



**PARLIAMENT OF VICTORIA**  
Accountability and Oversight Committee

**Inquiry into  
education, training  
and communications  
initiatives of Victorian  
oversight agencies**

Parliament of Victoria  
**Accountability and Oversight Committee**

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# Committee functions

The Accountability and Oversight Committee is constituted under Section 6A of the *Parliamentary Committees Act 2003*. The Committee is also granted powers and responsibilities under the *Ombudsman Act 1973*.

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

1. The functions of the Accountability and Oversight Committee are—
  - a. to monitor and review the performance of the functions and exercise of the powers of the Information Commissioner; and
  - b. to consider and investigate complaints concerning the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and
  - c. to report to both Houses of Parliament on any matter relating to—
    - i. the performance of the functions and the exercise of the powers of the Information Commissioner; and
    - ii. any complaint concerning the Information Commissioner and the operation of the Office of the Victorian Information Commissioner—  
that requires the attention of Parliament; and
  - d. to examine the annual report of the Information Commissioner and any other reports by the Commissioner and report to Parliament on any matters it thinks fit concerning those reports; and
  - e. to inquire into matters concerning freedom of information referred to it by the Parliament and to report to Parliament on those matters;
  - f. to monitor and review the performance of the duties and functions of the Victorian Inspectorate in respect of Ombudsman officers or the Judicial Commission; and
  - g. to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate in respect of Ombudsman officers or the Judicial Commission that require the attention of the Parliament; and
  - h. to examine any reports made by the Victorian Inspectorate in respect of Ombudsman officers or the Judicial Commission; and
  - i. the functions conferred on the Committee by the *Ombudsman Act 1973*; and
  - j. if so required or permitted under this Act, to inquire into, consider and report to Parliament on the operation of the *Judicial Commission of Victoria Act 2016*.
2. Despite anything to the contrary in subsection (1), the Accountability and Oversight Committee cannot—
  - a. reconsider a decision of the Information Commissioner or Public Access Deputy Commissioner in relation to a review of a particular matter; or
  - b. reconsider any recommendations or decisions of the Information Commissioner or Public Access Deputy Commissioner in relation to a complaint under the *Freedom of Information Act 1982*; or

- ba. reconsider any findings in relation to an investigation under the *Freedom of Information Act 1982*; or
- bb. reconsider the making of a public interest determination under the *Privacy and Data Protection Act 2014*; or
- bc. reconsider the approval of an information usage arrangement under the *Privacy and Data Protection Act 2014*; or
- bd. reconsider a decision to serve a compliance notice under the *Privacy and Data Protection Act 2014*; or
- c. investigate a matter relating to particular conduct the subject of any report made by the Victorian Inspectorate in respect of an Ombudsman officer; or
- d. review any decision to investigate, not to investigate or to discontinue an investigation of, a particular complaint made to the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011* in respect of an Ombudsman officer; or
- e. review any findings, recommendations, determinations or other decisions of the Victorian Inspectorate in relation to a particular complaint made to, or investigation conducted by, the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011* in respect of an Ombudsman officer; or
- f. disclose any information relating to the performance of a duty or function or exercise of a power by the Victorian Inspectorate which may—
  - i. prejudice any criminal proceedings or criminal investigations; or
  - ii. prejudice an investigation being conducted by the Ombudsman, the IBAC or the Victorian Inspectorate; or
  - iii. contravene any secrecy or confidentiality provision in any relevant Act; or
- g. investigate the conduct or capacity of a judicial officer or a non-judicial member of VCAT; or
- h. examine the merits or basis of a complaint or referral which is being or has been considered under the *Judicial Commission of Victoria Act 2016*; or
- i. reconsider the findings, recommendations, determinations or other decisions made or actions taken by the Judicial Commission or an investigating panel under the *Judicial Commission of Victoria Act 2016* in relation to a complaint, referral or investigation under that Act.

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

1. The functions of the Accountability and Oversight Committee under this Act are—
  - a. to monitor and review the performance of the duties and functions of the Ombudsman;
  - b. to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Ombudsman that requires the attention of the Parliament;
  - c. to examine any reports by the Ombudsman that are laid before a House of the Parliament.
2. Despite anything to the contrary in subsection (1), the Accountability and Oversight Committee cannot—
  - a. investigate a matter relating to particular conduct the subject of any particular complaint, protected disclosure complaint, referred complaint or referred matter;

- b. review any decision to investigate, not to investigate or to discontinue an investigation of, a particular complaint, protected disclosure complaint, referred complaint or referred matter;
- c. review any findings, recommendations, determinations or other decisions of the Ombudsman in relation to a particular complaint, protected disclosure complaint, referred complaint or referred matter or an investigation conducted by the Ombudsman;
- d. disclose any information relating to the performance of a function or duty or the exercise of a power by the Ombudsman which may—
  - i. prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
  - ii. contravene any secrecy or confidentiality provision in any relevant Act.

***Ombudsman Act 1973, Section 26I***

**Powers and procedures of Accountability and Oversight Committee**

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



# Committee membership



**Mr Neil Angus MP**  
Chair  
Forest Hill



**Ms Jaclyn Symes MLC**  
Deputy Chair  
Northern Victoria



**Ms Melina Bath MLC**  
Eastern Victoria  
*AOC member until March 2017*



**Mr Michael Gidley MP**  
Mount Waverley



**Mr James Purcell MLC**  
Western Victoria



**Mr Luke O'Sullivan**  
Northern Victoria  
*AOC member from March 2017*



**Mr Nick Staikos MP**  
Bentleigh



**Hon Marsha Thomson MP**  
Footscray

# Committee secretariat

## Staff

Mr Sean Coley, Executive Officer  
Ms Caitlin Grover, Research Officer  
Ms Sarah Catherall, Administrative Officer  
Mr Matt Newington, Research Officer

## Committee contact details

**Address** Accountability and Oversight Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

**Phone** 61 3 8682 2835

**Email** [aoc@parliament.vic.gov.au](mailto:aoc@parliament.vic.gov.au)

**Web** [www.parliament.vic.gov.au/aoc](http://www.parliament.vic.gov.au/aoc)

This report is available on the Committee's website.



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# Chair's foreword

I am pleased to present the fifth report of the Victorian Parliament's Accountability and Oversight Committee on its *Inquiry into the Education, Training and Communications Initiatives of Victorian Oversight Agencies*.

This report covers the three agencies the Committee has oversight responsibility for: the new Office of the Victorian Information Commissioner (which merged the functions of the former Freedom of Information Commissioner with the Commissioner for Privacy and Data Protection), the Victorian Ombudsman and the Victorian Inspectorate.

This report examines ways in which education, training and communications activities of the oversight agencies can best be strengthened. The Committee's inquiry found that more needs to be done to better articulate the role and work of the oversight agencies and how these agencies can best work in the interests of all Victorians.

The Committee received 23 submissions and undertook two public hearings; on 7 August and 18 September 2017, in which oversight agency representatives appeared before the Committee. In May 2016, a delegation of the Committee travelled to Sydney and Brisbane and met with representatives from interstate integrity bodies and in May this year, a delegation of the Committee travelled to New Zealand, to examine how their agencies deliver education, training and communications initiatives.

These meetings provided valuable insights on how comparable jurisdictions undertake their education, training and communications programs. The Committee extends its appreciation to the agency representatives who gave their valuable time and insights during our visits to New South Wales, Queensland and New Zealand.

In relation to the new Office of the Victorian Information Commissioner, the Committee made a number of recommendations involving enhanced decision-making and consistency in application of the *Freedom of Information Act 1982* through additional e-learning modules, publication online of FOI review decisions and the introduction of binding professional standards.

With the Victorian Ombudsman, the Committee heard that reported levels of understanding of the role and work of the Victorian Ombudsman amongst marginalised or disadvantaged groups is minimal. The Committee considers this to be of concern and in need of rectification. One way of effectively resolving this is through the provision of a statutory education function for the Victorian Ombudsman, and initial funding to fully establish an education and training program. This will make the Ombudsman's work in this area targeted and comprehensive, whereas currently it is under resourced, primarily because it is funded from existing areas of the Ombudsman's operating budget.

For the Victorian Inspectorate, the Committee found there is a need to publicise more information and guidance online, to clarify the Victorian Inspectorate's functions in relation to complaints, including guidance on compliance with procedural fairness and the exercise of coercive powers.

Public confidence is essential to the proper functioning of Victoria's oversight framework. People will only engage with the oversight agencies where they have confidence in the capacity of these agencies to uphold their rights or respond to their requests in a fair, equitable and timely manner. For this reason, education, training and communications programs are a vital component in ensuring public confidence. To deliver this, however, they must be effectively funded, measureable and relevant to the requirements of the public and the agencies.

To help the oversight agencies better deliver their education, training and communications programs, this report makes 17 recommendations to the Government, including:

- Enhanced and independently evaluated e-learning programs carried out by the Victorian Information Commissioner, and that the Victorian Government further invests in the provision of e-learning training and free or cost-recovery workshops that provide targeted training to the wider public service, including local government, education and health bodies.
- The Victorian Information Commissioner publishes FOI review decisions online, in accordance with privacy requirements and develops a database of these decisions.
- That the Victorian Ombudsman has a statutory education and training function included in the Ombudsman Act and that this legislated function includes key deliverables and targets.
- The Victorian Ombudsman specifically engages with young people and disadvantaged groups, through its community education and awareness-raising activities.
- The Victorian Inspectorate reviews the education and training information available on its website and includes a series of case notes to provide guidance on matters of frequent complaints, such as compliance with procedural fairness and the exercise of coercive powers and that all information published online be in 'plain English'.
- The oversight agencies further develop their lecture programs and deliver additional presentations to a wide audience.
- The Victorian Government advertises and promotes a range of options, including legal and counselling based services, for people who remain dissatisfied with a final decision of the oversight agencies, in particular where they have accessed and exhausted all available review mechanisms.

I would like to express my appreciation and thanks to all the people involved with the Committee and in the production of this report: my Committee colleagues Ms Jaclyn Symes MLC (Deputy Chair), Mr Luke O'Sullivan MLC, Ms Melina Bath MLC (Committee member until March 2017), Mr Michael Gidley MP, Mr James Purcell MLC, Mr Nick Staikos MP and Hon Marsha Thomson MP.

Finally, I wish to acknowledge the work of the Committee secretariat in preparing this report: executive officer Sean Coley, research officer Caitlin Grover, and administrative officer Sarah Catherall.

I commend this report to the Parliament.

A handwritten signature in black ink that reads "Neil Angus". The signature is written in a cursive, flowing style.

**Mr Neil Angus MP**  
**Chair**

# List of recommendations

## 2 Education, training and communications initiatives of the Office of the Victorian Information Commissioner

**RECOMMENDATION 1:** That the Office of the Victorian Information Commissioner continue to develop and deliver e-learning programs aimed at freedom of information decision-makers. . . . . 16

**RECOMMENDATION 2:** That the Office of the Victorian Information Commissioner independently evaluates its e-learning program on an annual basis to ensure it meets stakeholder requirements. . . . . 16

**RECOMMENDATION 3:** That the Office of the Victorian Information Commissioner continues to facilitate practitioner forums and examine opportunities for developing forums for additional sectors of the public service, such as universities. . . . . 19

**RECOMMENDATION 4:** That the Office of the Victorian Information Commissioner examine the possibility of publishing appropriate decisions of FOI reviews online, in accordance with privacy requirements, and develop a database of these decisions. . . . 26

## 3 Education, training and communications initiatives of the Victorian Ombudsman

**RECOMMENDATION 5:** That the Victorian Government support the Ombudsman’s recommendation for a statutory education and training function to be included in the *Ombudsman Act 1973* and that a legislated function includes key deliverables and targets.. . . . 46

**RECOMMENDATION 6:** That the Victorian Ombudsman develop sector-specific guidelines to assist agencies to meet their legal obligations. . . . . 46

**RECOMMENDATION 7:** That the Victorian Ombudsman examine the option of producing a monthly e-bulletin to keep public service staff abreast of emerging trends and issues in public administration. . . . . 46

**RECOMMENDATION 8:** That the Victorian Ombudsman examine how best to improve engagement with young people and disadvantaged groups through community education and awareness-raising activities.. . . . 49

**RECOMMENDATION 9:** That the Victorian Ombudsman monitor the level of public understanding of the Victorian Ombudsman’s Office by planning a follow-up survey to the 2015 survey of public understanding. . . . . 49



**RECOMMENDATION 10:** That the Victorian Government amend the *Ombudsman Act 1973* to provide for a statutory educative function to raise awareness of the functions of the Victorian Ombudsman within government agencies and the broader Victorian community. . . . . 54

**RECOMMENDATION 11:** That the Victorian Government provide initial funding to the Victorian Ombudsman for the development of a public sector and community education program. . . . . 54

## 4 Education, training and communications of the Victorian Inspectorate

**RECOMMENDATION 12:** That the Victorian Inspectorate reviews the education and training information available on its website and includes a series of case notes providing generic guidance on matters of frequent complaints, such as compliance with procedural fairness and the exercise of coercive powers. . . . . 62

**RECOMMENDATION 13:** That the Victorian Inspectorate further develop its lecture program and deliver presentations focused on procedural guidance to both the Victorian public and the government sector. . . . . 62

**RECOMMENDATION 14:** That the Victorian Inspectorate publish ‘plain English’ information on its website that clarifies its functions in relation to complaints, including guidance on compliance with procedural fairness and the exercise of coercive powers. . . . . 62

**RECOMMENDATION 15:** That the Victorian Government advertises and promotes a range of options, including legal and counselling based services, for people who remain dissatisfied with a final decision of the oversight agencies, in particular where they have already accessed all available review mechanisms. . . . . 62

## 5 Australian and international comparisons

**RECOMMENDATION 16:** That the Victorian Ombudsman, the Office of the Victorian Information Commissioner and the Victorian Inspectorate further invests in the provision of e-learning training and free or cost-recovery workshops that provide targeted training to the wider public service, including local government, education and health bodies. . . . . 65

**RECOMMENDATION 17:** That the Victorian Government, through the Victorian Public Sector Commission, investigates establishing a network forum comprising government agency representatives, based on the New Zealand model championed by the New Zealand State Services Commission. . . . . 78



## 1.1 Introduction

This is the fifth report of the Victorian Parliament's Accountability and Oversight Committee (the Committee). This report examines the education, training and communications initiatives undertaken by the three agencies the Committee oversees: the newly created Office of the Victorian Information Commissioner (which merged the functions of the former Freedom of Information Commissioner with the Commissioner for Privacy and Data Protection), the Victorian Ombudsman and the Victorian Inspectorate.

## 1.2 The Accountability and Oversight Committee

The Committee was first established in February 2013 under the *Parliamentary Committees Act 2003* as part of a new integrity regime in Victoria.<sup>1</sup>

The Accountability and Oversight Committee was re-established in April 2015 in the 58th Parliament.

The *Parliamentary Committees Act*, the *Ombudsman Act 1973* and the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017*, all provide the Committee with powers to oversee these three integrity agencies.

Under the legislation, the Committee is empowered to analyse the outputs of the Office of the Victorian information Commissioner (OVIC) and the Victorian Ombudsman and monitor their overall operational performance. In the case of the Victorian Inspectorate, the Committee oversees those aspects of the Victorian Inspectorate's work dealing with conduct of Victorian Ombudsman officers and OVIC officers.

Of note, the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017* also provided the Victorian Inspectorate with an oversight role. This includes undertaking own motion investigations relevant to the OVIC's exercise of coercive powers in relation to any matter and compliance with procedural fairness requirements in the performance of its functions.

The Committee notes that its jurisdiction was not similarly expanded to include overseeing the Inspectorate's functions in regards to the OVIC's exercise of coercive powers, despite the fact that the Committee has oversight of the Inspectorate's functions in regards to the Ombudsman's exercise of coercive powers.

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<sup>1</sup> *Parliamentary Committees Act 2003* (Vic)

### 1.3 The Committee's roles and responsibilities

As of 1 September 2017, the Committee's legislative functions include:

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

With the enactment of the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017*, the Committee's role in relation to the Inspectorate was expanded to include the Inspectorate's duties and functions in respect of the Judicial Commission.<sup>2</sup>

### 1.4 Inquiry terms of reference

The Inquiry, which was self-referenced by the Committee on 6 June 2016, required the Accountability and Oversight Committee to inquire into, consider and report, no later than 31 December 2017, on the following reference:

Review the effectiveness of education, training and communication initiatives by the Victorian Freedom of Information Commissioner, Ombudsman and Victorian Inspectorate, with particular regard to –

- (1) What current education and training initiatives exist, how are they measured and how effective are they?
- (2) How well are the roles, powers and processes of these bodies understood by the Victorian public?
- (3) How well are the functions of these bodies and the processes they enforce, understood and complied with by Government agencies?
- (4) How do the education and communication initiatives of these entities compare to comparable entities in other Australian and international jurisdictions?
- (5) Is there a need to strengthen the education and training functions for each of these bodies through legislation or other means?

### 1.5 Submissions

In June 2016, the Committee advertised its Inquiry terms of reference and called for submissions on the Inquiry. The Committee also wrote to the oversight agencies, government agencies, local councils and stakeholders,

<sup>2</sup> Due to consequential amendments to the *Parliamentary Committees Act 2003* section 6A(1)(f).

requesting submissions. The Committee received and accepted twenty three submissions, which are available on the Committee's website at: [www.parliament.vic.gov.au/aoc](http://www.parliament.vic.gov.au/aoc) and were received from the following groups and individuals:

- (1) Victorian Inspectorate
- (2) South Gippsland Shire Council
- (3) Independent Broad-based Anti-Corruption Commission (IBAC)
- (4) NSW Information Commissioner
- (5) Office of the Information Commissioner
- (6) NSW Ombudsman
- (7) Whitehorse City Council
- (8) Maroondah City Council
- (9) Victorian Ombudsman
- (10) Commissioner for Privacy and Data Protection
- (11) Loddon Shire Council
- (12) Melbourne City Council
- (13) Deakin University
- (14) Boroondara City Council
- (15) Australian and New Zealand Ombudsman Association (ANZOA)
- (16) Pyrenees Shire Council
- (17) Parliament of Tasmania Joint Standing Committee on Integrity
- (18) Office of the Ombudsman New Zealand
- (19) WorkSafe
- (20) Freedom of Information Commissioner
- (21) Mr Maurice Schinkel
- (22) City of Greater Geelong
- (23) Ambulance Victoria

The Committee would like to thank all organisations and individuals who made submissions.

## 1.6 Public Hearings

The Committee undertook two public hearings. The first was held on 7 August 2017, in which the then Acting Freedom of Information Commissioner, Ms Sally Winton, and Ms Simone Martin, Senior Manager, Communications and Education, of the former Office of the Freedom of Information Commissioner, presented to the Committee. This was followed by the Ombudsman,

Ms Deborah Glass OBE and Ms Christina DiPierdomenico, Head of the Executive Office, presenting on education, training and communications programs being undertaken by the Ombudsman's office.

At the second hearing on 18 September 2017 the Victorian Inspector, Mr Robin Brett QC, presented evidence to the Committee.

## 1.7 Study tours

### 1.7.1 New South Wales and Queensland

In May 2016, a delegation of the Committee travelled to Sydney and Brisbane and met with representatives from interstate integrity bodies. The purpose of the visit was to learn about oversight arrangements in New South Wales and Queensland, including various education and training programs in place. The agencies the delegation met with included:

- Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, Parliament of New South Wales
- New South Wales Ombudsman
- New South Wales Information and Privacy Commission
- Queensland Information Commissioner
- Queensland Health Ombudsman
- Queensland Ombudsman
- Legal Affairs and Community Safety Committee, Queensland Parliament.

### 1.7.2 New Zealand

A delegation of the Committee travelled to New Zealand in May 2017, to examine how New Zealand agencies deliver education, training and communications initiatives.

The delegation met with representatives from the following agencies:

- New Zealand Ombudsman
- New Zealand Privacy Commissioner
- Ministry of Justice
- State Services Commission
- Transparency International (New Zealand)
- Department of Corrections
- Wellington City Council
- Department of Internal Affairs

- Government Administration Select Committee, New Zealand Parliament
- Auckland Council
- Auckland University Law Faculty.

These meetings provided invaluable insights into the role of education, training and communications in strengthening the governance framework and enhancing accountability in public administration.

Meeting with people from equivalent agencies in other jurisdictions who are engaged in education and training helped to convey a broad understanding of how these activities work in practice.

The Committee extends their appreciation to all the agency representatives who gave their time to provide perspectives and experiences of the New South Wales, Queensland and New Zealand integrity systems.

## 1.8 Background

It is recognised that democratic participation depends upon a well-informed public.

Accountability and good governance similarly depend upon people knowing and understanding their rights and how to assert them.

This is why education and communication are integral to the capacity of Victoria's oversight agencies to enhance good governance and transparency in public administration.

Key oversight functions of the Victorian Information Commissioner, the Victorian Ombudsman and the Victorian Inspectorate are triggered when a request or complaint is made by a member of the public.

As such, only where there is public awareness and understanding of these functions and how they can be used to uphold individual rights can the accountability and transparency mechanisms of these oversight bodies be said to be operating effectively.

