



PARLIAMENT OF VICTORIA
Accountability and Oversight Committee

**Report into Victorian
oversight agencies
2013-14**

Parliament of Victoria
Accountability and Oversight Committee

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Committee functions

The Accountability and Oversight Committee is a joint investigatory committee of the Victorian Parliament. The Committee was first established in the 57th Parliament and re-established in the 58th Parliament, under the *Parliamentary Committees Act 2003* (Vic). Its members are drawn from both the Legislative Assembly and the Legislative Council.

The Committee's functions are contained in the following legislation:

Parliamentary Committees Act 2003, Section 6A **Accountability and Oversight Committee**

1. The functions of the Accountability and Oversight Committee are—
 - a. to monitor and review the performance of the functions and exercise of the powers of the Freedom of Information Commissioner; and
 - b. to consider and investigate complaints concerning the Freedom of Information Commissioner and the operation of the office of the Freedom of Information Commissioner; and
 - c. to report to both Houses of Parliament on any matter relating to—
 - i. the performance of the functions and the exercise of the powers of the Freedom of Information Commissioner; and
 - ii. any complaint concerning the Freedom of Information Commissioner and the operation of the office of the Freedom of Information Commissioner—
that requires the attention of Parliament;
 - d. to examine the annual report of the Freedom of Information Commissioner and any other reports by the Commissioner and report to Parliament on any matters it thinks fit concerning those reports; and
 - e. to inquire into matters concerning freedom of information referred to it by the Parliament and to report to Parliament on those matters;
 - f. to monitor and review the performance of the duties and functions of the Victorian Inspectorate in respect of Ombudsman officers; and
 - g. to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate in respect of Ombudsman officers that require the attention of the Parliament; and
 - h. to examine any reports made by the Victorian Inspectorate in respect of Ombudsman officers; and
 - i. the functions conferred on the Committee by the *Ombudsman Act 1973*.
2. Despite anything to the contrary in subsection (1), the Accountability and Oversight Committee cannot—
 - a. reconsider a decision of the Freedom of Information Commissioner in relation to a review of a particular matter; or
 - b. reconsider any recommendations or decisions of the Freedom of Information Commissioner in relation to a complaint under the *Freedom of Information Act 1982*; or
 - c. investigate a matter relating to particular conduct the subject of any report made by the Victorian Inspectorate in respect of an Ombudsman officer; or

- d. review any decision to investigate, not to investigate or to discontinue an investigation of, a particular complaint made to the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011* in respect of an Ombudsman officer; or
- e. review any findings, recommendations, determinations or other decisions of the Victorian Inspectorate in relation to a particular complaint made to, or investigation conducted by, the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011* in respect of an Ombudsman officer; or
- f. disclose any information relating to the performance of a duty or function or exercise of a power by the Victorian Inspectorate which may—
 - i. prejudice any criminal proceedings or criminal investigations; or
 - ii. prejudice an investigation being conducted by the Ombudsman, the IBAC or the Victorian Inspectorate; or
 - iii. contravene any secrecy or confidentiality provision in any relevant Act.

Ombudsman Act 1973, Section 26H
Oversight by Accountability and Oversight Committee

1. The functions of the Accountability and Oversight Committee under this Act are—
 - a. to monitor and review the performance of the duties and functions of the Ombudsman;
 - b. to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Ombudsman that requires the attention of the Parliament;
 - c. to examine any reports by the Ombudsman that are laid before a House of the Parliament.
2. Despite anything to the contrary in subsection (1), the Accountability and Oversight Committee cannot—
 - a. investigate a matter relating to particular conduct the subject of any particular complaint, protected disclosure complaint, referred complaint or referred matter;
 - b. review any decision to investigate, not to investigate or to discontinue an investigation of, a particular complaint, protected disclosure complaint, referred complaint or referred matter;
 - c. review any findings, recommendations, determinations or other decisions of the Ombudsman in relation to a particular complaint, protected disclosure complaint, referred complaint or referred matter or an investigation conducted by the Ombudsman;
 - d. disclose any information relating to the performance of a function or duty or the exercise of a power by the Ombudsman which may—
 - i. prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
 - ii. contravene any secrecy or confidentiality provision in any relevant Act.

Ombudsman Act 1973, Section 26I
Powers and procedures of Accountability and Oversight Committee

The powers and procedures of a Joint Investigatory Committee under the *Parliamentary Committees Act 2003* apply to the Accountability and Oversight Committee in the performance of its functions under this Act.

Committee membership



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Northern Victoria



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This report is also available online at the Committee's website.

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Chair's foreword

I am pleased to present the second report of the Victorian Parliament's Accountability and Oversight Committee into integrity agencies.

This report examines the 2013–14 annual reports of the Freedom of Information (FOI) Commissioner, the Victorian Ombudsman and the Victorian Inspectorate.

This report makes eight recommendations to the Victorian Government to streamline and enhance the operations of these three agencies.

The Committee's report from the last parliament made thirteen recommendations, including:

- implementing a system for the effective measurement and evaluation of the education and training activities of the FOI Commissioner
- that the FOI Commissioner's budget be published as a separate line item in the Department of Justice annual report and that the FOI Commissioner's annual report also includes the office's financial statements
- that the FOI Commissioner develops a methodology for better managing and quantifying alternative dispute resolution techniques
- that the FOI Commissioner updates the Committee on progress in implementing a case management system
- improving communication on FOI matters between the FOI Commissioner's office and the Victorian Civil and Administrative Tribunal
- commissioning an independent review at regular intervals of the Victorian Ombudsman's office
- working with the Ombudsman's office to develop a seamless 'one-stop shop' framework that offers a single point of entry for people seeking to make a complaint about a public body
- improving the protected disclosures provision in the *Ombudsman Act 1973* (Vic)
- providing alternatives for people to lodge applications and complaints with the Ombudsman other than always in writing

The Government Response to the report, which was received in June 2015, provided general support for the Committee's recommendations to enhance the integrity regime. The Committee now looks forward to specific details on the recommendations being enacted, particularly when legislation is introduced into Parliament with the stated aim of improving the effectiveness of oversight agencies, as has been forecast by the Government.

The members of the AOC were appointed on 16 April 2015 and the Committee held its first meeting in the 58th Parliament on 4 May 2015. The Committee subsequently met with the FOI Commissioner and Ombudsman at their offices on 3 and 17 August 2015 respectively. A site visit to the Victorian Inspectorate's office is scheduled for later in 2015. The Committee also sent representatives to the annual FOI Commissioner's 'FOI practitioners forum' in Melbourne on 16 June 2015.

As a result of the Parliament re-establishing the Committee in May 2015, this report is necessarily concise in order to meet the Committee's responsibilities under its governing legislation. It is intended to serve as an update on the 2013–14 annual reports of the three oversight agencies and most importantly, reinforce the previous Committee's recommendations that this Committee believes the Government should explicitly support.

In December the Committee intends to table its report on the 2014–15 oversight agency annual reports, which are due to be presented to Parliament by November 2015.

On behalf of the Committee, I would like to thank Ms Lynne Bertolini, former FOI Commissioner, and Ms Deborah Glass, Victorian Ombudsman, in addition to their staff, for their insights and hospitality while visiting their offices. On 7 August 2015 I was advised by Ms Bertolini of her decision to resign her position as FOI Commissioner on 5 September 2015. I wish to thank Ms Bertolini as the inaugural FOI Commissioner and for her work in establishing the office of the FOI Commissioner.

I would also like to express my thanks to all those people involved with the Committee and in the production of this report: my Committee colleagues Ms Jaclyn Symes MLC (Deputy Chair), Ms Melina Bath MLC, Mr Michael Gidley MP, Mr James Purcell MLC, Mr Nick Staikos MP and Hon Marsha Thomson MP.

Finally, I wish to acknowledge the work of the Committee secretariat, executive officer Sean Coley, research officer Vicky Finn and administrative officer Matt Newington.

I commend this report to the Parliament.



Mr Neil Angus MP
CHAIR

List of findings and recommendations

FINDING 1: The Committee finds that, due to the increasing number of complaints carried over into subsequent reporting periods, additional information (without identifying specific cases) on reasons for the carry-over of requests, should be included in the FOI Commissioner’s annual report. This would help identify whether there are any systemic issues to be resolved or additional resources and education initiatives required, to reduce the carry-over of complaints. 8

FINDING 2: The Committee finds that the annual report should include an analysis of factors which have contributed to changes in the volume of FOI requests and FOI appeals and complaints. This includes the role played by education and training initiatives and alternative dispute resolution techniques. 13

FINDING 3: The Committee finds that the Victorian Inspectorate’s annual report refers to ‘comprehensive and adequate’, in relation to reports made to the Victorian Inspectorate by the Ombudsman. However, there is no definition of what ‘comprehensive and adequate’ means. 31

RECOMMENDATION 1: That the FOI Commissioner include in subsequent annual reports, the average length of time for FOI reviews and the common circumstances under which the applicant agrees to extend the reporting date. 11

RECOMMENDATION 2: That the Victorian Government supports the continuation of the FOI Commissioner’s Practitioners Forum, as a key annual training and evaluation exercise for FOI officers and government agency staff. 14

RECOMMENDATION 3: That the Freedom of Information Commissioner’s financial statement reports are published as part of the FOI Commissioner’s annual report. 14

RECOMMENDATION 4: That the FOI Commissioner develops a targeted training program for departmental and agency staff using alternative dispute resolution (ADR) techniques and that an evaluation program is established to determine the value of ADR in reducing the volume of FOI reviews and complaints. 15

