PARLIAMENT OF VICTORIA
Public Accounts and Estimates Committee

Report of the investigation into allegations made against the Auditor-General

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Report

Background to the Inquiry

1 On 17 August 2015, the President of the Legislative Council and the Speaker of the Legislative Assembly were notified of allegations that had been made against the Auditor-General, Mr John Doyle, by a member of the staff of the Victorian Auditor-General’s Office (VAGO).

2 The Presiding Officers referred the complaint to the Public Accounts and Estimates Committee (‘the Committee’), which met on 17 August to consider the matter.

3 The Committee resolved unanimously to ask the Parliament to refer to the Committee the terms of reference set out at paragraph 5.

4 On 18 August 2015 the Committee tabled a report that recommended the Parliament refer the allegations to the Committee for investigation. On that day, the Assembly agreed to a resolution referring the matter to the Committee, and sought the Council’s agreement. The Council agreed to the resolution later that day, and the resolution was conveyed to the Committee.

Terms of reference

5 The Parliament referred to the Committee the following terms of reference:

The Public Accounts and Estimates Committee is to inquire into and report to Parliament on allegations made against the Auditor-General, Mr John Doyle, in a formal grievance dated 12 August 2015, by a member of his staff; and whether, in light of any findings that the Committee may make in relation to the allegations, the Parliament should give consideration to the removal of the Auditor-General from office.

The Committee is requested to conduct this inquiry having regard to the need to afford procedural fairness to all parties, and to protect the privacy of individuals.

The Committee is requested to report its findings to the Parliament on or before 20 October 2015.
The investigation

6 In discharging its obligations under the terms of reference, the Committee:

6.1 With the approval of the Speaker, engaged retired High Court of Australia judge Mr Ken Hayne QC AM under s 30 of the Parliamentary Committees Act 2003 to carry out the investigation. Mr Hayne’s terms of engagement required him to:
   • Investigate a formal grievance made by a VAGO employee (‘the Complainant’) against Mr Doyle;
   • Investigate in a manner that has regard to the need to afford procedural fairness to all parties;
   • Investigate in a manner that has regard to protecting the privacy of individuals;
   • To the extent any findings of fact were to be made, make them on the balance of probabilities;
   • Provide a report to the Committee by 9 October 2015.

6.2 With the consent of the Premier, as required under s 30 of the Parliamentary Committees Act 2003, engaged the Victorian Government Solicitor’s Office to support Mr Hayne to undertake his investigation; provide advice to the Committee; and provide a point of communication between the Committee and Mr Hayne.

7 Mr Hayne’s investigation involved the following steps:
   • Putting the allegations to Mr Doyle in writing and requesting a written response;
   • Requesting documents from Mr Doyle and the complainant;
   • Interviewing the Complainant and Mr Doyle;
   • Interviewing five people identified by Mr Hayne, noting that a sixth person declined to be interviewed;
   • Making written inquiries of external professional people;
   • Requesting the Complainant and Mr Doyle to identify any further people to be interviewed;
   • Interviewing six further people as nominated by the Complainant or Mr Doyle;
   • Interviewing the Complainant and Mr Doyle again;
   • Inviting the Complainant and Mr Doyle to make written submissions; and
   • Providing the Complainant and Mr Doyle with a copy of Mr Hayne’s draft report and inviting the Complainant and Mr Doyle to make further written submissions.

7.1 All interviews were conducted in the presence of a legal representative of the Complainant and Mr Doyle. All interviews were recorded and transcribed, and transcripts were subsequently provided to representatives of the Complainant and Mr Doyle and the witness concerned.
On 22 September 2015, Mr Doyle resigned as Auditor-General in writing to Governor-in-Council. This occurred after Mr Hayne had interviewed the Complainant and Mr Doyle for the second time.

In light of the resignation of Mr Doyle, Mr Hayne paused his investigation on 22 September, pending further instruction from the Committee.

The Committee met on 5 October 2015 to consider options for completing the investigation. The Committee noted that the resolution of the Parliament required a report on the allegations. The Committee resolved that Mr Hayne should continue his investigation from the point he had reached on 22 September, and continue to have due regard for procedural fairness in completing his investigation.

The Committee resolved to seek an extension to its reporting date from the Parliament.

On 7 October 2015, the Parliament agreed to a resolution extending the Committee’s reporting date to 10 November 2015.

The Committee wrote to Mr Hayne on 6 October 2015 to extend the date by which Mr Hayne’s report was required to 23 October 2015.

The Committee met on 26 October 2015 to consider Mr Hayne’s report. The Committee received Mr Hayne’s report, and noted its conclusions.

Mr Hayne’s report is set out at the Appendix.

Outcomes

The terms of reference required the Committee to inquire into and report to the Parliament on whether, in light of any findings made in relation to the allegations, consideration should be given to removing the Auditor-General from office. Consideration of this element of the terms of reference became redundant following Mr Doyle’s resignation. It was not the Committee’s role to provide mediation between the Complainant and Mr Doyle, or to suggest any remedy or compensation in the event that the complaint was substantiated, whether in part or in full.

The Committee notes that on 29 September 2015, under s 6 of the Audit Act 1994, the Governor-in-Council appointed Dr Peter Frost as Acting Auditor-General from 30 September 2015 to 29 March 2016 (inclusive) or until such time as a new Auditor-General is appointed, whichever is the earliest.

The Committee advises the Parliament that it has initiated a process to recommend to Governor-in-Council a candidate for appointment to the role of Auditor-General.
The Committee thanks all who participated in the investigation, particularly witnesses interviewed by Mr Hayne. The Committee recognises that it may have been a difficult time for staff at VAGO and commends them for continuing to discharge their duties throughout the process.
Appendix
21 October 2015

Edited Report to the Public Accounts and Estimates Committee of the Parliament of Victoria

Investigation of Allegations made against the Auditor-General¹

K M HAYNE

¹ Resigned on 22 September 2015.
INTRODUCTION

1. Pursuant to section 30(1) of the Parliamentary Committees Act 2003 (Vic), the Public Accounts and Estimates Committee of the Parliament of Victoria, with the authorisation of the Speaker of the Legislative Assembly of the Parliament, commissioned me to investigate and report to the Committee on any aspect of certain terms of reference referred to the Committee by the Parliament on 18 August 2015. The Committee's terms of reference were to:

"inquire into and report no later than 20 October 2015 on allegations made against the Auditor-General, Mr John Doyle, in a formal Grievance dated 12 August 2015, by a member of his staff; and whether, in light of any findings that the Committee may make in relation to the allegations, the Parliament should give consideration to the removal of the Auditor-General from office.

The Committee is requested to conduct this inquiry having regard to the need to afford procedural fairness to all parties, and to protect the privacy of individuals."

2. On 22 September 2015, Mr Doyle submitted his resignation as Auditor-General. I was instructed to take no further step in the investigation until I received further instructions. On 5 October 2015, I was told that I should proceed to complete the
3. I have completed my investigation and now submit this report to the Committee.

K M Hayne

21 October 2015
SUMMARY OF PRINCIPAL CONCLUSIONS

Sexual harassment allegations

4. I am satisfied that it is more probable than not that, on 13 February 2014, Mr Doyle made an unwanted sexual advance to the Complainant and made unwanted sexual contact with her by embracing her and running his hands over the sides of her body and breasts to her back while kissing her neck. These events occurred in circumstances in which a reasonable person would have concluded that the sexual advances I have described would be unwelcome to the Complainant. I conclude that the allegations which the Complainant made in her Grievance about sexual harassment are established.

Bullying allegations

5. I am satisfied that it is more probable than not that, between late January 2015 and July 2015, Mr Doyle engaged in repeated unreasonable behaviour directed at the Complainant that created a risk to her health and safety. I conclude that the allegations which the Complainant made in her Grievance about bullying (apart from the allegations about her being “uninvited” from meetings) are established.
The structure of the report

6. The balance of this report is organised in the following manner:

Chapter 1  The lodging of a Grievance

Chapter 2  The general nature of the allegations

Chapter 3  The conduct of the investigation

Chapter 4  The Auditor-General

Chapter 5  Sexual harassment

Chapter 6  Bullying and intimidation

Chapter 7  The sexual harassment allegations

Chapter 8  The bullying allegations

Chapter 9  Removal

Appendix
Chapter 1 – THE LODGING OF A GRIEVANCE

7. On 12 August 2015, the Complainant lodged a Grievance alleging that the Auditor-General, Mr Doyle, had harassed and bullied her. In that Grievance, the Complainant alleged that, on 13 February 2014, Mr Doyle had made an unwelcome sexual advance to her at his house. She alleged that he had bullied and intimidated her during 2015. The Grievance was attached to a statutory declaration to the effect that the Grievance had been compiled to the best of the Complainant’s ability from notes and recollections.

8. On the next day, 13 August 2015, Dr Peter Frost, Deputy Auditor-General and Chief Executive Officer of the Victorian Auditor-General’s Office (VAGO) sent a copy of the Grievance to the Secretary of the Department of Premier and Cabinet.

9. On 17 August 2015, the Chair and Deputy Chair of the Committee met Mr Doyle. The Victorian Government Solicitor and the Executive Director, Governance, Legal and Strategy of VAGO attended the meeting. The Chair of the Committee gave Mr Doyle a copy of the Grievance and Mr Doyle looked at it. Either then, or at some later point in this meeting, Mr Doyle said words to the effect “there’s not much in this”. 

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10. The Chair of the Committee told Mr Doyle that, after consultation with the Victorian Government Solicitor, an investigation would be undertaken. The Chair asked Mr Doyle to stand down while the investigation proceeded. Mr Doyle declined to do so. The Chair of the Committee asked why not and Mr Doyle responded that the Complainant was underperforming and would be affected by a proposed restructure.

11. As recorded in the introduction to this report, on the next day, 18 August 2015, the Parliament asked the Committee to inquire into and report on the allegations made in the Grievance and on the other matters set out in the terms of reference quoted above.

12. The Complainant subsequently provided a version of her Grievance to which she appended some documents intended either to support the claims she made or to identify persons whom she suggested could speak about the claims that were made. A copy of this amended Grievance is also appended to this report. Including references to the appendices in the amended Grievance altered the pagination of the document. At least for the most part, the references in this report are to the Grievance as originally lodged and the pagination of that version of the document.
Chapter 2 – THE GENERAL NATURE OF THE ALLEGATIONS

13. In her Grievance, the Complainant introduced what followed by saying that:

"[I]t has now become impossible for me to continue working in this environment where I am being bullied, intimidated and harassed by the Auditor-General (AG), John Doyle. My health is seriously compromised and I believe that I am being set up to fail by the AG because I rejected his sexual advances. I have documented a series of events that have taken place over a period of approximately 18 months outlining the inappropriate behaviour and actions displayed towards me by the AG."

14. In her Grievance, the Complainant alleged that, on the night of 13 February 2014, at Mr Doyle’s house, Mr Doyle had made an unwelcome sexual advance to her and had touched her inappropriately. She also alleged that in and between late January 2015 and July 2015, Mr Doyle had bullied and intimidated her at work.

15. At all times relevant to her Grievance, the Complainant held a senior position in VAGO. She is part of the Leadership Group of that office and reports directly to Dr Frost, Deputy Auditor-General and CEO of VAGO. In her Grievance, she made specific complaints about Mr Doyle’s conduct towards her at meetings on 28 January 2015, 29 January 2015, 28 April 2015, 30 April 2015, June 2015 and 10 July 2015. She spoke more generally in her Grievance about her working relationship with Mr Doyle and spoke also of her being “uninvited” from meetings which she would have
expected to attend. As will later be explained, the particular allegations made by the Complainant about bullying and intimidation must be assessed in the light of what others in VAGO identified as Mr Doyle's treatment of the Complainant during the period from late January 2015 to the time when the Complainant lodged her Grievance.
Chapter 3 - THE CONDUCT OF THE INVESTIGATION

Instructions

16. When commissioning me to investigate and report to the Committee on any aspect of the terms of reference referred to the Committee by the Parliament on 18 August 2015, the Committee instructed me that:

- To the extent I make findings of fact, they should be made on the balance of probabilities;

- I was to investigate in a manner that had regard to the need to afford procedural fairness to all parties;

- I was to investigate in a manner that had regard to protecting the privacy of individuals; and

- Otherwise, I may conduct my investigation in such manner and pursuant to such procedures as I consider necessary or appropriate.

- I was to provide my report to the Committee by 9 October 2015.
Assistance by VGSO

17. The Victorian Government Solicitor’s Office (VGSO) was appointed to assist me in the conduct of my investigations and in the preparation of my report. The assistance of that Office and the solicitors who had the carriage of the matter has been invaluable.

Legal assistance to the Complainant and Mr Doyle

18. On 21 August 2015, the Committee wrote to the Complainant and Mr Doyle confirming that it would reimburse each for the reasonable legal costs properly incurred for the purpose of participation in my investigation. Mr Doyle was represented at interviews I conducted by one of Mr Attiwill QC, Mr Bongiorno of counsel or Ms Vardi of Maurice Blackburn Solicitors. The Complainant was represented at interviews I conducted by Mr Lynch of counsel.

Form of the report

19. I provide my report to the Committee in two forms.

20. First, I provide a report in which I have put information which will identify the Complainant and other persons communicated with or referred to in the course of my investigations in footnotes to the text of the report. I attach to that copy of the report (the Full
Report) my correspondence with Mr Doyle, the Complainant and their advisers, my correspondence with certain other persons, transcripts of the interviews I conducted and other material to which I have referred in forming the conclusions I have reached.

21. Second, however, I provide a copy of my report from which I have removed the footnotes and attachments. This second form of the report (the Edited Report) may be thought to be in a form which might be published without expressly revealing the identity of the Complainant or the identity of any others with whom I have spoken or had communications apart from the Auditor-General, Mr Doyle, and the Deputy Auditor-General and CEO of VAGO, Dr Peter Frost.

Beginning the investigation

22. I began my investigation by writing to Mr Doyle and the Complainant telling each of my appointment and my instructions. I sent Mr Doyle a copy of the Complainant’s Grievance and asked him, first, to send me his written response to the Grievance, and second, to send me copies of all documents in his possession or under his control that related to the issues raised by the Grievance. At the same time, I wrote to the Complainant telling her that I had asked Mr Doyle to send me his written response to the Grievance and asking her to send me all documents in her possession or under her control that related to any of the issues
raised by the Grievance. I told both the Complainant and Mr Doyle that I would ask each to attend for the purpose of my interviewing, first, the Complainant, and then, Mr Doyle, about the matters the subject of the Grievance. I told both that each may have a representative attend all of the interviews I was to conduct, that the interviews would be recorded and transcribed and that the transcript would be made available to each.