Public understanding of the functions and processes enforced by the three oversight bodies under the Committee's jurisdiction also improves the quality of information provided by members of the public in support of requests and complaints, thereby contributing to the effectiveness of Victoria's oversight framework.

Education and communication initiatives targeted to the Victorian public service are equally important, as they contribute to better and more consistent decision-making within government agencies, and strengthen systems and processes related to decision-making.

This report examines whether education, training and communications activities of the oversight agencies can be strengthened to improve understanding of their functions and processes, both within the Victorian public service and the community more broadly.

## 1.9 Structure of the report

The report comprises six chapters. This chapter covers the role and responsibilities of the Committee and the focus of the Committee's Inquiry into Education, Training and Communications initiatives.

Chapter 2 examines the role of education and training regarding accountability and oversight bodies and reviews the Office of the Victorian information Commissioner.

Chapter 3 assesses the Victorian Ombudsman.

Chapter 4 reviews the Victorian Inspectorate.

Chapter 5 provides a comparison with education and communication initiatives of other Australian and international jurisdictions.

Chapter 6 looks at obstacles to enhanced education and training and what opportunities exist to help assess and develop education and training programs.



# Education, training and communications initiatives of the Office of the Victorian Information Commissioner

## 2.1 Background

The newly created Office of the Victorian Information Commissioner (OVIC) (previously the Office of the Freedom of Information Commissioner [OFOIC]) undertakes a number of education and training initiatives. These have increased in both breadth and depth since the OFOIC came into existence in December 2012. Please note that references to the OFOIC are retained in circumstances where evidence was received or accessed by the Committee prior to the establishment of the OVIC.

The various initiatives as they relate to the Inquiry terms of reference, are detailed in this chapter.

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

- (a) to promote understanding and acceptance by agencies of this Act and the object of this Act;
- ...
- (b) to provide advice, education and guidance to agencies in relation to compliance with any professional standards prescribed by the regulations;
- ...
- (c) to provide advice, education and guidance to agencies and the public in relation to the Commissioner's functions;

The OFOIC made undertaking these functions a key strategic priority in 2015–16.<sup>3</sup>

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<sup>3</sup> Freedom of Information Commissioner, *Annual report 2015-16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 10.

## 2.2 Training

### 2.2.1 Information Commissioner

The scope, nature and content of the OVIC's education and training program is based on the results of a training needs analysis conducted in September 2016.<sup>4</sup> Acting Public Access Deputy Commissioner Sally Winton told the Committee that:

98 per cent of respondents indicated overwhelming support for and interest in our office developing and delivering training, education and resource materials, including guidance materials for agencies, practice bulletins and face-to-face training supplemented by online e-learning modules.<sup>5</sup>

The OVIC is, accordingly, expanding education and training activities, with 42 sessions offered in 2016-17, compared to 27 in 2015-16, 29 in 2014-15 and 22 in 2013-14.<sup>6</sup>

A total of 415 public service staff attended face-to-face FOI training sessions, up from 330 in 2014-15.

In evidence to the Committee, Education and Communication Senior Manager Simone Martin stated:

There has been strong and incrementally increasing demand for our training. When we compare this year to last year there has been a 58 per cent increase in the total number of public sector employees attending our training. We believe this is also in part due to the fact that we operate a cost recovery model, so our training courses are operated at about half the cost of private providers in the same space.<sup>7</sup>

Education and communication initiatives have been targeted to FOI practitioners rather than the general public more broadly, due to resource constraints.<sup>8</sup>

The 2015-16 Annual Report observed that the then OFOIC 'does not have the resources to educate the entire Victorian community about the functions of the FOI Commissioner and the activities of the Office.'<sup>9</sup>

The 2017 FOIC Training and Education Program includes the following courses:

- Online awareness module
- FOI Introduction

<sup>4</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 1.

<sup>5</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 2.

<sup>6</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 1.

<sup>7</sup> Simone Martin, Senior Manager of Communications and Education, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

<sup>8</sup> Freedom of Information Commissioner, *Annual report 2015-16*, Office of the Victorian Information Commissioner, Melbourne, 2016, p. 38.

<sup>9</sup> Freedom of Information Commissioner, *Annual report 2015-16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.

- FOI Masterclass
- FOI Refresher and Masterclass
- FOI Comprehensive Combination
- Bespoke training.<sup>10</sup>

The OVIC also offers an e-learning module on FOI awareness, with modules on amendments to the FOI Act and FOI exemptions under development.<sup>11</sup>

In August 2017, the Acting FOI Commissioner presented information sessions on changes relating to the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017*, including a Q&A session with the Acting Public Access Deputy Commissioner.

All education and training is measured against key indicators with assessment and evaluation surveys administered for face-to-face and online learning.

Ms Martin explained the evaluation process to the Committee, stating:

Before we commence our training we ask our participants to complete a pre-assessment survey. That comprises 10 to 15 questions where we ask individuals to self-rate their knowledge. That is particularly important for our FOI introductory session. On a Likert scale they are asked to assess where they sit. They then participate in the training, and then at the end of the training we administer that assessment survey again and we compare the results. Then we go through and we compare the percentages, and we are looking for a percentage gain their knowledge and understanding of the content that they are exposed to during the training and then afterwards.<sup>12</sup>

In assessing the education and training program, the Acting Public Access Deputy Commissioner observed:

While the suite of agency activities by the OFOIC is relatively new, the program is reasonably comprehensive, given budget constraints, and has been well received by agencies. This is evidenced by participant survey results and recurrent demand.<sup>13</sup>

Further, Ms Winton noted:

We also believe that it is particularly cost-effective. We have invested less than \$100,000 in program development over the previous 12 months, and when we look at comparisons to other jurisdictions we can see that we have delivered quite an extensive program based on the funding that has been allocated to it.<sup>14</sup>

<sup>10</sup> Freedom of Information Commissioner, Training and Education, viewed 8 August 2017, <foicommissioner.vic.gov.au/training-and-education/>.

<sup>11</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 1.

<sup>12</sup> Simone Martin, Senior Manager of Communications and Education, Office of the Victorian Information Commissioner, Transcript of evidence, Melbourne, 7 August 2017, p. 5.

<sup>13</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 2.

<sup>14</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 3.

The Committee learned that the OVIC is continuing to expand its training and education activities and is aiming to deliver 50 education activities to 750 attendees in 2017-18.<sup>15</sup>

### 2.2.2 Submissions

Submissions received by the Committee relevant to the OVIC expressed support for enhanced education and training to assist in meeting statutory responsibilities, particularly in the context of ongoing legislative reform.

For instance, Melbourne City Council suggested that specific training on technical elements of the Act would be useful, such as requests for closed circuit television footage, what charges can be levied and how to write a Part II statement (i.e. publication of certain documents and information required by all agencies subject to the Act).<sup>16</sup>

Several submissions explained that FOI training needs are currently being met by private providers, with South Gippsland Shire Council using Maddocks and FOI Assist and WorkSafe Victoria using FOI Solutions.

Melbourne City Council stated 'In the absence of advice and training, councils incur additional costs through obtaining advice from external legal providers and consultants.'<sup>17</sup>

South Gippsland Council noted that private providers are proactive in providing comprehensive training and keeping council abreast of developments in FOI, however, they are costly.<sup>18</sup>

WorkSafe FOI officers receive training from FOI Solutions, which it regards 'as cost effective and as substantially meeting its training needs.'<sup>19</sup>

Loddon Shire Council supported the development of e-learning by the FOI Commissioner.<sup>20</sup>

### 2.2.3 Other Australian and international jurisdictions

#### Commonwealth Office of the Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is responsible for administering freedom of information, privacy and information policy legislation.

<sup>15</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

<sup>16</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 1.

<sup>17</sup> Melbourne City Council, Submission No. 12, 25 August 2016, p. 1.

<sup>18</sup> South Gippsland Shire Council, Submission No. 2, 22 August 2016, p. 1.

<sup>19</sup> WorkSafe, Submission No. 19, 29 August 2016, p. 2.

<sup>20</sup> Loddon Shire Council, Submission No. 11, 25 August 2016, p. 3.

The OAIC was established by the *Australian Information Commissioner Act 2010 (Cth)*, which requires that it undertake the following functions in relation to freedom of information:

- (a) promoting awareness and understanding of the Freedom of Information Act 1982 and the objects of that Act;
- ...
- (b) providing information, advice, assistance and training to any person or agency on matters relevant to the operation of the Freedom of Information Act 1982.<sup>21</sup>

The OAIC provides training to peak bodies and industry and business groups. In a teleconference with the Committee, Deputy Commissioner Angelene Falk explained that training activities and communications provided by the OAIC are designed to align with regulatory responsibilities and aim to equip decision-makers with the information needed to meet these responsibilities.<sup>22</sup>

The OAIC's annual report for 2015-16 did not provide information on the number of training sessions provided or participants.<sup>23</sup>

The only online learning module provided by the OAIC is the Privacy Impact Assessment eLearning, which appears on the OAIC website as follows:

## Welcome to the course

© TOTAL COURSE TIME: APPROXIMATELY 1 HOUR

Welcome to the Office of the Australian Information Commissioner's (OAIC) eLearning course on conducting a privacy impact assessment (PIA). This course aims to give you information in an easy-to-understand format so that you can have the confidence to do a PIA in your organisation.

### Who should complete this course?

This course is designed for people who are new to the PIA process and would like to:

- Understand the OAIC's expectations when completing a PIA
- Understand the steps to completing a PIA
- Be able to confidently identify privacy risks
- Be able to propose mitigation strategies to address privacy risks
- Commence the PIA process for their own project

The course content is based on the OAIC's [Guide to undertaking privacy impact assessments](#). You should refer to this guide if you need more information about any of the topics covered, or need further assistance in completing your PIA.

The course is designed for organisations and Australian Government agencies covered by the *Privacy Act 1988* (Privacy Act), however it will be relevant for any organisation that wants to take a best practice approach to privacy.



A screenshot of the OAIC privacy e-learning course

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- 21 *Australian Information Act 2010* (Cth) section 8.
  - 22 Angelene Falk, Deputy Commissioner, Office of the Australian Information Commissioner, teleconference 16 October 2017.
  - 23 Office of the Australian Information Commissioner, *Annual report 2015-16*, Office of the Australian Information Commissioner, Canberra, 2016, p. 27.

## New South Wales

The New South Wales Information and Privacy Commission (IPC) administers freedom of information and privacy functions.<sup>24</sup> This is a similar framework to what Victoria will have in place with the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017 (Vic)*.

The IPC has the following functions in relation to the operation of the *Government Information (Public Access) Act 2009 (NSW)* (GIPA Act) under section 17:

- (a) to promote public awareness and understanding of this Act and to promote the object of this Act,
- (b) To provide information, advice, assistance and training to agencies and the public on any matters relevant to this Act,
- (c) to assist agencies in connection with the exercise of their functions under this Act, including by providing services to assist with the lodgement, handling and processing of access applications,
- (d) to issue guidelines and other publications for the assistance of agencies in connection with their functions under this Act,
- (e) to issue guidelines and other publications for the assistance of the public in connection with their rights under this Act (including rights of review).

The IPC has an e-learning portal, which contains four training modules that are available free of charge and it delivers face-to-face information sessions and workshops for agencies on right to information and privacy laws.

These include:

- Training for decision-makers
- Contracts registers under the GIPA Act
- How to access government information
- Privacy complaints handling.

According to the 2015-16 Annual Report, the IPC will continue to develop new e-learning modules and educational tools.<sup>25</sup>

In 2015-16, the IPC delivered 26 information access training sessions and 20 sessions on privacy awareness to public sector agencies at the state and local levels, board-governed organisations and government service providers.<sup>26</sup>

<sup>24</sup> *Government Information (Information Commissioner) Act 2009 (NSW)*; *Government Information (Public Access) Act 2009 (NSW)*; *Privacy and Personal Information Protection Act 1998 (NSW)*.

<sup>25</sup> NSW Information and Privacy Commissioner, *Annual report 2015-16*, Office of the Information and Privacy Commissioner, Sydney, 2016, p. 15.

<sup>26</sup> NSW Information and Privacy Commissioner, *Annual report 2015-16*, Office of the Information and Privacy Commissioner, Sydney, 2016, p. 22.

These sessions aimed to develop participants' understanding of rights and responsibilities and capacity to apply relevant legislation, policies and procedures.<sup>27</sup>

### Queensland

Freedom of information and privacy functions are similarly merged in Queensland under the Office of the Information Commissioner (OIC).

Section 128 of the *Right to Information Act 2009 (Qld)* provides for the functions of the Information Commissioner, which include 'giving information and help to agencies and members of the public on matters relevant to this Act, in particular, by –

- (a) giving guidance on the interpretation and administration of this Act; and
- (b) giving information and help to agencies, applicants and third parties at any stage of an access application; and
- (c) promoting greater awareness of the operation of this Act in the community and within government, including by providing training and educative programs;

The OIC provides general training and targeted training to agencies and practitioner groups to improve agency practices on right to information and information privacy.<sup>28</sup> These include face-to-face workshops, online training courses, training developed for the specific needs of particular agencies and webinars.

Web-based technologies play an important part of the OIC's education program as they vastly increase the number of people who can participate in training activities and improve accessibility for people who live in regional and remote areas.

In 2015-16, a total of 9,295 participants undertook OIC training, over 90 per cent of which took place online,<sup>29</sup> reflecting the considerable scope for online tools in realising the educative function of freedom of information and privacy agencies.

### Western Australian Office of the Information Commissioner

The Western Australian Office of the Information Commissioner (OIC) has broadly the same statutory responsibilities as the Victorian FOI Commissioner. The *Freedom of Information Act 1992 (WA)* provides for the following functions of the OIC:

...

<sup>27</sup> NSW Information and Privacy Commissioner, *Annual report 2015-16*, Office of the Information and Privacy Commissioner, Sydney, 2016, p. 22.

<sup>28</sup> Queensland Information Commissioner, *Annual report 2016*, Office of the Information Commissioner, Brisbane, 2016, p. 5.

<sup>29</sup> Queensland Information Commissioner, *Annual report 2016*, Office of the Information Commissioner, Brisbane, 2016, p. 28.



- d. ensuring that agencies are aware of their responsibilities under this Act;
- e. ensuring that members of the public are aware of this Act and their rights under it;
- f. providing assistance to members of the public and agencies on matters relevant to this Act.<sup>30</sup>

To fulfil these obligations, the OIC provides advice to the public and agencies to assist in the proper lodgement and processing of applications and proposes measures to improve agency administration of applications.<sup>31</sup>

In 2015-16, the OIC provided:

- 8 FOI coordinator workshops
- 2 decision-makers forums
- 2 decision writing workshops
- 26 FOI briefings and trainings.<sup>32</sup>

Workshops involved introducing participants to the objects and principles of the FOI Act and the major elements of the legislation and enhancing decision-makers' skills in writing a notice of decision that complies with the FOI Act.

Briefings to agencies covered the application of particular exemptions, understanding the 'public interest' test and how to write a notice of decision that complies with the FOI Act. Briefings were also given to community groups to inform participants of their rights and how to use FOI when applying for access to documents from government agencies.<sup>33</sup>

The OIC is currently examining options for delivering online training to broaden the scope for raising awareness of the functions of the OIC and to broaden the reach of its education initiatives.

### **New Zealand Ombudsman**

The New Zealand Ombudsman administers the *Official Information Act 1982* (NZ) and is responsible for reviewing decisions of local authorities or chief executives in regards to applications for access to information under the *Local Government Official Information and Meetings Act 1987* (LGOIMA).

Protected disclosures also fall within the New Zealand Ombudsman's jurisdiction.

The New Zealand Ombudsman delivers a training program on official information, although there is no statutory requirement to do so.

<sup>30</sup> *Freedom of Information Act 1992* (WA) section 63(2).

<sup>31</sup> West Australian Information Commissioner, *Annual report 2015-16*, Office of the Information Commissioner, Perth, 2016, p. 54.

<sup>32</sup> West Australian Information Commissioner, *Annual report 2015-16*, Office of the Information Commissioner, Perth, 2016, p. 17.

<sup>33</sup> West Australian Information Commissioner, *Training for Agencies*, viewed 8 August 2017, <foi.wa.gov.au/en-us/Training>.



In discussion with a delegation of the Committee in May 2017, Chief Ombudsman Judge Peter Boshier explained that education is integral to strengthening systems and processes within agencies to improve decision-making. He observed that this reduces the number of complaints that are made, as well as the number that are upheld upon review.<sup>34</sup>

This reflects an emphasis on prevention of complaints rather than remediation, with collaboration and engagement seen as being more effective than a punitive enforcement regime.

Representatives of local governments and government departments reported that a shift towards a collaborative approach with the Ombudsman was more effective in achieving systemic improvements than punitive enforcement.<sup>35</sup>

The New Zealand Ombudsman provides face-to-face training rather than e-learning.

The Ombudsman delivered 38 workshops and training seminars in 2015-16 on the functions of the Ombudsman and official information legislation.<sup>36</sup> Of the participants who received training, 99 per cent reported that it would assist them in their work.<sup>37</sup>

## 2.2.4 Conclusion

The Committee supports the important role of education and training of Victoria's public service in realising the objectives of freedom of information legislation.

FOI decision-makers in agencies, departments and local councils must be equipped with the skills and knowledge necessary to make informed assessments of requests for information.

The Committee believes that the OVIC has demonstrated a commitment to delivering education and training to Victoria's public service and has developed strong foundations on which it continues to build.

E-learning presents a singular opportunity to expand the scope for participation in FOI education and training programs. This is demonstrated by the fact that 8,366 out of the 9,295 participants in the Queensland OIC's training programs in 2015-16 participated online.

<sup>34</sup> Peter Boshier, Chief Ombudsman, Office of the Ombudsman, briefing 30 May 2017, Wellington, New Zealand.

<sup>35</sup> Manoj Ragupathy, Privacy and Local Government Official Information and Meetings Act Manager, Auckland Council, briefing 31 May 2017, Auckland, New Zealand; Kane Patena, Director, Legal and Risk, Wellington City Council, briefing 30 May 2017; Wellington, New Zealand; Chris Hubscher, Policy Manager, Electoral and Constitutional, Group Policy, Ministry of Justice, briefing 29 May 2017, Wellington, New Zealand.

<sup>36</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 32.

<sup>37</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 32.

**RECOMMENDATION 1:** That the Office of the Victorian Information Commissioner continue to develop and deliver e-learning programs aimed at freedom of information decision-makers.

**RECOMMENDATION 2:** That the Office of the Victorian Information Commissioner independently evaluates its e-learning program on an annual basis to ensure it meets stakeholder requirements.

### Professional standards

As discussed in section 2.7 below, among the changes to be introduced with the establishment of the Office of the Victorian Information Commissioner in September 2017 is a statutory function to develop and review professional standards.

Existing professional standards have not been prescribed by the regulations and are, therefore, not binding.

The Committee notes that engagement by agencies with OVIC education and training will likely increase with the introduction of binding professional standards as penalties will apply for breach of the standards.

This was reflected in the comments at the public hearing on 7 August 2017 from Simone Martin, the Senior Manager of Communications and Education at the OVIC, who observed that:

... the new amendments to the act and its expanded powers in terms of educative findings and the new binding professional standards provide an additional opportunity for us to work with agencies and educate them in relation to these expanded powers.<sup>38</sup>

## 2.3 Forums and networks

Practitioner forums and networks play an important part in strengthening the application of freedom of information legislation as they enable the provision of support to FOI decision-makers and encourage consistency and best practice across the public service.

An example of this is the initiative undertaken by Professor Janet McLean from the University of Auckland Law Faculty. Professor McLean helped to establish the Centre for Freedom of Information while at the University of Dundee, in collaboration with the Scottish Information Commissioner. She told the Committee during its visit to New Zealand in May 2017, that practitioner forums may be the most effective method for improving the application of FOI legislation.

<sup>38</sup> Simone Martin, Senior Manager of Communications and Education, Office of the Freedom of Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

Professor McLean also explained that the responsibility for deciding official information requests could be challenging and professionally isolating, as people often experience pressure from within their agency to refuse legitimate requests for information. By providing support and access to best practice, practitioners' forums can help promote the cultural change needed to address institutional resistance to the release of information.

### 2.3.1 FOI Commissioner

A city FOI Commissioner informed the Committee that the OFOIC participates in the monthly whole-of-Victorian Government FOI Managers Network.<sup>39</sup> It also hosted a workshop with agencies in the Network to establish how they train, education and update staff working in FOI and how the Office could assist.<sup>40</sup>

Together with the Municipal Association of Victoria, the Office held a sector-specific FOI practitioners forum for Local Government staff, with over half of all Victorian councils represented.

In the 2015-16 Annual Report the Office stated that it is planning future sector-specific practitioner forums, with health agencies, regulatory agencies and potentially statutory authorities in accordance with recommendations by the Accountability and Oversight Committee in its last report to the Parliament.<sup>41</sup>

The practitioner forum with health agencies, was held in June 2017 in partnership with the Department of Health and Human Services and the Health Complaints Commissioner. The forum aimed to strengthen relationships with agencies, provide up-to-date FOI information and encouraged health agency FOI practitioners to build networks to support each other. This is important given that the health sector accounts for a significant proportion of FOI requests.