RECOMMENDATION 5: That the Victorian Parliament amends Section 14(2) of the *Ombudsman Act 1973* to allow complaints to be made by means other than writing, such as verbally or electronically transmitted. 24

RECOMMENDATION 6: That the Victorian Parliament amends Section 16E of the *Ombudsman Act 1973* to allow referral of complaints from the Ombudsman to IBAC to be made in ways other than writing, such as electronically transmitted. **24**

RECOMMENDATION 7: That the Victorian Government in consultation with the Accountability and Oversight Committee and the Independent Broad-based Anti-corruption Commission reviews the legislative requirement under the *Ombudsman Act 1973* that all protected disclosure cases must be investigated by the Victorian Ombudsman. **24**

RECOMMENDATION 8: That the Victorian Government develops a seamless 'one-stop shop' framework to provide a single point of entry for people seeking to make a complaint about a public body. **24**

List of acronyms

AOC	Accountability and Oversight Committee (Victorian Parliament)
FOI	Freedom of Information
IBAC	Independent Broad-based Anti-corruption Commission (Victoria)
PAEC	Public Accounts and Estimates Committee (Victorian Parliament)
PIM	Public Interest Monitor (Victoria)
VAGO	Victorian Auditor-General's Office
VCAT	Victorian Civil and Administrative Tribunal
VI Act	<i>Victorian Inspectorate Act 2011</i> (Vic)

1.1 Background

This is the second report of the Victorian Parliament's Accountability and Oversight Committee (AOC). The first report was tabled in the 57th Parliament, in September 2014. Using the legislative powers provided to the Committee, this report examines the 2013–14 annual reports of the three agencies the AOC oversees: the Freedom of Information (FOI) Commissioner, the Victorian Ombudsman and the Victorian Inspectorate.

This report covers matters raised in the last financial year and not developments during 2014–15, which will be the subject of the next Committee report expected to be tabled in the Parliament later in 2015.

1.2 The Accountability and Oversight Committee

The Committee was first established in February 2013 under the *Parliamentary Committees Act 2003* (Vic) as part of the implementation of a new integrity regime in Victoria.¹ It was formed at the same time as the Independent Broad-based Anti-corruption Commission Committee (IBAC Committee), which oversees Victoria's new anti-corruption agency, the Independent Broad-based Anti-corruption Commission (IBAC) and aspects of the Victorian Inspectorate. The AOC, along with the IBAC Committee, was re-established in April 2015, following the setting up of the majority of joint investigatory committees in the 58th Parliament. The Committee first met on 4 May 2015.

Both the *Parliamentary Committees Act* and the *Ombudsman Act 1973* (Vic) provide the AOC with powers to oversee three of Victoria's integrity agencies.² In the case of the Victorian Inspectorate, the AOC oversees only those aspects of the Victorian Inspectorate's work dealing with conduct of Victorian Ombudsman officers.

Under both Acts, the AOC is empowered to analyse the outputs of the FOI Commissioner and the Victorian Ombudsman and monitor their overall operational performance. In addition, it has powers to review any reports tabled by the FOI Commissioner and the Ombudsman in the Parliament — including annual reports — and reports of the Victorian Inspectorate in respect of the Victorian Inspectorate's oversight of the Ombudsman.

1 *Parliamentary Committees Act 2003* (Vic).

2 *Ombudsman Act 1973* (Vic).

Both the AOC and the IBAC Committee provide additional Parliamentary oversight of Victoria's integrity system, complementing the existing oversight role exercised by the Victorian Parliament's Public Accounts and Estimates Committee (PAEC), whose functions are constituted under section 14 of the Parliamentary Committees Act.

1.3 Victoria's integrity system

Victoria's integrity system was inaugurated in July 2012 with the establishment of new integrity bodies including IBAC, the Public Interest Monitor (PIM), FOI Commissioner and the Victorian Inspectorate. The functions of the former Office of Police Integrity and the Office of the Special Investigations Monitor were integrated into IBAC and the Victorian Inspectorate, respectively. There were also amendments to the powers of the Victorian Ombudsman and the Victorian Auditor-General's Office (VAGO) as part of the new system, along with the establishment of the AOC and the IBAC Committee by the Victorian Parliament.

On 16 September 2014 the then Government introduced into Parliament the Integrity Legislation Amendment Bill 2014 (Vic). The Bill aimed to strengthen IBAC and the Victoria's integrity framework more broadly, but lapsed following its Second Reading as a result of caretaker conventions.

1.4 The Committee's roles and responsibilities

The Committee's oversight role differs depending on which body it is overseeing. However, there are some similarities of the roles for each of the three agencies scrutinised by the Committee. These roles fall into the following categories:

- oversight of the performance, functions and duties of each agency (discussed below)
- scrutiny of each agency's reports; and
- management of complaints.

The Committee's legislative functions include:

- monitoring and reviewing the performance — in respect of the functions and exercise of powers — of the Ombudsman and FOI Commissioner;
- considering and investigating complaints concerning the FOI Commissioner and the operation of the office of the FOI Commissioner; and
- examining the performance of the Victorian Inspectorate in relation to the Inspectorate's duties and functions in respect of Ombudsman officers.

1.4.1 Oversight of agency performance, functions and duties

Scrutiny of agencies' annual reports allows the Committee to fulfil its role in Victoria's integrity system by identifying issues affecting each agency's operational performance and making recommendations to the Government through reports tabled in the Parliament.

The Committee is empowered by legislation to specifically examine the FOI Commissioner's annual report and any reports tabled by the Ombudsman and the FOI Commissioner, or any report made by the Victorian Inspectorate in respect of the Ombudsman's officers.

As the Committee is legislatively bound as to what matters it can examine in relation to the agencies it oversees, the Committee cannot investigate decisions, findings and recommendations made by an agency in the course of its investigation of specific cases. The Committee can only review processes followed by agencies when making decisions rather than overturning an agency's original decision or recommending an agency reconsider its decision.

1.5 Structure of the report

The report is divided into four chapters. This chapter covers the role and responsibilities of the Committee and Victoria's oversight system generally.

The following three chapters will examine in greater detail each of the three annual reports for 2013–14 on the agencies the Committee oversees.

Chapter 2 examines the performance of the FOI Commissioner's office, as detailed in the annual report.

Chapter 3 covers the operating performance of the Victorian Ombudsman.

Chapter 4 reviews the Victorian Inspector's annual report in respect of the Victorian Ombudsman.

2.1 Introduction

In 2012, the Victorian Government introduced reforms to the State's integrity regime. In terms of freedom of information (FOI) the most visible elements were new legislation, the *Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012* (Vic),³ and the establishment of the FOI Commissioner's office on 1 December 2012. Ms Lynne Bertolini was appointed as Victoria's inaugural FOI Commissioner in November 2012, taking up her role on 1 December 2012.⁴ On 5 September 2015, Ms Bertolini resigned as Commissioner and Mr Michael Ison, who was an Assistant Commissioner, was appointed as Acting FOI Commissioner.

For the 2013–14 year, the FOI Commissioner's office comprised 12 ongoing and five fixed-term appointments.⁵

2.2 The FOI Commissioner's functions

The FOI Commissioner viewed the role of her office as one of ensuring there is a fair and transparent flow of government information.⁶

The Freedom of Information Commissioner has the following functions and powers under section 6C(1) of the *Freedom of Information Act 1982* (Vic):

- (a) to promote understanding and acceptance by agencies of the Act and its object
- (b) to conduct reviews of decisions by agencies on requests under the Act
- (c) to receive and handle complaints in accordance with Part VIA of the Act
- (d) to provide advice, education and guidance to agencies in relation to compliance with any professional standards
- (e) to monitor compliance by agencies with those professional standards
- (f) to provide advice, education and guidance to agencies and the public in relation to the Commissioner's functions

3 *Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012* (Vic).

4 Freedom of Information Commissioner (2013), *Annual report 2012–13*, p. 9.

5 Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 37.

6 Freedom of Information Commissioner (2014), *Annual report 2013–14*, p.8.

- (g) in accordance with Division 3 of Part VII, to report on the operation of the Act
- (h) at the request of the Minister, to provide advice to the Minister in relation to the operation and administration of the Act
- (i) any other functions conferred on the Commissioner by or under the Act or any other Act.⁷

On 7 May 2014 the then Attorney-General announced amendments to the FOI Act. These included the appointment of two Assistant Commissioners and other amendments which resulted in changes to the practices in conducting reviews and investigating complaints.⁸ On 28 June 2014, the *Freedom of Information (Access Charges) Regulations 2014* (Vic) provided that some charges for access to documents were to be calculated in fee units rather than set amounts.⁹

The FOI Commissioner's objectives are:

- to conduct reviews and handle complaints
- to provide accurate advice and guidance on FOI
- to engage applicants, agencies and the community
- to promote excellence in FOI service delivery.¹⁰

The office also provides advice, education and guidance to the general public and public sector agencies in relation to the FOI Commissioner's functions and any professional standards on FOI. It is responsible for reporting to the Committee on the operation of the FOI Act.¹¹

In her annual report, the FOI Commissioner identified the following highlights for her office during 2013–14:

- 100 new review applications and 147 complaints were resolved using alternative dispute resolution techniques;
- an online satisfaction survey of applicants and complainants was introduced;
- inaugural FOI Practitioners Forum was held in Melbourne, which was attended by over 200 people representing 120 agencies;
- presentations and training were delivered to over 550 people from several government agencies and stakeholder groups, including a regional session in Geelong;
- annual survey of all agencies was redeveloped;
- Over 2000 telephone and 4030 email enquiries were responded to;

⁷ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 8.

