

24 January 2019

Mr Mark Gepp MLC  
Chair  
Scrutiny of Acts and Regulations Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

Dear Chair,

**Submission regarding the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018**

I am pleased to provide this submission to the Scrutiny of Acts and Regulations Committee (the **Committee**) regarding the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018 (the **Bill**).

My office, the Office of the Victorian Information Commissioner (**OVIC**) is the primary regulator for privacy, data protection and freedom of information (**FOI**) in Victoria, administering the *Privacy and Data Protection Act 2014* (the **PDP Act**) and the *Freedom of Information Act 1982 (Vic)* (the **FOI Act**).

**Key changes that affect the Information Commissioner**

The Bill seeks to amend several pieces of legislation including the PDP Act, the FOI Act, the *Protected Disclosure Act 2012*, the *Independent Broad-based Anti-corruption Commission Act 2011* and the *Victorian Inspectorate Act 2011 (VI Act)*, which affect the Information Commissioner's functions. These changes broadly relate to:

- new function and powers for the Information Commissioner to investigate public interest complaints under the FOI Act, where the Independent Broad-based Anti-corruption Commission (**IBAC**) has referred the complaint (**clauses 55 and 110**);
- new requirement for the Information Commissioner to provide advance copies of its investigation and annual reports to the Minister and to the Secretary to the Department of Premier and Cabinet (**clauses 142 and 143**, respectively);
- clarifying the Victorian Inspectorate's oversight of OVIC's compliance with procedural fairness requirements (**clause 132**); and
- merging the existing IBAC Committee and the Accountability and Oversight Committee to form a new Integrity and Oversight Committee, to streamline Parliamentary oversight of the Victorian integrity system (**clauses 1(e), 189 and 190**).

OVIC acknowledges the need for improved consistency in the oversight of Victoria's integrity bodies.

### **Clarification of the Victorian Inspectorate's oversight of OVIC**

OVIC welcomes the proposed amendments to the VI Act, under clause 132 of the Bill, which clarify that the Victorian Inspectorate's (VI) oversight of my office extends to monitoring whether procedural fairness requirements have been complied with by OVIC officers in the:

- exercise, or purported exercise, of coercive powers under the FOI Act and the PDP Act;
- conduct of investigations under Part VIB of the FOI Act;
- making of recommendations under s 61L of the FOI Act;
- making of investigation reports under s 61Q of the FOI Act; and
- making of compliance notices under Part 3 of PDP Act.

The amendments regarding the VI's role in receiving complaints about the conduct of OVIC officers, under clause 137 of the Bill, are also welcome.

### **Clarification on the nature of public interest complaints that IBAC can refer to OVIC**

Clause 109 proposes to amend my functions under section 6I(1) of the FOI Act to include investigating public interest complaints that 'relate to conduct relevant to the functions of the Information Commissioner'. Similarly, the Bill inserts a new Division 3 into Part VIB of the FOI Act to provide my office with the power to conduct investigations into public interest complaints 'under this Act' referred by IBAC.

Upon my reading of the Bill it is currently unclear whether this proposed new investigatory function is intended to apply to all three areas within my jurisdiction – freedom of information (FOI), privacy and data protection – or to FOI only. The reasons for this ambiguity include:

- this new proposed function is inserted into section 6I(1) of the FOI Act, which specifically relates to the Information Commissioner's FOI functions;
- the wording of this proposed new section 6I(1)(f) refers to the 'functions of the Information Commissioner' in a broad sense; and
- the proposed new section 61TA of the FOI Act requires the Information Commissioner to conduct an investigation 'under this Act' on a public interest complaint referred by IBAC. It is unclear in this case whether the intent of this provision is that the Information Commissioner can only investigate matters relating to FOI, or whether the Information Commissioner can investigate any matter – which could include FOI, privacy or data protection related matters – using their powers under the FOI Act.

To ensure clarity for my office, IBAC and the Victorian community, I recommend that the Bill clarify whether it is intended that the Information Commissioner be able to conduct public interest complaint investigations relating to FOI only, or more broadly in relation to any of the Information Commissioner's functions. If it is the intention of the proposed section 6I(1)(f) that this investigatory power be applicable across all three of the Information Commissioner's jurisdictions, OVIC recommends that, in addition to inserting this function into section 6I(1) of the FOI Act, the Bill provides for a comparable function under section 8A of the PDP Act.

### **Clarification of powers to conduct investigations into public interest complaints**

My office recognises the benefit in being able to receive public interest complaints that relate to conduct relevant to my functions. I understand that with this new proposed function, it is the intent that the Information Commissioner be able to use the coercive powers under Part VIC of the FOI Act, as well as the powers under Parts 3 and 6 of the PDP Act (if it is the case that the Information Commissioner can investigate public interest complaints relating to privacy and data protection), in investigating a public interest complaint referred by IBAC.

I thank you for the opportunity to provide a submission on the Bill. If you or your staff have any questions regarding the above, please do not hesitate to get in touch with me or the OVIC Policy team, at [policyteam@ovic.vic.gov.au](mailto:policyteam@ovic.vic.gov.au).

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'S. Bluemmel', with a long horizontal stroke extending to the right.

Sven Bluemmel  
**Information Commissioner**