23. Mr Doyle sought, and I granted him, an extension of the time within which he was to provide his written response.

24. The Complainant produced a folder of documents. I was informed by Ms Moulatsiotis, the Principal Solicitor at VGSO having the carriage of the matter under the supervision of Ms Parker, an Assistant Victorian Government Solicitor, that some of the documents produced by the Complainant appeared to relate to matters that were not the subject of the Grievance. At my direction, those documents were returned to the Complainant without my seeing them.

25. On 1 September 2015, Mr Doyle's solicitors sent two documents to VGSO but told Ms Moulatsiotis that "at this point in time our client does not intend to produce any further documents in his possession or under his control in relation to the issues raised by the Grievance however he may produce further documents in response to any new matters that arise during the course of the
investigation.” I invited Mr Doyle to reconsider this decision. On 4 September 2015, Mr Doyle provided a bundle of eleven documents. Again I was informed by Ms Moulatsiotis that the last of these documents appeared to relate to matters that were not the subject of the Grievance. I did not see that document.

*Initial Interviews*

26. Between 2 September 2015 and 14 September 2015, I conducted a series of interviews with persons whom I believed could provide me with information relevant to my investigation. Those interviews were:

- 2 September 2015, the Complainant;
- 4 September 2015, Mr Doyle;
- 7 September 2015, Dr Peter Frost;
- 9 September 2015, an aunt of the Complainant;
- 9 September 2015, two employees of VAGO; and
- 14 September 2015, a former employee of VAGO.
27. A representative of the Complainant and a representative of Mr Doyle attended each of these interviews.

28. One employee of VACO, whom I asked to attend for interview, declined to do so.

29. The Complainant provided some written records from, and I made some written inquiries of, certain professional persons whom the Complainant said she had spoken to about Mr Doyle. Copies of those records and that correspondence are attached to the Full Report.

Further steps

30. On 14 September 2015, I asked the representatives of the Complainant and Mr Doyle to tell me by 15 September 2015 whether the Complainant or Mr Doyle suggested that I should interview any other person or seek any further information than had then already been sought.

31. I told the representatives that I proposed to invite the Complainant and Mr Doyle to attend for further interview on 17 and 18 September respectively and I set a time for the Complainant and Mr Doyle to make such written submissions to me as she or he may be advised, including, in particular, any submission about what findings of fact I should make.
32. I indicated that I proposed to prepare a draft of my report and provide that draft to both the Complainant and Mr Doyle for comment before finalising the report for submission.

33. On 15 September 2015, I wrote to the Complainant and Mr Doyle confirming what I had said about further steps in the investigation.

Further interviews

34. In response to my inquiry whether either the Complainant or Mr Doyle suggested that I should conduct further interviews, the Complainant suggested that I should interview her sister (to whom the Complainant said that she complained about Mr Doyle’s conduct on the night that it happened) and another employee of VAGO, whom, it was said, would support the Complainant’s claim that she had been in tears after a meeting with Mr Doyle on 28 April 2015.

35. Mr Doyle submitted a list of five present or former employees of VAGO whom he suggested I should interview. Mr Doyle also asked me to interview the lawyer whom the Complainant said that she had consulted about Mr Doyle’s conduct towards her on the night of 13 February 2014.

36. Having regard to the information I had received about complaints made by the Complainant about Mr Doyle’s conduct on
13 February 2014, I concluded that there was no sufficient reason to ask the Complainant's sister to attend for interview. Having regard to the documents which the Complainant had produced in relation to her consulting a lawyer in February 2014, I concluded that my investigation would be best served by asking the lawyer to tell me, in writing, when the Complainant first spoke to him; what she then told the lawyer about Mr Doyle's conduct and her conduct; what advice the lawyer gave to the Complainant; and, what instructions the lawyer was given by the Complainant. My correspondence with the lawyer is attached to the Full Report.

37. On 17 September 2015, I conducted interviews with the employee of VAGO suggested by the Complainant and the five present or former employees of VAGO suggested by Mr Doyle.

38. On 21 September 2015, I conducted further interviews with the Complainant and with Mr Doyle.

RESIGNATION

39. As noted earlier in this report, Mr Doyle tendered his resignation on 22 September 2015 and I was instructed to take no further step until I received further instructions.
A REVISED TIMETABLE FOR FURTHER STEPS

40. On 5 October 2015, I wrote to the solicitors for the Complainant and the solicitors for Mr Doyle telling them that I had been instructed to report to the Committee on the allegations made in the Grievance. I fixed new times for the further steps that were to be taken. Initially, I fixed 4:00 pm on Friday, 9 October 2015, as the time for each to make such written submissions to me as she or he may be advised, and I indicated that I intended to make a draft of my report available to each on 14 October 2015, giving each until 12 noon on Tuesday, 20 October 2015 to comment on, or to make written submissions about, that draft report. At the request of Mr Doyle’s representatives, the time for submissions was extended to 12 October 2015.

Written submissions and provision of draft report

41. On 12 October 2015, the Complainant and Mr Doyle each made written submissions to me. Those submissions are appended to the Full Report.

42. On 16 October 2015, I provided a draft of my report to the Complainant and Mr Doyle.

43. On 20 October 2015, I received responses to my draft report from the legal representatives of Mr Doyle and the Complainant. The
letter from Mr Doyle's legal representatives said that "Mr Doyle
does not have any comments in response to the draft report,
except that he maintains his position set out in: (a) his response
dated 1 September 2015; and (b) his written submissions dated 12
October 2015". The Complainant's legal representative identified
a typographical error in the draft but otherwise offered no
comment.

44. Those letters are also appended to my report.

45. I note that Mr Doyle maintains the position set out in the
documents to which he refers. I remain of the views which were
expressed in my draft report and are now set out in this report.
Chapter 4 – THE AUDITOR-GENERAL

46. It is necessary to say something about the constitutional and statutory provisions that relate to the office of Auditor-General and then say something shortly about Mr Doyle.

Relevant constitutional and statutory provisions

47. Division 3 of Pt V of the Constitution Act 1975 (Vic) (ss 94A-94C) provides for the office of the Auditor-General, the independence of the Auditor-General and the tenure of office. In particular, s 94A provides that there is to be an Auditor-General for the State of Victoria, appointed by the Governor-in-Council on the recommendation of the Public Accounts and Estimates Committee.

48. The Auditor-General is an independent officer of the Parliament (s 94B(1)) and has the functions, powers, rights, immunities and obligations specified in the Constitution Act, the Audit Act 1994 (Vic) and other laws of the State (s 94B(2)). Subject to s 94C of the Constitution Act, the Auditor-General holds office for seven years. Section 94C(5)(a) and (e) and (6) provide that:

“(5) The Auditor-General ceases to hold office if he or she—

(a) is removed from office on the presentation of an address of both Houses of the Parliament praying for his or her removal from office; or
(e) delivers to the Governor in Council a signed letter of resignation.

(6) The Auditor-General is not to be suspended or removed from office except in accordance with this section.

49. One of the "other laws of the State" with which s 94B(2) engages in its identification of "the functions, powers, rights, immunities and obligations" of the Auditor-General is s 16 of the Public Administration Act 2004 (Vic). Section 16(1)(a) of the Public Administration Act provides (in effect) that the Auditor-General has all the functions of "a public service body Head" in relation to the Victorian Auditor-General's Office. Those functions include those prescribed by s 20 of the Public Administration Act. Section 20(1) and (3) of the Public Administration Act provide, so far as presently relevant, that:

"(1) A public service body Head, on behalf of the Crown, has all the rights, powers, authorities and duties of an employer in respect of the public service body and employees in it.

(3) A public service body Head, in exercising a right, power, authority or duty referred to in this section, must do so in conformity with—

(a) the public sector values; and

(b) any binding code of conduct; and

(c) the public sector employment principles; and

(d) standards issued by the Victorian Public Sector Commission..."
50. Section 7 of the Public Administration Act provides that the public sector values are responsiveness, integrity, impartiality, accountability, respect, leadership and human rights. The section provides expressly that the value of "respect" requires public officials to "demonstrate respect for colleagues" and others by, among other things, "ensuring freedom from discrimination, harassment and bullying".

51. The better view would be that the public sector values provisions I have mentioned would be sufficient statutory reason to conclude that an Auditor-General should not sexually harass, bully or intimidate a member of the staff of VAGO. The same conclusions would be reached if regard was had to the general law or to relevant codes of conduct and employment principles and standards but it is not necessary to trace through the provisions relevant to those matters. And, as will be explained, the same conclusions are reached by other and more generally applicable statutory paths.

Mr Doyle

52. Mr Doyle was appointed to the office of Auditor-General with effect from 1 July 2013. He holds qualifications in Australia as a Fellow Chartered Accountant (FCA), Fellow Certified Practising Accountant (FCPA), Professional Fellow of the Institute of Internal Auditors (PFIJA) and Certified Internal Auditor (CIA); in the United
Kingdom as a Fellow Chartered Certified Accountant (FCCA); and in Canada as a Fellow Chartered Accountant (FCA) and Fellow Chartered Professional Accountant (FCPA). He holds degrees of Master of Business Administration and Master of Accounting from Edith Cowan University, Western Australia.


54. He has held a number of academic appointments: Lecturer in Accounting at Edith Cowan University (1999-2001); Lecturer in Software Engineering (1999-2000); Lecturer at University of Western Australia (1999-2000); Senior Lecturer and then Associate Professor and Head of School at University of Notre Dame (2000-2006); and Adjunct Professor at University of Notre Dame (2007-2010).
Chapter 5 – SEXUAL HARASSMENT

55. Part 6 of the *Equal Opportunity Act 2010* (Vic) (ss 92-102) prohibits sexual harassment. Section 5 of the *Equal Opportunity Act* provides that it binds the Crown in right of Victoria. Section 92(1) provides that, for the purposes of the *Equal Opportunity Act*:

"a person sexually harasses another person if he or she—

(a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or

(b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated."

56. Section 93(1)(b) provides that an employer must not sexually harass an employee of that employer.

Section 7E of the *Audit Act 1994* (Vic) provides that:

"As many employees as are required for the performance of the functions of the Victorian Auditor-General's Office are to be employed under Part 3 of the *Public Administration Act 2004*.”

57. The Victorian Auditor-General's Office is defined in s 3 of the *Audit Act* as the office in respect of which the Auditor-General has the
functions of public service body Head under s 16 of the Public Administration Act.

58. Because the Public Administration Act gives to the Auditor-General all the rights, powers, authorities and duties of an employer in respect of the Victorian Auditor-General’s Office and employees in it, s 93(1)(b) of the Equal Opportunity Act applies to prohibit the Auditor-General (as the person having the duties of an employer with respect to persons employed in VAGO) from sexually harassing persons employed in VAGO. That is, if Mr Doyle’s conduct towards the Complainant was sexual harassment, it was a breach of s 93(1)(b) of the Equal Opportunity Act.
Chapter 6 – BULLYING AND INTIMIDATION

59. Victorian legislation refers to, but does not define, "bullying" at work. Thus, as has already been noted, the public sector values identified in s 7 of the Public Administration Act include the value of "respect", and that Act requires the Auditor-General, as a public service body Head exercising the rights, powers, authorities and duties of an employer in respect of VAGO, to demonstrate respect for colleagues by, among other things, "ensuring freedom from discrimination, harassment and bullying".

60. More generally, the Occupational Health and Safety Act 2004 (Vic), which binds the Crown in right of the State of Victoria, obliges an employer, so far as is reasonably practicable, to provide and maintain for employees of the employer a working environment that is safe and without risks to health (ss 6 and 21(1)). The Occupational Health and Safety Act does not deal expressly with "bullying" at work. But if, as later explained, "bullying" at work carries a risk to health and safety, the connection between the general obligations imposed by the Occupational Health and Safety Act and a particular obligation to prevent "bullying" at work is evident.

61. It is not necessary to trace in any detail the way in which the general obligations of the Occupational Health and Safety Act, to provide and maintain a safe working environment for employees,
may apply to VAGO or to the Auditor-General. For present purposes, it is sufficient to conclude that one of the duties which s 20 of the *Public Administration Act* imposes on the Auditor-General, as public service body Head of VAGO, is a duty not to “bully” employees of VAGO. And Mr Doyle expressly accepted that in the workplace at VAGO there is to be no bullying.

*What, then, is “bullying” at work?*

62. In a publication entitled “Your guide to workplace bullying – prevention and response”,¹ the Victorian WorkCover Authority states that “workplace bullying is characterised by persistent and repeated negative behaviour directed at an employee that creates a risk to health and safety”. The guide also states² that “OHS law places duties on employers to eliminate, so far as is reasonably practicable, risks to the health and safety of their employees.”

63. The *Fair Work Act 2009* (Cth) deals, in Pt 6-4B (ss 789FA-789FL), with workers bullied at work. The relevant provisions of the *Fair Work Act* do not apply to VAGO or the Auditor-General. They apply only to workers at work in a “constitutionally-covered

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business”, a term which does not include VAGO or the Auditor-General. It is useful to observe, however, that s 789FD of the Fair Work Act identifies a worker as being “bullied at work” when an individual or a group of individuals “repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member” and “that behaviour creates a risk to health and safety”. The section further provides that, to avoid doubt, the definition of when a worker is bullied at work “does not apply to reasonable management action carried out in a reasonable manner”.

64. For the purposes of this report, I identify “bullying” at work as at least including repeated unreasonable behaviour directed at an employee that creates a risk to health or safety. It may be that this is not a comprehensive or exhaustive definition of what amounts to “bullying” at work but it is sufficient for the purposes of this report. And, to avoid doubt, it is as well to add that “bullying” at work does not include reasonable management action carried out in a reasonable manner.

65. It is necessary to emphasise that I proceed on the footing that “bullying” is unreasonable behaviour with a risk to health and safety. It follows that to show that there has been “bullying” at work it is not necessary to show that the risk to health and safety came home and resulted in actual damage to health or safety. In that regard it may be noted that the Complainant alleges that
Mr Doyle's conduct had very adverse effects on her health. It is not necessary to form any view about whether all or any of the particular physical conditions which the Complainant came to experience during 2015 were caused by Mr Doyle's conduct towards her. Rather, it is necessary to identify what was his conduct towards her, whether that conduct was reasonable and whether the conduct carried a risk to her health or safety. And when answering those questions, it will be necessary to bear at the forefront of consideration the recognition that reasonable management action, carried out in a reasonable manner, is not "bullying" at work.