Of the participants who completed the evaluation survey, 100 per cent found the Q&A session of interest and 97 per cent learned new information about the office.<sup>42</sup>

Over 90 per cent of participants who completed the evaluation survey agreed or strongly agreed that they learned new information at the forum.<sup>43</sup>

<sup>39</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 1.

<sup>40</sup> Freedom of Information Commissioner, July e-Bulletin, viewed 27 July 2017, <foicommissioner.vic.gov.au/wp-content/uploads/2017/07/July-eBulletin.pdf>.

<sup>41</sup> Freedom of Information Commissioner, *Annual report 2015-16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 37.

<sup>42</sup> Freedom of Information Commissioner, July e-Bulletin, viewed 27 July 2017, <foicommissioner.vic.gov.au/wp-content/uploads/2017/07/July-eBulletin.pdf>.

<sup>43</sup> Freedom of Information Commissioner, Practitioner Forum: Health Sector – Collated results, viewed 27 July 2017, <foicommissioner.vic.gov.au/wp-content/uploads/2017/07/FOI-Practitioners-Forum-Health-Sector-Collated-results.pdf>.

### 2.3.2 Submissions

The submissions that addressed practitioner forums expressed their support for the initiative.<sup>44</sup>

For example, Maroondah City Council informed the Committee that ‘My feedback is that it was very well received and that it would be a good model for the new Commissioner to apply for future training.’<sup>45</sup>

Similarly, South Gippsland Shire Council noted that the forum ‘was a welcome opportunity to speak directly to the Commissioner and staff on the effectiveness of the legislation and to touch on education and training matters.’<sup>46</sup>

### 2.3.3 Other jurisdictions

The following practitioner forums have been established in New South Wales, Queensland, New Zealand and Scotland:

- New South Wales Information and Privacy Commission – Right to Information and Privacy Practitioners Network
- Queensland Office of the Information Commissioner – Right to Information and Information Privacy Practitioners’ forums
- New Zealand Ministry of Justice and State Services Commission – Official Information Act forum
- Scotland Centre for Freedom of Information – FOI Scotland Forum.

The Western Australian OIC has established an Agency FOI Reference Group that aims to promote good practice by:

- exploring ways that it can assist FOI officers in their roles, particularly through the information provided on the website, in publications and in training
- improving FOI coordinator and agency knowledge of the FOI process and current issues
- sharing information about trends in FOI decisions.

The Reference Group consists of FOI practitioners who have an interest in helping to implement the FOI Act.<sup>47</sup>

<sup>44</sup> Maroondah City Council, Submission No. 8, 23 August 2016, p. 2; Boroondara City Council, Submission No. 14, 26 August 2016, p. 1; Whitehorse City Council, Submission No. 7, 25 August 2016, p. 1.

<sup>45</sup> Maroondah City Council, Submission No. 8, 23 August 2016, p. 2.

<sup>46</sup> South Gippsland Shire Council, Submission No. 2, 22 August 2016, p. 1.

<sup>47</sup> West Australian Information Commissioner, *Annual report 2015-16*, Office of the Information Commissioner, Perth, 2016, p. 17.

The Office of the Australian Information Commissioner participates in several international and domestic forums and networks, however, these are solely related to privacy.<sup>48</sup>

The Deputy Commissioner of the OAIC told the Committee that a practitioners' network for FOI officers has been established and participants are kept abreast of developments in FOI with a regular newsletter.<sup>49</sup>

### 2.3.4 Conclusion

The Committee believes that practitioner forums play an important part in enabling the OVIC to convey FOI best practice to a specific sector so that learning is targeted and relevant to participants.

Practitioner forums also foster greater engagement with the OVIC and enable the development of networks of FOI decision-makers in which skills and experience can be shared, both of which contribute to the strengthening of the FOI regime in Victoria.

The positive participant feedback for both the local government and the health sector practitioner forums suggests there is a strong interest in such forums.

**RECOMMENDATION 3:** That the Office of the Victorian Information Commissioner continues to facilitate practitioner forums and examine opportunities for developing forums for additional sectors of the public service, such as universities.

## 2.4 Communications

### 2.4.1 Office of the Victorian Information Commissioner

The OVIC website has information about the function of the Office, its role and powers. There are also communications materials to assist FOI practitioners and the general public more broadly in understanding how the Act operates. These include a newsletter, an e-bulletin, sample letter templates, how-to guides and frequently asked questions.

The FOI in Practice newsletter, targeted to Victorian public service staff, provides guidance on how to apply specific provisions of the FOI Act. To date, there have been five editions of FOI in Practice.<sup>50</sup>

The monthly e-bulletin provides information about upcoming training sessions, amendments to legislation and recent FOI cases heard in the Victorian Civil and Administrative Tribunal (VCAT).

<sup>48</sup> Australian Information Commissioner, Engage with us, Office of the Information Commissioner, viewed 27 July 2017, <[www.oaic.gov.au/engage-with-us/networks](http://www.oaic.gov.au/engage-with-us/networks)>.

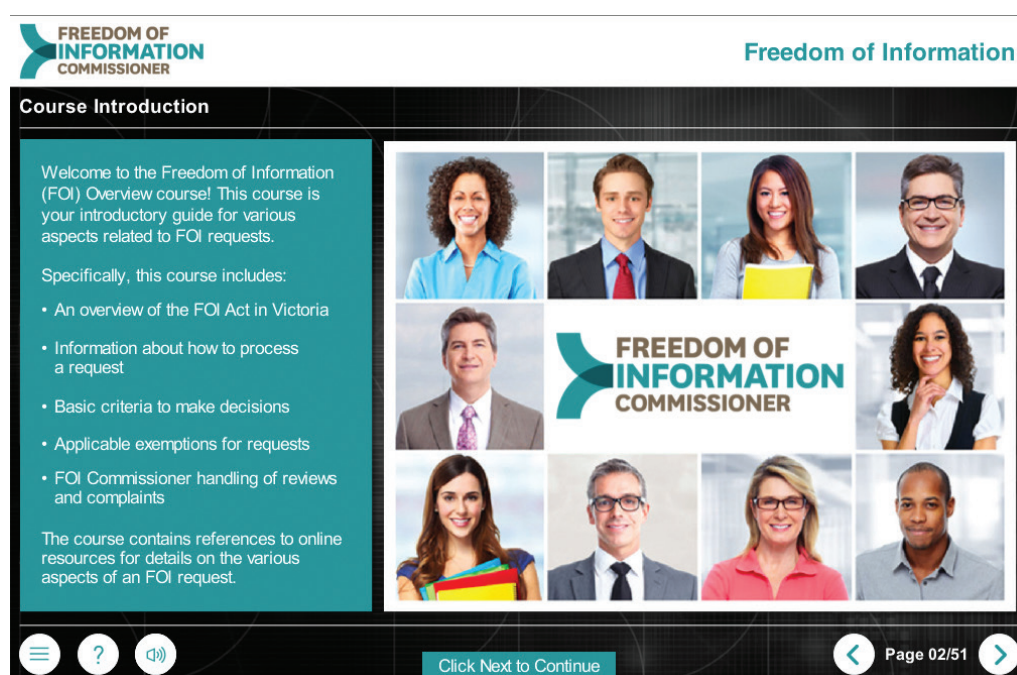
<sup>49</sup> Angelene Falk, Deputy Commissioner, Office of the Australian Information Commissioner, teleconference 16 October 2017.

<sup>50</sup> Freedom of Information Commissioner, Resources, viewed 20 November, 2017 <[foicommissioner.vic.gov.au/resources/](http://foicommissioner.vic.gov.au/resources/)>.

According to the Acting Public Access Deputy Commissioner, the OVIC website has been redeveloped with improved navigation and accessibility to enable users to find information according to whether they are a member of the public or an agency staff member.<sup>51</sup>

In addition, the OVIC's website has course information available online as part of its e-learning module. This provides an overview of the FOI Act, how to process a request for information, the basic criteria for making decisions, applicable exemptions for requests and the role of the FOI Commissioner in handling reviews and complaints.

Ms Winton told the Committee: 'The new website features improved navigation and accessibility for agencies, guidance materials and resources, and fact sheets. It now also includes an online e-learning module that covers FOI awareness.'<sup>52</sup>



A screenshot of the FOI awareness e-learning module

The FOI Act requires decision letters of agencies in response to requests for information to inform applicants of their right to seek a review of a decision by the FOI Commissioner, as well as the right to make a complaint.

With over 28,000 FOI decisions made by agencies in 2015-16, these letters serve as a key tool for raising awareness of the OVIC and its functions,<sup>53</sup> particularly in light of the lack of resources for greater community awareness raising activities.

51 Simone Martin, Senior Manager of Communications and Education, Office of the Freedom of Information Commissioner, Transcript of evidence, Melbourne, 7 August 2017, p. 5.

52 Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, Transcript of evidence, Melbourne, 7 August 2017, p. 3.

53 Freedom of Information Commissioner, Annual report 2015-16, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.



## 2.4.2 Submissions

Several submissions stated that existing resources on the FOI Commissioner's website were useful and assist in the application of the FOI Act.

Deakin University observed that existing resources are practical and accessible.<sup>54</sup>

WorkSafe noted 'Although the amount of guidance material on the FOI Commissioner's website is currently small, the material that is available assists WorkSafe in performing its FOI functions.'<sup>55</sup>

There was strong support in the submissions for further development of guidelines, fact sheets and case studies by the FOI Commissioner.

For example, WorkSafe stated: 'WorkSafe's view is that it would greatly benefit from further guidance of this nature from the FOI Commissioner.'<sup>56</sup> This would help WorkSafe to reduce its reliance on expensive external legal advice.

Reliance on external legal advice was also highlighted by Deakin University, which noted that complexity of the FOI Act, its broad application and the level of expertise required in considering an FOI application meant training and communication resources are essential.

It stated 'Compliance with the Act often necessitates the University seeking external independent expert legal advice. This is time-consuming and expensive.'<sup>57</sup>

Deakin University specifically called for greater guidance on the application of the Act, the role of the FOI Commissioner and, in particular, the interpretation and application of exemptions.

Subsequent improved understanding of FOI within agencies would improve decision-making at first instance, thereby reducing both the requests for review by the FOI Commissioner and the need to seek external legal advice.<sup>58</sup>

## 2.4.3 Other jurisdictions

### NSW Information and Privacy Commissioner

The IPC produces case notes, review reports, bulletins and regulatory guidance 'to enhance knowledge and increase compliance,'<sup>59</sup> which are published on the IPC website.

<sup>54</sup> Deakin University, Submission No. 13, 25 August 2016, p. 3.

<sup>55</sup> WorkSafe Victoria, Submission No. 19, 26 August 2016, p. 1.

<sup>56</sup> WorkSafe Victoria, Submission No. 19, 26 August 2016, p. 1.

<sup>57</sup> Deakin University, Submission No. 13, 25 August 2016, p. 3.

<sup>58</sup> Deakin University, Submission No. 13, 25 August 2016, p. 3.

<sup>59</sup> NSW Information and Privacy Commissioner, *Annual report 2015-16*, Office of the Information and Privacy Commissioner, Sydney, 2016, p. 5.

A content inventory shows the following communications materials on the IPC website relating to freedom of information:

- 141 reports
- 43 fact sheets
- 8 checklists
- 13 guidelines
- 2 videos.

Resources for public sector agencies are designed to assist agencies in complying with their responsibilities under the *Government Information Public Access Act*, including how the exemptions apply, when to discount processing charges, how to comply with reporting requirements and what constitutes a reasonable search.

Resources for the public detail the type of information that can be accessed, the grounds on which a request may be refused, how to apply for an external review, associated fees and charges and the role of right to information officers.

The IPC also has Twitter, LinkedIn and YouTube accounts.

The IPC conducts reviews of requests for information that have been refused or partially permitted by an agency at the request of the applicant.. Subsequent reports on these requests are made publicly available on the IPC website to enhance compliance and improve understanding of how the GIPA Act is applied.

### **Queensland Office of the Information Commissioner**

The OIC undertakes a range of communications activities, including radio interviews, lectures, presentations and submissions, as well as providing advice to key stakeholder groups including local councils and hospitals and health services.<sup>60</sup>

The OIC has an extensive range of communications materials on its website relating to freedom of information, including:

- annotated legislation
- case studies (x 6)
- practice notes (x 2)
- privacy case notes (x 23)
- audit tools (x 9)
- checklists (x 14)
- guidelines (x 203)
- fact sheets

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60 Queensland Information Commissioner, *Annual report 2016*, Office of the Information Commissioner, Brisbane, 2016, p. 27.



- for the general public (x 48)
- for public service staff (x 203)
- research papers (x 7)
- presentations
- training materials (x 19)
- a news feed.

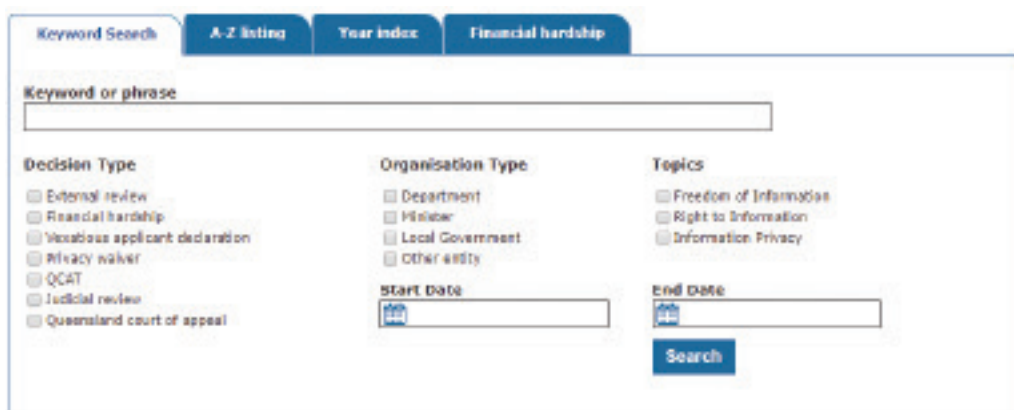
Communications materials designed to assist staff of agencies in best practice application of the legislation cover a range of topics, including how to apply exemptions, the public interest balancing test, the grounds on which a request can be refused and how to provide notice of a decision.

Other communications materials aim to assist members of the public in making a request for information, including what information can be requested, the grounds on which an agency can refuse to disclose information, the right to review of an agency decision and applying for financial hardship.

These materials are updated in accordance with amendments to legislation, as well as in response to enquiries received from agencies and applicants, which help to identify any gaps or areas for improvement.

The OIC has YouTube, Twitter and LinkedIn accounts as a means to increase engagement with public servants and the general public.<sup>61</sup>

The OIC also has an online database of decisions relating to freedom of information and privacy, which can be searched according to topics, decision type and organisation type, as illustrated in the screenshot below.



A screenshot of the Office of the Information Commissioner's decision database

61 Queensland Information Commissioner, *Annual report 2016*, Office of the Information Commissioner, Brisbane, 2016, p. 31.

### Western Australian Office of the Information Commissioner

The Western Australian OIC has the following communications materials on its website relating to freedom of information:

- guidance (x 21)
- bi-monthly newsletter
- frequently asked questions for the general public (x 18)
- frequently asked questions for agencies (x 20).

The Information Commissioner is required under the *Freedom of Information Act* to publish decisions in an accessible format so that the public is adequately informed of the grounds on which decisions are made. Accordingly, there is an OIC database of decisions that can be searched according to the relevant section of the Act, key words, the names of complainants and respondents and by the year.

The OIC has an email alert service for newly published decisions that users can subscribe to and new decisions are reported on in the bi-monthly newsletter.<sup>62</sup>

### Commonwealth Office of the Information Commissioner

The Commonwealth OAIC website has the following FOI resources on its website:

- FOI guide
- FOI fact sheets (x 16)
- FOI agency resources (x 23)
- frequently asked questions for individuals (x 15)
- FOI guidelines (x 15).

The website also has a catalogue of FOI decisions regarding reviews, FOI determinations and vexatious applicant declarations. The database can be searched according to keyword or by year. There is also an annual FOI review decisions summary table.

### New Zealand Ombudsman

The New Zealand Ombudsman has the following materials on its website that relate to official information:

- guides
- official information legislation guides (x 24)
- official information subject guides (x 7)
- template letters
- worksheets

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<sup>62</sup> West Australian Information Commissioner, Decisions, viewed 27 July 2017, <foi.wa.gov.au/en-us/UR100>.

- Ombudsman Quarterly Review
- opinions
- official information (x 39)
- Ombudsman Act (x 19)
- case notes
- official information (x 17)
- official information legislation guides (x 24)
- official information subject guides (x 7)
- resources for agencies
- template letters for OIA and LGOIMA requests (x 11).

These cover a range of themes, including definitions of key terms, how to apply specific provisions within the legislation, exemptions and how they apply, reasons for refusing a request and how to determine charges for applications, amongst others.

The Office of the Ombudsman produces the Ombudsman Quarterly Review newsletter in which the Ombudsman presents an analysis of a particular case in light of the applicable laws and policies. This is designed to improve understanding within agencies of how the law is applied in certain circumstances. An index allows users to filter according to the issues assessed by the Ombudsman.

The Ombudsman’s website also publishes opinions on official information or Ombudsman Act complaints that contain the background of the matter and the Ombudsman’s reasoning for reaching a particular opinion.

As with the Ombudsman Quarterly Review, the opinions are designed to inform agency staff and the public as to how legislation is applied in specific circumstances.

A database allows users to find specific information on the Ombudsman’s website, which improves the accessibility of the guidance materials and increases the likelihood that users will find the information they are seeking.



A screenshot of the New Zealand Ombudsman’s resources database

### 2.4.4 Conclusion

The Committee notes that it is important that decision-makers have access to resources that provide guidance on best practice application and interpretation of the FOI legislation.

The Committee believes that there is a compelling case for publishing review decisions of FOI requests online and developing a searchable database, as exists in New South Wales, Queensland, Western Australia and New Zealand.

This would enable FOI decision-makers to draw on the unique expertise of the OVIC, thereby improving understanding of and compliance with FOI legislation.

**RECOMMENDATION 4:** That the Office of the Victorian Information Commissioner examine the possibility of publishing appropriate decisions of FOI reviews online, in accordance with privacy requirements, and develop a database of these decisions.

The Committee notes that the OVIC has developed several useful communications resources for public service staff to assist in the FOI decision-making process, including sample letter templates, how-to guides, frequently asked questions and a monthly e-bulletin.

The Committee endorses the ongoing development of these resources.

## 2.5 Government agency understanding of Office of the Victorian Information Commissioner

Education, training and communications activities are fundamental to raising awareness of the functions of the OVIC and the processes it enforces, which are, in turn fundamental to fostering compliance by Government agencies.

### 2.5.1 Understanding

Acting Public Access Deputy Commissioner Sally Winton rated government agency understanding of the OVIC's functions as good to very good.<sup>63</sup>

The level of understanding within agencies correlates with the number of FOI requests that an agency receives and the number of applications for review or complaints about an agency that the OVIC receives, Ms Winton observed.

Departments that receive a high number of FOI requests typically have a team of full-time FOI officers, which contributes to a strong understanding within an agency of the functions of the OVIC and the processes it enforces.

<sup>63</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

For example, the seven key agencies that process 85 per cent of all FOI applications have a strong understanding of the Act and their obligations in relation to it.<sup>64</sup>

Agencies that receive few FOI requests tend to have few resources committed to the process and, as such, will typically have a more limited understanding of the OVIC.

## 2.5.2 Compliance

The Acting Public Access Deputy Commissioner noted that the vast majority of agencies subject to the FOI Act cooperate with the OVIC.

There is, however, a small group of agencies who rely on legal advice to challenge the jurisdiction and procedures of the OVIC, taking a very technical approach to their responsibilities under the Act. The OVIC has sought to resolve these challenges through discussions with the agency in question.

The OVIC has once had to prepare a Supreme Court originating motion in response to an agency's refusal to comply with a decision of the Acting Public Access Deputy Commissioner which the agency did not appeal to VCAT. The agency in question released the documents in accordance with the Acting Public Access Deputy Commissioner's decision upon receiving the draft Supreme Court documentation.

This non-compliance is not inadvertent or due to a poor understanding of FOI legislation.