⁸ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 11.

⁹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 11.

¹⁰ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 8

¹¹ Freedom of Information Commissioner (2015), *About*, viewed 31 August 2015, <<http://www.foicommisioner.vic.gov.au/home/about/>>.

- 474 requests for review of FOI decisions (of which 399 were completed in 2013–14) were received; and
- 361 complaints relating to the administration of FOI (of which 249 were completed in 2013–14) were received.¹²

2.3 Complaints investigated

The FOI Commissioner has the power to receive and investigate complaints about a Victorian government department, agency or council's handling of an FOI request.

The types of complaints the FOI Commissioner can investigate include:

- an action taken or failed to be taken by an agency, including a decision that a document does not exist or cannot be located
- a delay by a Minister in dealing with an FOI request
- an action taken or failed to be taken by a Minister in making a decision to
 - defer access to a document, or
 - disclose a document that is claimed to be exempt under section 33 of the Act or section 34.¹³

Once a complaint has been received, it will be assessed to ensure it is within the FOI Commissioner's jurisdiction. The Act provides that the FOI Commissioner may determine not to accept a complaint or may dismiss a complaint at any stage on any of the following grounds:

- the action taken or failed to be taken by an agency falls outside the Act
- the complaint was made out of time, or is frivolous, vexatious, misconceived, lacking in substance or not made in good faith
- the complainant has the right to make a complaint to another body and has not exercised that right, or does not have sufficient interest in the subject matter of the complaint
- the Commissioner considers that a complaint is not appropriate in the circumstances, or after making reasonable attempts, is unable to contact the complainant.¹⁴

Complaints to the FOI Commissioner must be made within 60 calendar days after the action or conduct that is the subject of the complaint occurred.

If the complaint is within the FOI Commissioner's jurisdiction, the complainant will receive written advice that their complaint has been accepted. If required the Commissioner will request any additional information to investigate the

¹² Freedom of Information Commissioner (2014), *Annual report 2013–14*, pp. 9–10.

¹³ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 24.

¹⁴ *Freedom of Information Act 1982* (Vic) section 61B.

complaint. The FOI Commissioner will then make preliminary inquiries with the public sector agency or Minister's office that is the subject of the complaint to determine how best to resolve the complaint.

The FOI Commissioner's annual report makes special mention of the benefits of employing alternative dispute resolution techniques, through which the Commissioner will seek to conciliate the matter between the agency and complainant and, if required, make recommendations to the agency to improve procedures and compliance. Where appropriate, complaints will be handled through informal resolution by agreement between parties.¹⁵

2.4 Complaint completion rates

In 2013–14 the FOI Commissioner received 361 new complaints and carried over 72 from 2012–13. Of these, 249 were completed and 184 remained outstanding as of 30 June 2014.

Table 2.1 below provides a summary of the complaints.

Table 2.1 Summary of FOI complaints in the 2013–14 financial year

	2012–13	2013–14	Total
Complaints received	—	361	361
Unfinalised complaints carried over	72	—	72
Complaints finalised	(72)	(177)	(249)
Total complaints outstanding	0	184	184

Source: Freedom of Information Commissioner (2014), *Annual report 2013–14*.

The 249 completed cases exceed the FOI Commissioner's performance target of 150 resolved complaints during the 2013–14 financial year.¹⁶ However, the annual report does not specify the reasons why 72 complaints were outstanding at the end of 2012–13 or 184 complaints were outstanding at the end of 2013–14.

FINDING 1: The Committee finds that, due to the increasing number of complaints carried over into subsequent reporting periods, additional information (without identifying specific cases) on reasons for the carry-over of requests, should be included in the FOI Commissioner's annual report. This would help identify whether there are any systemic issues to be resolved or additional resources and education initiatives required, to reduce the carry-over of complaints.

Of the 72 complaints carried over from 2012–13, 69 were finalised by the FOI Commissioner and the remaining 3 were not finalised at the request of the applicants.¹⁷

¹⁵ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 23.

¹⁶ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 26.

¹⁷ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 26.

There were four categories of complainants comprising the 361 complaints received in 2013–14. These were:

- members of the public (308);
- Members of Parliament (26);
- media (14); and
- other organisations/companies (13).¹⁸

The 361 complaints related to 88 Victorian public sector agencies. This amounted to a 29 per cent complaint rate against the 307 agencies and Ministers who reported receiving an FOI request during 2013–14.¹⁹

Further, of the 249 complaints finalised during the 2013–14 year:

- 51 complaints were not accepted or outside the FOI Commissioner’s jurisdiction
- 41 complaints were dismissed by the Commissioner under section 61B of the FOI Act
- 10 complaints were withdrawn by the complainant, with one being withdrawn following actions taken by the agency in accordance with a conciliation agreement
- 147 complaints were resolved informally.²⁰

2.5 Reviews of agency decisions

If the parties to a complaint are unable to reach an agreement regarding a decision on an FOI request, then the complainant can request that the FOI Commissioner conducts a review of an agency’s decision. Under the FOI Act, the Commissioner can review decisions of public sector agencies to:

- refuse access to a document through provisions of the Act;
- defer access to a document;
- not waive or reduce an application fee; or
- refuse to amend a personal record.²¹

Applications for reviews of an FOI decision must be made to the FOI Commissioner within 28 days of receiving the decision from the agency. The FOI Commissioner has 30 days to conduct its review, unless the applicant agrees in writing to a further extension of the review period.

¹⁸ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 26.

¹⁹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 24.

²⁰ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 26.

²¹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 14.

The FOI Commissioner cannot review FOI decisions of agencies relating to:

- Cabinet documents;
- documents affecting national security, defence or international relations;
- a decision of a Minister or a principal officer of an agency; or
- an agency exemption on Cabinet or national security grounds.²²

Applications for reviews of a these FOI decisions must be made to the Victorian Civil and Administrative Tribunal (VCAT).

2.6 Review completion rates

The FOI Commissioner received 474 requests for review of agency decisions,²³ of which 399 were completed by the end of the 2013–14 financial year.²⁴ The Committee notes this was just one short of the target measure of 400 completed reviews during the financial year.

Sixty-eight applications for review of agency decisions were carried over from 2012–13.²⁵ Of these, 65 were completed in 2013–14 and the remaining three were held over at the request of the applicant.²⁶

Lodgement of a request for a review is not subject to any fees or costs to the applicant. As with the complaints handling process, the FOI Commissioner's stated aims are to conduct reviews in a timely, efficient and fair manner, with an emphasis on informal resolution.

In the 2013–14 reporting year, there were four categories of applicants to the FOI Commissioner for a review of decisions:

- members of the public (371 requests);
- Members of Parliament (44 requests);
- media (31 requests); and
- other organisations/companies (28 requests).²⁷

Once a request for review has been received by the FOI Commissioner, it is assessed to ensure it is a matter that is able to be reviewed under the FOI Act. If it is a reviewable matter, the applicant will be sent a letter advising the request has been accepted and seeking provision of any additional information. The FOI Commissioner will then make preliminary inquiries with the agency and view the documents subject to the FOI request.

22 Freedom of Information Commissioner (2014), *Reviews*, viewed 1 September 2015, <<http://www.foicommisioner.vic.gov.au/home/reviews/>>.

23 Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 14.

24 Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 34.

25 Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 14.

26 Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 17.

27 Freedom of Information Commissioner (2014), *Annual report 2013-14*, pp. 14–16.

During 2013–14, 57 applications were not accepted by the FOI Commissioner as the application was received out-of-time or the application related to a matter that fell outside the Commissioner’s jurisdiction. In 54 cases, applicants withdrew their review requests following preliminary inquiries and alternative dispute resolution. A further seven matters were resolved by negotiated agreement.²⁸

During the course of a review, an agency has the option to revoke its original decision, reconsider the documents and make a fresh decision. The applicant then has the opportunity to either agree with the fresh decision and finalise the review, or disagree with the fresh decision and continue with the review.

Following the reviews, agencies made fresh decisions in 78 cases. Applicants agreed with an agency’s fresh decision in 22 cases. Two matters were not accepted, as they fell outside the FOI Commissioner’s jurisdiction.²⁹

The FOI Commissioner made a total of 220 fresh decisions after conducting a review, with 75 per cent being made within 30 days of receipt of the application or other period agreed by the applicant. Applicants agreed to extensions of time in a total of 291 reviews and agreed to 512 extensions of time in total.³⁰

It is unclear from the annual report under what circumstances extensions of time are proposed to, and accepted by, applicants. The large number of FOI reviews in which time extensions have been negotiated merits further investigation, which would be assisted through the provision of information in future annual reports.

RECOMMENDATION 1: That the FOI Commissioner include in subsequent annual reports, the average length of time for FOI reviews and the common circumstances under which the applicant agrees to extend the reporting date.

Of the 220 fresh review decisions made by the FOI Commissioner, 116 were the same as the agency decision and 104 decisions differed (either in full or in part). A total of 37 applications for review were dismissed by the FOI Commissioner under section 49G of the Freedom of Information Act. Of these:

- 17 were dismissed with the applicant’s agreement
- 8 were dismissed on the grounds that the FOI Commissioner considered a review was not appropriate in the circumstances
- 8 were dismissed as the FOI Commissioner considered the review would be more appropriately dealt with by VCAT
- 1 was dismissed following the applicant’s failure to co-operate with the review
- 3 were dismissed on the grounds that the FOI Commissioner was unable to contact the applicant following reasonable attempts.³¹

²⁸ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 17.