66. It will be recalled that the Complainant spoke, in her Grievance, of being both "bullied" and "intimidated" by Mr Doyle. If Mr Doyle's conduct toward the Complainant amounted to "bullying" at work, I do not think that any distinctly separate inquiry is presented by the allegation of "intimidation". Rather, the allegation of "intimidation" stands as amplification of, or perhaps explanation for, the Complainant's allegation that Mr Doyle repeatedly acted towards her in a way that was unreasonable and created a risk to her health and safety.
Chapter 7 – THE SEXUAL HARASSMENT ALLEGATIONS

Introduction

67. Mr Doyle and the Complainant agreed that, on 13 February 2014, they had met in the office with Dr Frost and had discussed some work matters over a bottle of wine between about 5:00 and 6:00 pm. They agreed that Dr Frost went home and that they then went to dinner together. They agreed that, over dinner, they continued to discuss matters relating to work but they differed about whether their dinner-table conversation included Mr Doyle making any inquiry about the personal life and background of the Complainant. She said, but he denied, that he said to her, at dinner, that she was “delightful” but “too subservient”.

68. Their accounts of what happened after dinner were radically different. The Complainant described being invited to Mr Doyle’s house for a bottle of wine to continue the discussion about work (expecting his partner to be present in the house) only to find that they were alone in the house and that she was there subjected to an unwanted sexual advance. By contrast, Mr Doyle described his accepting a lift home in a cab with the Complainant, and finding her not continuing with her journey but entering his house uninvited, resisting all attempts to have her go, helping herself uninvited to wine and a tour of the house (including not only the
bedroom but also opening and shutting cupboards) until finally being prevailed on to go.

69. In his written response to the Grievance, Mr Doyle sought to explain what had happened as the product of the Complainant drinking too much, though he did not suggest in his written response that he had observed, on the night, that she appeared to be affected by alcohol. The Complainant denied that she had had too much to drink and said, in effect, that there was nothing to explain – he had made an unwanted sexual advance.

70. The Complainant said that she was very upset by what had happened and, in the first interview I conducted with her, it was evident that she found recounting what she said had happened to be emotionally difficult.

71. It is necessary to say something more about the competing accounts of the events of 13 February 2014.

The Complainant’s account

72. According to the account the Complainant gave in her Grievance, which she repeated in her first interview with me, Mr Doyle invited her to his house. According to her, he said words to the effect: “I have a lovely bottle of red back at my place and we could go there if you like and finish talking about this. I just want to make it clear,
you are safe" (emphasis added). She said that she replied: "What do you mean 'you are safe?'" and that he said "Just so you know that you are safe, Peter [meaning Dr Peter Frost] has been to my place before and had dinner with [Mr Doyle’s partner] and I".

73. She said that she found, on arriving at the house, that Mr Doyle’s partner was not home. She said that he explained this as his partner being off on a one week research program looking at koalas. The Complainant described Mr Doyle pouring a glass of wine in the kitchen and talking about the illness of his wife. She said that she noticed him staring at her shoulder and that she realised her bra strap had slipped off her shoulder and was visible. As he reached out to adjust it, she pushed it up and there was no contact. She said that she became uncomfortable, told Mr Doyle that she needed to go and began to call a cab. She said that, as she was doing this, Mr Doyle took the phone from her hand. In her written Grievance she said that she told him that she really needed to go and that he told her that “You’re not going anywhere, you have been drinking and you’re staying here”, but she did not refer to this exchange in the course of her interview with me.

74. The Complainant said that Mr Doyle offered to “show her the rest of the place” and, as she put it, to “get past the awkwardness of what had just happened” or “placate him” she followed him as he went upstairs. She said in her Grievance that, as she went to go downstairs again, he said that she should stay with him (pointing
to the bed) and that everything would be okay because she was safe. She said that he then ran his hands down the sides of her torso, brushing the sides of her breasts "and around to the back onto my backside as he embraced me" and started to kiss her along the neck and collarbone. She said that she pushed him away and said again that she needed to go. She went downstairs, called a Silver Service cab and waited for it, with him, outside the house.

*Mr Doyle’s account*

75. By contrast, Mr Doyle said that it was the Complainant who said at dinner that she wanted to see his house. He said that he told her that this “could not happen”, that he had an early start and his partner was not at home “so it was not appropriate”. He said that he told her he would walk home. But, on the Complainant telling him that he was “heading in the direction of her house,” he agreed to share a cab with her.

76. On arrival at his house, he used his CabCharge card to pay the cab driver what was on the meter and she got out. He said that he again told her that his partner was not there but away on a koala field trip and that she should go home. She said she wanted to see “the lights” and he opened the electronic gate. He said that he “did not, in any way, intend this to be an invitation”. But she walked into the front courtyard of the house.
77. In the course of his interview with me, Mr Doyle gave an account of the course of events up to and including the Complainant’s departure from his house which differed in some respects from what he had said in his written response to the Grievance. For the most part, the differences were about the order in which particular conversations or events occurred. I do not attach any significance to those differences about the order of events and conversations and say nothing further about them. The central question is whether Mr Doyle’s description of those events and conversations is substantially accurate, not whether they occurred in the particular order given in one, rather than the other, of his accounts of them.

78. In his first interview with me, Mr Doyle did not say, as he had in his written response, that the Complainant had twice suggested that she stay the night at his house. On the face of it, this is a surprising omission. It is an omission that was consistent with his statement to me, in interview, that he did not feel that she was making a sexual advance to him (emphasis added). It is an omission which might be understood as suggesting that his account of events was unreliable but I prefer not to attach any significance to it and instead will assess the reliability of his account by reference to other considerations.

79. Mr Doyle said that, having got out of the cab, he said “goodnight”, put his briefcase inside the front door of the house and put out his
rubbish bins for collection the next day. He was surprised, he said in effect, to discover that the Complainant had remained in the courtyard and that the taxi had gone. He said that he told her to call the cab but that she told him that he ("a taxi driver she preferred to use") was busy. According to Mr Doyle, he asked her twice more to ring the taxi and that he told her that he would call her a taxi but to no effect. Instead, she walked around the house, commenting on how nice it looked.

80. Mr Doyle said that she sat at the counter top in the kitchen and looked at a vendor's brochure that had been prepared for Mr Doyle's house while first, he went downstairs to wash his hands and relieve himself. Next, he collected his own mobile phone from his briefcase and then he went upstairs to the first floor. On his return to the kitchen he said that he found that she had taken a bottle of wine from his wine refrigerator, had opened it and had poured herself a glass of wine. He said he declined her offer to pour him a glass.

81. He said that he told her that he would call her a cab but that she replied "firmly" that she only used one cab driver out of safety concerns. He said that he then made himself a mug of tea and offered her a hot drink while they waited for a cab. He said that she got a glass from a cupboard and poured another glass of wine, which he declined. He said that again he asked her for "her taxi number" or he would just ring any taxi number. He said that
she replied "I will ring but he is busy". He said that she should ring and book a time so that he did not miss her.

82. In his written response to the Grievance, but not in his interview with me, Mr Doyle suggested that the Complainant said at this point "I could stay here" but he said that she should go home. In his written response, he said that she said "something like", "you have a spare room so you can put me up for the night" but that he replied that she could not stay and that her family would be expecting her. Mr Doyle said that she then walked upstairs to the top storey of the house (where the main bedroom was) and that he could hear her commenting on how nice it was and he could hear her opening and closing cupboards. He said that he did not follow her upstairs and that at no time were they in the bedroom together. He said that he kept calling to her to come downstairs and that, when she did, he said that he would call a cab but that she said that she would "ring for my special one". He said that she said she wanted a cigarette and went downstairs. He said that, while she was outside, he threw away the wine, rinsed the glasses and put them into the dishwasher, and went downstairs and out of the house, locking the front door behind him.

83. Mr Doyle said that he could not see the Complainant until, just as he got outside the front gate, he saw her walking up the street towards him. He said that she said that the taxi was coming. He said that they should wait out the front but that, while waiting, they
sat on a bench in the garden. Again in his written response, but not in his oral account of the events, Mr Doyle said that the Complainant said “I could stay” but that he replied that it was inappropriate and her family would be expecting her. The taxi arrived and she left.

84. In his written response, Mr Doyle concluded his account of the events of the night saying: “I did not touch [the Complainant] at all that night in my house. I tried to avoid her. At times I felt she was flirting. I ignored it”. (This suggestion, that the Complainant was “flirting”, may be at odds with his statement to me that “I didn’t feel that she was making a sexual advance to me. I just felt that she was acting atypically and that she was behaving strangely”. It is neither necessary nor profitable to explore that question.) His written response ended: “I am in a committed and loving relationship. She [the Complainant] seemed steady on her feet but, from her behaviour and how much she had drunk, I surmised that she was drunk. She did not cry at any time nor did she suggest she was uncomfortable. I was uncomfortable. She had come into my house uninvited and looked through my house, including the bedroom where [my partner] and I slept.”

A choice to be made

85. The accounts which Mr Doyle and the Complainant now give of the events of 13 February 2014 present a stark choice. There
appears to be no middle ground between the two accounts. Either Mr Doyle invited the Complainant to his home, or she entered uninvited and against his protests. Either he was the one who suggested that she remain at the house overnight or she raised that possibility. Either he touched her in the manner she described, or there was no physical contact between them of any kind.

Some Improbabilities

86. Mr Doyle’s account of events is that the Complainant entered his house uninvited (having earlier been told that it would be inappropriate for her to come to and look at the house) and that, despite his repeated attempts to have her leave, Mr Doyle could not achieve that result. Mr Doyle initially estimated that the Complainant was at his house for about 40 minutes to an hour. As I will later explain, I find that she was at Mr Doyle’s house for approximately 90 minutes and, when re-interviewed, Mr Doyle accepted that this was the case. In that second interview, he suggested that the additional time (over and above his earlier estimate of 40 minutes to an hour in the house) was spent outside the house waiting for the cab. Central to the explanation Mr Doyle provided for events taking as long as they did to play out was that the Complainant insisted upon using a particular taxi and the Complainant would not call that taxi.
87. I consider it improbable that Mr Doyle, a man well used to management and direction of staff, could not have had the Complainant leave his house much sooner than 90 minutes after her arrival if, as he says, she was an uninvited guest, let alone one behaving as oddly and rudely as he said she did. Given the length of the time she was at the house, I consider it much more probable than not that the Complainant went into and remained in Mr Doyle's house at his express invitation. Further, her account of events at the house, including, as it did, reference to Mr Doyle speaking of the illness of his wife "how her illness came on, all the different events that had happened, you know, when she started losing her memory, how difficult that was and how he had to cope with it" is more consistent with her spending 90 minutes there, than is Mr Doyle's account.

88. Mr Doyle's account was, in effect, that he let events take their course, asking the Complainant, on numerous occasions, to call the cab she wanted to use to take her home. But this alternative account does not accord with Mr Doyle's having told the Complainant, at the restaurant, that it was inappropriate for her to come to his house. And his suggestion that the Complainant said that Mr Doyle was "heading in the direction of her house" necessarily infers that the Complainant lied to him, because Mr Doyle's house, was not in the direction of the Complainant's house. I do not accept that the Complainant said this to Mr Doyle.
To anyone who knows Melbourne at all, it is so obviously untrue that I do not accept that the Complainant would have said it.

89. As I will explain, I do not accept that, at the time of these events, the Complainant used only one taxi or only one taxi driver to drive her home at night. I do not accept that Mr Doyle and the Complainant travelled to Mr Doyle’s house in a taxi which was the Complainant’s “special” taxi. I do accept that, at the time of these events, the Complainant preferred to travel in a “Silver Service” taxi but there are many taxis of that kind available for hire and they can be booked in a manner no different from the way in which any taxi is booked.

90. The excuses which Mr Doyle said that the Complainant gave for her remaining at his house for as long as she did, if given by her, would not have been true. I consider it to be more probable than not that she did not say anything to Mr Doyle at his house on 13 February 2014 about her using a special taxi or special taxi driver. I do not accept that the Complainant said to Mr Doyle at his house any words to the effect that “he” (meaning a special taxi driver) is busy. I do not accept that the Complainant said to Mr Doyle, at his house, words to the effect “that she only drove home with one cab driver” or that “she only goes home with that one and she won’t get into any other cab at night”. I do not accept that the Complainant said to Mr Doyle at his house words to the effect that “I’m going to ring for my special one”. I do not believe
Mr Doyle when he told me that he had numerous conversations with the Complainant at his house that night about calling a taxi. I do not believe that conversations of the kind or to the effect he described took place.

91. The conduct which Mr Doyle attributes to the Complainant is very odd behaviour constituting rudeness of a high order. I do not believe that, if it occurred, Mr Doyle could not and would not have brought it to an end very firmly and very quickly. He has pointed to no reason of any kind that would have prevented him doing that. In particular, his suggestion that the Complainant was drunk, even if I accepted it (and I do not), would have been all the more reason why he could and would have brought matters to a head in such a way as either would have seen her never entering the house or, at least, would have seen her out of it in very short order and certainly much quicker than the period of 90 minutes that, as I will explain, I find that the Complainant was at the house.

92. Because use of taxis loomed so large in Mr Doyle's account of events, it is necessary to say something more about that subject.

**Taxi services**

93. Documentary records of the use of Mr Doyle's VAGO CabCharge account show that on 13 February 2014 he (and it follows, the Complainant) took a Black Cabs taxi from the city and that the fare
was charged at 22:03 hours. As I have explained, I do not accept that the taxi which made this trip was a particular taxi regularly used by the Complainant. Rather, I prefer the Complainant’s account that this was a taxi which she and Mr Doyle picked up outside Cecconi’s Restaurant as the next available taxi for hire.

94. The Complainant provided to me a handwritten note recording a reference number for Silver Top Taxi Silver Service which, she said, recorded that she had booked a taxi through Silver Top Silver Service and which picked her up at Mr Doyle’s house at 23:36 hours on 13 February 2014. At my request, a solicitor from the Victorian Government Solicitor’s Office made an independent inquiry of Silver Top Silver Service Taxis about what that organisation recorded in respect of that reference number. Based on what the solicitor was told, I accept that the Complainant telephoned for and booked a Silver Service Taxi at 11:36 pm and that the taxi picked her up from Mr Doyle’s address at about 11:41 pm.