Prior to her appointment as Acting Public Access Deputy Commissioner, Ms Winton, in her capacity as Acting Assistant FOI Commissioner, Ms Winton told a Legal and Social Issues Committee inquiry that:

From time to time some agencies exploit our lack of formal powers to avoid their FOI obligations, and this leads to frustration, delay and sometimes additional expense for applicants. The current legislative arrangements make it challenging for us to ensure that those agencies are acting consistently with the object of the FOI Act.<sup>65</sup>

Then Acting FOI Commissioner Michael Ison observed that changes to Victoria's FOI framework through the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act* would address limitations to the OVIC's ability to foster compliance, stating that:

<sup>64</sup> Simone Martin, Senior Manager of Communications and Education, Office of the Freedom of Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

<sup>65</sup> Sally Winton, Acting Assistant Freedom of Information Commissioner, Standing Committee on Legal and Social Issues, *Inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016*, *Transcript of evidence*, 3 March 2017, p. 3.

the bill [Act] also gives the information commissioner new powers to ensure compliance by agencies – for example, the coercive powers to compel evidence and to compel the production of documents, but also the power to order further quite specific searches for documents – and those are powers that we do not have at the moment.<sup>66</sup>

The power to conduct own-motion investigations would further strengthen the FOI Commissioner’s capacity to enforce compliance, Mr Ison observed.<sup>67</sup>

Another amendment associated with the Act is the power to issue binding professional standards to assist agencies. Mr Ison told the Legal and Social Issues Committee that it ‘places greater responsibility on principal officers of agencies, including duties to comply with any professional standards, and introduces criminal offences for obstructing, resisting or mislead OVIC.’<sup>68</sup>

The power to issue binding professional standards is discussed in more detail in the section of the chapter that examines whether legislation or other measures are necessary to strengthen the educative function of the OVIC.

### 2.5.3 Education and training

The OVIC has successfully developed strong foundations for ongoing expansion of its public sector and education program, particularly in the context of limited resources.

Further development of e-learning modules will considerably amplify the scope for public service staff to participate in the OVIC’s education and training, at their convenience.

Ms Winton described the OVIC’s expansion of e-learning to the Committee, explaining ‘We are developing two further online e-learning modules that will deal with the forthcoming amendments to the Act and 10 of the most commonly used exemptions.’<sup>69</sup>

The Committee believes that public sector education and training activities are integral to improving understanding of the Office, its functions and processes.

<sup>66</sup> Michael Ison, Acting Freedom of Information Commissioner, Standing Committee on Legal and Social Issues, *Inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016, Transcript of evidence*, 3 March 2017, p. 3.

<sup>67</sup> Michael Ison, Acting Freedom of Information Commissioner, Standing Committee on Legal and Social Issues, *Inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016, Transcript of evidence*, 3 March 2017, p. 3.

<sup>68</sup> Michael Ison, Acting Freedom of Information Commissioner, Standing Committee on Legal and Social Issues, *Inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016, Transcript of evidence*, 3 March 2017, p. 3.

<sup>69</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 3.

This is demonstrated in monitoring and evaluation. For example, of the health sector practitioner forum participants who completed the evaluation survey, 97 per cent said they learned new information about the Office and health sector reviews.<sup>70</sup>

The Committee notes that these activities have also strengthened engagement between participating FOI officers and the OVIC.

## 2.5.4 Communications

The OVIC has developed a range of resources to assist public sector staff in implementing FOI legislation, including an e-bulletin, practice notes, fact sheets and guides to applying specific provisions in the legislation.

The Acting Public Access Deputy Commissioner described the range of OVIC communications to the Committee as follows:

We have published an array of agency guidance materials in the last 12 months including monthly e-bulletins for FOI practitioners, practice notes prepared in collaboration with the Victorian Government Solicitor's Office, and fact sheets and training resources providing practitioner-level advice on practical and legislative issues.<sup>71</sup>

Several submissions expressed support for guidance resources of the OVIC. WorkSafe Victoria stated that 'the material that is available assists WorkSafe in performing its FOI functions.'<sup>72</sup> Further:

WorkSafe's view is that it would greatly benefit from further guidance of this nature from the FOI Commissioner. This would reduce the need for external advice on the interpretation and application of the FOI Act in complex cases. It would also reduce the resources expended by agencies in producing their own guidance materials for their FOI officers.<sup>73</sup>

These reinforce information conveyed in education and training activities and further promote ongoing engagement with the OVIC.

## 2.6 Victorian public understanding of the Office of the Victorian Information Commissioner

Acting Public Access Deputy Commissioner Ms Winton believes that community understanding of the Office's functions ranges from modest to well informed, according to the degree of contact with the Office.

<sup>70</sup> Office of the Victorian Information Commissioner, FOI Practitioner Forum: Health Sector – Survey, viewed 3 August 2017, <[foicommissioner.vic.gov.au/wp-content/uploads/2017/07/FOI-Practitioners-Forum-Health-Sector-Collated-results.pdf](http://foicommissioner.vic.gov.au/wp-content/uploads/2017/07/FOI-Practitioners-Forum-Health-Sector-Collated-results.pdf)>.

<sup>71</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 3.

<sup>72</sup> WorkSafe Victoria, Submission No. 19, 26 August 2016, p. 1.

<sup>73</sup> WorkSafe Victoria, Submission No. 19, 26 August 2016, p. 1.



For example, people who are actively engaged with FOI, such as journalists, interest groups and members of political parties are likely to have a well-informed understanding of how the OVIC operates.

Individuals seeking information relating to their health or employment, conversely, are likely to have a modest understanding of the OVIC.

Ms Winton told the Committee:

While we do not have any objective measures of understanding in place at the moment, we do believe that the general community's understanding of FOI ranges from modest to well-informed, and we believe that this is informed by the amount of interaction that they have when they are seeking a review or wish to lodge a complaint in relation to the applications where they are trying to seek information.<sup>74</sup>

WorkSafe Victoria observed that applicants who request information have a reasonable understanding of the roles, powers and processes relating to the work of the OVIC.

'WorkSafe receives approximately 1,000 FOI applications per year and [the] majority of these applications are valid, meaning that applicants have successfully met the basic requirements for making an application.'<sup>75</sup>

Although the original Office of the Freedom of Information Commissioner was established relatively recently, in 2012, the right to information has existed since 1982. FOI was previously under the jurisdiction of the Victorian Ombudsman.

Accordingly, although awareness of the OVIC specifically may be generally described as modest within the Victorian community, the Committee considers it likely that awareness of FOI is greater.

In evidence to the Committee, Ms Winton observed:

In 2016 and 2017 we saw a 40 per cent increase in the number of FOI applications to our office, and we believe that that in itself is a confirmation of the public's awareness of FOI in Victoria and our office's mandate in that space.<sup>76</sup>

### 2.6.1 Education and training

The Acting Public Access Deputy Commissioner has recognised that the OVIC 'does not have the resources to educate the entire Victorian community about the functions of the FOI Commissioner and the activities of the Office.'<sup>77</sup>

<sup>74</sup> Sally Winton, Acting Freedom of Information Commissioner, Office of the Freedom of Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

<sup>75</sup> WorkSafe Victoria, Submission No. 19, 26 August 2016, p. 2.

<sup>76</sup> Sally Winton, Acting Freedom of Information Commissioner, Office of the Freedom of Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 4.

<sup>77</sup> Freedom of Information Commissioner, *Annual report 2015-16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.



Accordingly, education and training efforts to date have focused on ensuring that ‘those members of the public who does [sic] use FOI are aware of the Office and the support and services it can provide to them.’<sup>78</sup>

### 2.6.2 Communications

The Committee notes that the OVIC has implemented communications measures to foster awareness of its functions and processes. This includes a telephone hotline (1300 FOI VIC) and dedicated enquiries, reviews and complaints email addresses.

OVIC information has become more accessible through a redevelopment of its website in March 2017 and the provision of plain English resources. As the supplementary submission of the OVIC observes:

This has resulted in a 34 per cent increase in site visits and a 57 per cent increase in page views, when comparing the number of visits and views for the three months prior to the release of the new site with visits during the first three months of operation of the new site.<sup>79</sup>

## 2.7 Ensuring a robust freedom of information education program

A key factor in addressing the question as to whether there is a need to strengthen the education and training functions through legislation or other means is the establishment of the OVIC, which commenced operations on 1 September 2017.

The following table provides a comparative overview of the educative functions of the FOI Commissioner under original legislation with the functions of the Public Access Deputy Commissioner with the establishment of OVIC. Substantive changes to the functions of the Public Access Deputy Commissioner are highlighted in bold text.

<sup>78</sup> Freedom of Information Commissioner, *Annual report 2015-16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.

<sup>79</sup> Office of the Freedom of Information Commissioner, Submission No. 24, 26 July 2017, p. 2.

**Table 2.1** Comparative overview of functions of FOI Commissioner and the Information Commissioner

Freedom of Information Act 1982	Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act
<i>Section 6C</i>	<i>Section 6I(1)</i>
1. The Freedom of Information Commissioner has the following functions –	The Information Commissioner has the following functions –
(a) to promote understanding and acceptance by agencies of this Act and the object of this Act;	...
...	(b) to develop and review professional standards in accordance with Part 1B.
(d) to provide advice, education and guidance to agencies in relation to compliance with any professional standards prescribed by the regulations;	<i>Section 6I(2)</i>
(e) to monitor compliance by agencies with those professional standards;	The Information Commissioner and the Public Access Deputy Commissioner each have the following functions –
(f) to provide advice, education and guidance to agencies and the public in relation to the Commissioner's functions;	(a) to promote understanding and acceptance by agencies <b>and the public of this Act</b> and the object of this Act;
...	(b) to provide advice, education and guidance to agencies <b>and the public</b> in relation to compliance with the professional standards;
	(c) to monitor compliance with professional standards
	...
	(f) to provide advice, education and guidance to agencies and the public in relation to the Information Commissioner's functions. <sup>7</sup>

As the above table demonstrates, the FOI Commissioner had specific statutory educative functions, including promoting understanding and acceptance by agencies of the Act and its object.<sup>80</sup>

This function is broadened by legislation establishing the OVIC, which provides for the promotion of understanding and acceptance of the Act by agencies as well as the public.<sup>81</sup>

The FOI Commissioner is also required by legislation to provide advice, education and guidance to agencies and the public in relation to the Commissioner's functions.<sup>82</sup>

The Act also requires that the Commissioner provide advice to agencies in relation to compliance with professional standards prescribed by the regulations.<sup>83</sup>

As existing professional standards issued in 2014 were not prescribed by regulation, they do not attract this responsibility.

<sup>80</sup> *Freedom of Information Act 1982* (Vic) section 6C(1)(a).

<sup>81</sup> *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017* (Vic) section 6I(2)(a).

<sup>82</sup> *Freedom of Information Act 1982* (Vic) section 6C(1)(f).

<sup>83</sup> *Freedom of Information Act 1982* (Vic) section 6C(1)(e).

Among the changes associated with the establishment of the OVIC is a statutory function to develop and review professional standards, which will be binding.

The educative function in relation to the professional standards is also broadened for OVIC to include providing advice, education and guidance to the public, as well as to agencies, in contrast to the former legislation which requires that such advice be provided to agencies only.

The former legislation imposes an obligation to monitor compliance by agencies with professional standards that are prescribed by regulations.

In assessing whether education and training by the OVIC needs to be strengthened through legislation or other means, Acting Public Access Deputy Commissioner Winton told the Committee:

we do anticipate that the forthcoming amendments to the act, in particular those relating to binding professional standards and the expanded educative remit of the Information Commissioner, will strengthen the educative role of OVIC into the future.<sup>84</sup>

## 2.7.1 Conclusion

Evidence presented to the Committee indicates that the Acting Public Access Deputy Commissioner has the necessary resources and scope within current legislation to deliver a program that strengthens the application of FOI legislation in Victoria.

Further, the Committee accepts that communication and awareness activities associated with the establishment of the OVIC will contribute to a greater understanding of freedom of information in the public sector and the community more broadly.

Several submissions expressed concern about the changing freedom of information framework in Victoria and the difficulty staying abreast of these developments.

South Gippsland Shire Council, for example, stated:

Our experience is that consultation and communication about either regulatory or impending legislative change is not always timely or consistent and sometimes appears to lack understanding of the resources available to rural and regional councils.<sup>85</sup>

The Committee believes that the communications strategy for the establishment of OVIC is important to clarify its functions and the processes it enforces.

<sup>84</sup> Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 5.

<sup>85</sup> South Gippsland Shire Council, Submission No. 2, 22 August 2016, p. 2.

In addition, the Committee acknowledges that associated amendments will clarify the functions of the OVIC and provide additional scope for the OVIC to monitor and enforce compliance.

The Committee notes that the new scope for non-compliance with professional standards will likely act as an incentive for agencies to improve their understanding of FOI and the functions of OVIC.

Accordingly, the Committee considers that there is no need for further strengthening the education and training functions of the OVIC in relation to FOI.

# 3

## Education, training and communications initiatives of the Victorian Ombudsman

### 3.1 Background

Of the three oversight agencies under the Committee's responsibility, the Ombudsman has the greatest engagement with the Victorian public.

In its submission to the Committee's Inquiry, the Ombudsman highlighted the need for a statutory education function to be included in the *Ombudsman Act 1973*, on the basis that a statutory requirement will ensure activities are adequately funded and supported.

While there is currently no legislated education function, the Ombudsman's office undertakes a number of education and training programs. The various initiatives undertaken as they relate to the Inquiry terms of reference, are detailed in this chapter.

### 3.2 Training

#### 3.2.1 Victorian Ombudsman

At the public hearing, the Victorian Ombudsman noted advice she received from the Victorian Public Sector Commission that there was little training available for frontline public servants, particularly in core areas of Ombudsman work of complaints handling and managing conflicts of interest.<sup>86</sup>

To bridge this gap, the Ombudsman established a pilot public sector education program to build the capacity of public sector agencies and to prevent issues from escalating to the point of investigation.<sup>87</sup>

In 2016-17, 3 masterclasses and 13 workshops on good complaint handling and dealing with conflicts of interest were delivered to a total of 519 public service staff.

Good complaint handling focuses on developing effective skills and appropriate strategies for handling complaints and provides participants with a step-by-step model to apply to complaints.

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<sup>86</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 9.

<sup>87</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 3.

The dealing with conflicts of interest workshop helps participants to identify and deal with conflicts of interest and teaches good practice approaches to recording and managing them.

In assessing the value of education and training to addressing systemic issues within public administration in Victoria, the Ombudsman observed the following:

... conflict of interest is a perennial issue for my office. A succession of Ombudsman reports over many years has highlighted the importance of managing conflicts, yet the cases continue. The education program is another possibly more effective way to improve the capacity of agencies to deal with this important issue.<sup>88</sup>

Workshops are evaluated by participants at the end of each workshop through surveys and feedback.

The following table shows the results for the 2016-17 pilot program workshops.

Programs	KPI > 80%		
	Useful content	Engaging facilitators	Overall satisfaction
Good complaint handling	86%	99%	89%
Dealing with conflicts of interest	96%	100%	98%

The Ombudsman's Office is currently developing a workshop on responding to challenging behaviours which will be offered from 2017-18.<sup>89</sup>

Christina DiPierdomenico, Head of the Executive Office, explained the evaluation process of education and training programs to the Committee.

At the end of each workshop we give people a feedback form to fill out. It is absolutely voluntary for them to fill it out, and we have had an almost 100 per cent completion rate around that. In the form that we have given you, you will see the KPIs that we actually measure against. We ask three key questions at the time: 'Was it useful content?', 'Were the facilitators engaging?' and 'Overall were you satisfied with the course?'. We also ask them some free text questions around how we can improve our training but also what they have learned and what they are going to implement back in their workplace.<sup>90</sup>

Workshops are provided on a cost-recovery basis, ranging from \$385 to \$550 per person.

The Ombudsman has previously facilitated a Diploma of Government (Investigations), since 2012, however, at the public hearing Ms Glass indicated that it would not be continued due to the costs associated with developing a high-quality offering and in light of limitations on resources.

<sup>88</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 9.

<sup>89</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 9.

<sup>90</sup> Christina DiPierdomenico, Strategic Advisor and Manager, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 12.

## 3.2.2 Other jurisdictions

### New South Wales Ombudsman

The New South Wales Office of the Ombudsman (NSW Ombudsman) was established in 1974.

It is responsible for investigating complaints about the conduct of government agencies, as well as protected disclosure complaints.

The NSW Ombudsman does not have an overarching educative function, however, it is required to provide education and training about reporting wrongdoing in the public sector and about the standards for delivery of community services.

The *Public Interest Disclosures Act 1994 (NSW)* requires the NSW Ombudsman to provide education and training to public officials, public authorities and investigating authorities about reporting wrongdoing in the public sector.

Similarly, the Ombudsman is required to provide education and training about the standards for delivery of community services to service providers, clients, carers and the community in accordance with the *Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)*.<sup>91</sup>

### Training

The NSW Ombudsman provides community education and training to public service staff and the broader community.

In 2015-16, the NSW Ombudsman delivered 307 training workshops and 138 community education activities to a total of 6,317 participants.

The Ombudsman also delivered 55 workshops to ageing, disability and home care staff and tailored training sessions on handling serious incidents to 12 non-government disability service providers.

<sup>91</sup> *Community Services (Complaints, Reviews and Monitoring) Act 1993* section 11(1); New South Wales Ombudsman, Submission No. 6, 26 August 2016, p. 1.

Matters	Workshops	Participants
Complaint-handling and negotiation skills	115	2,290
Revised Australian Standard for complaint management	4	54
Public interest disclosures	59	1,494
Community and disability services	70	1,364
Access and equity	15	270
Workplace child protection	12	237
Investigation skills	15	251
Supporting young people to make complaints	12	242
Other (e.g. international delegation)	5	115
<b>Total</b>	<b>307</b>	<b>6,317</b>

Source: NSW Ombudsman, Annual report 2015-16, Office of the Ombudsman, Sydney, 2016. p. 134.

Of the participants who completed evaluations for in-house training:

- 98.2 per cent rated it as excellent or good
- 98 per cent rated the trainers as excellent or good
- 97.1 per cent would recommend the training to others
- 97.7 per cent strongly agreed or agreed that they could implement what they had learnt in training in their workplace.<sup>92</sup>

The workshops offered by the Ombudsman, however, go beyond what is required by legislation. They include:

- Community and disability services training
- Aboriginal cultural appreciation
- Disability awareness training
- Supporting young people to make complaints and advocate for systems change
- Initial and early response to abuse or neglect in disability services
- Frontline skills for complaint handling – community services
- Implementing a quality complaints management system – disability sector
- Handling serious incidents in the disability sector
- Reviewable disability deaths
- Speak up
- The rights stuff – tips for solving problems and making complaints.

<sup>92</sup> New South Wales Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Sydney, 2016, p. 132.



Complaint handling and negotiation skills training:

- Complaint handling for frontline staff
- Implementing a quality complaints management system
- Managing unreasonable complainant conduct
- The art of negotiation
- Revised Australian/New Zealand standard: Guidelines for complaint management in organisations.

Employment-related child protection training:

- Handling serious child protection allegations against employees
- Notifying and reporting allegations of workplace child abuse
- Responding to child protection allegations against employees.
- Investigation training:
- Administrative law in the public sector
- Investigating misconduct in the public sector.

Public interest disclosures training:

- Public interest disclosures general awareness information sessions
- Public interest disclosures management training.

In his submission to the Inquiry, Acting NSW Ombudsman John McMillan observed:

Many of our training programs and information products address common issues that we see in our complaint handling and oversight work. In this way, we aim to improve administrative conduct, facilitate fair decision-making, and ensure high standards of service delivery in the government and community sectors.<sup>93</sup>

The NSW Ombudsman also provides tailored workshops to public agencies as requested.

The Acting Ombudsman stated that although his Office receives some funding from government for education activities, most training is delivered on a fee-for-service basis.<sup>94</sup>

Education and training activities are a source of revenue for the NSW Ombudsman. In 2014-15, it generated \$1.142 million in revenue and \$1.081 million in 2015-16. The Acting Ombudsman observed that ‘The revenue we generate from training has helped us to manage ongoing budget pressures, supporting our core work as well as enabling us to do more proactive project work.’<sup>95</sup>

<sup>93</sup> New South Wales Ombudsman, Submission No. 6, 26 August 2016, p. 1.

<sup>94</sup> New South Wales Ombudsman, Submission No. 6, 26 August 2016, p. 2.

<sup>95</sup> New South Wales Ombudsman, Submission No. 6, 26 August 2016, p. 3.

### Queensland Ombudsman

The Office of the Queensland Ombudsman was established in 1974 as the Parliamentary Commissioner for Administrative Investigations.

The functions of the Office broadened from investigating complaints about government agencies to include assisting agencies to improve their decision-making and complaint handling with the passage of the *Ombudsman Act 2001 (Qld)*.<sup>96</sup>

Section 12(d) of the Act states that the Ombudsman is required to provide advice, training, information or other help to agencies, in particular cases, about ways of improving the quality of administrative practices and procedures.

The Queensland Ombudsman is also responsible for public interest disclosures.

#### Training

In 2015-16, the Office delivered 162 training sessions to 2,616 public sector staff, with 60 sessions delivered in regional Queensland.<sup>97</sup> Of these participants, 95.4 per cent reported that the training would assist their decision-making.<sup>98</sup>

The Ombudsman provides training on good decision-making, effective complaint management, managing unreasonable conduct and public sector ethics.

### Western Australian Ombudsman

The Western Australian Ombudsman was established by the *Parliamentary Commissioner Act 1971 (WA)*.

The Western Australian Ombudsman has no statutory responsibility to raise awareness about the functions of the office the public or deliver training to public sector staff.

As with the New South Wales and Queensland Ombudsmen, the Western Australian Ombudsman is responsible for public interest disclosures in accordance with the *Public Interest Disclosure Act 2003 (WA)*.