²⁹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 17.

³⁰ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 17.

³¹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 17.

As at 30 June 2014, 143 review applications were pending finalisation.³²

2.7 VCAT Appeals

The FOI Commissioner's ruling in its review of an agency's decision may be appealed by applicants and agencies through the Victorian Civil and Administrative Tribunal (VCAT). VCAT can review decisions of the FOI Commissioner to refuse or defer access to a document in accordance with an application. Applicants have 60 days to apply to VCAT from the date the Commissioner's written decision was received. Applicants can also apply to VCAT for a review if the FOI Commissioner has not completed a review within the 30-day timeframe (or any agreed timeframe). Public sector agencies can also appeal the FOI Commissioner's decisions at VCAT and they are required to notify the Commissioner if lodging an application for review at VCAT.³³

The annual report notes that in 2013–14, three agencies appealed four decisions of the FOI Commissioner at VCAT.³⁴ The FOI Commissioner does not receive notification from VCAT on applicants who had lodged applications at VCAT for a review of the Commissioner's decision, which was one of the recommendations from the previous Committee's report in the 57th Parliament.

Initial FOI requests reported in 2013–14 increased by 1.73 per cent on the figure for the previous year to 34,126. Agencies reported that 86 VCAT appeals were lodged in 2013–14, and that of the 31 cases decided by VCAT, agency decisions were fully confirmed in 24 cases. It was also reported that VCAT varied agency decisions in four cases and overturned the agency's decision in three cases. Agencies reported that 67 appeals were withdrawn in the reporting period.³⁵

2.8 The Committee's interaction with the FOI Commissioner

To date in the 58th Parliament, the Committee has had limited interaction with the FOI Commissioner's office. The Committee held an informal meeting with the then Commissioner Lynne Bertolini, and then assistant (and now acting) commissioner, Michael Ison, on 3 August 2015. This was followed by an informal 'walk through' of the office and meeting with staff on the same day.

³² Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 17.

³³ Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 23.

³⁴ Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 23.

³⁵ Freedom of Information Commissioner (2014), *Annual report 2013-14*, p. 43.

2.9 Performance of the FOI Commissioner

In 2013–14, the FOI Commissioner responded to more than 2000 telephone enquiries and over 4030 enquiries received by email; received 474 requests for review of FOI decisions; received 361 complaints relating to the administration of FOI requests received by the agencies and delivered formal presentations to over 550 agency staff.³⁶

The 2013–14 annual report noted that over the three years to 30 June 2014, the number of FOI requests made to the emergency services sector halved, the number made to the government sector doubled and the health sector had the highest volume of requests.³⁷ However, the annual report did not provide any analysis of this data, which would be beneficial in identifying trends.

FINDING 2: The Committee finds that the annual report should include an analysis of factors which have contributed to changes in the volume of FOI requests and FOI appeals and complaints. This includes the role played by education and training initiatives and alternative dispute resolution techniques.

The annual report also identifies the FOI Commissioner’s output results. The Commissioner exceeded her 2013–14 complaints target of 150 by 99 (249 actual) and was one short of her ‘reviews completed’ target of 400 (actual 399).³⁸

The education and training target of 20 fell 5 presentations short at 15, which the FOI Commissioner explained was due to resources being focused on completing reviews and responses, as well as the increasing complexity of the reviews and some agencies choosing not to cooperate.³⁹

The same rationale applied to ‘statutory and other agreed timelines’ being met in only 74.9 per cent of cases. In a post review/complaint survey, introduced in April 2014, 65 per cent of the respondents (a 31.9 per cent response rate) rated the FOI Commissioner’s services in handling their requests as satisfactory or higher.⁴⁰

2.9.1 Education and training

As part of its education role, the number of education and training activities delivered by the FOI Commissioner in 2013–14 fell short by 5 of the target of 20, yet the FOI Commissioner’s office delivered formal presentations on the organisation’s responsibilities to over 550 staff representing approximately 170 Victorian public sector agencies.⁴¹

³⁶ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 9.

³⁷ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 43.

³⁸ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 34.

³⁹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 34.

⁴⁰ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 34.

⁴¹ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 34.

A key education and training activity conducted by the FOI Commissioner's office during 2013–14 was the inaugural FOI practitioners' forum held in Melbourne during June 2015, attended by the Chair of the Committee, Mr Neil Angus MP and the Committee secretariat.

The Committee is pleased to see that the FOI practitioners' forum has become a regular fixture of the FOI Commissioner's office's education and training program.

As recommended in its previous report, the Committee has again identified a need for effective measurement and evaluation of education and training activities conducted by the FOI Commissioner. This would provide a way to ensure that education and training activities are targeted to the right audience and deliver appropriate training to FOI staff in public sector agencies.

RECOMMENDATION 2: That the Victorian Government supports the continuation of the FOI Commissioner's Practitioners Forum, as a key annual training and evaluation exercise for FOI officers and government agency staff.

2.10 Issues identified in the FOI Commissioner's annual report

While the Committee's function is to review agency operational performance — with VAGO and the Public Accounts and Estimates Committee being responsible for reviewing financial statements — there is a need for greater financial transparency and accountability to be included in the FOI Commissioner's annual report. This was identified as a recommendation by the previous committee in its report in the last parliament.

2.10.1 FOI Commissioner finances

The Committee found it noteworthy that, unlike the Victorian Ombudsman or Victorian Inspectorate, the FOI Commissioner's financial accounts are not contained in its annual report. In 2013–14 both the former Victorian Inspectorate and the FOI Commissioner's office were funded by the Department of Justice, however only the Victorian Inspectorate's financial statements in its annual report show sources and amounts of grant funding from the Department.⁴²

While the FOI Commissioner's budget is contained in the Department's annual report, its budget is part of a single, larger output program and not readily disaggregated.

RECOMMENDATION 3: That the Freedom of Information Commissioner's financial statement reports are published as part of the FOI Commissioner's annual report.

⁴² Victorian Inspectorate (2014), *Annual Report 2013-14*.

2.10.2 Performance measures

In addition to the FOI Commissioner's five key performance measures (output results) noted above, the following matters warrant particular attention due to being identified as developing trends or where resources may be required.

Alternative dispute resolution

The use of mediation, conciliation and other alternative dispute resolution techniques are important tools for resolving appeals in a non-adversarial way.

While acknowledging that in 2013–14 agencies reported that 93.2 per cent of FOI requests were processed in 45 days or less,⁴³ there remains a requirement for agency staff to further develop their communication and mediation skills, which may lead to a decrease in the numbers of requests for reviews and complaints coming to the attention of the FOI Commissioner. This is especially the case given the high number of cases which are resolved when they reach the FOI Commissioner's office through alternative dispute resolution techniques.

In the 2013–14 annual report the FOI Commissioner reported that 100 reviews were resolved informally⁴⁴ and 147 complaints were resolved informally.⁴⁵ With the high volume of requests being informally resolved by the FOI Commissioner's office, a greater focus should be on training agency staff who are initially involved in receiving and processing the FOI request, from the FOI officer through to department officers, managers and the principal officer.

RECOMMENDATION 4: That the FOI Commissioner develops a targeted training program for departmental and agency staff using alternative dispute resolution (ADR) techniques and that an evaluation program is established to determine the value of ADR in reducing the volume of FOI reviews and complaints.

2.10.3 Case management system

The 2012–13 annual report noted that the FOI Commissioner had contracted out the development of an information technology based case management system, with implementation taking place during the 2013–14 financial year.⁴⁶ The Committee would welcome subsequent annual reports providing an update on its implementation and operation.

⁴³ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 47.

⁴⁴ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 17.

⁴⁵ Freedom of Information Commissioner (2014), *Annual report 2013–14*, p. 26.

⁴⁶ Freedom of Information Commissioner (2013), *Annual report 2012–13*, p. 11.

2.10.4 Better transmission of VCAT rulings

As part of Victoria's FOI regime, the FOI Commissioner's decisions can be appealed through VCAT. While applicants are advised by the FOI Commissioner of the requirement to notify the Commissioner if lodging an application for review of a decision at VCAT, the annual report notes that they do not always do so. The effectively *ad hoc* nature whereby the FOI Commissioner's office receives rulings and results of disputes over FOI decisions that are appealed through VCAT means the office remains less able to efficiently identify trends, determine the cases resolved by mediation without the need for a hearing and administer and manage FOI disputes.

The previous Committee's report made two recommendations on this issue.

3

Victorian Ombudsman

3.1 Introduction

The Victorian Ombudsman is an independent officer of the Victorian Parliament, established under the *Ombudsman Act 1973* (Vic).⁴⁷ The independence of the Ombudsman is guaranteed under Sections 18(1B) and 94E of the *Constitution Act 1975* (Vic).⁴⁸

The Ombudsman's objective is to promote excellence in public administration in Victoria and to ensure the highest possible standards of public sector service delivery to all Victorians. The Ombudsman enquires into or investigates administrative actions taken by any member of staff of a government department, public statutory body or municipal council. The Ombudsman also has some important functions aimed at ensuring compliance by State Government entities with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and other Victorian legislation.⁴⁹

On 11 February 2013 legislation implementing integrity reforms came into effect in Victoria, with amendments to the Ombudsman Act and the replacement of the *Whistleblowers Protection Act 2001* (Vic)⁵⁰ with the *Protected Disclosure Act 2012* (Vic).⁵¹

With an office comprising 77 staff and an annual budget of \$10 million, the Victorian Ombudsman's office has the power to investigate actions and decisions of over 1000 Victorian government departments, statutory authorities and local councils.