95. In his initial interview, Mr Doyle told me that once outside the house, he had waited with the Complainant for about ten minutes “just talking about inconsequential things” and that, maybe five or ten minutes after the Complainant had had another cigarette, the taxi arrived. By the time of his second interview, Mr Doyle had been told of the times recorded by Silver Top Silver Service Cabs in respect of the booking made by the Complainant to go from his
house to her home. In that second interview, he suggested that he waited for a cab outside the house, with the Complainant, for between 30 and 50 minutes after he had eventually persuaded her to leave his house and that the Complainant "didn't actually ring the taxi until the second cigarette was actually taken because, at the time, and I said it in my evidence, she was still trying to discuss with me about staying over in the house whilst we were sitting outside in the garden area". At the very least this second account is a reconstruction of events to accommodate what by then were the known facts. I do not accept it as an accurate account of what Mr Doyle remembers about the events of that night. And, as I have already noted, Mr Doyle did not mention in his initial interview anything about the Complainant asking or suggesting that she stay at his house, despite having said, in his written response, that she had twice raised this as a possibility.

96. The short time that elapsed between booking the cab and its arrival is consistent with the Complainant's account of events. It is not consistent with Mr Doyle's first account. And, I find the second account he gave was reconstruction not recollection.

97. The taxi records to which I have referred show, and I accept, that Mr Doyle and the Complainant were at his house for approximately 90 minutes.
98. I conclude that the cab which the Complainant used to leave Mr Doyle’s house to travel to her own house was not a taxi which she called by contacting the driver. It was not the taxi which took Mr Doyle and the Complainant to his house. It was a taxi booked through the Silver Top Taxi Silver Service system. I am well satisfied that the Complainant was correct to say that she did not use a particular taxi driver, she used the Silver Service when travelling at night because that service would record (as it did in this case) who booked the taxi, what taxi provided the service and what was the pick-up address.

99. It is next necessary to say something about the complaints which the Complainant later made to others about Mr Doyle’s conduct at his house.

*Immediate and subsequent complaints*

100. The Complainant said both in her Grievance, and in her first interview with me, that, as soon as she got home, she complained of what had happened to her sister. She said that on the next day, 14 February 2014, she complained to her aunt and to two members of VAGO (her then executive assistant and a person in the People and Culture section of VAGO) (but, at the same time, telling them to say nothing about what she had told them). She said that over the following days she complained about what had happened to her psychologist and to the general medical
practitioner standing in for her regular GP. She also said that she consulted a lawyer about what had happened.

101. I have interviewed the Complainant's aunt, the Complainant's then executive assistant and the person in the People and Culture section of VAGO. I wrote to the Complainant's psychologist and both her regular general medical practitioner and the doctor who had been standing in for the Complainant's GP asking them to tell me whether, in February 2014, the Complainant had spoken about a matter concerning Mr Doyle and, if she had, what she had said about the matter. I include copies of my correspondence with the psychologist and the doctors in the material appended to the Full Report.

102. The Complainant provided me with documents from the lawyers she consulted and I wrote to the lawyer concerned asking him to tell me when the Complainant first spoke to him; what the Complainant then told him about Mr Doyle's conduct; what advice the lawyer gave to the Complainant; and what instructions the Complainant gave the lawyer. I include copies of the documents produced by the Complainant and my correspondence with the lawyer in the documents appended to the Full Report.

103. I accept that the Complainant made each of the complaints she described.
104. I have no doubt that, on 14 February 2014, as soon as she arrived at the office, she spoke to her then executive assistant and, either then, or very soon after, to a person from the People and Culture section of VAGO. In those conversations, the Complainant gave an account of the central events of the previous night that was in no material way different from the account she was later to give of those events in both her Grievance and in the course of her interview with me.

105. The Complainant's then executive assistant described to me the Complainant arriving in the office one February morning in a state of evident distress. The executive assistant (and another member of the VAGO staff) followed the Complainant into her office and asked her what was wrong. The Complainant broke down in tears. The executive assistant told me that the Complainant had said to her that Mr Doyle had "pushed her against the door and he started to touch her from behind and started to kiss her neck and touch her breasts"; that the Complainant had said she needed to go; and that Mr Doyle had said "You're staying here. You're not going anywhere". The executive assistant was particularly struck by this last statement, saying of it that "I'll never forget this". And it is a statement which another employee of VAGO told me that the Complainant had used when describing what had happened on that night.
106. I have no doubt at all about the honesty or substantial accuracy of what the executive assistant told me the Complainant had said to her on the morning of 14 February. I say "substantial accuracy" only because it is inevitable that her memory of precise words used on that day may not be complete. But for present purposes, what matters is that the account the executive assistant gave me of what the Complainant had said on the morning after the events of 13 February 2014 did not differ in any material respect from the complaint which the Complainant was later to make in her Grievance.

107. Likewise, the person from the People and Culture section of VAGO, to whom the Complainant said she had spoken on 14 February 2014, gave me an account of her conversation with the Complainant which did not differ in any material respect from the complaint which the Complainant made in her Grievance. The person from the People and Culture section provided to me a note which she said that she thought she had prepared soon after the conversation with the Complainant. The electronic record of the document's properties suggest that it was prepared some months after the conversation and I place no reliance upon it. (A copy of the document and a screen shot of the properties of the document are included in the documents appended to the Full Report.) Further, I have given consideration to whether the account which this person gave to me in interview may have been reconstructed by reference to this note. It is not necessary to pursue that
question to any definite conclusion. It is enough for me to say that I conclude that the Complainant (and her then executive assistant) told me the truth about what was said on the morning of 14 February 2014. And what was then said accorded with what the Complainant has told me happened on the night of 13 February 2014.

108. That being so, it is probable that the principal elements of the accounts which the Complainant's aunt and the person from the People and Culture section gave of their conversations with the Complainant on 14 February 2014 are also generally accurate.

109. As Mr Doyle's written submissions pointed out, it is to be observed that, after the Complainant had told her of what had happened, the aunt twice applied for, but was unsuccessful in, securing a position at VAGO. Contrary to those submissions, however, I do not regard that fact as impairing the aunt's credibility or suggesting that she treated what she had been told about the events of 13 February as a trifling matter. What the aunt told me about the Complainant's conversation with her on 14 February 2014 is consistent with what others said about the complaints that were then made. And even though I greatly doubt that the aunt did regard the incident of which the Complainant had spoken as insignificant or trifling, her view of its nature or significance is not to the point.
110. The Complainant consulted a lawyer about these matters soon after 13 February 2014. Whether that came about because the Complainant thought she should do so or because her aunt suggested that the Complainant should consult a lawyer does not matter.

111. The Complainant produced records from the lawyers showing that a partner of the firm sent the Complainant a draft costs agreement on 19 February 2014 which described the work to be done by the firm as “to provide general advice in relation to your rights and entitlements and recommended steps to protect your interests arising from an incident involving John Doyle the Auditor General of VAGO”. The email enclosing the draft costs agreement was entitled “Sexual Harassment Advice”. The firm later rendered a bill recording that, on 18 February 2014, the partner concerned had a “[t]elephone attendance on client regarding workplace incident” and, a week later, a further telephone attendance on the client “regarding strategy and steps to protect interests”. Copies of these documents are included in the documents attached to the Full Report.

112. The correspondence I have received from the Complainant’s psychologist, her doctors and the lawyer she consulted shows that she complained of Mr Doyle’s conduct to them. It may be that her recollection of when she first spoke to these people about these matters is inaccurate. But if it is, the inaccuracy is a matter (at
most) of a few days, not weeks, and I do not attach any significance to that fact.

113. It may also be observed that there are some differences between the records those professionals made of what she told them and the account which she gave in her Grievance and in her interviews with me. So, for example, the lawyer recorded her telling him that it was Mr Doyle who had called a cab for her at his house, whereas her account to me (supported by the records obtained from Silver Top Silver Service) was that she had called the cab. I regard this difference as insignificant.

114. More generally, I regard such other differences as may be observed between the records made by the professionals of what she told them and her account to me as insignificant.

115. In his written submissions, Mr Doyle pointed to what were said to be “evidentiary inconsistencies” arising out of what the Complainant told me in interview and her “version of events as told to other people”. The premise for the submission is that persons to whom the Complainant spoke about these matters were able to, and did, give a wholly accurate account of the words that the Complainant had used in her conversation with them. I do not accept that premise. I have no doubt that those who spoke to me about what the Complainant had told them did their best to give an accurate account of the conversation. Nor do I have any
doubt that each of them gave a substantially accurate account. But it is not to the point to parse and analyse precise words or phrases used when recalling the conversations that had occurred.

116. So, for example, I do not consider that anything turns on the fact that a person to whom the Complainant spoke about these matters in the middle of 2014 recalled the Complainant as saying that “they [the Complainant and Mr Doyle] had been to dinner and they were getting a taxi to drop him off and then she would go home” (emphasis added). As that person said at the time, she did not want to know about the matter and she had cut off the conversation. Rather, the statement that appeared to have stuck in her mind was the Complainant saying to her that Mr Doyle had said “You’re not going home tonight, you’re staying here”.

117. Likewise, I do not consider that anything turns on the fact that the Complainant’s aunt, and one of the general medical practitioners, recalled the Complainant speaking of Mr Doyle asking her to come upstairs (to the bedroom level) to pick up or look at some work-related papers. Mr Doyle never suggested that he had said this. If the Complainant said this to these persons, it is readily understood as the Complainant explaining away how she came to be in his bedroom. It does not detract from her account that she went upstairs at his invitation.
118. More important than these differences (which, as I say, I consider to be insignificant) is the fact that I am satisfied that the Complainant complained to others about Mr Doyle’s conduct at the first available opportunity. And the complaints which she made to those others were directly inconsistent with the version of the events of that night which Mr Doyle was later to give in his written and oral responses to the Grievance she submitted 18 months later.

119. Although the Complainant told the several persons I have identified that Mr Doyle had made an unwelcome sexual advance to her on 13 February 2014, she did not thereafter speak to Mr Doyle about the events of that night, and she took no step to make any formal complaint until 18 months later.

120. In the course of my interviewing a member of the staff of VAGO who worked closely with Mr Doyle, it emerged that the Complainant did tell this person, in about the middle of 2014, what the Complainant said had happened at Mr Doyle’s house. (I have already referred to this conversation as one on which Mr Doyle relied in his Written Submissions.) As I have already noted, this person cut off the conversation. The Complainant asked this person not to talk about it and I accept that she did not. As this person said in interview, and I accept, when told matters in confidence, she will not discuss them. As she put it, “I wouldn’t be in the job that I’m in if I wasn’t a trusted source.”
121. I am satisfied that, apart from her initial complaints on 14 February 2014 and this one confidential conversation in about the middle of 2014, the Complainant made no complaint to anyone at VAGO about the events of 13 February 2014 until late in July 2015.

122. I am satisfied that the Complainant told her then executive assistant and the person from the People and Culture section to whom she had complained on 14 February 2014, that she did not want them to do anything about her complaint. I consider that she did this for a combination of reasons: fear of the consequences of complaining about the conduct of the Auditor-General and, in particular, the fear that, if she complained, she would lose her job. The Complainant was frightened of what would happen if she lost her job. She was living with, and supporting, members of her family who did not have any substantial income.

123. As time went by, I think it probable that the Complainant thought that, nothing being said or done, what had happened was a single occurrence not likely to be repeated. And this view of matters would have been reinforced by Mr Doyle marrying his partner in November 2014 and inviting the Complainant to the wedding.

124. The course of events which I have described explains why the Complainant made no official complaint about Mr Doyle’s conduct before she did. It is necessary now to say when and why she did make an official complaint.
The complaint in July 2015

125. As will later be explained, the working relationship between Mr Doyle and the Complainant deteriorated between late January and July 2015. Although the Complainant performed her work during this time in ways which Dr Frost assessed as "superior" performance, Mr Doyle dealt with the Complainant in ways which led a staff member who worked closely with Mr Doyle to say that "it was becoming more evident to [that staff member] that anything [the Complainant] was going to produce was not going to meet [Mr Doyle's] expectations" and that, although the work the Complainant was doing was "of a reasonable expectation". Mr Doyle "would pick it apart". Or, as Dr Peter Frost said in his interview, he attended a "couple of extremely regrettable meetings" during 2015 where the "tone" in which Mr Doyle conducted the meetings towards the Complainant "was, to put it mildly, highly regrettable". It will be necessary to say much more about the events of 2015 but for the moment it is sufficient to say only that the working relationship between Mr Doyle and the Complainant deteriorated between late January and July 2015.

126. Dr Frost told me that in July 2015, the Complainant just "blurted out" to him that Mr Doyle had touched her inappropriately. The Complainant said that she did this in response to Dr Frost saying that he had been told that Mr Doyle thought her "too familiar". Dr Frost recalled it as being in response to him telling her that he
had been told that Mr Doyle thought her to be “too forward’, or something of that order, ‘with her staff”. No matter what were the precise words which provoked the Complainant to “blurt out” her accusation against Mr Doyle, I have no doubt that her telling Dr Frost that Mr Doyle had touched her inappropriately was neither planned nor calculated; it was entirely spontaneous. And likewise, I have no doubt that Dr Frost told her immediately that “It’s put up or shut up”. That is, Dr Frost told her immediately, in effect, that she must either make a formal complaint in writing or never again say anything to the effect of what she had just said about Mr Doyle.

The significance of the complaints

127. In his first interview with me, Mr Doyle suggested that the Complainant made the complaints she did because “she was utterly embarrassed by her behaviour”, “she’d just gone too far and was now realising, in fact, that she may be in a lot of serious trouble”. But, as Mr Doyle rightly acknowledged, his suggestion about embarrassment was speculation. And what the “serious trouble” might be was never identified. I consider that Mr Doyle’s suggestion of embarrassment has no foundation.

128. The spontaneity of the complaint to Dr Frost does not prove that the complaint was true. Nor does the making of that complaint, or any of the earlier complaints (soon after 13 February 2014) to
relatives, to staff at VAGO, to her psychologist and doctors or to a lawyer, prove that the events of which complaint was made had occurred. But the succession of complaints, coupled with the spontaneity of her complaint to Dr Frost, is not consistent with the Complainant inventing an allegation of sexual harassment out of fear of and embarrassment about her inappropriately entering and remaining at Mr Doyle's house. Rather, the successive complaints, culminating in her “blurtng out” what she did to Dr Frost, is consistent with the Complainant describing events that she had experienced.

*The critical questions*

129. In the end I must decide whether I believe what Mr Doyle has said about the events of 13 February 2014, or what the Complainant has said, or I am left unpersuaded of the accuracy of some part or all of the account which either or both of them has given. In forming that judgment I must, and do, take account of all of the material which I have available to me.