#### Training

The Ombudsman delivers workshops to strengthen public service governance and decision-making. These are tailored to each organisation or sector. No information regarding the number of workshops or participants is publicly available.

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96 Queensland Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Brisbane, 2016, p. 3.

97 Queensland Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Brisbane, 2016, p. 7.

98 Queensland Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Brisbane, 2016, p. 11.

### New Zealand Ombudsman

The New Zealand Ombudsman delivers a training program to improve public service decision-making despite no statutory educative requirement to do so.<sup>99</sup>

The Ombudsman delivered 38 workshops and training seminars in 2015-16 on the functions of the Ombudsman and official information legislation,<sup>100</sup> up from 20 the previous year.<sup>101</sup> Of the participants who received training, 99 per cent reported that it would assist them in their work.<sup>102</sup>

The New Zealand Ombudsman has currently not developed an e-learning module.

### 3.2.3 Submissions

Few submissions addressed the education and training initiatives of the Ombudsman.

Deakin University noted that the training sessions and forums tailored to the university sector are useful and City of Melbourne staff similarly found training and workshop sessions with the Ombudsman beneficial.

## 3.3 Community engagement

### Victorian Ombudsman

The Ombudsman has undertaken community outreach in rural and regional Victoria, engaging with peak community sector organisations, including financial counsellors and disability and child advocates to increase awareness of Ombudsman services among key agencies and their clients.

In 2015-16, the Ombudsman delivered 33 of these sessions, as well as 10 presentations to peak bodies in regional Victoria and 5 presentations to schools and university students.

The 2014-17 communications strategy identifies the following three target groups as the focus of engagement:

- people in rural and regional Victoria
- people with disability
- Aboriginal and Torres Strait Islander people.

The Ombudsman has accounts on Twitter and Facebook.

<sup>99</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 32.

<sup>100</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 32.

<sup>101</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 32.

<sup>102</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 32.

### 3.3.1 Other jurisdictions

#### New South Wales Ombudsman

The NSW Ombudsman promotes the Office and its services at various community events, conferences and forums.

In 2015-16, the NSW Ombudsman undertook 51 regional and remote community visits in 2015-16, as well as 25 visits to 22 correctional centres and 10 visits to juvenile justice centres.<sup>103</sup>

Several events were held to address sector specific issues. These include the annual university complaint handlers forum, which has been each year since 2007, and a forum on reportable conduct which had over 800 attendees from across the education, out-of-home care, disability, early childhood, religious, sporting and recreational sectors.

#### Queensland Ombudsman

The Queensland Ombudsman undertakes various awareness raising activities to empower people to resolve complaints with public sector agencies, including visiting correctional centres, attending community meetings and delivering presentations.

The Regional Services Program aims to improve awareness of the Office and access to its services for communities in regional and remote areas.

#### New Zealand Ombudsman

The New Zealand Ombudsman delivered 51 speeches and presentations in 2015-16 to community groups, public servants, universities, unions, media and disability organisations in 2015-16.<sup>104</sup>

### 3.3.2 Submissions

The Committee did not receive evidence from any agencies relating to community education by the Ombudsman.

## 3.4 Communications

### 3.4.1 Victorian Ombudsman

The Victorian Ombudsman publishes communications materials on its website to assist public service staff in meeting their responsibilities and to inform the broader community about their rights and how to access services and supports.

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<sup>103</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 7.

<sup>104</sup> New Zealand Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Wellington, 2016, p. 7

The Ombudsman’s website includes the following materials:

- fact sheets (x 20)
- guidelines (x 10)
- brochures (x 2)
- a frequently asked questions page
- presentations (x 33).

Materials designed for public service staff aim to assist in meeting legal obligations, including:

- managing complaints involving human rights
- managing complaints for public sector agencies
- conducting internal investigations into misconduct
- local council guide to managing complaints
- complaint handling at universities.

Materials designed to inform the public of their rights and legal recourse through the Office of the Ombudsman include cover a range of topics, including:

- Tips for making a complaint to public sector bodies
- Prisoner complaints
- Council rates and charges
- Infringements
- Transport Accident Commission.

### 3.4.2 Other jurisdictions

#### New South Wales Ombudsman

A content inventory of the New South Wales Ombudsman website shows the following published materials:

- guidelines (x 31)
- fact sheets (x 102)
- two monthly newsletters (Disability e-News and the Public Interest Disclosure e-News)
- brochures (x 9)
- posters (x 3).

There is a comprehensive range of resources for public sector agencies to assist staff in complying with their legal responsibilities, with multiple resources on child protection, community and disability services, public interest disclosures, state and local government and disability reportable incidents.

The NSW Ombudsman has also produced a *Managing unreasonable complainant conduct: A manual for frontline staff, supervisors and senior managers*, which details how to prevent and respond to unreasonable complaints, as well as responsibilities of supervisors and senior managers.

A link to this manual is provided on the Victorian Ombudsman's website.

### Queensland Ombudsman

Information on the Queensland Ombudsman website is published directly onto web pages, rather than attached for download as other oversight agencies do.

Detailed information on complaints management, good decision-making, managing unreasonable complainant conduct and public sector ethics is provided on the website.

The Queensland Ombudsman produces advisories several times a year that communicate lessons learned from recent investigations and provide insight into systemic issues on the following matters:

- making good decisions
- effective communication
- managing complaints
- improving policy and procedure.

These advisories demonstrate how the legislation is applied and provide guidance to public service staff on how to meet their legal responsibilities.

The Queensland Ombudsman also produces targeted newsletters for specific stakeholders, including legal practitioners, decision-makers in local and state government and the broader community.

### New Zealand Ombudsman

The New Zealand Ombudsman has an extensive range of communications materials available on its website. Those relating to public administration (excluding official information which are detailed in Chapter 2), include:

- guides
- good administration guides (x 6)
- disability rights guides (x 5)
- protected disclosure guides (x 2)
- template letters
- worksheets
- Ombudsman Quarterly Review
- case notes

- Ombudsman Act (x 5)
- resources for agencies
- worksheets (x 2).

The New Zealand Ombudsman's database can be searched for materials on particular topics within the Ombudsman's jurisdiction. Further information on the database can be found in Chapter 2.

### 3.4.3 Submissions

Inquiry submissions were positive in their assessment of Victorian Ombudsman communication, particularly the website.

The South Gippsland Shire Council stated that the website is engaging and user-friendly.<sup>105</sup>

Loddon Shire Council suggested that the Victorian Ombudsman's website should be used as a benchmark for online communication by the FOI Commissioner and the Victorian Inspectorate.<sup>106</sup>

Fact sheets, best practice guides and statistics published on the Ombudsman website were very useful, practical and accessible resources, according to Deakin University.<sup>107</sup>

South Gippsland Shire Council stated that people it directed to the Ombudsman's website 'have generally found it to be effective and the information easily understood.'<sup>108</sup>

### 3.4.4 Conclusion

The Committee found an interest within agencies for greater guidance from the Ombudsman in the form of education and training activities, as well as more communications resources.

The Committee believes that the Ombudsman should be empowered to expand delivery of education and training to the public sector specifically and the broader community as a whole.

Expansion of the education program should be supported by the development of more detailed communications materials to assist agency staff in upholding their legal obligations.

<sup>105</sup> South Gippsland Shire Council, Submission No. 2, 22 August 2016, p. 2.

<sup>106</sup> Loddon Shire Council, Submission No. 11, 25 August 2016, p. 3.

<sup>107</sup> Deakin University, Submission No. 13, 25 August 2016, p. 4.

<sup>108</sup> South Gippsland Shire Council, Submission No. 2, 22 August 2016, p. 2.

The NSW Ombudsman's comprehensive range of resources represents a strong benchmark against which the Victorian Ombudsman may use to work towards/as a basis for development of further resources.

**RECOMMENDATION 5:** That the Victorian Government support the Ombudsman's recommendation for a statutory education and training function to be included in the *Ombudsman Act 1973* and that a legislated function includes key deliverables and targets.

**RECOMMENDATION 6:** That the Victorian Ombudsman develop sector-specific guidelines to assist agencies to meet their legal obligations.

**RECOMMENDATION 7:** That the Victorian Ombudsman examine the option of producing a monthly e-bulletin to keep public service staff abreast of emerging trends and issues in public administration.

### 3.5 Government agency understanding of the Victorian Ombudsman

According to Victorian Ombudsman Deborah Glass, public service staff have a reasonably good understanding of the functions and processes of the Office of the Ombudsman.<sup>109</sup>

Ms Glass observed that this is primarily due to the history and profile of the Office.<sup>110</sup>

In assessing levels of compliance within government agencies, the Ombudsman's submission to the Inquiry notes that there were 54 formal recommendations made by the Ombudsman's office in 2015-16, the majority of which were accepted by the relevant agencies.<sup>111</sup>

Submissions by government agencies supported this view, however, these were unanimously in relation to their own compliance.

The Ombudsman also noted that there are always opportunities to improve public administration through increased education, which contributes to improved decision-making within the public sector and helps to prevent issues escalating to the point of investigation by the Ombudsman.

<sup>109</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 5.

<sup>110</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 5.

<sup>111</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 5.



## 3.6 Victorian public understanding of the Victorian Ombudsman

### 3.6.1 Inquiry evidence

Submissions to the Inquiry indicated that the Victorian Ombudsman was likely the most widely known agency amongst the Victorian public, followed by the OFOIC (now OVIC) and then the VI.

Maroondah City Council observed ‘clearly the Ombudsman is the most well-known of the three oversight agencies. Particularly, due to the fact that the public have possibly the most dealings of the three with the Ombudsman.’<sup>112</sup>

Nonetheless, the Ombudsman expressed the view to the Committee that public understanding of her role needs to be improved, as the following exchange from the public hearing indicates:

Mr Purcell: How well do you believe that your role and the role of your office are understood by the public?

Ms Glass: Not particularly well. I think the public sector is different; I think the public sector has a pretty good understanding of the role and functions of my office. I do not think that is the case with the public at large.<sup>113</sup>

Poor public understanding of the role of the Ombudsman is indicated by the number of complaints the Office receives and the proportion of these complaints that are outside the Ombudsman’s jurisdiction, as the Ombudsman explained to the Committee:

... I get some 40 000 complaints a year to my office. First of all I suspect that is a fraction of the number of grievances that the public has in relation to their dealings with the public sector, bearing in mind this includes, for example, all local councils, but I think what is more telling is that many of the contacts to my office are not in fact even relevant to the Ombudsman’s powers and functions. People will complain to my office about all kinds of things outside my jurisdiction, including their contacts with industry, their contacts with local businesses, so there is I think an important piece of work to be done, which I would be very keen to undertake, to provide better education and training to the Victorian public.<sup>114</sup>

### 3.6.2 Survey of public understanding of the Ombudsman’s office

The level of public awareness of the functions of the Victorian Ombudsman were examined by independent research commissioned by the Office and detailed in a report published in February 2015.

<sup>112</sup> Maroondah City Council, Submission No. 8, 23 August 2016, p. 2.

<sup>113</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 10.

<sup>114</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 9.

The following is an overview of the key findings of the report.

Respondents were asked where they would take a complaint about a Victorian Government department or agency or local council in Victoria, with 39 per cent mentioning the Ombudsman unprompted.<sup>115</sup>

When asked what the role of the Ombudsman is, 23 per cent of respondents said it was to investigate/mediate/resolve disputes/complaints/concerns with government/departments/local councils and a further 26 per cent said the Ombudsman's role was to hear/investigate/mediate and help resolve complaints about organisations.<sup>116</sup>

Younger people were more likely to say that they had not heard of the Victorian Ombudsman, with 52 per cent of those aged 18-24 saying they had not heard anything about the Ombudsman compared with 15 per cent of those aged 65 and over.<sup>117</sup>

Further, those in older age groups were more likely to say that they would take up a complaint with the Ombudsman.<sup>118</sup>

At the public hearing, the Ombudsman indicated that the Office would follow up on the 2015 survey.

Mr Purcell: I see that the office undertook a survey in 2015 of 1000 people et cetera, and it resulted in that younger people were less likely to know of the office. Has there been any work done since that for similar surveys?

Ms Glass: We have not yet followed that up. I intend to do so. The intention was always to do that in probably three, four year cycles. So yes, that is something that will be planned but has not yet been undertaken. What that survey has done has given us a good benchmark, however, on which to measure.<sup>119</sup>

In evidence to the Committee, the Ombudsman highlighted certain trends in relation to those that do and do not know about her functions, observing that:

Ensuring that the community is aware of the Ombudsman's service is a challenge, particularly among disadvantaged groups including people facing homelessness or those with a disability, young people and culturally and linguistically diverse communities.<sup>120</sup>

115 Victorian Ombudsman (2015) *Survey of 1000 Victorians: Research highlights*, Office of the Ombudsman, Melbourne, 2015, p. 2.

116 Victorian Ombudsman (2015) *Survey of 1000 Victorians: Research highlights*, Office of the Ombudsman, Melbourne, 2015, p. 2.

117 Victorian Ombudsman (2015) *Survey of 1000 Victorians: Research highlights*, Office of the Ombudsman, Melbourne, 2015, p. 2.

118 Victorian Ombudsman (2015) *Survey of 1000 Victorians: Research highlights*, Office of the Ombudsman, Melbourne, 2015, p. 2.

119 Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 11.

120 Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 2.

This is problematic given the links between vulnerability and human rights breaches, as the Ombudsman's 2015 Annual Report notes:

People most in need of help, particularly those who are vulnerable because of health, age, disability or language, are often the least likely to know about or contact us. We want this to change.<sup>121</sup>

### 3.6.3 Conclusion

Community education about the Victorian Ombudsman's functions and the processes it enforces is integral to the Office's ability to foster accountability and improve public administration in Victoria.

In light of the vulnerability of disadvantaged groups, the Committee believes it is critical that increased efforts are made to build awareness of the functions of the Ombudsman, and the support that can be offered by the Office, within these sectors of the community.

The Ombudsman's 2014-17 communications strategy identifies engaging with people in rural and regional Victoria, people with a disability and Aboriginal and Torres Strait Islander people as a priority.

The Committee supports this focus and suggests that it be maintained in ongoing communications strategies, including greater community engagement and awareness-raising activities.

The Committee also believes that monitoring the level of community understanding of the Office of the Ombudsman is important to help shape ongoing community engagement activities.

**RECOMMENDATION 8:** That the Victorian Ombudsman examine how best to improve engagement with young people and disadvantaged groups through community education and awareness-raising activities.

**RECOMMENDATION 9:** That the Victorian Ombudsman monitor the level of public understanding of the Victorian Ombudsman's Office by planning a follow-up survey to the 2015 survey of public understanding.

<sup>121</sup> Victorian Ombudsman, *Annual report 2015*, Office of the Ombudsman, Melbourne, 2015, p. 48.

### 3.7 Ensuring a robust Victorian Ombudsman education program

The Ombudsman sees education and training as integral to improving public administration in Victoria. Without a statutory requirement to deliver such activities, however, the Ombudsman's education initiatives have historically been limited and mostly ad hoc, in response to invitations from the local and state government sector.<sup>122</sup>

This is predominantly due to a lack of resources and competing priorities.

In evidence to the Committee, the Ombudsman observed that 'While courses are offered on a fee-for-service basis, some investment is inevitably required to develop the courses, which has added somewhat to the strain on my existing resources.'<sup>123</sup>

She further noted that activities with no statutory basis do not receive the same priority or funding as statutory duties.<sup>124</sup>

Nonetheless, the Ombudsman is well positioned to deliver more comprehensive education and training if afforded the necessary resources to do so.

The considerable number of approaches to the Ombudsman from the public, as well as enquiries and investigations undertaken each year, form a significant evidence base of common administrative failings.

The Ombudsman submitted that a statutory educative function would enable the Ombudsman to work comprehensively with agencies to address and prevent such administrative failings.<sup>125</sup>

A statutory educative function would also enable the Ombudsman to provide education and training to the general public to address the poor levels of understanding of the Office's functions and processes.

In the 2015 Annual Report, the Ombudsman observed:

What has become clear, however, is that many Victorians are not aware of the Ombudsman's services, and do not know how to access them or what to expect if they do. This is particularly apparent among disadvantaged groups – all too often, those with the greatest need for Ombudsman services are the least likely to use them.<sup>126</sup>

<sup>122</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 9.

<sup>123</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 9.

<sup>124</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 7.

<sup>125</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 5.

<sup>126</sup> Victorian Ombudsman, *Annual report 2015*, Office of the Ombudsman, Melbourne, 2015, p. 4.

It has also been noted that a significant number of contacts received by the Office are not relevant to the Ombudsman's powers and functions. Accordingly, the Ombudsman stated, 'there is I think an important piece of work to done, which I would be very keen to undertake, to provide better education and training to the Victorian public.'<sup>127</sup>

In assessing the role of education to achieving the objectives of the Ombudsman's Act, Ms Glass observed:

To remain relevant to the community and the public sector, a modern Ombudsman must be able to respond to individual complaints from the public and take a preventative approach to address problems in public administration systematically through capacity building and education.<sup>128</sup>

## 3.8 Discussion Paper

The question of a statutory educative function for the Ombudsman was previously examined by the Department of Premier and Cabinet (DP&C), which undertook a community consultation in March 2016.

The discussion paper asked the following questions:

- What kinds of education and training should the Ombudsman provide?
- How, and to whom, should this education be delivered?
- Should this function be included in law?<sup>129</sup>

The following is an overview of the responses to the discussion paper.

### 3.8.1 Victorian Ombudsman

The Ombudsman's response to the discussion paper largely reflects the issues raised in her submission to the Inquiry. This includes the potential value of education to strengthening public administration in Victoria and the significance of providing for a statutory function in the context of limited resources and competing priorities.

In assessing the value of education, the Ombudsman observed 'encouraging Victorians to make appropriate complaints so they can both resolve their own concerns and contribute to improvements to the system is also important.'<sup>130</sup>

<sup>127</sup> Deborah Glass, Victorian Ombudsman, Office of the Ombudsman, *Transcript of evidence*, Melbourne, 7 August 2017, p. 10.

<sup>128</sup> Victorian Ombudsman, Submission No. 9, 25 August 2016, p. 6.

<sup>129</sup> Department of Premier & Cabinet (2016) *The Victorian Ombudsman: Discussion Paper*, Melbourne, 2016, p. 14.

<sup>130</sup> Victorian Ombudsman (2016) 'Response of the Victorian Ombudsman to the discussion paper of March 2016', p8.

The Ombudsman also stated that:

There are always more complaints and investigations than an office can investigate regardless of the resources available. If there is no statutory basis for my office to undertake education, it is only rational that those activities will not receive the same priority as my statutory duty to investigate complaints.<sup>131</sup>

### 3.8.2 Law Institute of Victoria

The Law Institute of Victoria observed in its submission that:

A legislated education function focusing on, for example, complaint handling, making complaints and common administrative issues would complement the Ombudsman's overall role of investigating complaints and upholding the accountability of the public sector.<sup>132</sup>

A legislated function, the LIV submitted, would enable the Ombudsman to commit necessary resources to education and should be accompanied by adequate funding for such activities.<sup>133</sup>

The LIV made several qualifications as to this support for a legislated function. Firstly, it stated that the Ombudsman should not be in a position of reviewing her own standards.<sup>134</sup> A focus on broad educational strategies would minimise this risk.<sup>135</sup>

Secondly, the LIV noted that there should not be unnecessary overlap between the Ombudsman and the Victorian Public Sector Commissioner (VPS Commissioner), who also has educative functions in relation to the public sector.

The submission stated that 'potential overlap could be addressed by the Ombudsman focusing on her areas of expertise and through information sharing with the [VPS] Commissioner.'<sup>136</sup>

### 3.8.3 Deakin University

A legislated educative function for the Ombudsman was also supported by Deakin University, which noted:

<sup>131</sup> Victorian Ombudsman (2016) 'Response of the Victorian Ombudsman to the discussion paper of March 2016', p8.

<sup>132</sup> Law Institute of Victoria (2016) *Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General: Submission*, Melbourne, 2016, p. 17.

<sup>133</sup> Law Institute of Victoria (2016) *Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General: Submission*, Melbourne, 2016, p. 18.

<sup>134</sup> Law Institute of Victoria (2016) *Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General: Submission*, Melbourne, 2016, p. 18.

<sup>135</sup> Law Institute of Victoria (2016) *Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General: Submission*, Melbourne, 2016, p. 18.

<sup>136</sup> Law Institute of Victoria (2016) *Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General: Submission*, Melbourne, 2016, p. 18.