In the 2013–14 year the Victorian Ombudsman's office:

- received 34,374 approaches
- completed 2672 enquiries
- undertook 15 'own motion matters' investigations
- tabled 12 reports in Parliament
- completed 70 formal investigations
- hosted 4 regional information days
- closed 85 percent of approaches in 7 days

47 *Ombudsman Act 1973* (Vic).

48 *Constitution Act 1975* (Vic).

49 Victorian Ombudsman (2014), *Annual Report 2014*, p. 7.

50 *Whistleblowers Protection Act 2001* Vic.

51 *Protected Disclosure Act 2012* (Vic).

- reported that agencies adopted 86 percent of recommendations.⁵²

3.2 The Victorian Ombudsman's functions

The Victorian Ombudsman's powers to conduct investigations are broad. The Ombudsman's investigations review the lawfulness of the actions or decisions of public sector agencies, as well as the reasonableness and fairness of an agency's actions.⁵³

The work of the Victorian Ombudsman essentially falls into two categories: enquiries and investigations, both of which involve the Ombudsman responding to complaints from the public and the use of own motion powers. In her role, the Ombudsman:

- receives complaints and disclosures
- makes enquires into and investigates administrative actions
- receives and assesses disclosures made under the Protected Disclosure Act
- investigates protected disclosure complaints
- reports on the outcomes of investigations
- makes recommendations
- tables reports in Parliament.⁵⁴

In the foreword to the 2013–14 annual report, the Ombudsman stated that her role is to '... redress the imbalance of power between the individual and the state' by providing a '... free, fair and independent service to those who are dissatisfied with the action or inaction of public bodies'.⁵⁵

The Ombudsman's Annual Report for 2013–14 argued that anti-corruption is the business of the Independent Broad-based Anti-corruption Commission (IBAC) and ensuring fairness is the role of the Victorian Ombudsman. Accordingly the Ombudsman called for either legislative amendment or alternatively, increased resources, to address the 'unintended consequences' of the integrity legislation that, Ms Glass argued, has diminished her office's capacity to undertake own motion investigations by requiring all 'protected disclosure' requests be investigated.⁵⁶

52 Victorian Ombudsman (2014), *Annual Report 2014*, p. 12.

53 Victorian Ombudsman (2015), 'About the Victorian Ombudsman', viewed 11 September 2015, <<https://www.ombudsman.vic.gov.au/About/The-Victorian-Ombudsman>>.

54 Victorian Ombudsman (2014), *Annual Report 2014*, p. 49.

55 Victorian Ombudsman (2014), *Annual Report 2014*, p. 4.

56 Victorian Ombudsman (2014), *Annual Report 2014*, p. 5.

The Ombudsman identified what she viewed as some of these unintended consequences of the integrity regime being the increase in: the number of investigations; workload relating to protected disclosure matters being assessed; and the administrative workload arising from the requirement to make written referrals.⁵⁷

Ms Glass also called for the Ombudsman Act to be amended to include a public education role for her office, along with altering the requirement that complaints must be made in writing,⁵⁸ which was also a recommendation made by the previous Committee.

3.2.1 Complaints handling

One of the Ombudsman's main functions is the investigation of complaints regarding public sector agencies. The Ombudsman's office provides citizens with a mechanism for the conduct of public sector agencies to be investigated, but usually as a last resort. Prior to investigation, the Ombudsman's office recommends that complainants first try to resolve their issues with the agency concerned.

In the 2013–14 annual report, 34,374 'approaches' (or complaints) were made to the Ombudsman, with 25,400 approaches closed in this period. Of these closed approaches, 13,152 were managed as complaints to be investigated.⁵⁹ The remaining 11,763 approaches were matters the Ombudsman could not deal with. These were mostly dealt with by referral to appropriate integrity and oversight agencies (such as IBAC), Consumer Affairs Victoria and 'industry' Ombudsmen's offices (e.g. Energy and Water Ombudsman, Telecommunications Ombudsman, Public Transport Ombudsman), while 485 were classified as 'information requests'.⁶⁰

In the 2013–14 year, 13,152 complaints in the Victorian Ombudsman's jurisdiction were closed, as were 15 own motion matters. Of this, there were 2672 enquiries (of which 6 were own motion enquiries) and 70 formal investigations (of which 9 were own motion investigations).⁶¹ The Ombudsman reported that the 34,374 approaches in 2013–14 was a 12.6 per cent increase on the previous year of 30,517.⁶²

Of the 25,400 approaches closed, 69.13 per cent were closed on the day they were received and 95 percent were closed within 30 days. A very small number (0.21 percent or 53 cases) were closed in excess of 6 months.⁶³

57 Victorian Ombudsman (2014), *Annual Report 2014*, p. 11.

58 Victorian Ombudsman (2014), *Annual Report 2014*, p. 5.

59 Victorian Ombudsman (2014), *Annual Report 2014*, p. 14.

60 Victorian Ombudsman (2014), *Annual Report 2014*, p. 14.

61 Victorian Ombudsman (2014), *Annual Report 2014*, p. 16.

62 Victorian Ombudsman (2014), *Annual Report 2014*, p. 13.

63 Victorian Ombudsman (2014), *Annual Report 2014*, p. 15.

3.2.2 Investigations

The Ombudsman has advised there has been an increase in investigations, which has come about mainly as a result of the requirement under the integrity regime that the Victorian Ombudsman must, except in narrow circumstances, investigate all protected disclosures referred to IBAC. Of the 51 formal investigations started in 2013–14, 33 were protected disclosure matters.⁶⁴

Part 4 of the Ombudsman Act provides the Ombudsman with powers to undertake investigations of public sector agencies, either as an ‘own motion’ investigation by the Ombudsman (section 16A), by the Victorian Parliament (section 16) or as a ‘referred’ investigation by another body in Victoria’s integrity system (section 16B).⁶⁵

The Ombudsman has jurisdiction under the Ombudsman Act to investigate a range of activities undertaken by public sector agencies, with the following public sector bodies and agencies subject to investigation by the Ombudsman:

- Victorian Government departments;
- statutory authorities
- local councils; and
- private agencies that carry out statutory responsibilities of government.⁶⁶

A list of public sector agencies that the Ombudsman has jurisdiction over for the purposes of complaint investigation is provided in Appendix 2 to this report. However, a number of agencies cannot be investigated by the Ombudsman. This is because the oversight of these agencies:

- is conducted through a court or tribunal (such as the Victorian Civil and Administrative Tribunal [VCAT]);
- is conducted by other integrity bodies (such as IBAC); or
- the agencies fall under the jurisdiction of the Federal or other State and Territory governments.

Agencies, bodies or situations excluded from oversight by the Ombudsman include:

- Victoria Police;
- private organisations such as banks, finance companies or shops;
- disputes between individuals;
- departments and authorities of the Commonwealth, States and Territories other than Victoria;

⁶⁴ Victorian Ombudsman (2014), *Annual Report 2014*, p. 11.

⁶⁵ *Ombudsman Act 1973* (Vic).

⁶⁶ Victorian Ombudsman, *Complaining to the Victorian Ombudsman*, viewed 4 September 2015, <<https://www.ombudsman.vic.gov.au/Complaints>>.

- decisions by Ministers of the Crown;
- decisions made by courts and tribunals, and
- decisions made by a municipal council.⁶⁷

Unless there are extenuating circumstances that warrant the Ombudsman's attention, the Ombudsman does not investigate complaints that are:

- more than 12 months old; or
- more appropriately decided by a court or tribunal.⁶⁸

The Ombudsman noted that during the year in review, she had looked at 15 matters using own motion powers,⁶⁹ including a broad-based review of deaths in custodial facilities and the use of force by Authorised Officers on Victoria's regional rail network (V/Line), both of which resulted in policy and operational changes.⁷⁰

In terms of complaints linked to ministerial/departmental portfolios, in 2013–14 the annual report noted the following volumes:

- Justice: 4248
- Local Government: 3281
- Human Services: 1391
- Transport, Planning and Local Infrastructure: 1227
- Education and Early Childhood Development: 1084
- Treasury and Finance: 914
- Health: 551
- Environment and Primary Industries: 343
- Other: 113.⁷¹

In an Australasian Study of Parliament Group presentation to parliamentarians and staff on 24 June 2014 at Parliament House, the Ombudsman sought the following changes and various amendments to the Ombudsman Act:

- greater flexibility in the handling of protected disclosure complaints referred from IBAC
- amending the requirement that complaints need to be in writing

⁶⁷ Victorian Ombudsman, *What we can and cannot investigate*, viewed 4 September 2015, <<https://www.ombudsman.vic.gov.au/Complaints/What-We-Can-and-Cannot-Investigate>>.

⁶⁸ Victorian Ombudsman, *What we can and cannot investigate*, viewed 4 September 2015, <<https://www.ombudsman.vic.gov.au/Complaints/What-We-Can-and-Cannot-Investigate>>.

⁶⁹ Victorian Ombudsman (2014), *Annual Report 2014*, p. 15.

⁷⁰ Victorian Ombudsman (2014), *Annual Report 2014*, p. 20.

⁷¹ Victorian Ombudsman (2014), *Annual Report 2014*, p. 22.