130. In reaching my conclusions I must, and I do, recognise how serious are the consequences of my decision for both Mr Doyle and the Complainant. Not only that, I must, and I do, recognise that the allegation which the Complainant makes is an allegation of unlawful conduct by the holder of one of the most important constitutional offices of the State. The conduct of which she
complains, if established, was an indecent assault; it is conduct which she alleges to be sexual harassment by an employer of an employee.

**Conclusion and findings about the events of 13 February 2014**

131. I am satisfied that it is more probable than not that the Complainant's account of the events of 13 February 2014 is substantially accurate. That is, I am satisfied that it is more probable than not that Mr Doyle made an unwanted sexual advance to the Complainant that night and made unwanted sexual contact with her by embracing her, running his hands over the sides of her body and breasts to her back while kissing her neck. These events occurred in circumstances in which a reasonable person would have concluded that the sexual advances I have described would be unwelcome to the Complainant.

132. I have reached these conclusions having regard to my assessment of the veracity of Mr Doyle and the Complainant.

133. I do not accept the account which Mr Doyle gave of the events of 13 February 2014. Because the central features of the accounts of the events of that night which Mr Doyle and the Complainant each gave were so radically opposed, I can only conclude that one was telling the truth and the other was not. In my view, Mr Doyle
did not tell the truth. And he must have known that the account he was giving of the events of that night was not true.

134. The conclusions I have just expressed are reached independently of the conclusions I have reached about the bullying complaints made by the Complainant. But it is also relevant to record that the conclusions I have reached about Mr Doyle’s veracity in relation to the sexual harassment complaint are consistent with the conclusions I later reach in connection with the bullying complaints.

135. As will later be explained, in both his written response to the Grievance and in his interviews with me, Mr Doyle gave me answers to a number of the bullying complaints which were directly contradicted by others who had seen the events in issue. As will also later be explained, I do not accept that the events which the Complainant described as occurring during 2015 were, as Mr Doyle put it, “ordinary course-of-business events”. Rather, and contrary to what he told me, I conclude that Mr Doyle engaged repeatedly during 2015 in unreasonable behaviour towards the Complainant and that his conduct was such as to constitute a risk to her health and well-being. I consider that in both his written response and in his answers in interview with me he deliberately sought to downplay the nature and seriousness of his conduct towards the Complainant. I consider that it is more probable than not that Mr Doyle knew that the description he gave
of his dealings with the Complainant during 2015 was not a full
and accurate description.

136. By contrast, I have formed the view that the Complainant tried to
tell the truth, the whole truth, and nothing but the truth in both her
Grievance and in what she said in the interviews she had with me
about both the sexual harassment complaint and the bullying
complaints. I am satisfied that the account which she gave of the
events relevant to my investigation was substantially accurate and
was not embellished or exaggerated. On the contrary, in some
respects, and to some extent, her account of the conduct which
she alleged to be “bullying” omitted details given to me by others.
That is, her account of the relevant conduct did not include some
matters of which others spoke and which were matters adverse to
the interests of Mr Doyle.

137. Contrary to Mr Doyle’s submission, if the documents which the
Complainant produced, and I refused to receive, did seek to
attempt to accuse Mr Doyle of some form of financial impropriety,
the Complainant’s attempt to widen the field of inquiry does not
reflect poorly on the cogency of the complaints she made in her
Grievance. Nor is it something which bears upon the credibility of
what she did tell me in relation to either the sexual harassment
allegations or the bullying allegations. The content of any
additional allegations foreshadowed by the Complainant was, and
remains, irrelevant. An attempt to make the allegations is of no present significance.
Chapter 8 – THE BULLYING ALLEGATIONS

138. In considering the bullying allegations, it is necessary to deal with a number of separate but related matters. It is desirable, therefore, to set out here the way in which this part of the report is organised. It is organised under the following headings:

A  Look at all relevant circumstances

B  Two observers of the working relationship

C  Complainant “underperforming”? 

D  Issues under Mr Doyle’s consideration in 2015

E  Mr Doyle’s management style

F  The nature of the Complainant’s meetings with Mr Doyle

G  Mr Doyle’s use of particular expressions

   (a) Putting people “on notice”

   (b) “You’ll need a box of tissues”

   (c) “Be careful when I’m polite”
Particular meetings

(a) 28 January 2015 – Performance Audit charging

(b) 29 January 2015 – Graduate recruitment

(c) 28 April 2015 – Resourcing needs

(d) 30 April 2015 - Job Descriptions

(e) June 2015 – Monthly Management Reports

(f) 10 July 2015 – Budgeting

Uninvited to meetings?

Repeated unreasonable behaviour

Reasonable management action effected reasonably?

Risk to health and safety?

Conclusion about bullying allegations
A  Look at all relevant circumstances

139. In her Grievance, the Complainant referred to particular meetings in 2015 when she said Mr Doyle’s conduct left her feeling humiliated and embarrassed. She referred to particular meetings when she broke down in tears. But the particular events cannot be judged in isolation from each other, or in isolation from the nature or content of the working relationship between the Complainant and Mr Doyle. More particularly, it is not possible, and it would not be right, to take each event of which complaint was made, and ask of only that event, whether Mr Doyle’s conduct on that occasion was unreasonable and carried any risk to health or safety or was no more than reasonable management action carried out in a reasonable manner.

140. When drawing conclusions about whether there was bullying, as the Complainant alleged, I must, and do, recognise that an allegation of bullying by the Auditor-General is a very serious allegation. Not only is the allegation very serious, the conclusions which I reach may have very serious consequences for both Mr Doyle and the Complainant. The conclusions I express about the bullying allegations are formed in the light of these considerations.

141. Bullying is constituted by repeated or persistent unreasonable behaviour which carries a risk to health and safety. Neither the
question about whether the behaviour is “unreasonable” nor the question about risk to health and safety can be answered properly without regard to all of the relevant circumstances. Those circumstances will necessarily include all those matters that bear upon the nature of the relationship between the two parties. That is, they will include, but are not limited to, such matters as whether the person alleged to be the bully was in a formal position of power and authority over the other person in the workplace and whether, as a matter of fact, the person alleged to be the bully asserted control or dominance over the other.

142. When looking at all of the relevant circumstances, there is one matter to which Mr Doyle referred in his written submissions, but which should be put aside from consideration. It will be recalled that, early in my investigations, I asked some professional persons consulted by the Complainant in February 2014 what she had told them about Mr Doyle. One of those persons replied in terms which Mr Doyle submitted should be understood as recording that the Complainant had complained about being bullied or harassed during 2014. I do not read the letter in the manner suggested. Rather I consider that it attributes the Complainant’s physical deterioration (which occurred during 2015, not 2014) as being “due to her experience of being harassed and bullied at work”. But whether or not that is the proper reading of the letter, there is no other material which suggests in any way that the Complainant has ever complained of being bullied before 2015. Hence the
suggestion inferentially made by Mr Doyle, in his written submissions, that there had been some bullying at VAGO before 2015 by someone other than Mr Doyle should be put aside from consideration as unfounded.

B Two observers of the working relationship

143. It follows from what I have said earlier in this report about “bullying” in the workplace that it is both relevant and important to take proper account of the information I was given about the working relationship between the Complainant and Mr Doyle during 2015. The most important and telling information about that relationship came from two separate sources: Dr Peter Frost and an employee of VAGO who worked closely with Mr Doyle. It is convenient to refer to this employee as “Ms A”.

144. I accept, without any hesitation, the accuracy and veracity of what both Dr Frost and Ms A told me about the working relationship between the Complainant and Mr Doyle (and, I should add, about the other matters of which each spoke). To the extent to which each expressed opinions about the nature or quality of the conduct they observed and described, I regard their opinions as founded in wide experience of public service and as very persuasive.
145. To explain why that is so, it is necessary to say something more about both Dr Frost and Ms A, and to begin with Ms A.

146. As I have said, Ms A worked closely with Mr Doyle. She was employed at VAGO as a Grade 6 officer (the most senior grade below executive level officers). Her duties required her to be generally familiar with all aspects of the operations of VAGO. (It was to Ms A that the Complainant had spoken, in mid-2014, about Mr Doyle’s conduct at his house in February 2014.)

147. Dr Frost is a very senior and experienced manager, consultant and public servant. He has remarkably diverse experience in senior positions in this country and overseas ranging from Deputy Secretary of the Head of the Office of Public Sector Management during the Kennett government of Victoria, to four years as Deputy Vice-Chancellor of RMIT “in charge of every part of the organisation which was not academic”, to holding office as Special Adviser on Public Sector Reform in the Commonwealth Secretariat providing advice to Commonwealth member countries. He has been Deputy Auditor-General and Chief Executive Officer of VAGO for the last two and a half years and for the six months preceding was the Acting Auditor-General.

148. Dr Frost is responsible for the executive management of the whole of VAGO. All members of the leadership group of VAGO report to him although, as he told me, his approach to management is to be
as open and collegiate as possible. But, as he also said, “at the end of the day, [he is] ultimately responsible for the operations of the Office”.

149. Having interviewed Dr Frost I was left in no doubt that he gave to me a wholly honest and accurate account of the events he described. I was left in no doubt that Dr Frost paid careful attention to management of VAGO and I have no doubt that he performed those tasks with great skill.

150. Dr Frost evidently regarded Mr Doyle’s treatment of the Complainant in two meetings which he attended during 2015 as inappropriate and unreasonable. Dr Frost said that “the tone [in] which [Mr Doyle] conducted those sort of meetings, particularly in relation to [the Complainant] was, to put it mildly, highly regrettable” (emphasis added). Dr Frost described Mr Doyle’s conduct as directing frustration and anger at the Complainant. According to Dr Frost, these meetings were not “simply normal course-of-business events”, rather, Mr Doyle’s conduct was “intimidating” and left the Complainant “humiliated”. No less importantly, Dr Frost regarded Mr Doyle’s conduct towards the Complainant as meriting the description “unreasonable behaviour with a risk to health or safety”.

151. Dr Frost described the changes in the relationship between the Complainant and Mr Doyle, during 2015, as “stuff like” Mr Doyle
ignoring her at meetings of the Leadership Group, and his not commenting upon the contributions she made to discussions. The other matter which Dr Frost said alerted him to "what [was] going on" was the development of successive proposals for reorganisation of VAGO, especially the Leadership Group. Initially those discussions were conducted in a group consisting of Mr Doyle, Dr Frost, the Complainant and Ms A. But, after a time, the Complainant was not included in the discussions. The proposals went through several iterations. In one of these iterations, Mr Doyle proposed to the Complainant that she become the head of a newly established group called Performance Innovation and Monitoring. But the final iteration of these proposals appears to have been one given by Mr Doyle to Dr Frost in a meeting between the two of them "where he had her [the Complainant] not only not as part of the Leadership Group, but reporting to somebody ... who [Mr Doyle] and I had – had right up until the very death contemplated terminating". Dr Frost told Mr Doyle, at once, that he had "real problems" with this proposal. Dr Frost explained his reaction on the basis that Mr Doyle had never said to him that the Complainant was underperforming. Ms A, who was privy to this proposal, said that this would have been quite a significant demotion for the Complainant.

152. I accept the accounts given by Dr Frost and Ms A about this last iteration of the restructuring proposal. I do not accept the
competing version given by Mr Doyle at his second interview denying that he had ever proposed a restructuring in which the Complainant would report to an Assistant Auditor-General.

153. At each of the particular meetings to which Dr Frost referred as “highly regrettable”, the Complainant was reduced to tears. Dr Frost attached significance to this because, to his observation, the Complainant “has always struck [him] as being incredibly resilient” or, as he also said, “a pretty tough resilient woman”. (Several other members of the Leadership Group of VAGO agreed with this description of the Complainant.) And Dr Frost even went so far as to rebuke himself for not stepping in and preventing what was done to the Complainant at the two meetings to which he referred.

154. Ms A told me that in the period between Australia Day 2015 and the end of June 2015, the relationship between the Complainant and Mr Doyle “was different in the sense that it was becoming more evident to me that anything [the Complainant] was going to produce was not going to meet [Mr Doyle’s] expectations”. When asked to amplify the proposition she said, “I felt regardless of the request that would – or requests that were being made, that I really felt in her area that it is not going to meet [Mr Doyle’s] expectations”. Ms A made these statements against a background of her assessing that the work which the Complainant
was doing “was fine, but it was not meeting [Mr Doyle’s]
expectation because he would pick it apart”.

155. Ms A said of Mr Doyle’s behaviour towards the Complainant “that
[at] the level that I have worked at for the past ten years, I have
not witnessed or experienced this sort of behaviour”. And she
amplified her reference to “this sort of behaviour” by saying:

“I have not witnessed people, very senior people, speaking
to their Leadership Group in a frustrated, angry tone and
seemingly never happy with what the organisation are doing,
while not appreciating that he had been away from the
organisation for some time and people had kept it, you
know, ticking over and still delivering and doing the
important work that we do in his absence.”

156. Ms A said of Mr Doyle’s conduct that she thought it unreasonable
and that, if she “was on the receiving end, for me it would
seriously affect my mental health”. She said that she attended
“probably half a dozen or so meetings” where she witnessed
conduct of this kind by Mr Doyle focused on the Complainant and
that there were “at least a dozen” other meetings which she had
not attended but in respect of which information had been
volunteered to her. She said that there would have been a couple
of those meetings in 2014 but that “the majority” (I infer that she
meant the rest) of the meetings to which she was referring had
taken place in 2015.

157. Ms A told me that, in July 2015, Dr Frost had said to her that “I
don’t know what it is about the relationship [between the
Complainant and Mr Doyle] but I am determined to get to the bottom of it. ... What is it that he doesn't like about what she's doing or not doing; what is it about?" And Dr Frost told me that from early in 2015 he had noticed a change in the relationship between the Complainant and Mr Doyle and that he had said "on a number of occasions" to Ms A, "Look, I'm determined to get to the bottom of what is going on between" the Complainant and Mr Doyle. Dr Frost told me that he deemed the right place (and time) to do this as being at the end of the evaluation of the performance of the members of the Leadership Group. Whether Ms A was right to say that there was only one such conversation, or Dr Frost was right to recall several conversations to the same effect, does not matter.

C Complainant "underperforming"?