Deakin University supports the formal extension of the Ombudsman's role to education both the public sector and the community, with a view to improving the standards and conduct of public sector agencies through the provision of advice, education and information and possibly training.<sup>137</sup>

Deakin University further noted that 'it is helpful for the Ombudsman to continue to foster awareness of the Act and required compliance and best practice.'<sup>138</sup>

### 3.8.4 Victorian Council of Social Service

The Victorian Council of Social Service (VCOSS) submitted that a general lack of community awareness and understanding of the Ombudsman's role is exacerbated by limited resources and the lack of legislated mandate to deliver education and training to the public sector, non-government entities and the wider community.<sup>139</sup>

It noted that similar entities such as the Victorian Equal Opportunity and Human Rights Commission have a legislated mandate to deliver public education and that such a statutory function could help the Ombudsman to address the gap in community awareness, particularly among those who are vulnerable.<sup>140</sup>

Accordingly, VCOSS recommended that the following responsibilities and functions be conferred on the Ombudsman, including the ability to:

- provide community education and engagement activities that support improved understanding of, and access to complaints mechanisms especially by vulnerable and disadvantaged communities
- deliver training and education for (expanded) public authorities that supports rights-compatible administrative and complaint handling good practice
- provide public interest information independently of formal enquiry, investigative and own-motion functions
- aggregate and annually report on complaint themes and trends across the Victorian complaints system, and recommend system-wide actions to address them.<sup>141</sup>

The responses to the DP&C discussion paper reflect the general support expressed in submissions to this Inquiry for the provision of expanded education and training activities by the Victorian Ombudsman, as well as more guidance materials.

<sup>137</sup> Deakin University (2016) *Victorian Ombudsman Submission*, Melbourne, 2016, p. 2.

<sup>138</sup> Deakin University (2016) *Victorian Ombudsman Submission*, Melbourne, 2016, p. 2.

<sup>139</sup> Victorian Council of Social Service (2016) *A more accountable Victoria: VCOSS response to discussion papers on VAGO and the Victorian Ombudsman*, Melbourne, 2016, pp. 20-21.

<sup>140</sup> Victorian Council of Social Service (2016) *A more accountable Victoria: VCOSS response to discussion papers on VAGO and the Victorian Ombudsman*, Melbourne, 2016, p. 22.

<sup>141</sup> Victorian Council of Social Service (2016) *A more accountable Victoria: VCOSS response to discussion papers on VAGO and the Victorian Ombudsman*, Melbourne, 2016, p. 21.

### 3.9 Conclusion

The Committee accepts that there is significant scope for the Ombudsman to improve public administration in Victoria through education and training targeting government agencies and the public.

The Committee believes increased community education is integral to improving awareness of the functions of the Ombudsman and equipping people with the knowledge they need to exercise their rights, where needed, .

The experience of the NSW Ombudsman suggests there is scope for the Victorian Ombudsman to deliver education and training activities that generate revenue once a full suite of programs is developed.

However, the Committee accepts that investment is necessary to fully develop an education program tailored to the training needs of agencies and the non-government sector, as suggested by the Victorian Ombudsman in evidence to the Inquiry.

**RECOMMENDATION 10:** That the Victorian Government amend the *Ombudsman Act 1973* to provide for a statutory educative function to raise awareness of the functions of the Victorian Ombudsman within government agencies and the broader Victorian community.

**RECOMMENDATION 11:** That the Victorian Government provide initial funding to the Victorian Ombudsman for the development of a public sector and community education program.



# 4 Education, training and communications of the Victorian Inspectorate

## 4.1 Education & Training

### 4.1.1 Background

The Victorian Inspectorate (VI) made a detailed submission to the Inquiry addressing each of the terms of reference.

From 1 September 2017, the functions of the VI were extended to oversee the newly created Office of the Victorian Information Commissioner (OVIC), in relation to the exercise of coercive powers, compliance with procedural fairness requirements and receiving complaints concerning conduct of the officers of the OVIC.

In its submission, the VI made the following opening statement:

The operational focus of the VI in the integrity regime is inward, ensuring that integrity agencies are accountable to the public sector and the public generally for the exercise of power, particularly coercive power. The VI's engagement is therefore largely with those integrity agencies rather than with the public at large. Whilst the VI engages with the public through its complaint function, the focus of the VI is always on the performance of those integrity bodies. What is important is that the VI is visible to the public as a body which oversees the integrity regime and as a body it can complain to. The VI's education activities are directed to achieving that visibility.<sup>142</sup>

### 4.1.2 Current education and training initiatives & their effectiveness

Under the VI's strategic plan, a key initiative for the VI in 2016–17 is to 'undertake presentation to staff of integrity agencies and the wider community to ensure an awareness and understanding of the Inspectorate's responsibilities and accountabilities. This includes the following initiatives:

- education sessions to the Ombudsman and IBAC about the VI's jurisdiction, functions and powers in relation to complaints
- updating and reviewing information on the VI's website and information about the role of the Inspectorate provided on other stakeholder websites (discussed in detail in response to term of reference two)

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142 Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 3.

- producing public education productions
- participating in public events such as Public Sector Week and Law Week.<sup>143</sup>

The VI's education and training initiatives also involve the following:

### **Annual Inspectors' Forum**

The VI reported that the forum involved information sharing between the VI, Parliamentary Inspector of the Crime and Corruption Commission (WA), Inspector of the Independent Crime and Corruption Commission (NSW) and the Parliamentary Crime and Corruption Commissioner (QLD). The Inspector and Chief Operations Officer of the VI attend the Forum annually to discuss challenges and developments in the Victorian integrity framework, as well as learn from the experiences of other jurisdictions. In 2015, the VI hosted the inaugural meeting.

### **Lectures and talks**

Examples of events noted in the submission were the:

- Third Frank Costigan Oration, Transparency International, 20 November 2014 *Quis Custodiet Custodes? The role of oversight in the Victorian Integrity System*. This was a public lecture regarding the role of oversight of anti-corruption bodies in a comprehensive and balanced integrity system.
- Guest lecture at Swinburne University of Technology, on 4 June 2015 titled: 'Professional conduct of integrity officers'. This was a lecture to students enrolled in the Diploma of Government (Investigations), being Ombudsman officers from Tasmania, New South Wales, Queensland and New Zealand, regarding oversight of the Victorian Ombudsman.<sup>144</sup>

### **Information provided to the public through the VI's website**

The efficacy or value of the presentations is unclear from the VI's submission, for example, whether their effectiveness at conveying key messages was assessed. Future presentations by the VI could incorporate feedback sought from attendees on how they received the information presented, the level of engagement during the presentation, and whether the discussion, questions and answers enhanced their knowledge and understanding of the VI.

At a public hearing on 18 September 2017, the Victorian Inspector, Mr Robin Brett QC, provided an update on the various education, training and communications initiatives being undertaken by the Victorian Inspectorate since the original

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<sup>143</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 5.

<sup>144</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 4.

submission was provided to the Committee. Mr Brett reiterated that the VI ‘... operates a small scale education function’ while noting that equivalent agencies in other jurisdictions have an even narrower function.<sup>145</sup>

At the hearing, Mr Brett also explained the VI’s jurisdiction and his belief that it was important to keep the VI a prominent as part of raising public awareness. Mr Brett further believed that the VI is the best placed agency to advise people of the final outcome of any review of their matter, especially when they have ‘reached the end of the line’.<sup>146</sup> On this, Mr Brett advised the Committee that work is being undertaken to upgrade the VI’s website further and that guidelines on both Protected Disclosures and the Complaints Form are also about to be revised and updated.

Committee members queried the work being undertaken on the VI’s website and noted that further information for the public on the role and functions, including what the VI can and cannot do, should be clearly articulated on the website.

## 4.2 Victorian public understanding of the Victorian Inspectorate

The Inspectorate’s engagement with the public is primarily through receiving complaints. This includes staff responding verbally and in writing to complaints, as well as meeting with the complainant if required. People who have contacted the Committee with complaints about the Ombudsman have had little to no awareness of the VI. This view is consistent with the submissions received.

### 4.2.1 Compliance and communications

The complaints process is communicated to the public through the Inspectorate’s website. This includes a ‘complaint notes’ document, which outlines the role and powers of the Inspectorate and the general process for complaints.

The VI has developed a detailed complaints form on its website, which outlines the type of complaints the VI can assess and how complaints are assessed, as follows:





<sup>145</sup> Mr Robin Brett, Victorian Inspector, Office of the Victorian Inspector, *Transcript of evidence*, Melbourne, 18 September 2017, p. 3.

<sup>146</sup> Mr Robin Brett, Victorian Inspector, Office of the Victorian Inspector, *Transcript of evidence*, Melbourne, 18 September 2017, p. 4.



# Making a complaint to the Victorian Inspectorate

## The Victorian Inspectorate (VI) has power to receive and investigate certain complaints made to it about –

-  the Independent Broad-based Anti-corruption Commission (IBAC) or IBAC personnel
-  Victorian Ombudsman officers
-  the Chief Examiner or Examiners
-  Victorian Auditor General's Office (VAGO) officers

There are limits on the types of complaints that the VI may receive about these bodies. For more information refer to section 43 of the *Victorian Inspectorate Act 2011* (VI Act).

In addition, the VI has a very limited jurisdiction to consider complaints about the Office of Police Integrity (OPI) before 10 February 2013.

**Please use the Complaint Form if you wish to make a complaint. You can either:**

- fill in the **Online Complaint Form** available at <https://vicinspectorate.vic.gov.au/complaints-form/>
- or
- download a hard copy of the **VI Complaint Form** at <http://vicinspectorate.vic.gov.au/wp-content/uploads/2015/01/complaints-form.pdf>

Please also **read the Complaint Notes** before you lodge your complaint - available at <http://vicinspectorate.vic.gov.au/wp-content/uploads/2015/01/vi-complaints-notes.pdf>

Reading the Complaint Notes will help you to understand how to complete the Complaint Form and what information the VI needs in order to consider your complaint.

### How the VI assesses your complaint

If you want to complain to the VI because the IBAC or the Victorian Ombudsman did not uphold a complaint you made to them, the VI's role is only to consider whether the IBAC or the Victorian Ombudsman considered your complaint fully and fairly. The VI has no power to reconsider a complaint if the only real reason is that you disagree with the decision made.

If the VI considers that your complaint is valid, it may recommend that the IBAC or the Victorian Ombudsman should reconsider their decision, and in a serious case it may make a report to Parliament. However the VI has no power to remake a decision made by the IBAC or the Victorian Ombudsman or to direct them to alter a decision.

Upon receipt of each complaint the VI assesses it for two purposes:

- First, to determine whether the VI has jurisdiction to receive and consider the complaint
- Secondly, if the VI considers that it has jurisdiction, it must then decide whether the complaint warrants taking any and, if so, what further action

The assessment process requires the VI to gain a full and clear understanding of the complaint and of the decision made by the agency concerned.

# VI's complaint assessment flowchart:



A fact sheet sourced from the Victorian Inspectorate website: <[vicinspectorate.vic.gov.au/home/complaints-investigations/](http://vicinspectorate.vic.gov.au/home/complaints-investigations/)>

The Inspectorate informed the Committee in both its submission and at the public hearing that it is redeveloping its website content, particularly the ‘complaints and investigations section’.<sup>147</sup> This will include updates on information on complainants dissatisfied with the outcome of their complaints and enquires. The Inspectorate noted that dissatisfaction of complainants with the VI is most often due to misunderstanding of the Inspectorate’s jurisdictional limitations.

## 4.2.2 Education & training

The Inspectorate’s engagement work with stakeholder agencies aims to improve information on their website to reduce the number of inappropriate referrals and better manage complainant expectations.

The Inspectorate plans to track and measure referrals from third-party websites through Google Analytics. In its submission the VI advised the Committee:

The VI will engage with its stakeholder agencies to improve the prominence, quality and quantity of information relating to the VI on their websites. The VI will work with each agency to identify how this can be best achieved in the current reporting period, with the aim of reducing the number of inappropriate referrals and better managing complainant expectations. The VI will be in a position to track and measure referrals from third-party websites to the VI through its use of Google Analytics and engage with its stakeholders in relation to their experiences in formal and informal referrals.<sup>148</sup>

Since 2013, there has been a 74 per cent increase in enquiries made to the Inspectorate, and a 16 per cent increase in complaints.<sup>149</sup> Of these, enquiries made that are outside of the Inspectorate’s jurisdiction increased by 79 per cent, and only 33 per cent of all enquiries proceeded to complaint stage. For matters outside its jurisdiction, the Inspectorate assists by referring them to a more appropriate body or ensuring they better understand the scope of its powers and functions.

## 4.3 Government agency understanding of the Victorian Inspectorate

The Inspectorate believes the bodies it oversees are aware of its statutory responsibilities for its oversight role. This is partially borne out in the submissions received during the Inquiry, although the Committee believes significantly more work is required to articulate to government agencies the role and functions of the VI. As a first step, this can be undertaken through the redeveloped website and continuing to host additional information forums and presentations to government agencies, including but not limited to the oversight agencies under the VI’s jurisdiction.

<sup>147</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 6.

<sup>148</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 6.

<sup>149</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 6.

### 4.3.1 Compliance

In addition, the Inspectorate engages with the bodies it oversees in its inspection function. This includes developing Compliance Standards for each agency, including ongoing feedback meetings. The Inspectorate notes in 2015–16 it conducted 20 inspections of the agencies, where almost all disclosed improvement in their level of regulatory compliance.<sup>150</sup> The Inspectorate considers this demonstrates improvement in the agencies' understanding of and compliance with its processes.

### 4.3.2 Education & training

Very few submissions explicitly referenced the VI, with only Whitehorse City Council noting that they had a good understanding of the requirements of all three oversight agencies, while WorkSafe noted that it would welcome the opportunity to become more familiar with the VI.

### 4.3.3 Communications

Very few submissions demonstrated an awareness of the role of the VI, with most commentary provided on the role and work of the VO and OFOIC. The Committee believes this suggests a lack of awareness of the role of the VI and, concurrently, highlights the importance of increased strategic communications by the VI with government agencies, statutory authorities, local councils and education and training institutions.

### 4.3.4 Conclusion

Education and communication initiatives have been developed by the VI in response to identified need, as the Inspectorate does not have a legislated educative function.

The VI did not support the establishment of a legislated educative function due to '...its role within the integrity framework and the experience of comparable interstate agencies.' The Inspectorate further advised the Committee that:

The Victorian Inspectorate is primarily concerned with the oversight of other integrity, accountability or investigatory bodies or officers, and monitoring for compliance. It is not charged with any education or training functions under the Victorian Inspectorate Act 2011.<sup>151</sup>

As such, VI engagement with government agencies has not been systemic or comprehensive.

<sup>150</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 7.

<sup>151</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 9.

The VI explained the limited nature of education and communication with government agencies as follows:

... while the VI has identified education and communication activities as a priority in the current financial year, its primary relationships are directly with the bodies it oversees and complainants who are affected by their conduct. It is a necessary consequence of the VI's limited jurisdiction and range of functions that its need to engage with the broader general community is limited, as is its ability to dedicate resources to such engagement.<sup>152</sup>

**RECOMMENDATION 12:** That the Victorian Inspectorate reviews the education and training information available on its website and includes a series of case notes providing generic guidance on matters of frequent complaints, such as compliance with procedural fairness and the exercise of coercive powers.

**RECOMMENDATION 13:** That the Victorian Inspectorate further develop its lecture program and deliver presentations focused on procedural guidance to both the Victorian public and the government sector.

**RECOMMENDATION 14:** That the Victorian Inspectorate publish 'plain English' information on its website that clarifies its functions in relation to complaints, including guidance on compliance with procedural fairness and the exercise of coercive powers.

**RECOMMENDATION 15:** That the Victorian Government advertises and promotes a range of options, including legal and counselling based services, for people who remain dissatisfied with a final decision of the oversight agencies, in particular where they have already accessed all available review mechanisms.

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152 Victorian Inspectorate, Submission No. 1, 10 August 2016, p. 10.



# 5

## Australian and international comparisons

### 5.1 Education, training and communications

#### Background

This chapter examines education and training initiatives at the federal, interstate and international levels, with particular reference to identified best practice or progressive developments in other jurisdictions and how they could be adapted for, or adopted in, Victoria.

#### 5.1.1 Australian jurisdictions

Previous chapters of this report have described in detail the comparative roles of the Ombudsman, and FOI and Right to Information agencies at the Commonwealth and interstate levels, regarding education, training and communications.

However, in each jurisdiction there are similarities in how oversight bodies approach their respective roles. The Committee observed a commitment by all agencies to providing more information and guidance to the public service and the broader community, as well as an increased focus on the proactive release of information and transparency. This was noted by the Committee during its visit to New South Wales and Queensland in May 2016 and was subsequently reinforced during the course of the Committee's Inquiry, through submissions, independent research and a study tour to New Zealand in May 2017.

#### Victorian Inspectorate

Many submissions to the Inquiry referred to education and training programs offered in other jurisdictions, demonstrating that there is effective information sharing by many agencies on the initiatives undertaken outside their own jurisdiction. For instance, the Victorian Inspectorate's submission highlighted the work of oversight agencies in Western Australia, Queensland and New South Wales, noting that not all oversight agencies undertake formal education initiatives.<sup>153</sup> The Inspectorate also indicated that while most of Hong Kong's oversight bodies do not appear to engage in education initiatives, the Independent Commission Against Corruption does. One of Malaysia's five oversight agencies, the Consultation and Corruption Prevention Panel, engages

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<sup>153</sup> Victorian Inspectorate, Submission No. 1, 10 August 2016, pp. 7-9.

in education initiatives by monitoring community attitudes about corruption and assisting the Malaysian Anti-corruption Commission in communicating with the public.

### **Victorian Ombudsman**

The Victorian Ombudsman, in its submission to the Inquiry, highlighted the value in learning from the work of industry ombudsmen, especially in how they promote the importance of service standards and product and service knowledge. The submission also noted that the Queensland Ombudsman is required by legislation to provide education, advice and information to support the improvement of operational practices in the public sector. It was also observed that the New South Wales Ombudsman has a comprehensive and notable education and training program.

### **Office of the FOI Commissioner**

The submission of the former Office of the FOI Commissioner, now the Office of the Victorian Information Commissioner (OVIC), stated that FOI agencies in Victoria, Queensland, New South Wales and South Australia offer a similar suite of education, training and communication activities, each of which includes the following:

- training and information sessions
- FOI practitioner forums
- online resources, information and fact sheets
- newsletters and bulletins.

The submission also noted that Queensland, New South Wales, South Australia and Western Australia offer face-to-face and e-learning modules. Queensland and New South Wales also support International Right to Know Day/Week, which OVIC is working towards.

### **Commissioner for Privacy and Data Protection**

The Victorian Commissioner for Privacy and Data Protection (CPDP), which has since been subsumed by OVIC, submitted that effective education is more than simply providing information; it requires focusing on the roles and responsibilities of oversight agencies in conjunction with stakeholder needs. The CPDP highlighted its use of technology in reaching audiences, including the use of online videos to assist the public, online training modules, mobile apps, a Twitter account, as well as feedback sessions with a youth advisory group for the development of products and services for young people.

The newly formed OVIC Acting Information Commissioner, Mr Alex Kamenev, wrote to the Chair of the Committee on 14 September 2017 to provide an update on the new OVIC. This included its privacy and data protection education and training initiatives, which now comes under OVIC's responsibility, as detailed in Chapter 2.

## Other submissions

Evidence received by the Committee indicates that there is a good understanding of oversight agencies in other Australian jurisdictions and in New Zealand, as well as a high level of sharing of information. Very few government agencies, local councils or educational institutions, however, provided information to the Inquiry on comparable entities in other jurisdictions.

One council that did, Loddon Shire Council, recommended that the oversight agencies benchmark their counterparts in each state to identify best practice and develop education and communication initiatives that meet or exceed best practice. It further recommended that the three Victorian oversight agencies undertake the following:

- develop e-learning training for local government
- include a calendar of upcoming training and events on their websites
- include free workshops for the public sector (in particular local government).<sup>154</sup>

**RECOMMENDATION 16:** That the Victorian Ombudsman, the Office of the Victorian Information Commissioner and the Victorian Inspectorate further invests in the provision of e-learning training and free or cost-recovery workshops that provide targeted training to the wider public service, including local government, education and health bodies.

WorkSafe Victoria stated that there is a significant variance in the scope of training and guidance provided by Australian FOI agencies and noted that, as an example, the South Australian Ombudsman provided comparatively little guidance.

In its submission, the West Australian Office of the Information Commissioner noted the work its equivalent agency in Queensland has been undertaking regarding training in negotiating skills and managing high-conflict behaviour.

The submission from the Australian and New Zealand Ombudsman Association (ANZOA) referred to principles and practices of customer dispute resolution benchmarks it regards as best practice for ombudsman offices. ANZOA stated that the principles of accessibility, accountability and effectiveness require the delivery of education, training and communications.<sup>155</sup>

### 5.1.2 Education, training and communications activities of oversight bodies in other Australian jurisdictions

The following is an overview of education, training and communications activities of oversight bodies throughout Australian jurisdictions. Further information on these activities is provided in Chapters 2 and 3.

<sup>154</sup> Loddon Shire Council, Submission No. 11, 25 August 2016, p. 3.

<sup>155</sup> Australian and New Zealand Ombudsman Association, Submission No. 15, 26 August 2016, p. 1.

## Commonwealth Ombudsman

The Commonwealth Ombudsman does not deliver education or training programs. However, it does provide the following communications and engagement activities in relation to public interest disclosure:

- publication of guidance materials online
- an e-newsletter
- community of practice forums
- presentations to government agencies
- oversight forums
- public interest disclosure community Wiki.<sup>156</sup>

In a teleconference with the Committee, Commonwealth Ombudsman Michael Manthorpe explained that the Office facilitates a complaint-handling forum in which Commonwealth agency staff can participate.