- amendments to allow the Ombudsman to communicate more effectively with the public and public service, through a public education function similar to that of IBAC and other Ombudsman offices in Australia
- amendments to enhance the office's capacity to manage complaints and investigations efficiently and effectively, including the use of alternative dispute resolution and the power to conduct administrative reviews as an alternative to formal investigations.⁷²

3.3 Impact of new integrity regime on operating costs

The Ombudsman's 2013–14 annual report notes that the Ombudsman's office faces increased operating costs as a consequence of Victoria's new integrity regime. The Victorian Ombudsman notes that these increased costs are borne across a range of the Ombudsman's activities.

3.4 Interactions with the Committee

The Ombudsman has had relatively minimal formal interaction with the Committee during the 58th Parliament. The Committee met with the Ombudsman on 14 August 2015, at which time there was an informal visit to the Ombudsman's office comprised of briefing and then a 'walk through' of the offices to meet with Victorian Ombudsman staff. This provided the Committee with a greater understanding of the issues facing the Victorian Ombudsman's office and the work of the office.

3.5 Interactions with other elements of Victoria's integrity regime

There are two key agencies the Ombudsman interacts with as part of Victoria's integrity regime, namely IBAC and the Victorian Inspectorate. All three agencies are interlinked through legislation and investigative procedures, and their relationships are outlined below.

3.5.1 The Ombudsman and the Victorian Inspectorate

The Victorian Inspectorate is a key oversight body in Victoria's new integrity system. It undertakes the day-to-day oversight of IBAC, the Ombudsman and the Victorian Auditor-General's Office (VAGO), monitors the interaction between the three integrity bodies, and oversees the use of covert and intrusive investigative powers by integrity bodies and law enforcement agencies and their application of procedural fairness in investigations. The Victorian Inspectorate can also

⁷² Deborah Glass, presentation to Australasian Study of Parliament Group hosted seminar 'Keeping Them Honest', 24 June 2014, Melbourne.

investigate matters regarding the conduct of Ombudsman officers, including the investigation of protected disclosures. Greater detail on the Victorian Inspectorate's oversight role of the Ombudsman is provided in Chapter 4.

3.5.2 The Ombudsman and IBAC

IBAC is able to investigate allegations of serious corrupt conduct by officers of the Ombudsman and VAGO. Under Part 3 of the Protected Disclosure Act, IBAC has become a 'clearing house' for protected disclosure cases.⁷³ IBAC is responsible for assessing and investigating protected disclosures of serious corrupt conduct as well as referring disclosures to other integrity bodies for investigation. While protected disclosures can be made to the Victorian Ombudsman or other public bodies, they are required to refer them to IBAC for assessment. IBAC can then investigate the disclosure itself or refer it to the Ombudsman, Chief Commissioner of Police or the Victorian Inspectorate for further investigation.

The referral process was identified by the former Ombudsman, Mr George Brouwer, in his 2012–13 annual report as causing investigative delays and inefficiency in Victoria's integrity system as all referrals from the Ombudsman to IBAC must occur in writing after the Ombudsman has first received a complaint.

The current Ombudsman also outlined the impact of referrals between integrity agencies, particularly referrals of protected disclosure matters between the Ombudsman's office and IBAC.

3.5.3 Key issues raised in the annual report

The following issues were raised by the Victorian Ombudsman in the 2012–13 and 2013–14 annual reports and were also the subject of recommendations contained in the previous Committee's report:

- Provision of a secure IT system.
- Allowing complaints to be made in forms other than writing.
- Streamlined referrals process between the Ombudsman and IBAC.
- Providing greater flexibility with protected disclosure referrals from IBAC, including being able to refer elsewhere, or conduct preliminary enquiries on, protected disclosure complaints rather than necessarily launching a full investigation.
- A 'one-stop shop' or internet gateway/portal to streamline complaints handling.⁷⁴

⁷³ *Protected Disclosure Act 2012 (Vic)*.

⁷⁴ See: Victorian Ombudsman (2013), *Annual Report 2013 – Part One*, Melbourne; Victorian Ombudsman (2014), *Annual Report 2014*, Melbourne; Accountability & Oversight Committee (2014), *Report into Victorian Oversight Agencies*, Parliament of Victoria, Melbourne.

The Committee believes these issues need resolution and the previous committee's recommendations (numbers 10 to 13) address these anomalies and as such are still relevant. The Committee calls on the Government to support the recommendations from the previous Committee's report to Parliament, namely:

RECOMMENDATION 5: That the Victorian Parliament amends Section 14(2) of the *Ombudsman Act 1973* to allow complaints to be made by means other than writing, such as verbally or electronically transmitted.

RECOMMENDATION 6: That the Victorian Parliament amends Section 16E of the *Ombudsman Act 1973* to allow referral of complaints from the Ombudsman to IBAC to be made in ways other than writing, such as electronically transmitted.

RECOMMENDATION 7: That the Victorian Government in consultation with the Accountability and Oversight Committee and the Independent Broad-based Anti-corruption Commission Committee reviews the legislative requirement under the *Ombudsman Act 1973* that all protected disclosure cases must be investigated by the Victorian Ombudsman.

RECOMMENDATION 8: That the Victorian Government develops a seamless 'one-stop shop' framework to provide a single point of entry for people seeking to make a complaint about a public body.

3.6 Performance of the Ombudsman

The Ombudsman's annual report's Output Statement for 2013–14⁷⁵ noted the following measures:

3.6.1 Quantitative performance measures

Outreach initiatives

The Victorian Ombudsman conducts outreach activities to both public sector agencies and to the community. These activities provide an effective way of providing education and information on the Ombudsman's services and making them more accessible to Victorians. The Ombudsman reported that her office started a new outreach program in September 2013, although the annual report contained minimal information on what this involved. During the 2013–14 financial year, the Ombudsman's office delivered 46 outreach activities, well short

⁷⁵ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41, Table 6.

of the delivery target of 115 activities.⁷⁶ The Ombudsman explained this was due to the lack of resources in her office to undertake outreach initiatives and that this will be an area of focus for 2014–15.⁷⁷

Internal reviews of complaint investigations

The office undertakes formal internal investigations or reviews of complaints by senior officers of the Victorian Ombudsman, at the request of the complainant. Most investigations are resolved quickly. In 2013–14, 33 reviews were closed.⁷⁸ The number of reviews is approximately 0.25 per cent of all jurisdictional complaints and below both the 2013–14 targeted level of less than 70 investigations.⁷⁹

Complaints finalised

The Victorian Ombudsman notes that the number of complaints finalised in any given year relates closely to the number of complaints received. The Ombudsman finalised 13,152 complaints in 2013–14, below the target of 14,000. The Ombudsman's annual report also notes that in 2013–14 the office received over 1000 complaints related to Victoria Police, which are now outside the scope of the Ombudsman's functions.⁸⁰

Tabled reports

The Victorian Ombudsman tabled 12 reports in 2013–14, 2 above the target of 10.⁸¹

3.6.2 Qualitative performance measures

Reviewed investigations

This measure reports the outcomes of internal reviews of investigations by the Ombudsman following concerns raised by complainants about the handling of their cases, where the original findings were found to be sound and well founded. In these cases the requests are reviewed by senior investigators who haven't been involved in the original decision. Of the 33 complaint cases reviewed, the original findings in 31 were found to be sound and well founded. In only two of the reviewed cases were the initial finding amended. The internal review process' 94 per cent validation rate of original decisions exceeds the 80 per cent quality measure.⁸²

⁷⁶ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁷⁷ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁷⁸ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁷⁹ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁸⁰ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁸¹ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁸² Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

Investigation recommendations accepted by respondent agencies

This performance measure relates to jurisdictional complaints where maladministration was identified and the Ombudsman recommended changes to the relevant agency's administrative processes. This has been one way in which the Ombudsman's investigations achieve effective outcomes for complainants. The final 2013–14 outcome of 86 per cent take up of recommendations exceeded the original target of 80 per cent.⁸³

Tabled report recommendations that are accepted

The outcome in this measure is seen as a conservative count, as it is based on explicit statements from respondent agencies that the Ombudsman's recommendations in tabled reports have been accepted. It does not include situations where agencies 'agree to consider' recommendations or where no acceptance of the Ombudsman's recommendations is known. Some recommendations from Ombudsman reports still await the Government's response. The 2013–14 target was 90 per cent of tabled recommendations accepted, with the actual outcome being 71 per cent.⁸⁴ In the annual report, the Ombudsman notes that the percentage would be higher (78 per cent) if the measure was expanded to include 'all departments, Ministers and the Victorian Government more broadly'.⁸⁵

3.6.3 Timeliness measures

Complaints resolved within required timelines

The Ombudsman's annual report stated that, of the 25,400 approaches received, the vast majority (69.1 per cent or 17,559) were resolved on the day of receipt. Many of these resolutions involved the redirection of non-jurisdictional complaints to the appropriate agencies. It also reported that 15.7 per cent (or 3993) of complaints were resolved within seven days, and 10.9 per cent (or 2761) were resolved within 30 days.⁸⁶ Of the 25,400, 13,152 came under the Ombudsman's jurisdiction, 11,763 did not, and 485 were requests for information.⁸⁷

The performance measure target for complaint resolution is for 95 per cent of complaints to be resolved within the required timeframe.⁸⁸ In 2013–14 however, the actual amount was 92 per cent, which the Ombudsman explained was a direct result of the new integrity legislation impacting on the ability of the office to undertake its core business (complaint handling).⁸⁹

⁸³ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁸⁴ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁸⁵ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

⁸⁶ Victorian Ombudsman (2014), *Annual Report 2014*, pp. 14–15.