158. In the course of this investigation, Mr Doyle has sought to characterise the events which the Complainant identified as specific instances of bullying (or at least "a lot of the examples she provided") as "normal course-of-business events where there had been some difficulties with the information that I had been provided and I was asking hard and direct questions in regard to those particular events". Mr Doyle told me that this was why he had said, when presented with the Complainant's Grievance, that "[t]here's not much in this".
159. At once it may be observed that saying "[t]here's not much in this" may be thought to be an odd or unusual reaction to a claim of sexual harassment if, as Mr Doyle was later to say in his written response to the Grievance, there had never been any sexual contact of any kind with the Complainant. It was a reaction that stopped short of explicit denial of the account given in the Grievance. It was a reaction that expressed no element of surprise or anger that such a serious allegation had been made. Rather, in its terms, the response appeared to relate principally, perhaps only, to the complaint about bullying. And not to react at all to the allegation of sexual harassment which the Complainant made would be very odd. It is not productive, however, to explore this issue any further. Rather, it is important to deal with the other proposition that Mr Doyle made on being presented with the Grievance: that the Complainant "was underperforming and would be affected by a proposed restructure".

160. As has already been observed, Mr Doyle had proposed a form of restructure of VAGO that Dr Frost and Ms A regarded as demoting the Complainant. Dr Frost had told Mr Doyle, in effect, that he opposed her demotion. On being presented with the Grievance, Mr Doyle had said that the Complainant "would be affected by a proposed restructure", evidently intending to convey that the effect would be adverse to her interests. Yet in his written submissions, Mr Doyle sought to dismiss the proposed "restructure" as "only the subject of early discussion" and not amounting to any demotion,
just a better deployment of the Complainant’s skills. Yet if that was so, why say, in response to the Grievance, that the Complainant “was underperforming and would be affected by a proposed restructure”?

161. If, by the time the Grievance was presented to Mr Doyle, he had come to think that the Complainant was underperforming, it was a view which I am satisfied he had never expressed to her or to Dr Frost. As Mr Doyle accepted, in both his written response to the Grievance and his interview with me, he had said to the Complainant, more than once, that his complaints were not directed at her but at those who worked for her. And Mr Doyle had never said to Ms A that he thought that the Complainant was underperforming. Indeed, Ms A told me that Mr Doyle had said to her, on more than one occasion during 2015, and “[r]ight up to probably May or June”, that the Complainant “is very good at what she does. Unfortunately, some of her people need to, you know, do better and she spends a lot of her time fixing their work”. A member of the Audit and Risk Committee of VAGO (a committee of persons not otherwise connected with VAGO) told me that he had spoken with Mr Doyle about the Complainant and that Mr Doyle “felt that she was an extremely intelligent and talented person”. The member of the Audit and Risk Committee had no recollection of it being suggested that she was underperforming but that, her brief being “too broad”, she might be better suited to a similar but differently defined role in the organisation.
162. More importantly, Mr Doyle's conduct, after the Grievance was presented to him, was directly inconsistent with his then believing that the Complainant had underperformed in the year ended June 2015.

163. In July 2015, Dr Frost had completed the Complainant's End of Year Review assessing the Complainant's performance against her established goals and measures. Dr Frost had provided an "Overall 2014-2015 Progression Rating" for the Complainant as "exceeded" her performance objective. The summary which Dr Frost gave of the Complainant's performance for 2014-2015 was:

"[Name] has listed a number of clear achievements for the [group she led]. Many of these have benefitted other business units, who without [that unit's] support could not have themselves delivered on their programs. [Name] understands what these developments have cost her, however she should be safe in the knowledge that I trust her to deliver with the resources she has at her disposal. I know she has been under considerable pressure and criticism, but she should know that she is now an influential widely respected colleague in this Office, and she is entitled to get, and she will receive all the support she needs."

164. All of the more particular ratings of her performance objectives were assessed as either "met" or "exceeded".

165. Dr Frost told me, and I accept, that he intended that the Complainant should be awarded a bonus "in the order of four per cent" for the 2014-2015 year and that he had never heard Mr Doyle suggest that the Complainant was not performing
satisfactorily. More significantly, Dr Frost told me that having heard that, when told of the Complainant's Grievance, Mr Doyle had told the Chair and Deputy of the Committee that the Complainant "was underperforming" he had challenged Mr Doyle about this assessment, telling Mr Doyle that he should take no part in the further consideration of the Complainant's performance. Dr Frost said that Mr Doyle then asked, as a matter of interest, what Dr Frost had in mind for the Complainant's remuneration and Dr Frost replied that he intended that she be awarded a bonus of four per cent for superior performance\(^3\) of her duties during 2014-2015. Mr Doyle said that he would be "happy to sign off on that".

166. This is not conduct which is consistent with Mr Doyle holding the opinion that the Complainant was underperforming. Mr Doyle well knew that a bonus was payable to a senior officer in the position of the Complainant only if that officer's performance during the year was better than "competent" and was rated as either "superior" or "exceptional". He could not properly agree "to sign off" on payment of a bonus to her if he genuinely thought that the Complainant was underperforming. Yet I have no doubt that he said to Dr Frost, after the Grievance had been lodged and Mr Doyle had been given a copy of it, that he was happy "to sign

\(^3\) Dr Frost explained the performance rating system as having four steps: "one, you need improvement – no bonus; two, competent – no bonus; three, superior – bonus; four, exceptional – bonus".
off" on payment of a bonus to the Complainant. Indeed, Mr Doyle expressly accepted that he had said words to that effect.

167. In his second interview with me, Mr Doyle sought to amplify his criticisms of the Complainant's performance by challenging a number of the statements that appeared in the Complainant's End of Year Review. In the course of that amplification he said that the amount of the bonus to be allowed was three and not four per cent but I do not consider that anything turns on that difference (especially given Dr Frost's description of the bonus as "in the order of four percent"). Rather, the criticisms Mr Doyle made of the Complainant's performance during his second interview served only to emphasise that, if Mr Doyle did hold the opinion that the Complainant was "underperforming", as distinct from not meeting some particular aspects of her performance targets, it would have been quite wrong "to sign off" on any bonus for the Complainant, especially when she was an officer employed at Executive level. Yet he told Dr Frost that he was happy "to sign off" on a bonus.

168. The better view probably is that Mr Doyle has said that the Complainant was "underperforming" in order to provide an explanation, first, for his conduct towards her during 2015, and second, for her making the complaints she has. But, even if that is not right, and Mr Doyle did think that she was "underperforming", the question would remain whether Mr Doyle had repeatedly acted
unreasonably towards the Complainant during 2015 in a way that carried a risk to her health or safety. This would remain the central question, even if Mr Doyle had genuinely formed the view during 2015 that the Complainant was underperforming, because action taken in consequence of that view had to be both reasonable action and action effected in a reasonable manner. No employer or manager may repeatedly behave unreasonably towards an employee in a way that carries a risk to the health or safety of that employee.

169. Before coming to deal with the particular meetings to which the Complainant referred in her Grievance, it is desirable to deal with three related matters. Two concern Mr Doyle’s management or leadership: first, what issues were under his consideration during the first part of 2015, and second, how did Mr Doyle manage or lead the office in respect of those issues. (Both of these matters came into sharper focus as a result of my interviewing, at Mr Doyle’s request, three of the present members of the Leadership Group of VAGO and one former member of that group about Mr Doyle’s relationship with the Complainant and his conduct at various meetings, including meetings of the Leadership Group.) The third matter is connected with the second matter of leadership style, but is more particular. It concerns Mr Doyle’s use of particular expressions which the Complainant said he had used in the course of meetings referred to in her Grievance.
D  *Issues under Mr Doyle's consideration in 2015*

170. There appear to have been several issues discussed at meetings of the Leadership Group during 2015 about which Mr Doyle expressed increasing frustration. Those issues included the matters which were the subject of the particular meetings about which the Complainant made specific mention in her Grievance. A main subject of Mr Doyle’s frustration was the quality of Monthly Management Reports (documents prepared by a subordinate of the Complainant). (In that regard, one of the leadership group said that Mr Doyle “knows more about financial reporting than I have experienced in the past and is much more insightful and probing”).

171. Another set of issues about which Mr Doyle expressed frustration at Leadership Group Meetings concerned “people-related” matters generally and the graduate recruitment strategy in particular. I was also told that questions about the charging of hours in connection with Performance Audits was also a matter of frustration for Mr Doyle. As will later be explained, each of these issues loomed large in the meetings which the Complainant mentioned in her Grievance.
E  
Mr Doyle's management style

172. The second point to emerge from the interviews I had with other members of the Leadership Group concerned Mr Doyle's management style. Some referred to his frustration (or his "venting" frustration) about the issues I have mentioned. One of those to whom I spoke told me that the frustration which Mr Doyle expressed was always for "a valid reason" but noted, correctly, that there are different ways of expressing frustration.

173. It emerged plainly from what I was told about meetings of the Leadership Group that, at those meetings, Mr Doyle expressed his dissatisfaction, in disrespectful and sarcastic terms, with what had been done, or the lack of progress towards some aim he had set. But Mr Doyle would not tell those whose work he criticised what could or should be done to deliver what he wanted. That is, Mr Doyle's expressions of frustration were wholly negative (making plain that he thought that what had been done or not done was unsatisfactory) but did not identify what it was that he would consider to be satisfactory or how it could or should be achieved. As one member of the Leadership group put it, Mr Doyle "talk[s] in stories and examples rather than issue[s] direct instructions" and a part of the task of the relevant member of the Leadership Group was to interpret what it is that he wants. I consider it much more probable than not that, in the particular meetings referred to by the Complainant in her Grievance,
Mr Doyle expressed his dissatisfaction with work which the Complainant or her subordinates had done in wholly negative terms without identifying what were the particular defects in what had been done or what could or should be done to remedy those defects.

174. Mr Doyle did not dispute the proposition that he would not tell staff how the deficiencies which he identified were to be remedied. In his second interview, he told me:

"I don’t direct people to do things, I explain situations and look at the strategic view of an issue or a subject matter and I give the senior staff the opportunity to put their minds to the problem and come up with solutions that are not only going to work for them and their teams but are also going to work for the organisation. We then discuss it and then we form a view as to what the actual situation would be. It’s a management style that allows people to have a point of view and to discuss things quite clearly and openly" (emphasis added).

175. The general tenor of the accounts which the Complainant gave me of Mr Doyle’s conduct in the meetings to which she referred was that there was no discussion or formation of a view “as to what the actual situation would be”; there was only criticism and “venting” of frustration.

176. Some of those to whom I spoke said, in effect, that they did not consider Mr Doyle’s criticisms or expressions of frustration to have been unprofessional or inappropriate. But, as I have already noted, Dr Frost and Ms A were of the opposite opinion. And,
tellingly, one former member of the Leadership Group told me that “it wasn’t unusual after a leadership meeting for – whether it was myself or others in the Leadership Group – to go and check in on others to make sure that they were okay. And so, from that point of view, the need to actually go and check that your colleagues are okay, suggests that [Mr Doyle’s behaviour is] not behaviour that would be acceptable.”

177. I accept that in the meetings to which the Complainant referred, and on other occasions, Mr Doyle expressed his dissatisfaction to her in wholly negative terms, without indicating what needed to be done to remedy the cause of the dissatisfaction. At meetings of the Leadership Group, it may well be right to say, as Mr Doyle submitted, that she probably did not stand apart from several others in the Leadership Group, even though it may be that, to adopt an expression another member of the Leadership Group used, “the blow torch was, you know, pointed” in her direction more often than others.

178. But I am satisfied that there was one important respect in which Mr Doyle treated the Complainant differently. It is captured by Ms A’s statements that Mr Doyle “would be quite intent on picking the work apart that had been done” by the group for which the Complainant was responsible, and “anything [the Complainant] was going to produce was not going to meet [Mr Doyle’s] expectations ... [H]e would pick it apart".
179. More particular content was given to that proposition by the course of events about one particular issue which was the subject of one of the meetings with Mr Doyle to which the Complainant referred in her Grievance (a meeting held on 30 April 2015). The issue concerned the preparation within the People and Culture group of some written job descriptions. The task went through many iterations between April 2015 (if not earlier) and July 2015. Mr Doyle repeatedly expressed dissatisfaction with what was done. The employee who had had the principal carriage of the task told me that, despite Mr Doyle's repeated expression of dissatisfaction with the work when the Complainant presented it, the work was approved when this other employee presented it having made only minimal changes to what the Complainant had presented. She said that she "felt like the merit of the work wasn't being judged any more ... [I]t felt like it was the person who was presenting it and not the work that was being presented that was being looked at" (emphasis added).

180. Taken together, what Ms A told me, and what the person having principal carriage of the preparation of job descriptions told me, lead me to conclude that Mr Doyle treated the Complainant differently from other staff or leaders at VAGO. Mr Doyle treated her differently by repeatedly levelling criticism at her, and at those for whom she was and felt responsible, that was unjustified. Anything she produced would not meet his expectations; the
person who was presenting the work was being looked at, not the work that was being presented.

181. That understanding of what was happening in and between January and July 2015 is consistent with Dr Frost’s puzzlement about the cause for the deterioration of the working relationship between the Complainant and Mr Doyle during that period. Not only that, it is an understanding that entails the conclusion that Mr Doyle’s conduct was unreasonable. It was unreasonable because the Complainant could not meet the criticisms being levelled at her and her staff. She could not meet the criticism by reasoned response denying some identified error or omission; she could not meet the criticism by remedying an error or omission that had been identified. She could take neither of these steps because Mr Doyle did not identify what it was that he wanted her to do.

F The nature of the Complainant’s meetings with Mr Doyle

182. The meetings which the Complainant described were long. As she described those meetings, Mr Doyle spoke largely to the exclusion of others. More than once, the Complainant described what had happened at a meeting as a "rant" by Mr Doyle. What she meant by that is sufficiently captured by one answer she gave to me at her first interview:
"Before every conversation there's, 'Now, I'm the Auditor-General here and don't forget I taught [this to] Master students' and before you answer any question, there's always a start phrase to everything and it's not a conversation, it's not John speaking, making statements or asking me questions and then giving me an opportunity to respond, it's a monologue, it's me coming in, sitting down and him just yelling at me and I'm never given the opportunity to respond: 'I don't want to hear that, that was a rhetorical question.' I used to hear that one a lot: 'That was a rhetorical question.'" (emphasis added).

183. That is, the Complainant described Mr Doyle's conduct in meetings (not only those of which she complained but also meetings with other members of the Leadership Group of VAGO or their subordinates) as not a conversation but a monologue giving no opportunity to respond.

184. By contrast, Mr Doyle described the meetings, in effect, as occasions where he was asking direct and pressing questions about matters that were important to the proper administration of the office and proper provision of information to him. And in his second interview with me, Mr Doyle emphasised that no-one had expressed any concern about his behaviour in any meeting until the Complainant lodged her Grievance.