Under the *Public Interest Disclosure Act 2013* (Cth), the Commonwealth Ombudsman is responsible for promoting awareness and understanding of the Act, which includes providing guidance, information and resources about making, managing and responding to disclosures.<sup>157</sup> As such, Mr Manthorpe observed, the Commonwealth Ombudsman has a strong focus on engagement and communications in relation to public interest disclosure.<sup>158</sup>

## Office of the Australian Information Commissioner

The Commonwealth Office of the Australian Information Commissioner (OAIC) is responsible for freedom of information, privacy and information policy. The OAIC also has online resources to assist with information and privacy matters, including guidelines, fact sheets, frequently asked questions, and OAIC decisions and determinations. These are categorised according to the intended audience, including businesses, agencies and individuals.

The OAIC website also has a catalogue of decisions, determinations, investigation reports and enforceable undertakings in relation to privacy and freedom of information.

The only education program provided by the OAIC is a Privacy Impact Assessment.

The OAIC also runs a series of events for Privacy Professionals' Network members, including seminars, workshops and network meetings.<sup>159</sup>

<sup>156</sup> Commonwealth Ombudsman, *Annual report 2015-16*, Office of the Commonwealth Ombudsman, Canberra, 2016, p. 78.

<sup>157</sup> Section 62(b).

<sup>158</sup> Michael Manthorpe, Commonwealth Ombudsman, teleconference 16 October 2017.

<sup>159</sup> Office of the Australian Information Commissioner, Events, viewed 10 August 2017, <[www.oaic.gov.au/engage-with-us/events](http://www.oaic.gov.au/engage-with-us/events)>.

### New South Wales Information and Privacy Commissioner

The New South Wales Information and Privacy Commissioner (IPC) administers freedom of information and privacy and has the following education functions provided for in legislation in relation to both functions:

- promoting awareness and understanding of information access rights and obligations
- providing information and advice regarding information access rights and obligations
- training and education to agencies and public
- regulatory guidance on operation of information access laws.<sup>160</sup>

The IPC has developed e-learning modules and provides guidelines, case notes, frequently asked questions on its website. It also provides advice and assistance to businesses and agencies, undertakes research and participates in campaigns to raise awareness of freedom of information and privacy.

### New South Wales Ombudsman

In its submission, the New South Wales Ombudsman's Office noted that its community education and training program is the largest program of any Australian parliamentary ombudsman's office.<sup>161</sup> Although the Ombudsman is required by legislation to provide education in relation to public interest disclosure and community services, the education program is broader, covering complaint handling, investigating misconduct, managing unreasonable complainant conduct and negotiating.<sup>162</sup>

The New South Wales Ombudsman also has a range of resources on its website including fact sheets, guidelines, case notes and checklists which can be searched according to the type of resource and the audience.

### Queensland Ombudsman

The Queensland Ombudsman similarly has a statutory obligation to provide education, however, it is broader than that of the New South Wales Ombudsman as it must provide advice, training, information or other help to agencies, in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures.<sup>163</sup> Unlike the New South Wales Ombudsman's educative function, however, the Queensland Ombudsman is only required to provide training and information to government agencies, not to the broader community.

<sup>160</sup> *Government Information (Public Access) Act 2009*, section 17; *Privacy and Personal Information Protection Act 1998*, section 36.

<sup>161</sup> New South Wales Ombudsman, Submission No. 6, 26 August 2016, p. 1.

<sup>162</sup> New South Wales Ombudsman, All workshops, viewed 11 August 2017, <[www.ombo.nsw.gov.au/training-workshops-and-events/our-workshops/all-workshops](http://www.ombo.nsw.gov.au/training-workshops-and-events/our-workshops/all-workshops)>.

<sup>163</sup> *Ombudsman Act 2001*, section 6(b)(iii).

The Queensland Ombudsman delivers training face-to-face, as well as online, and has produced a range of communications to assist with decision-making, complaint handling, managing unreasonable conduct and communicating effectively. It also produces advisories that provide information on lessons learned from recent investigations, as well as e-newsletters for specific stakeholders.

### Western Australian Office of the Information Commissioner

The Western Australian Office of the Information Commissioner (OIC) is required by legislation to ensure that agencies are aware of their responsibilities under the *Freedom of Information Act 1992* and that members of the public are aware of their rights. The OIC is also required to provide assistance to members of the public and agencies on matters relevant to freedom of information.<sup>164</sup>

Accordingly, the Western Australian OIC provides training to agencies on matters relating to freedom of information. It also publishes a range of resources, including decisions of the Information Commissioner, e-newsletters, guidelines on applying specific provisions and frequently asked questions. The Office also collaborates with the Western Australian Ombudsman, the Public Sector Commission, and the Health and Disability Services Complaints Office, amongst others and provides briefings in regional areas.

### South Australia

The South Australian Ombudsman is responsible for administering freedom of information. South Australia's freedom of information framework is unique, as FOI officers of government agencies are required to complete accredited training delivered by State Records of South Australia (SRSA).<sup>165</sup> The cost of the four modules, delivered over 2.5 days, is \$1855.01. The SRSA also provides an online FOI general awareness course at a cost of \$47.75.<sup>166</sup>

The Ombudsman does not provide education or training, however, it does produce a range of resources, including FOI determinations, relevant court and tribunal decisions, fact sheets and guidelines.<sup>167</sup>

### Tasmania

The Tasmanian Ombudsman is responsible for administering freedom of information, known as right to information (RTI) in Tasmania. Under the *Right to Information Act 2009*, the Ombudsman is responsible for issuing and maintaining guidelines and a manual on the process of obtaining access to information.

<sup>164</sup> *Freedom of Information Act 1992* (WA) section 63.

<sup>165</sup> State Records of South Australia, Classroom FOI courses, accessed 11 August 2017, <[government.archives.sa.gov.au/content/classroom-foi-courses-and-fees](http://government.archives.sa.gov.au/content/classroom-foi-courses-and-fees)>.

<sup>166</sup> State Records of South Australia, Online FOI courses and fees, accessed 11 August 2017, <[government.archives.sa.gov.au/content/online-foi-courses-and-fees](http://government.archives.sa.gov.au/content/online-foi-courses-and-fees)>.

<sup>167</sup> South Australian Ombudsman, Publications, accessed 11 August 2017, <[www.ombudsman.sa.gov.au/publications/relevant-court-decisions/](http://www.ombudsman.sa.gov.au/publications/relevant-court-decisions/)>.

In its 2015-16 annual report, the Tasmanian Ombudsman noted that it receives considerable interest from councils, government departments and public authorities in relation to education and training opportunities. The report states:

There is an ongoing demand for RTI training for public authorities to assist them to meet the legislative requirements and obligations under the RTI Act. Unless adequate resourcing becomes available, however, that demand over time will have to remain largely unmet.<sup>168</sup>

The Ombudsman does not provide education or training related to its broader functions either, however, it does publish investigation reports, fact sheets and guidelines on the Tasmanian Ombudsman website.<sup>169</sup>

## 5.2 International comparisons

A number of countries, including New Zealand, Canada, the United Kingdom and Sweden, have developed sophisticated oversight regimes in terms of education, training and communications initiatives, which are described below:

### 5.2.1 New Zealand

#### Access to official information

There are three acts governing access to official information in New Zealand:

- *Official Information Act 1982*
- *Local Government Official Information and Meetings Act 1987*
- *Privacy Act 1993 (for an applicant's personal information)*.

The guiding principle for official information under the *Official Information Act 1982 (OIA)* is that it must be made available unless a good reason under legislation exists for withholding it.<sup>170</sup>

Before the OIA was introduced, access to information was governed under the *Official Secrets Act 1951*. Under the Official Secrets Act, official information was to be kept secret unless a decision was made to release it.<sup>171</sup>

<sup>168</sup> Tasmanian Ombudsman, *Annual report 2015-16*, Office of the Ombudsman, Hobart, 2016, p. 17.

<sup>169</sup> Tasmanian Ombudsman, Publications and media, accessed 11 August 2017, <[www.ombudsman.tas.gov.au/publications\\_and\\_media](http://www.ombudsman.tas.gov.au/publications_and_media)>.

<sup>170</sup> *Official Information Act 1982* (NZ) section 5.

<sup>171</sup> Law Commission, Review of the Official Information Act 1982, Wellington, New Zealand, 2010, <[www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R40.pdf](http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R40.pdf)>.



The OIA covers the following persons or entities:

- ministers
- departments and organisations listed in Part 1 and Part 2 of Schedule 1 of the *Ombudsmen Act* (except for the Parliamentary Counsel Office, the Parliamentary Service and mortality review committees)
- organisations listed in Schedule 1 of the Official Information Act
- the local authorities listed in Schedule 1 and Schedule 2 of Local Council Act
- council-controlled organisations and council organisations.

Under the OIA, requests for official information can be made by:

- a New Zealand citizen or permanent resident
- a person in New Zealand
- a body corporate that is incorporated or has a place of business in New Zealand.<sup>172</sup>

Applicants can request:

- access to specified official information
- reasons for decisions made about the applicant
- internal policies, principles, rules or guidelines
- meeting agendas and minutes of public bodies, including those not open to the public.

An applicant requesting personal information about themselves under the *Privacy Act 1993* has the right to:

- access to personal information held by any person or organisation in New Zealand, (subject to some exemptions)<sup>173</sup>
- request corrections to personal information held by these people or organisations.<sup>174</sup>

Any person may complain to the Privacy Commissioner if they think a person or organisation holding their personal information has breached their privacy.

### Complaints about official information requests

Applicants can lodge a complaint with the Ombudsman if they do not receive a response by the statutory time limit or are unhappy with the result they receive.

The role of the Ombudsman is to 'investigate and review' complaints against the agency's decision (or lack of). This includes investigating:

<sup>172</sup> *Official Information Act 1982* (NZ) section 12(1).

<sup>173</sup> Including Members of Parliament, the Ombudsman, Courts and media.

<sup>174</sup> *Privacy Act 1993* (NZ) section 6.



- refusals and deletions
- delays and extension
- charges
- the manner in which information is released
- conditions on release.<sup>175</sup>

### **Ombudsman**

Aside from its functions in relation to investigating and reviewing OIA complaints, the Ombudsman's primary role is to review processes, hear complaints and investigate administrative conduct of state sector agencies.

The New Zealand Ombudsman has jurisdiction over ministers, government departments/agencies and local government authorities. It also undertakes a range of roles to protect rights, including monitoring places of detention, and the implementation of the UN Disabilities Convention.

The Ombudsman also provides advice, guidance and training to state sector agencies and undertakes community education campaigns.

### **Parliamentary oversight**

The Select Committee on Government Administration has a basic oversight function over the Ombudsman's office and for official information requests made to departments, ministries and government entities.

Complaints against the Ombudsman need to be made to the Speaker of the New Zealand House of Representatives.

### **Study tour to New Zealand, May 2017**

The Committee travelled to New Zealand in May 2017 to examine how oversight agencies in other jurisdictions deliver education and communications initiatives to canvass the broadest possible field of options in determining what is appropriate in the Victorian context.

The Committee met with the Ombudsman and the Privacy Commissioner, as well as representatives of government agencies, local government, civil society and academia.

These meetings provided invaluable insight into the role of education and communications in strengthening the governance framework and enhancing accountability in public administration.

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<sup>175</sup> New Zealand Ombudsman, What we do, viewed 11 August 2017, <[www.ombudsman.parliament.nz/what-we-do/investigations/complaints-about-access-to-official-information](http://www.ombudsman.parliament.nz/what-we-do/investigations/complaints-about-access-to-official-information)>.

Meeting with people who are engaged with education and communication of oversight agencies from differing perspectives helped to convey a broad understanding of how these activities work in practice.

### **New Zealand Ombudsman**

The Ombudsman handles complaints and investigates the administrative conduct of public service agencies, including in relation to official information requests, as freedom of information is known in New Zealand.

To complement and support the Ombudsman's main legislated functions, the Office of the Ombudsman provides advice and guidance to the public service agencies to improve public administration and improve public awareness and accessibility of the Office's services.

As with the Victorian Ombudsman, the New Zealand Ombudsman does not have a legislated educative function, however, the Office of the Ombudsman delivers an education and training program and publishes a broad range of communications resources.

Chief Ombudsman Peter Boshier told the Committee that the education and outreach activities of the Office would be strengthened if they were provided for in the legislation as this would result in improved funding of these functions.

He further noted that where an Ombudsman performs functions not provided for in legislation, there is the risk that they are acting *ultra vires*, or beyond the scope of statutory responsibilities.

The most notable aspect of the Ombudsman's work in relation to the Inquiry's terms of reference is the range of resources designed to assist public service staff in meeting their legal obligations.

As mentioned in Chapter 3, these include guidelines, template letters, opinions, case notes, as well as the Ombudsman Quarterly Review (OQR) newsletter, a screenshot of which is provided below.

The newsletter is a particularly useful resource as the articles have been archived and indexed so users can search for a particular topic, as shown in the below screenshot. This keeps public service staff informed of the latest developments and demonstrates how the law is applied.

## OQR newsletter

You can read archived OQR articles here - these are ones published between 1995 and 2008. You can find recent issues and subscribe to the OQR [here](#).

The archived OQR articles set out an Ombudsman's views on a specific case. These views were formed on the particular facts of the case in light of the then applicable laws and policies. They should not to be taken as establishing any legal precedent for the view an Ombudsman may form on a similar matter in the future. If you want to know the Ombudsman's current view on a particular matter, please contact our staff for assistance on 0800 802 602 or [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

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Screenshot of the New Zealand Ombudsman Quarterly Review archive

## Privacy Commissioner

The New Zealand Privacy Commissioner has broadly the same responsibilities as the OVIC's Privacy and Data Protection Deputy Commissioner, including investigating complaints about breaches of privacy, developing codes of practice for specific sectors and building and promoting understanding of the privacy principles.<sup>176</sup>

The Office of the Privacy Commissioner promotes and protects individual privacy by monitoring and reporting on government information sharing, informing public and private sector practices, conducting outreach and supporting law reform.<sup>177</sup>

<sup>176</sup> *Privacy Act 1993* (NZ) section 13.

<sup>177</sup> Privacy Commissioner, *Statement of intent: 1 July 2014 – 30 June 2018*, Office of the Privacy Commissioner, Wellington, New Zealand, 2014, p. 5.

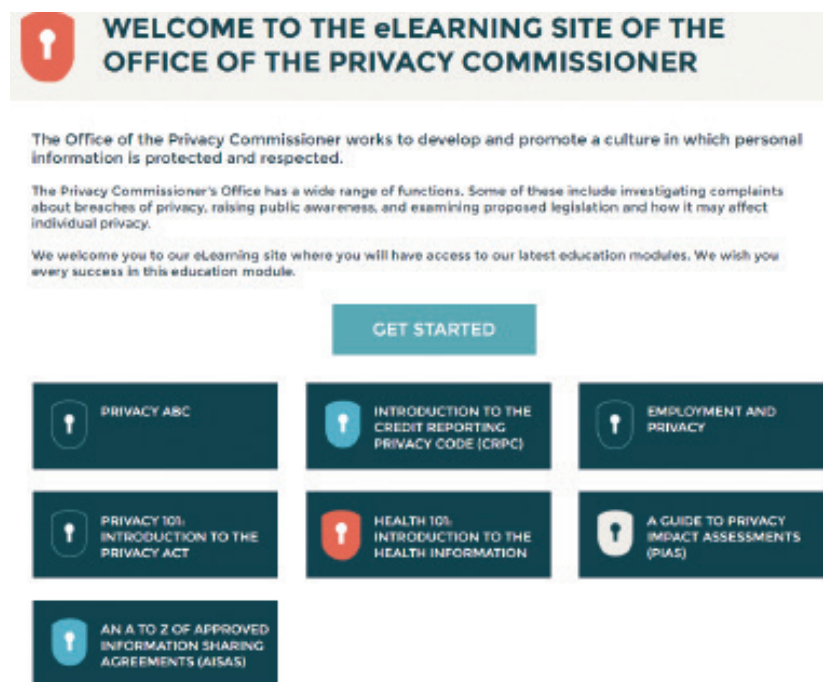
Privacy education modules are sector specific and tailored to addressing common issues that arise within a specific sector so that the guidance is as relevant and detailed as possible.

A review of the education function of the Privacy Commissioner found that in-person training and workshops in Auckland and Wellington were not creating the type of penetration necessary to put privacy principles on the agenda of the public and private sectors. This led to the development of digital tools such as online training modules, databases and other resources.<sup>178</sup>

In-person training reaches approximately 200 people per year whereas approximately 2,000 people participate in online learning each year. To date, around 7,000 people have signed up to Privacy 101 online.<sup>179</sup>

As with the Queensland Information Commissioner’s e-learning program, the reach of the Privacy Commissioner’s online learning platform reflects the considerable scope for online tools in realising the educative function of oversight agencies.

The following is a screenshot of the e-learning modules offered by the Privacy Commissioner.



Screenshot of the New Zealand Privacy Commissioner’s e-learning modules

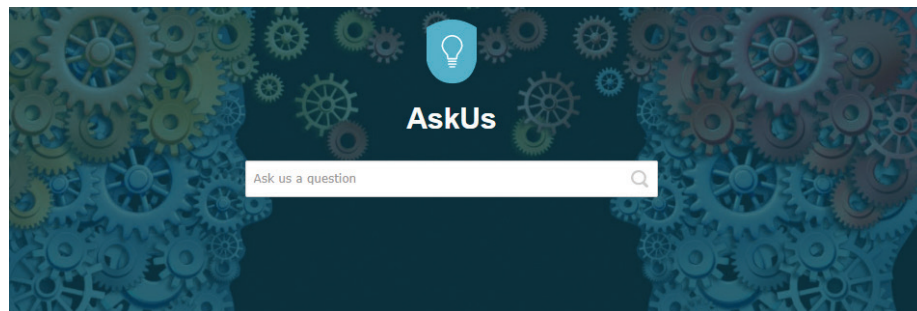
178 Annabel Fordham, Public Affairs Manager, Office of the Privacy Commission, briefing 29 May 2017, Wellington, New Zealand.

179 Annabel Fordham, Public Affairs Manager, Office of the Privacy Commission, briefing 29 May 2017, Wellington, New Zealand.

The Privacy Commissioner has also developed tools to improve access to private information and awareness of how the privacy principles are to be applied in a particular scenario, as outlined below.

## AskUs

The AskUs database allows users to enter a query which is matched to a file in the database that best addresses it. Where there is no file, the Webmaster receives a notification and a file is created to address the query. This user-focused communication enables the Commission to be responsive to the information needs of the community by developing case studies and guides according to the most common queries submitted.



The AskUs knowledge base provides general guidance about privacy issues, not legal advice.  
For requests about your specific circumstances, or about a complaint you have lodged with us, please [contact us](#) directly.

### FEATURED ARTICLES

#### How did a political party get my contact information?

Political parties obtain contact information from publicly available sources like the electoral roll and the White Pages, as well as their party membership databases. They may use this information to...

#### Can the Privacy Commissioner award damages for a privacy breach?

No, the Privacy Commissioner helps parties settle privacy disputes and sometimes settlement may include damages (financial compensation) if the party that caused the breach agrees. Only the Human...

#### Can news media publish photos of car crash victims?

The Privacy Act doesn't apply to the collection and reporting of news and current affairs, so we aren't able to investigate complaints about the actions of newspapers and other news media. But the...

#### Can an employer look up a job candidate on the internet?

Yes, they can. Information that has been posted publicly online is available to everyone. In information privacy principle 2 of the Privacy Act, it says collecting publicly available information is a...

#### Can I publish a video or photos of people I suspect are shoplifting?

If you use CCTV to detect and record crime, it is legitimate to provide copies to Police so they can investigate. If you have banned someone from the shop for suspected shoplifting, you might also...

#### What do I need to do if I'm using CCTV, or planning on installing CCTV?

CCTV stands for closed circuit television. It is also known as video surveillance. If you are installing CCTV, you need to think about – and preferably document – what you are recording, why you are...

Screenshot of the New Zealand Privacy Commissioner's AskUs database

## AboutMe

AboutMe is a tool that facilitates request for information on behalf of an individual to an agency, making the process of obtaining personal information more straightforward.

**AboutMe (Request My Info Tool)**

**I want information about me**

*Under the Privacy Act, you have the right to ask for personal information about you.*

Here's an easy way to ask for your personal information from any organisation, business or government agency in New Zealand.

Email them a request by filling in the form below.

You will be sent a copy for your records.

All fields are required unless marked optional.

Are you asking for personal information about yourself?

Yes
  No

First name

Surname

Your email address  
 The email address the organisation can use to reply to you. [?](#)

Your contact telephone number  
 (Optional) In case the organisation needs to call you to confirm or discuss your request

Name of organisation, business or government agency  
 The organisation holding your information - start typing and possible matches will appear, or enter the name if there's no match. [?](#)

**Help**

- ▶ How will this work?
- ▶ Do I have to use this form?
- ▶ When will I get a response?
- ▶ Will I be charged?
- ▶ What email address should I give?
- ▶ Who can I request information from?
- ▶ What email address do I send this to?
- ▶ Why provide a reference number?
- ▶ What should I include in my request?