⁸⁷ Victorian Ombudsman (2014), *Annual Report 2014*, p. 15.

⁸⁸ Victorian Government (2013), *2013–14 Victorian Budget – Service Delivery Budget Paper No. 3*, pp. 221–22.

⁸⁹ Victorian Ombudsman (2014), *Annual Report 2014*, p. 41.

4 The Victorian Inspectorate

4.1 Introduction

The Victorian Inspectorate is a key oversight body in Victoria's integrity system. It commenced operations in February 2013 and operates under the *Victorian Inspectorate Act 2011* (Vic) (VI Act).⁹⁰

4.2 Functions of the Victorian Inspectorate

The Victorian Inspectorate is responsible for oversight of the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Auditor-General's Office (VAGO), and the Victorian Ombudsman. The Victorian Inspectorate is also responsible for monitoring the exercise of coercive powers by IBAC, VAGO and the Ombudsman, and to ensure that officers of those bodies abide by the relevant legislation. Furthermore, the Victorian Inspectorate receives, assesses and investigates complaints about the conduct of officers of the IBAC, VAGO, and the Ombudsman.

4.2.1 The Victorian Inspector

As is the case with the IBAC Commissioner, the Victorian Inspector is an independent officer of the Victorian Parliament. The Inspector's independence is guaranteed under the VI Act.⁹¹ The appointment of the Inspector by the Governor in Council is made upon Ministerial recommendation, with the Minister's recommendation subject to veto by the Victorian Parliament's IBAC Committee. Mr Robin Brett QC is the Victorian Inspector, appointed to the role on 1 January 2013.⁹²

4.2.2 Powers of the Victorian Inspectorate

The Victorian Inspectorate is vested with all powers necessary for it to perform its functions under the VI Act. Section 13 of the Act also specifies a number of powers in regard to oversight and monitoring of the Public Interest Monitor (PIM) by the Victorian Inspectorate.⁹³ As with IBAC officers, Victorian Inspectorate officers are not permitted to disclose certain information obtained in the course of their duties.

⁹⁰ *Victorian Inspectorate Act 2011* (Vic).

⁹¹ *Victorian Inspectorate Act 2011* (Vic).

⁹² Victorian Inspectorate (2013), *Annual Report 2012-13*, p. 5.

⁹³ *Victorian Inspectorate Act 2011* (Vic).

The Victorian Inspectorate is also able to issue confidentiality notices where considered reasonable under Sections 38 and 39 of the VI Act, if the matter may prejudice:

- (a) an investigation; or
- (b) the safety or reputation of a person; or
- (c) the fair trial of a person who has been, or may be, charged with an offence.⁹⁴

Under Sections 40, 41 and 42 of the VI Act, the Victorian Inspectorate may require IBAC, the Auditor-General or the Victorian Ombudsman to provide it with a report specifying circumstances where an examination of a person has been conducted.⁹⁵

The Victorian Inspectorate has oversight under its own and subordinate legislation of the following agencies and officers:

- IBAC and IBAC officers
- the Chief Examiner and examiners appointed under the *Major Crimes (Investigative Powers) Act 2004* (Vic)
- the Ombudsman and Ombudsman officers
- the Auditor-General and VAGO officers.⁹⁶

The Committee can only scrutinise actions taken by the Victorian Inspectorate in relation to the Victorian Ombudsman and her officers.

During the reporting year, the Victorian Inspectorate noted there were no significant issues concerning compliance with governing legislation. Further, there were also no significant issues raised concerning the comprehensiveness and adequacy of reports made by the Victorian Ombudsman.

Investigations and inquiries

Section 43 of the VI Act provides that a person may make a complaint to the Victorian Inspectorate about the conduct of IBAC or IBAC personnel regarding the exercise, or failure to exercise, the functions or duties of IBAC or IBAC personnel.⁹⁷ While complaints may be made generally, the VI Act describes some of the grounds on which a complaint can be made, including that an act of IBAC or an IBAC officer was:

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or

⁹⁴ *Victorian Inspectorate Act 2011* (Vic).

⁹⁵ *Victorian Inspectorate Act 2011* (Vic).

⁹⁶ Victorian Inspectorate (2015), 'The Inspector's functions', viewed 11 September 2015, <<http://www.vicinspectorate.vic.gov.au/home/about+us/the+inspectors+functions/>>.

⁹⁷ *Victorian Inspectorate Act 2011* (Vic).

- (d) an abuse of power; or
- (e) otherwise improper.⁹⁸

Similarly, complaints can be made by any person under Section 43 in respect of the conduct of officers of VAGO, and the Victorian Ombudsman, as well as the Chief Examiner and its officers.⁹⁹

Generally, the conduct of investigations and the powers vested in the Victorian Inspectorate are similar to the powers of IBAC to investigate police misconduct and public sector corruption, but instead with regard to IBAC, VAGO and the Victorian Ombudsman. Under Section 51 of the VI Act, examinations by the Victorian Inspectorate must be conducted in private.¹⁰⁰

Reports of the Victorian Inspectorate

Under Section 78 of the VI Act, the Victorian Inspectorate is able to make recommendations to IBAC in relation to any action that the Victorian Inspectorate considers must be taken. These recommendations are not to be made public other than by means of a report. The Victorian Inspectorate may require IBAC to prepare a report outlining responses to recommendations made under this section of the VI Act.¹⁰¹

The Victorian Inspectorate is also able to recommend to IBAC the disciplinary action that should be taken against an IBAC officer, other than the Commissioner. The Victorian Inspectorate may also refer matters for consideration by other prescribed bodies as it sees fit.

The Victorian Inspectorate may table a report in each House of the Victorian Parliament on any matter relating to the performance of its functions and duties. Any person named or identified in a report must have an opportunity to review and, if the matter adversely reflects on that person, respond to relevant sections of the report.

Part 7 of the VI Act also outlines considerations when providing advice and outcomes to complainants, and for matters to be included in the Victorian Inspectorate's annual report.¹⁰² These provisions are similar to those applying under Part 7 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).¹⁰³

⁹⁸ *Victorian Inspectorate Act 2011* (Vic).

⁹⁹ *Victorian Inspectorate Act 2011* (Vic).

¹⁰⁰ *Victorian Inspectorate Act 2011* (Vic).

¹⁰¹ *Victorian Inspectorate Act 2011* (Vic).

¹⁰² *Victorian Inspectorate Act 2011* (Vic).

¹⁰³ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).

4.3 Interactions with the Committee

The VI has had relatively minimal interaction with the Committee in the 58th Parliament. An informal visit to the Victorian Inspectorate's office to meet the Inspector and his staff is scheduled for later in 2015.

4.4 Key issues raised in the annual report

The Victorian Inspectorate received 618 statutory notifications from all relevant agencies during 2013–14.¹⁰⁴ As at 30 June 2014, 251 coercive examinations were received for review from the Chief Examiner, IBAC and the Victorian Ombudsman's office.¹⁰⁵

Section 11(4) of the VI Act gives the Victorian Inspectorate certain specific functions and powers in relation to Ombudsman officers (which term includes the Ombudsman and any Acting Ombudsman), as follows:

- (a) to monitor —
 - (i) the exercise of coercive powers by Ombudsman officers; and
 - (ii) compliance by Ombudsman officers with procedural fairness requirements in the performance of functions under the Ombudsman Act or any other Act, including in the conduct of enquiries and investigations and the making of reports and recommendations under the Ombudsman Act or any other Act;
- (b) to receive complaints in accordance with this Act about the conduct of Ombudsman officers;
- (c) to investigate and assess in accordance with this Act the conduct of Ombudsman officers;
- (d) to report on, and make recommendations as a result of, the performance of its functions under paragraphs (a) to (c).

The Victorian Inspectorate has power under section 44 of the VI Act to investigate certain complaints made against an Ombudsman officer; under section 46 of the VI Act it may investigate conduct of an Ombudsman officer of its own motion.¹⁰⁶

Section 82 of the VI Act gives the Victorian Inspectorate power to make recommendations to the Ombudsman in relation to any action that the Victorian Inspectorate considers should be taken. The Ombudsman is not required to comply with any such recommendation, but the Victorian Inspectorate may require the Ombudsman to give it a report stating whether or not he or she intends to take a recommended action and, if the Ombudsman does not intend to take that action, to state the reason for not taking it.¹⁰⁷

¹⁰⁴ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 7.

¹⁰⁵ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 7.

¹⁰⁶ Victorian Inspectorate (2014), *Annual Report 2013–14*, pp. 18–19.

¹⁰⁷ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 19.

Section 16F of the *Ombudsman Act 1973* (Vic) requires the Ombudsman to notify the Victorian Inspectorate of any complaint or referred matter that appears to involve conduct of the IBAC or IBAC personnel, or an Ombudsman officer, a VAGO officer, the Chief Examiner or an Examiner.¹⁰⁸

4.4.1 Compliance

During the 2013–14 reporting period, 37 notifications were received by the Victorian Inspectorate from the Ombudsman under sub-section 16F(2) of the Ombudsman Act. Thirty-four of these concerned IBAC or IBAC personnel and three of them concerned Ombudsman officers (including one that also concerned IBAC personnel). The Victorian Inspectorate then wrote to the person who had complained to the Ombudsman and invited them to make a complaint.¹⁰⁹ The annual report noted that in some cases the Victorian Inspectorate had already been in contact with that person and previously written to them. During 2013–14 the Ombudsman reported the issue of 18 summonses to the Victorian Inspectorate.