185. In his written submissions, Mr Doyle emphasised that "there was considerable evidence that Mr Doyle's behaviour [behaviour of which complaint was made] was confined". But Mr Doyle made no written submission that I should reject Ms A's account of events, including, as it did, her attending "[p]robably half a dozen or so meetings" where she witnessed unreasonable conduct by
Mr Doyle directed at the Complainant and her hearing of at least a
dozen other like meetings. The reasons proffered by Mr Doyle in
his second interview as reasons to reject what Dr Frost, Ms A and
others had told me were unpersuasive.

G Mr Doyle's use of particular expressions

186. Not surprisingly, those who described the meetings spoke of
Mr Doyle using phrases or making statements that he had used on
other occasions. And some of those phrases or statements took
on some prominence in the investigation in the sense that there
were issues about whether they had been used and, if they were,
what they conveyed to the listener.

187. It is relevant to notice one other consequence that may follow from
the repeated use of certain expressions, lest that consequence is
thought to have been overlooked. Because some of the
expressions given some prominence in the investigation appear to
have been used by Mr Doyle often, there is, I think, a real
possibility for confusion about whether the expressions were used
at one meeting rather than at another. And that risk of confusion
is all the greater in this case when some of the particular meetings
to which the Complainant referred took place only days apart.

188. I do not consider it necessary to decide, however, whether there
was any uncertainty of the kind to which I have referred or, if there
was, to decide which is the preferable version of events. Instead, the critical questions are whether Mr Doyle said what the Complainant alleges he said, and, if he did, what would the listener have made of what was said? It is those questions (rather than whether the statement was made in one meeting rather than another) which go to the issue of bullying. And those questions go to the issue of bullying because they bear directly upon whether Mr Doyle repeatedly acted unreasonably towards the Complainant in ways that created a risk to health or safety.

189. It is necessary to deal directly with only three expressions: putting people “on notice”, “you’ll need a box of tissues” and “be careful when I’m polite”.

(a) Putting people “on notice”

190. The Complainant said in her Grievance and told me that, at a meeting on 28 April 2015, Mr Doyle had said that she should tell the then Manager of the People and Culture group and “the rest of them” that “they are all on notice”. In his written response Mr Doyle denied saying this and, in his first interview, said that he did not know what putting people “on notice” means. Yet Dr Frost told me (and I accept) that he attended a meeting with Mr Doyle and the Complainant where Mr Doyle had said to the Complainant “Well, you basically go and tell all your managers”, but particularly
P&C [People and Culture] and [a named staff member], that they were more or less on notice”.

191. I do not accept Mr Doyle’s denial that he said what the Complainant attributed to him. I do not accept that Mr Doyle does not know what putting people “on notice” means. I accept that, at the meeting of 28 April 2015, Mr Doyle told the Complainant she should put people on notice. I also accept that the Complainant rightly understood this to be a threat to staff for whom she was responsible (and thus a threat to her) of unspecified but serious adverse consequences.

(b) “You’ll need a box of tissues”

192. The Complainant said in her Grievance and, using substantially the same terminology, told me that at the beginning of a meeting, Mr Doyle said “You’ll need a box of tissues for this”. In the Grievance, the Complainant attributed the comment to a meeting about written job descriptions, held on 30 April 2015 and in her account at her first interview seemed to attribute it to a more recent meeting in July about resource planning and the VAGO budget for the 2015-2016 financial year.

193. In his written response to the Grievance, Mr Doyle strongly denied using the expression at the April meeting. In his first interview, Mr Doyle went further, and said “I don’t recall ever having said that
nor – I don’t think it’s an appropriate thing to say anyway”
(emphasis added). Yet both Dr Frost and Ms A told me that
Mr Doyle had used the expression. Dr Frost told me that Mr Doyle
used the expression in a jocular way. Ms A told me that Mr Doyle
had used the expression once to her and (in effect) she thought
nothing of it, but she also said “I have heard him say to people
going into meetings ‘You might need a box of tissues’”.

194. I do not accept Mr Doyle’s denial that he said what the
Complainant attributed to him. I cannot say whether it is more
probable that he said it to her at the beginning of a meeting in April
or more probable that he said it to her at the beginning of a
meeting in July. But I do accept that he did say it to her at one of
those meetings.

195. Given that the Complainant had already been reduced to tears in
an earlier meeting with Mr Doyle, the statement was one which the
Complainant could, and I find did, take as threatening. Mr Doyle
may have used this phrase in a jocular way on other occasions
and in other circumstances. This was not such an occasion, and,
given what had happened before, these were not circumstances in
which the statement could or would have been understood as a
joke.
(c) "Be careful when I'm polite"

196. The Complainant said in her Grievance that Mr Doyle told her in a meeting held on 30 April 2015 "now [name], you're lucky I'm not being polite, because if I get polite you know what that means". She said that Mr Doyle had said many times, to her and to other staff, that "we should all be worried if he is speaking to us politely. If he is yelling and ranting, that's a good thing". In her first interview, the Complainant gave me a substantially similar, but not quite identical, version of the words she said were used. I do not think that anything turns on the differences; there was no difference in the substance of the Complainant's two accounts.

197. Mr Doyle said in his written response that he did not say this to her. He acknowledged that he had said to staff (but not necessarily to the Complainant) that he goes quiet when annoyed but he asserted that he had not said that for some time.

198. The Complainant's statement that Mr Doyle used this expression to her at the meeting of 30 April 2015 was supported by another member of the staff of VAGO whom I interviewed. She told me that from her desk (located "around the corner and down the hallway" from Mr Doyle's office), she had heard Mr Doyle "yelling" at the Complainant for about 20 minutes, that she heard him "yelling" "How many times do I have to ask for these?" and that
she heard him then say “I’m going to get nice and you know what that means”.

199. Further, others I interviewed spoke of Mr Doyle using words to the general effect of those which the Complainant said he had used to staff other than her.

200. I do not accept Mr Doyle’s denial that he said what the Complainant attributed to him. I do not accept the inference which Mr Doyle’s written response appeared to me to invite, that he had said something more moderate to staff soon after his appointment but had not repeated that more moderate version (let alone anything more intense) for some time.

201. I do accept that, towards the end of the meeting of 30 April 2015, Mr Doyle said to the Complainant words to the effect that “you’re lucky I’m not being polite, because if I get polite you know what that means”. Given what had happened before this statement was made (what was described as a prolonged period of Mr Doyle “yelling” at the Complainant) I consider that the Complainant not only did take the statement as a threat of adverse consequences for her but also was right to do so.

202. It is necessary to say something more about each of the meetings referred to by the Complainant in her Grievance.
Particular Meetings

(a) 28 January 2015 – Performance Audit charging

203. On 28 January 2015, the Complainant and a subordinate presented a Mid-Year Budget Review to Mr Doyle and Dr Frost. Attention turned to the number of hours charged by the Performance Audit group. The Complainant said she raised the subject in response to Mr Doyle’s comment that the hours charged were too low; Mr Doyle said he raised it.

204. The Complainant said that Mr Doyle became “very agitated and proceeded to point at [her] and raised his voice”. Mr Doyle denied raising his voice and, in his first interview, denied that any of the meetings referred to by the Complainant were anything but an ordinary course-of-business event in which he was asking direct and probing questions about a very important matter.

205. The Complainant said that she told Mr Doyle that the issue had been raised in a Monthly Management Report of September 2014. And it had. Minutes of the meeting of the Operations Committee of VAGO held in October 2014 to consider that Management Report (among other things) recorded that the chargeable hours were down by a significant percentage “due to allocating time to admin” and that there was “a need to clarify what work should be allocated to admin and what can be charged to an audit”.
206. The Operations Committee comprised the whole of the leadership group of VAGO and Dr Frost chaired the October meeting. Mr Doyle did not ordinarily attend meetings of the Operations Committee and did not attend the October meeting of that Committee. But the general tenor of Mr Doyle’s account of the meeting of 28 January 2015 was that he became aware of the issue only in connection with the meeting of 28 January. And in his second interview, Mr Doyle expressly denied that the matter had been drawn to his attention before 28 January.

207. Both the Complainant and Mr Doyle agreed that the Complainant started to cry in the meeting. And the Complainant said that she left the meeting feeling humiliated and embarrassed. In part, she was embarrassed because she had become visibly upset but I consider the dominant reason for her reaction was captured in two answers she gave in her first interview:

“What embarrassed you, the fact that you had become visibly emotional? — That was part of it and that he — the tone in which he spoke to me with. I felt disrespected, like he was speaking to me as though I was, you know, some little peasant person: ‘You, you’, you know, ‘This’.

Yes? — And I was frustrated because I was unable to defend myself or say anything” (emphasis added).

208. That is, she left the meeting humiliated and embarrassed by the way in which Mr Doyle had spoken to her: in a fashion she described as “ranting”, with raised voice while pointing at her, and
not permitting her to make any answer to the criticisms being levelled at her.

209. Several points may be made in relation to this meeting.

210. First, Mr Doyle accepted that he had been directing attention to the Complainant in this meeting. More particularly, in his first interview, Mr Doyle said that he had been entitled to reprove her for failing in her duty and that he had done that in the meeting. That is, in effect, he said that his conduct towards the Complainant in the meeting of 28 January 2015 was no more than reasonable management action carried out in a reasonable manner. Yet contrary to the proposition that he had been entitled to reprove the Complainant, and had done so, Mr Doyle also told me, in the same interview, that he had said to the Complainant, at the meeting "something like, 'This is not about you, it's about those people that have fudged the hours', because it is about those people who have fudged the hours. She is only the messenger" (emphasis added).

211. Mr Doyle sought to bridge the gap between saying that he had been entitled to reprove the Complainant, yet saying both that she was "only the messenger" and that it was not about her, by suggesting that the Complainant should have drawn the issue of incorrect charging to his attention. But why that should be the Complainant's task when the matter had been drawn to the
attention of all members of the leadership group, including the CEO, Dr Frost, was never explained.

212. It is not necessary, however, to pursue any issue about whether the Complainant should have drawn the issue of charging to the attention of Mr Doyle. That issue need not be pursued because Dr Frost told me, and I accept, that he had told Mr Doyle, more than once before the meeting of 28 January 2015, that Performance Audit staff were not charging their hours correctly. That is, contrary to Mr Doyle’s express denial, I find that Mr Doyle knew of the issue well before the meeting of 28 January 2015. It was not right then, to proceed, as Mr Doyle did at the meeting on 28 January, on the footing that he had discovered the issue for himself only in preparation for the discussion at that meeting of a Mid-Year Budget Review and that the Complainant was somehow at fault for not drawing it to his attention before that meeting.

213. Second, it may be accepted that Mr Doyle regarded the proper charging of time by the Performance Audit group as an important issue. He told me that hours not being charged properly “was about an absolutely Auditor-General’s worst nightmare type situation”; these were matters, he said, that “were extremely grave and strike at the very heart of the – the credibility of the office and competence of the office to actually manage its – manage its activities”. It was the sort of thing, he said, that, if found in an organisation the Office was auditing, “we would put into an audit
report which we would table in Parliament as being utterly unacceptable with recommendations that it be improved".

214. But there was no suggestion that proper charging of time in Performance Audit was a matter for which the Complainant was responsible. It was a matter for those charging the hours and for those who managed them. And the Complainant was not their manager, either directly or indirectly. Moreover, as already noted, the issue had been drawn to the attention of the whole of the leadership group in October 2014 and that group had agreed on the need to take remedial action.

215. Third, those who had worked with the Complainant at VAGO agreed, when asked, that the Complainant was a tough and resilient woman. And Mr Doyle told me that he "would judge her to be so".

216. Fourth, the very fact that the Complainant was brought to tears in the meeting as a result of what was said and done in relation to a subject matter for which she was not responsible, points firmly towards the meeting not being an "ordinary course-of-business" event in which Mr Doyle was simply asking direct or probing questions and points even more firmly towards the Complainant having been the subject of Mr Doyle's conduct in the meeting.
217. Fifth, Dr Frost described the tone of the meeting as “ugly” and directed mainly at the Complainant. He, like the Complainant, said that Mr Doyle’s voice was raised during the meeting.

218. In his second interview with me, Mr Doyle suggested, in effect, that the meeting could not have been of the character which the Complainant and Dr Frost described because Dr Frost had never suggested to Mr Doyle that he had behaved inappropriately at this meeting. More broadly, Mr Doyle asserted that the descriptions which Dr Frost and Ms A had given of his conduct should be rejected because neither of them had ever expressed any concern to him, whether formally or informally, about his conduct. I accept that, until the Complainant lodged her Grievance, no-one at VAGO expressed any concern to Mr Doyle about his conduct. But I do not regard that fact as detracting from the honesty or cogency of the accounts which the Complainant, Dr Frost, Ms A and others gave of Mr Doyle’s conduct.

219. I accept the substantial accuracy of the Complainant’s account of the meeting of 28 January 2015, supported as it was by Dr Frost’s account. I conclude that it is more probable than not that Mr Doyle’s conduct at the meeting not only humiliated and embarrassed the Complainant but, taken as a whole, was unreasonable conduct and was conduct that was directed at the Complainant. I do not accept that it was reasonable management action for Mr Doyle to rebuke or reprove the Complainant (let
alone humiliate or embarrass her). There was no occasion to rebuke or reprove the Complainant.

220. It is not only unprofitable, but also may mislead, to ask whether the meeting of 28 January 2015 presented a substantial risk to the Complainant’s health or safety. As I have sought to explain earlier, issues about the risks flowing from what is said to have been repeated instances of unreasonable conduct cannot be determined by looking at particular incidents in isolation.

221. Nevertheless, it is necessary to deal with the next incident to which the Complainant referred: a meeting on 29 January 2015 about graduate recruitment.

(b) 29 January 2015 – Graduate recruitment

222. On 29 January 2015, the Complainant attended a meeting that had been organised by the People and Culture group to talk to the leadership group about graduate recruitment. The Complainant told me that the presentation had been intended to describe the last five years of graduate recruiting and what had become of those recruits, and then set out a future strategy for graduate recruitment. (The People and Culture group reported to the Complainant).
223. The then manager of the People and Culture group began her presentation, but Mr Doyle interrupted it very soon after it had begun.

224. Mr Doyle had said previously that he “wanted a dedicated bespoke model developed for the Financial Audit graduate recruitment” rather than continue to use the general Victorian Public Sector Commission graduate recruitment program. The first slide displayed at the meeting of 29 January 2015 described the general Victorian Public Sector Commission recruitment program. The Complainant told me that Mr Doyle said: “That’s not what I want, I don’t want to use them. Why doesn’t anyone know what I want? Where’s my graduate video?”

225. The Complainant agreed that Mr Doyle had previously asked for a graduate video to be prepared, that it had not been prepared at the time of the meeting and that Mr Doyle was entitled to be irritated by that fact. But she also said that it would not make sense to prepare a video before understanding what kind of graduate program was wanted and that depended upon understanding clearly “what it was that the Auditor-General was looking for [and] where he wanted [People and Culture] to go and find these graduates”. The meeting was intended to explore those issues.
226. In my first interview, I asked the Complainant what it was about the conduct of the meeting that she regarded as inappropriate or unacceptable. She said:

"I think cutting [the manager of People and Culture] off who was very nervous doing her presentation and trying to do her best. Not allowing her to finish was inappropriate. The rant and phrases like, 'It's not rocket science', and, 'I asked for this 18 months ago and I don't have it', is incorrect. I think saying things like, you know; 'Everyone in the VPS is protected and getting rid of them is so difficult.' I don't remember the exact words but, 'People in the VPS are protected.' You know, 'Well, I'll find a way around it.' I found that language threatening. I thought it was inappropriate and not professional. I understand people get frustrated, but that's not the way to speak to people. And those people, including myself, did not deserve that. We were trying our best to understand exactly what he wanted. He is a man who frequently changes his mind so you need to meet with him and talk him through where you're at and where you're going to ensure that it is still the same concept and the same idea."

227. Mr Doyle agreed that he stopped the presentation at an early point. He accepted that thereafter he was the dominant speaker, that he had said that VPS staff had protections (but did not think that he said he would "find, if needs be, some way round that") and that he had explained to the meeting what he wanted to achieve in some detail and several times. When I asked what he understood the purpose of the meeting to have been, he said that he did not know what its purpose was.

228. Even on Mr Doyle's account of the meeting it is clear that he interrupted the presentation very early and proceeded to tell the meeting, more than once, what he wanted to achieve, without
asking or knowing what those making the presentation had wanted to show, explain or achieve at the meeting. It was well open to the Complainant, and others at the meeting, to consider Mr Doyle’s conduct to have been inappropriate and unprofessional. I consider it more probable than not that, in the course of his statements to the meeting, Mr Doyle not only referred to the protections enjoyed by members of the Victorian Public Service but also spoke of finding some way round those protections. And that could be rightly seen, and was seen, by the Complainant, as inappropriate and unprofessional, even threatening to staff (including staff who reported to the Complainant).

(c) 28 April 2015 – Resourcing needs

229. The Complainant submitted a memorandum to Mr Doyle about the resourcing needs for the group for which she was responsible. She appended an organisational chart to the memorandum. On 28 April 2015, Mr Doyle spoke to her about the matter saying that he had “serious issues” with the proposal and that the proposal “doesn’t make sense”. The Complainant said that Mr Doyle then took the organisational chart and went through every person on it, asking what they did and whether they were competent. At the end of the meeting, he made the statement about the Complainant putting people “on notice” that I have considered earlier in this report.
230. The Complainant said that the meeting lasted until 7:00 pm, that she told two of her staff who were still in the office what had happened and that she burst into tears. She said that she told them that she could not believe he was “bagging out” the staff and “being so cruel when he didn’t even know the people he was talking about”. She gave a substantially similar account of the meeting in her first interview. Again, there are some verbal differences between the two accounts but they are not such as cause me to doubt their substantial accuracy.

231. The Complainant said that she felt so sick after this meeting that she did not come into work on the next day. When she rang the office to say that she was not coming in to work, she spoke with Ms A who told her that Mr Doyle had written on draft job descriptions prepared within the Complainant’s group:

“This must be at least the third time I have commented on these JD’s [Job Descriptions].

This is not good enough. I have asked for a similar ‘look & feel’ and appropriate consistency. This has not been achieved.

I require by Friday midday proper JD’s that make sense for each AAG [Assistant Auditor-General] and Director.”

(d). 30 April 2015 – Job Descriptions

232. On the next day, 30 April 2015, the Complainant met with Mr Doyle. It was either at the start of this meeting or a later
meeting in July that Mr Doyle began by saying "You'll need a box of tissues".

233. The Complainant told me that, contrary to what Mr Doyle had said in his note, this was not the third, but rather the second time Mr Doyle had seen draft Job Descriptions and that he had made "minimal comments or suggestions on what he wanted changed" in respect of the first draft.

234. Be this as it may, the Complainant said that he had made only a few question marks on the second draft documents and that, as she sought to understand what was the problem, "he got angrier and angrier", saying under his breath "I don't know, I just don't know". She said that Mr Doyle then began to speak about budgeting, finance and reporting but that, when she went to speak, she was cut off by him saying "these are all rhetorical questions and I'm not looking for answers". She said that she sat there for an hour "while he just yelled at me" and that he finished by saying that she was lucky he was not being polite "because if I get polite you know what that means".

235. Mr Doyle denied that he became angry and specifically denied making either the "tissues" remark or the "lucky I'm not being polite" remark.
236. As I have already explained, I am satisfied that Mr Doyle did use both expressions to the Complainant. It may be that the “tissues” remark was not made at this meeting but at a meeting in July 2015 but I am satisfied he did use it. And I am satisfied that he made the “lucky I’m not being polite” remark at the meeting of 30 April. Not only did another employee of VAGO (whose account I have no hesitation in accepting) hear him say that, she, like the Complainant, described a meeting at which Mr Doyle was “yelling” at the Complainant. And that description is consistent with the other employee saying, as she did, that she heard what he said from her desk.

237. I accept that the Complainant gave a substantially accurate account of what happened at this meeting and that Mr Doyle’s conduct at the meeting was unreasonable.

(e) June 2015 – Monthly Management Reports

238. The Complainant referred to another meeting, which she thought was in late June 2015, where Mr Doyle “yelled at [her] again and did not let [her] speak”. She said it was a meeting attended by Dr Frost and focused upon Monthly Management Reports.

239. The Complainant said that the meeting began with Mr Doyle saying that “before you answer any questions, understand that I taught finance and budgeting to Master’s students”. And she
described a meeting in which there was much criticism of the reports prepared by a subordinate of the Complainant and no opportunity given for her to explain where the criticisms being made were met by what was set out in the reports. The Complainant said that she began to “tear up” and Dr Frost redirected the conversation.

240. This was the second of the meetings which Dr Frost described as “highly regrettable”. He said that at this meeting Mr Doyle told the Complainant to “tell all your kind of managers, but particularly P&C [People and Culture] and [a named subordinate] that they were more or less on notice”, by which Dr Frost understood Mr Doyle as saying “Pull your socks up or you’re gone”.

241. Dr Frost told me that the two “highly regrettable” meetings warranted the Complainant’s description of them as “intimidating” and causing her to be “humiliated”. What made the second of the meetings abnormal, said Dr Frost, “was the whole tenor of the discussion, the tone and the rest of it”.

242. In his written response, Mr Doyle denied being rude, cutting off the Complainant or yelling at her. He accepted that the Complainant “became teary” but could not recall Dr Frost redirecting the conversation.
243. I accept the substantial accuracy of the Complainant's description of the meeting. It is a description consistent with Dr Frost's account and, as I have already said, I accept the accuracy of what Dr Frost told me.

244. Contrary to Mr Doyle's assertions, I consider his conduct at this meeting was unreasonable. It was not reasonable to allow no explanation of, or answer to, the matters which Mr Doyle raised in the meeting.

245. I accept Dr Frost's assessment of the tenor and tone of the meeting as "highly regrettable". I consider that it is probable that Mr Doyle said again at this meeting that the Complainant should put people in her group "on notice", intending that to be a threat not only to the staff concerned but also to the Complainant. As I have already said, I do not accept Mr Doyle's denial that he used the expression or his assertion that he does not know what it means.

(f) 10 July 2015 – Budgeting

246. On 10 July 2015, the Complainant and Ms A attended a meeting with Mr Doyle about resource planning and budgeting. The Complainant and Mr Doyle agreed that the Complainant said that it was necessary to finalise the 30 June 2015 figures to help plan (or "sort out") the budget for 2015-2016.
247. The Complainant said that Mr Doyle looked at her and said “I am going to say this as politely as I possibly can, I needed all this information from you months ago when I was settling the budget”. Mr Doyle’s account was that he said “We should have already figured out the budget. We did the bid to ERC [the Expenditure Review Committee] and, putting that aside, the new financial year had already arrived”.

248. The Complainant said that Mr Doyle glared at her, put his head down and fell silent causing her to say “I guess that means you want me to leave”. Mr Doyle denied glaring at her and denied that the meeting ended in the fashion she had described.

249. Ms A’s description of the meeting is revealing. She told me that Mr Doyle became “quite agitated” and that she felt “very uncomfortable at that meeting with the tone he was talking in and I would not like to be on the receiving end of it”. The tone, she said was a tone of “frustration and agitation” and “it changed into a little bit of a rant, for want of a better word”. She said that Mr Doyle said to the Complainant “I’m only going to say this once’, or ‘I will be as polite as possible when I say this.’ And I think it was ‘Let me tell you’, but the finger was pointing and I was quite taken aback that [Mr Doyle] would speak to someone like that.”

250. I accept the substantial accuracy of the Complainant’s description of the meeting, supported, as it was, by Ms A’s account. I
consider that it is probable that at this meeting Mr Doyle again
said something to the effect that he would be "as polite as
possible", intending that to be a threat to the Complainant. I do
not accept Mr Doyle's denial that he used any expression to the
effect I have described. I find that Mr Doyle's conduct at the
meeting was unreasonable.

Uninvited to meetings?

251. In her Grievance, the Complainant said that, on 28 July 2015, she
was "uninvited" to a meeting about a Performance Audit
methodology project. She said that she "was the one who jumped
in and got [that] project going". In her initial interview, the
Complainant told me that she had found out a meeting about this
subject had been proposed, she had not been invited to it, and
asked the then executive assistant to Dr Frost to issue her an
invitation. She further told me that she had been told by Ms A
that, when Mr Doyle saw that the Complainant had been invited,
he directed that she be "uninvited".

252. Even accepting that Mr Doyle brought this result about, I am not
persuaded that it is shown that his doing so was unreasonable.

253. The Complainant also said, in her Grievance, that she was no
longer being invited to attend meetings of the Audit and Risk
Committee, a committee of persons independent of VAGO acting,
as the name suggests, as external auditors of the work of VAGO. I am not able to say whether Mr Doyle brought about this result. I do know, from what I was told by a member of the Audit and Risk Committee, that the committee had asked that the number of persons attending its meetings be reduced.

254. Even if Mr Doyle directed that the Complainant not be invited to meetings of the Audit and Risk Committee (and I have no material suggesting that he did) I am not persuaded that doing so was unreasonable.

255. For these reasons, the issue about the Complainant being "uninvited" from meetings may be put aside from further consideration.

J Repeated unreasonable behaviour?

256. As I have indicated, I consider that Mr Doyle's conduct towards the Complainant at each of the particular meetings to which she referred was unreasonable. I am persuaded, however, that it is more probable than not that there were other incidents of unreasonable behaviour directed at her by Mr Doyle beyond those to which she specifically referred in her Grievance. As I have already noted, Ms A told me, and I accept, that there were at least "half a dozen" meetings where she observed unreasonable conduct by Mr Doyle towards the Complainant and that
information had been volunteered to her of "at least a dozen" other similar meetings.

K  Reasonable management action effected reasonably

257. Central to Mr Doyle’s answer to the bullying allegations was the proposition that he did no more than take reasonable management action in a reasonable manner. He sought to characterise what had happened as his asking direct and difficult questions about important matters. He agreed that some of what he had said to the Complainant was by way of reproof or rebuke. As was implicit in much of what Mr Doyle said, being asked direct and difficult questions by a superior may be very uncomfortable. And obviously, a subordinate may find reproof or correction very uncomfortable.

258. But Mr Doyle’s conduct went beyond asking questions. To the extent to which he did ask questions, he would not stay for any answer. Instead, he engaged in long monologues in the course of which he used expressions that the listener would hear as (and was intended to hear as) conveying a threat of adverse consequences. Even if I were to accept that Mr Doyle had occasion to reprove or rebuke the Complainant (and I am not persuaded that he did) any reproval or rebuke had to be effected reasonably. As I have indicated, I conclude that Mr Doyle’s conduct at each of the meetings to which the Complainant referred
was not reasonable. Where there was occasion to rebuke or reprove the Complainant, there would be no risk to health or safety if the reasonable management action was carried out in a reasonable manner. It is to that question of risk that I now turn.

L Risk to health and safety?

259. The Complainant said in her Grievance that from February 2015 she suffered various debilitating medical conditions. (She provided medical records which supported her statements.) I am not able to say whether those conditions were caused by any, or any combination, of the events and circumstances that are described in this report. But, as I have sought to explain previously, the question which is presented by the allegations of bullying is a question of risk to health and safety, not actual damage.

260. Two points may be made about that question of risk.

261. First, I am persuaded that both Dr Frost and Ms A were right to say that Mr Doyle’s behaviour created a risk to the Complainant’s health. That is, adopting and adapting Ms A’s words, Mr Doyle engaged in conduct directed at the Complainant that was conduct of a kind which, for the person “on the receiving end”, carried a real risk to mental health or overall wellbeing.
262. Second, in the eyes of at least one employee of VAGO, those risks did come home. That employee (a person whom the Complainant asked me to interview) said of the Complainant:

"This is my personal view because I worked so closely with [the Complainant]. To my mind, I watched her, over a period of 18 or so months, just disintegrate, and that was hard.

... For me, like I was saying, to my mind, a person who is that strong, that resilient, a real implementer in an organisation, significant things must have happened for me to watch that kind of person struggle, try to cope, try to rally so many times, to the point where she broke."

263. It is more probable than not that Mr Doyle's conduct towards the Complainant between January and July 2015 carried a risk to her health and safety.

M Conclusion about bullying allegations

264. I am satisfied that it is more probable than not that, between late January 2015 and July 2015, Mr Doyle engaged in repeated unreasonable behaviour directed at the Complainant that created a risk to her health and safety. I conclude that the allegations which the Complainant made in her Grievance about bullying (apart from the allegations about her being "uninvited" from meetings) were established.
Chapter 9 – REMOVAL

265. Because Mr Doyle has resigned from office, there is no occasion for me now to consider or report on so much of the Committee’s terms of reference as asked “whether, in light of any finding that the Committee may make in relation to the allegations, the Parliament should give consideration to the removal of the Auditor-General from office”.

This page and the preceding 110 pages comprise the Edited Report of K M Hayne of his inquiry into allegations made against the Auditor-General, Mr John Doyle, in a formal Grievance dated 12 August 2015, by a member of his staff, in accordance with the terms of reference referred to the Public Accounts and Estimates Committee on 18 August 2015.