During the reporting period the Ombudsman reported the issue of 12 confidentiality notices to the Victorian Inspectorate, and the withdrawal of 4 confidentiality notices. Under section 18F(7) of the Ombudsman Act the Ombudsman provided the Victorian Inspectorate with audio recordings of 167 persons who were compulsorily examined by an Ombudsman officer. The Inspector reported that he considered that the reports made to it by the Ombudsman were ‘comprehensive and adequate’¹¹⁰ although did not provide a measure of what constitutes ‘comprehensive and adequate’, notwithstanding compliance with governing legislation.

FINDING 3: The Committee finds that the Victorian Inspectorate’s annual report refers to ‘comprehensive and adequate’, in relation to reports made to the Victorian Inspectorate by the Ombudsman. However, there is no definition of what ‘comprehensive and adequate’ means.

4.4.2 Monitoring of Ombudsman

During the reporting period the Victorian Inspectorate identified an issue relating to the information available to persons who were examined under oath by an Ombudsman officer. The Victorian Inspectorate noted that the issue related to the manner in which the powers exercised were described. The issue was raised in correspondence with the Ombudsman. The Victorian Inspectorate was subsequently informed that the information available to examinees was being revised.¹¹¹

¹⁰⁸ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 19.

¹⁰⁹ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 20.

¹¹⁰ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 20.

¹¹¹ Victorian Inspectorate (2014), *Annual Report 2013–14*, p. 20.

The revision had not been completed at the time of review and will be subject to the 2014–15 annual report review by the Accountability and Oversight Committee.

4.4.3 Complaints

During the reporting period the Victorian Inspectorate received 17 complaints and 13 enquiries relating to the Ombudsman.

The Victorian Inspectorate assessed each complaint in order to decide whether it had jurisdiction to deal with it, and, if so, whether it merited investigation.

The Committee notes that the Victorian Inspectorate did not conduct a formal investigation of any of the complaints made about the Ombudsman. In respect of seven complaints, the Victorian Inspectorate requested information from the Ombudsman which was in each case provided and enabled the Victorian Inspectorate to fully assess the complaint. The annual report records that the complaints the Victorian Inspectorate received were all assessed as being not within the jurisdiction of the Victorian Inspectorate to investigate or as not meriting investigation.¹¹²

Committee room, 5 October 2015.

112 Victorian Inspectorate (2014), *Annual Report 2013-14*, p. 20.

Appendix 1

Committee briefings and forum

Melbourne, 16 June 2015

FOI Practitioners Forum, hosted by the FOI Commissioner, Hotel Windsor, 111 Spring Street, Melbourne 3000.

Site visit Melbourne, 3 August 2015

Hosted by Ms Lynne Bertolini, Freedom of Information Commissioner and Mr Michael Ison, Assistant Freedom of Information Commissioner.

Site visit Melbourne, 17 August 2015

Hosted by Ms Deborah Glass OBE, Victorian Ombudsman.

Appendix 2

Victorian Ombudsman relevant legislation, what can be investigated and protected disclosures

Relevant legislation to the Victorian Ombudsman's integrity function (during 2013–14)

<i>Ombudsman Act 1973</i> (Vic)	Provides for the appointment of an Ombudsman and details the Ombudsman's role and functions in relation to the investigation of complaints.
<i>Protected Disclosure Act 2012</i> (Vic)	Empowers the Ombudsman to receive and refer disclosures of improper conduct or detrimental action by public bodies and public officers.
<i>Whistleblowers Protection Act 2001</i> (Vic)	Empowers the Ombudsman to investigate disclosures, made prior to the commencement of the Protected Disclosure Act 2012, of improper conduct by public bodies and public officers, including members of Parliament and municipal councillors.
<i>Charter of Human Rights & Responsibilities Act 2006</i> (Vic)	Amended the Ombudsman Act 1973 and gives the Ombudsman the power to investigate whether any administrative action is incompatible with the human rights set out in the Charter. Its jurisdiction includes Ministers and municipal councillors.
<i>Accident Compensation Act 1985</i> (Vic)	Empowers the Ombudsman to investigate:
<i>Children, Youth and Families Act 2005</i> (Vic)	Empowers the Ombudsman to investigate:
<i>Corrections Act 1986</i> (Vic)	Empowers the Ombudsman to investigate the actions of contractors managing prisons or police gaols.
<i>Disability Act 2006</i> (Vic)	Enables the Community Visitors Board to refer certain matters to the Ombudsman to be dealt with.
<i>Information Privacy Act 2000</i> (Vic)	Enables the Information Privacy Commissioner to refer certain matters to the Ombudsman to be dealt with.
<i>Terrorism (Community Protection) Act 2003</i> (Vic)	Requires that the Ombudsman be notified in relation to preventative detention orders and prohibited contact orders, and allows the Ombudsman to make representations in relation to prisoners held under those orders.
<i>Transport (Compliance and Miscellaneous) Act 1983</i> (Vic)	Empowers the Ombudsman to investigate the actions of authorised officers (ticket inspectors) in exercising statutory duties in the detection of offences. Enables the Ombudsman to investigate the actions of relevant Transport Safety Officers in relation to compliance and enforcement functions and safety audits.
<i>Court Security Act 1980</i> (Vic)	Empowers the Ombudsman to investigate complaints regarding the actions of a contractor in its capacity as a provider of court security.

<i>Plant Health and Plant Products Act 1995 (Vic)</i>	Empowers the Ombudsman to investigate the approved inspection service in its capacity of a provider of services in accordance with an agreement under Section 51B.
<i>Health Services Act 1988 (Vic)</i>	Empowers the Ombudsman to investigate the actions of a contractor or a sub-contractor in its capacity as a provider of health services to public hospital patients at the hospital in accordance with an agreement under Section 69B(1).
<i>Magistrates' Court Act 1989 (Vic)</i>	Empowers the Ombudsman to investigate complaints regarding the actions of a contractor or a sub-contractor in its capacity as a provider of services in accordance with an agreement under Section 24B(1) or a sub-contract agreement under the Act.
<i>Public Health and Wellbeing Act 2008 (Vic)</i>	Empowers the Ombudsman to investigate complaints regarding the actions of authorised officers under the Act.
<i>Melbourne City Link Act 1995 (Vic)</i>	Empowers the Ombudsman to receive restricted tolling information in order to fulfil his functions in respect to the disclosure and use of restricted tolling information by members of Victoria Police.
<i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i>	Empowers the Ombudsman to receive referrals from the Independent Broad-based Anti-corruption Commission for investigation under the Ombudsman Act 1973.
<i>Victorian Inspectorate Act 2011 (Vic)</i>	Establishes the Victorian Inspectorate to provide oversight of the Victorian Ombudsman, including the ability to take complaints about the Ombudsman and the Ombudsman's staff members and review the use of the Ombudsman's coercive powers.

What can be investigated?

Victorian government departments:

- Education and Early Childhood Development
- Environment and Primary Industries
- Health
- Human Services
- Justice
- Premier and Cabinet
- State Development, Business and Innovation
- Transport, Planning and Local Infrastructure
- Treasury and Finance.

Specified entities, including a range of statutory bodies, such as:

- WorkSafe Victoria
- Transport Accident Commission
- Universities and other tertiary institutions
- VicRoads
- Selected professional boards e.g. Legal Services Board.

Actions by staff of local councils in relation to matters such as:

- enforcement of parking, building or planning regulations
- nuisance control
- rate and service charges
- liability claims against the council
- drainage matters
- roads, construction, maintenance and closures
- contracts or agreements with the council
- building matters
- planning and subdivisions permits, advertising and zoning.

What cannot be investigated?

Complaints about:

- Victoria Police
- private organisations such as banks, finance companies or shops
- disputes between individuals
- departments and authorities of the Commonwealth, states and territories other than Victoria
- decisions by Ministers of the Crown
- decisions made by courts and tribunals.

Other complaints such as:

- complaints more than 12 months old
- complaints which may be appropriately decided by a court or tribunal.¹¹³

¹¹³ Victorian Ombudsman 'What we can and cannot investigate', viewed 2 September 2015, <<https://www.ombudsman.vic.gov.au/Complaints/What-We-Can-and-Cannot-Investigate>>

Protected disclosures – Investigating bodies

Subject of the allegation/disclosure	Body to whom the disclosure must be made
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative Council)	President of the Legislative Council
The Chief Commissioner of Police The Director of Public Prosecutions The Chief Crown Prosecutor The Solicitor General The Governor The Lieutenant Governor or Administrator The Electoral Commissioner Persons issued or appointed to Boards of Inquiry or Commissions of Inquiry Judicial officers Members of VCAT who are not judicial officers Judicial employees Ministerial officers Parliamentary advisers Parliamentary officers Electorate officers Minister of the Crown who is not a member of Parliament.	Independent Broad-based Anti-corruption Commission (IBAC)
Employee of a jurisdictional public body	IBAC or Victorian Ombudsman or public body
A councillor The Freedom of Information Commissioner The Privacy Commissioner The Health Services Commissioner The Commissioner for Law Enforcement and Data Security	IBAC or Victorian Ombudsman
An officer of the Victorian Ombudsman An officer of the Victorian Auditor-General's Office The Chief Examiner s.21 Major Crimes Act Examiner	IBAC or Victorian Inspectorate
An IBAC officer	Victorian Inspectorate

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