Screenshot of the New Zealand Privacy Commissioner's AboutMe database

**Case notes and court decisions**

The Privacy Commissioner also has an extensive range of case notes and court decisions in a searchable online database.

**Case notes and court decisions**

[Print](#) | [Email this page](#)

You can search for case notes either by using the date filter below, or by using the free text search on our website. The free text search box displays in the top right hand corner of your desktop window. For mobile devices, you can access the free text search box from the menu icon (the 3 horizontal lines) on the top right corner of your device screen.

Show items from between:

Filter from date (example: 2013-12-13)

Filter to date (example: 2013-12-13)

Latest in Case notes and court decisions Displaying 1 - 20 of 324

**Case note 285231 [2017] NZ PrivCmr 9: Couple says repair service damaged their car**  
 13 November 2017

A couple claimed a vehicle repair service damaged their car engine and were then denied information about what happened to the car while it was at the service centre. The couple said information about the car was personal information and they should have access to it. They made a complaint to our office.

In the complaint, the couple said they had requested all the information the repair service had about them and the car – memos, diary notes, telephone calls, records of calls and any...

**Case note 284443 [2017] NZ PrivCmr 8: Neighbours in surveillance camera dispute**  
 31 October 2017

Complaint about neighbour's surveillance cameras - long-running dispute.

Screenshot of the New Zealand Privacy Commissioner's online case notes and court decisions database



Case notes and court decisions demonstrate how the *Privacy Act 1993* is applied in a given set of circumstances and can be used by public service staff to determine how to uphold legal obligations and by members of the public to assess how their matter might be determined.

### Study tour overview

Several key themes emerged in discussions with representatives of New Zealand's government agencies and oversight bodies and experts in transparency and accountability.

### The state of accountability and transparency in New Zealand

There was a general consensus that New Zealand performs well in terms of accountability and transparency at a global level, as evidenced by consistent high performance in worldwide rankings. In several discussions, however, there was concern that these issues had fallen off the agenda and that further improvement was necessary.

Representatives of oversight bodies, including the State Services Commission (SSC), and government agencies identified education and communication directed at the public service and the broader New Zealand public as integral to achieving further improvement. This reflects the widely held view that education and communication are in the common interests of oversight bodies and those that they oversee.

### Increasing collaboration

A recurring theme in discussions was the collaborative nature of engagement between oversight bodies – the New Zealand Ombudsman and the Privacy Commissioner – and government agencies.

The Department of Corrections, Wellington City Council and Auckland Council each recognised the value in working with the oversight bodies to prevent incidents that lead to complaints.<sup>180</sup> This cooperation involves regular meetings, forums, ongoing discussions on emerging issues as well as liaising on the development of policies that aim to prevent complaints to the Ombudsman and the Privacy Commissioner.

It was acknowledged that there has been a shift away from somewhat punitive enforcement of compliance by the oversight agencies towards increased collaboration and working together to achieve common goals. This shift is underpinned by the concept that prevention of incidents is preferable to remediation.

<sup>180</sup> Ray Smith, Chief Executive Officer, Department of Corrections, briefing 30 May 2017, Wellington, New Zealand; Kane Patena, Director of Legal and Risk, Wellington City Council, briefing 30 May 2017, Wellington, New Zealand; Manoj Ragupathy, Privacy and Local Government Official Information and Meetings Act Manager, Auckland Council, briefing 31 May 2017, Auckland, New Zealand.

As an effective way to improve ethical behaviour and professionalism in the public service, officials from the SSC informed the Committee that informal gatherings and engagements with no formal agenda other than senior officials meeting with, and getting to know one another, have proved to be an ideal method in which to build trust and rapport. These forums have also had the effect of enhancing trust by people sharing organisational challenges with others offering solutions and support.<sup>181</sup>

This was recognised by the Ombudsman and the Privacy Commissioner, who also reported a greater emphasis on education and training to improve compliance and strengthen privacy, rather than punitive measures. Both the Chief Ombudsman and the Privacy Commissioner explained that this contributes to improved and more consistent decision-making, which in turn strengthens good governance and public administration.<sup>182</sup>

### Conclusion

The Committee found that the New Zealand Ombudsman and Privacy Commissioner's approach to education and communication correlated to relatively strong levels of understanding of their functions within the public service and the broader New Zealand community.

It was also evident that education and communication initiatives helped to foster increased engagement between oversight bodies and government agencies, which has the positive effect of encouraging collaboration and enhanced professionalism.

**RECOMMENDATION 17:** That the Victorian Government, through the Victorian Public Sector Commission, investigate establishing a network forum comprising government agency representatives, based on the New Zealand model championed by the New Zealand State Services Commission.

## 5.2.2 United Kingdom

### Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) is the lead ombudsman responsible for making final stage decisions on complaints that have not been resolved by the National Health Service (NHS) in England, in addition to public services delivered by the UK Government.

The PHSO looks into complaints of an alleged injustice or hardship because an organisation has not acted properly or fairly, or has given a poor service and not resolved a matter satisfactorily.

<sup>181</sup> Al Morrison, Deputy Commissioner, System Performance Group, State Services Commission, briefing 29 May, Wellington, New Zealand.

<sup>182</sup> John Edwards, Privacy Commissioner, Office of the Privacy Commission, briefing 29 May 2017, Wellington, New Zealand; Peter Boshier, Chief Ombudsman, Office of the Ombudsman, briefing 30 May 2017, Wellington, New Zealand.



The PHSO was established by Parliament to provide an independent complaint handling service. It is accountable to Parliament, with the Public Administration and Constitutional Affairs Committee providing parliamentary scrutiny.<sup>183</sup>

In addition to the PHSO, the UK also a number of sector-specific ombudsmen, including:

- Housing Ombudsman
- Local Government Ombudsman
- Financial Ombudsman Service
- European Ombudsman
- Legal Ombudsman
- Ombudsman Services: Energy
- Telecommunications Ombudsman
- Property Ombudsman
- Pensions Ombudsman
- Prisons and Probation Ombudsman
- Pension Protection Fund Ombudsman
- Judicial Appointments and Conduct Ombudsman
- Service Complaints Ombudsman
- The Waterways Ombudsman.<sup>184</sup>

### Information Commissioner's Office

The UK Government also established the Information Commissioner's Office (ICO), which acts as an independent authority, with the stated aim of upholding information rights in the public interest, promoting openness by public bodies and protecting data privacy for individuals.<sup>185</sup>

The ICO has responsibility for the following legislation:

- Data Protection Act
- Freedom of Information Act
- Privacy and Electronic Communications Regulations
- Environmental Information Regulations
- eIDAS Regulation

<sup>183</sup> Parliamentary and Health Service, Who we are, accessed 11 August 2017, <[www.ombudsman.org.uk/about-us/who-we-are](http://www.ombudsman.org.uk/about-us/who-we-are)>.

<sup>184</sup> Citizens Advice, Complaint to an ombudsman, accessed 11 August 2017, <[www.citizensadvice.org.uk/consumer/get-more-help/how-to-use-an-ombudsman-in-england/](http://www.citizensadvice.org.uk/consumer/get-more-help/how-to-use-an-ombudsman-in-england/)>.

<sup>185</sup> Information Commissioner's Office, Who we are, accessed 11 August 2017, <[ico.org.uk/about-the-ico/who-we-are/](http://ico.org.uk/about-the-ico/who-we-are/)>.

- INSPIRE Regulations
- Re-use of Public Sector Information Regulations.<sup>186</sup>

### Freedom of Information

The *Freedom of Information Act 2000* provides public access to information held by UK public authorities. The stated principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.<sup>187</sup> It purports to do this in two ways:

- public authorities are obliged to publish certain information about their activities
- members of the public are entitled to request information from public authorities.

The Act does not give people access to their own personal data, such as their health records or credit reference file. If a person wants to see information that a public authority holds about them, they are required to make a subject access request under the *Data Protection Act 1998*.<sup>188</sup>

The FOI Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own *Freedom of Information (Scotland) Act 2002*.

### 5.2.3

## Canada

### Ombudsman

At a federal level, Canada does not have a single or 'whole of government' ombudsman and instead has sector-specific ombudsmen in the public and private sectors. In Canada, ombudsmen have important roles in education institutions, with representation in colleges and universities and also speciality ombudsmen linked to government agencies and portfolios.

Sectoral ombudsmen at both the federal and provincial levels include the Taxpayers' Ombudsman, Pension Ombudsman, Veterans Ombudsman, First Nations Ombudsman, Procurement Ombudsman, Federal Ombudsman for Victims of Crime, and the National Defence and Canadian Forces Ombudsman.

General ombudsmen also exist at the provincial level in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, Saskatchewan and Yukon.

<sup>186</sup> Information Commissioner's Office, What we do, accessed 11 August 2017, <[ico.org.uk/about-the-ico/what-we-do/](http://ico.org.uk/about-the-ico/what-we-do/)>.

<sup>187</sup> Information Commissioner's Office, For organisations, accessed 11 August 2017, <[ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/](http://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/)>.

<sup>188</sup> Information Commissioner's Office, For organisations, accessed 11 August 2017, <[ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/](http://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/)>.

## Federal Privacy Commissioner

The Federal Privacy Commissioner's stated mission is to protect and promote the privacy rights of individuals.<sup>189</sup> The Commissioner's powers include:

- investigating complaints, conducting audits and pursuing court action under the Personal Information Protection and Electronic Documents Act and the Privacy Act
- reporting on the personal information-handling practices of public and private sector organisations
- conducting research into privacy issues
- promoting public awareness and understanding of privacy issues.<sup>190</sup>

Canada's *Access to Information Act 1985* provides legislative oversight at a federal level. The Act also established the Canadian Information Commissioner.<sup>191</sup> The Commissioner investigates complaints into federal institutions' handling of FOI access requests. The Commissioner:

- carries out investigations and dispute-resolution efforts to resolve complaints
- monitors federal institutions' performances under the Act
- represent the Commissioner in court cases and provide legal advice on investigations and legislative matters.<sup>192</sup>

Under the Access to Information Act, any Canadian citizen or permanent resident has the right to request access to government records.<sup>193</sup> Subject to some exemptions, records that cannot be requested include:

- information obtained in confidence from external governments (such as regional provincial, international or aboriginal governments)<sup>194</sup>
- information containing trade secrets or specific types of confidential financial, commercial, scientific or technical information<sup>195</sup>
- personal information as defined by the Privacy Act<sup>196</sup>
- certain types of third party information.<sup>197</sup>

<sup>189</sup> Office of the Privacy Commissioner of Canada, What we do, accessed 11 August 2017, <[www.priv.gc.ca/en/about-the-opc/what-we-do/](http://www.priv.gc.ca/en/about-the-opc/what-we-do/)>.

<sup>190</sup> Office of the Privacy Commissioner of Canada, What we do, accessed 11 August 2017, <[www.priv.gc.ca/en/about-the-opc/what-we-do/](http://www.priv.gc.ca/en/about-the-opc/what-we-do/)>.

<sup>191</sup> Access to Information Act (R.S.C., 1985, c. A-1) section 54.

<sup>192</sup> Office of the Privacy Commissioner of Canada, Who we are, accessed 11 August 2017, <[www.oic-ci.gc.ca/eng/abu-ans\\_who-we-are\\_qui-sommes-nous.aspx](http://www.oic-ci.gc.ca/eng/abu-ans_who-we-are_qui-sommes-nous.aspx)>.

<sup>193</sup> Access to Information Act (R.S.C., 1985, c. A-1) section 4.

<sup>194</sup> Access to Information Act (R.S.C., 1985, c. A-1) section 13.

<sup>195</sup> Access to Information Act (R.S.C., 1985, c. A-1) sections 18; 20.

<sup>196</sup> *Access to Information Act* (R.S.C., 1985, c. A-1) section 19.

<sup>197</sup> Access to Information Act (R.S.C., 1985, c. A-1) section 20.

During an investigation of a complaint, the Information Commissioner has the power to:

- enter premises
- examine or obtain records
- hold interviews in private
- receive evidence informally or under oath
- subpoena persons or documents.<sup>198</sup>

Complainants who are unhappy with the Information Commissioner's report on their complaint can apply to the Federal Court of Canada to have the agency's decision reviewed.<sup>199</sup>

The Office of the Information Commissioner has also been active in supporting initiatives that enhance the role of Parliament and the proactive disclosure of information, especially in relation to:

- travel expenses
- hospitality expenses
- contracts over CA\$10,000
- position reclassifications
- proactive Disclosure of Grants and Contributions over CA\$25,000
- report on Annual Expenditures for Travel, Hospitality and Conferences
- public Opinion Research
- advertising.<sup>200</sup>

### **Federal parliamentary oversight**

The House of Commons Standing Committee on Access to Information, Privacy and Ethics performs an oversight role of the Canadian Office of the Information Commissioner. The Committee also oversees the Privacy Commissioner, the Commissioner of Lobbying of Canada and the conflict of Interest and Ethics Commissioner.<sup>201</sup>

<sup>198</sup> Office of the Privacy Commissioner of Canada, Investigations, accessed 11 August 2017, <[www.oic-ci.gc.ca/eng/investigations-enquetes.aspx](http://www.oic-ci.gc.ca/eng/investigations-enquetes.aspx)>.

<sup>199</sup> Office of the Privacy Commissioner of Canada, Lodging a complaint, accessed 11 August 2017, <[www.oic-ci.gc.ca/eng/lc-cj-logde-complaint-deposer-plainte.aspx](http://www.oic-ci.gc.ca/eng/lc-cj-logde-complaint-deposer-plainte.aspx)>.

<sup>200</sup> Office of the Privacy Commissioner of Canada, Proactive disclosure, accessed 11 August 2017, <[www.oic-ci.gc.ca/eng/proactive-disclosure-divulgation-proactive.aspx](http://www.oic-ci.gc.ca/eng/proactive-disclosure-divulgation-proactive.aspx)>.

<sup>201</sup> Parliament of Canada, House of Commons, accessed 11 August 2017, <[www.ourcommons.ca/Committees/en/ETHI](http://www.ourcommons.ca/Committees/en/ETHI)>.

## Provincial and territory level oversight

Each of Canada's 13 provinces and territories has its own freedom of information legislation and arrangements.<sup>202</sup> Most of the Canadian provinces have legislation covering FOI, privacy, personal information and health information protection.

For instance, in Ontario, the provincial government initiated a major review in 2003 by its Open Government Engagement Team, with the stated aim of determining how Ontario can best engage, collaborate and innovate. Part of this review looked at how government can best work with the public, enhance the availability of government information, and make data a public asset.<sup>203</sup> Ontario's FOI framework comes under the *Freedom of Information and Protection of Privacy Act 1990* and the *Municipal Freedom of Information and Protection of Privacy Act 1990*.

In British Columbia, the Information and Privacy Commissioner enforces two pieces of legislation: the *Freedom of Information and Protection of Privacy Act 1996* (FIPPA) and the *Personal Information Protection Act 2003* (PIPA). The FIPPA sets out the access and privacy rights of individuals as they relate to the public sector and establishes an individual's right to access records – this includes access to a person's own 'personal information' as well as records in the custody or control of a public body.

The PIPA came into effect in January 2004, and sets out how private sector organizations can collect, use and disclose personal information. There are more than 300,000 organisations in British Columbia B.C. covered by PIPA, including businesses and corporations, unions, political parties, and not-for-profits.

Under PIPA, individuals have the right to access their own personal information. The law also sets out the rules by which organizations can collect, use and disclose personal information from customers, clients and/or employees. PIPA requires organisations to protect and secure personal information against unauthorised use or disclosure.<sup>204</sup>

### 5.2.4

## Sweden

### Ombudsman

The role of the Swedish Ombudsman's office (Riksdagens Ombudsmän) is to independently review the implementation of laws and other regulations in the public sector on behalf of the Riksdag (parliament). This review also includes courts, public authorities and their employees.

In Sweden, the Ombudsmen's role is promoted as one of the pillars in ensuring constitutional protection for basic freedoms and rights of individuals.<sup>205</sup>

<sup>202</sup> An overview can be found at: <[www.priv.gc.ca/resource/prov/index\\_e.ASP](http://www.priv.gc.ca/resource/prov/index_e.ASP)>.

<sup>203</sup> See: [www.ontario.ca/document/open-default-new-way-forward-ontario#!/](http://www.ontario.ca/document/open-default-new-way-forward-ontario#!/)

<sup>204</sup> Office of the Information and Privacy Commissioner for British Columbia, Legislation, accessed 11 August 2017, <[www.oipc.bc.ca/about/legislation/](http://www.oipc.bc.ca/about/legislation/)>.

<sup>205</sup> Riksdagens Ombudsman, About JO, Accessed 11 August 2017, <[www.jo.se/en/About-JO/](http://www.jo.se/en/About-JO/)>.

There are four Parliamentary Ombudsmen and they are appointed directly by the Riksdag. There is a Chief Ombudsman and three Ombudsmen, who are elected for a four-year term and can be reelected. The four ombudsmen are based on four 'supervisory areas', which cover the following portfolios or organisations:

- Supervisory area 1: courts, enforcement authority, planning and construction service, land survey service, environment and health protection, tax agency, Chief Guardians and communications system.
- Supervisory area 2: Prison and Probation Service, Social Insurance Agency, Pensions Agency, Armed Forces and number of authorities incl. National Board for Consumer Disputes, Equality Ombudsman and Swedish Competition Authority.
- Supervisory area 3: health and medical care, education system and social services.
- Supervisory area 4: police and prosecution authorities, customs, non-nationals and employment, and government offices and municipal operations.

In addition to the Parliamentary Ombudsmen, Sweden has a number of other ombudsmen who are responsible for specific areas, such as the Equality Ombudsman, the Ombudsman for Children, the Press Ombudsman and the Consumer Ombudsman.<sup>206</sup>

### **Public access to information and secrecy legislation**

The Public Access to Information and Secrecy Act 2009 contains additional provisions to the Freedom of the Press Act 1766<sup>207</sup> covering the right to obtain official documents.

This Act also contains provisions concerning the application of the principle of public access to information by municipal authorities and certain private bodies. The Act contains secrecy provisions, which entail both document secrecy and a duty of confidentiality.<sup>208</sup>

Noted on the following pages is a summary table of Australian and international jurisdictions relating to oversight regimes on Freedom of Information/Right to Information, Privacy and the Ombudsman.

<sup>206</sup> Riksdagens Ombudsman, About JO, Accessed 11 August 2017, <[www.jo.se/en/About-JO/](http://www.jo.se/en/About-JO/)>.

<sup>207</sup> Freedominfo, 1766/2016 anniversary, Accessed 11 August 2017, <[www.freedominfo.org/2015/11/swedes-finns-planning-17662016-anniversary/](http://www.freedominfo.org/2015/11/swedes-finns-planning-17662016-anniversary/)>.

<sup>208</sup> Government Offices of Sweden, Public Access to Information and Secrecy Act, Accessed 11 August 2017, <[www.government.se/information-material/2009/09/public-access-to-information-and-secrecy-act/](http://www.government.se/information-material/2009/09/public-access-to-information-and-secrecy-act/)>.

### 5.3 Comparison of FOI oversight regimes

Jurisdiction	Organisation	Governance structure/functions	Parliamentary oversight
Australia - Federal	Office of the Australian Information Commissioner (OAIC)	<p>Reviews FOI decisions and complaints.</p> <p>Privacy role (under the Privacy Act)</p> <p>The <i>Australian Information Commissioner Act (AIC Act) 2010</i> established the OAIC. The AIC Act sets out three functions of the OAIC:</p> <ul style="list-style-type: none"> <li>• FOI</li> <li>• Privacy</li> <li>• Information policy.</li> </ul> <p>OAIC also has a dispute resolution function covering case management and resolution of privacy complaints and FOI reviews and complaints, Commissioner-initiated investigations; legal services and the public enquiries line.</p> <p>Applicants can seek judicial review (although not merits based) by the Federal Court of Australia or the Federal Circuit Court for a review of a decision or determination of OAIC and can complain to the Commonwealth Ombudsman if they believe they were treated unfairly.</p>	<p>Annual report tabled in Parliament.</p> <p>Information Commissioner required to report to Attorney-General on how public sector information is collected, used, disclosed, administered, stored and accessed.</p> <p>May be overseen by a parliamentary committee.</p> <p>External oversight on operations by Auditor-General or Commonwealth Ombudsman if required.</p>
Victoria	Office of the Victorian Information Commissioner	<p>Combined FOI &amp; Privacy body.</p> <p>Reviews FOI decisions, FOI complaints, monitors compliance with the FOI Act and from 1 September 2017, encompasses privacy and data protection functions.</p>	<p>Annual report tabled in Parliament.</p> <p>Accountability &amp; Oversight Committee.</p>
New South Wales	Information and Privacy Commissioner	<p>Combined FOI and privacy functions.</p>	<p>Annual report tabled in Parliament.</p> <p>Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission.</p>
Queensland	Office of the Information Commissioner	<p>Combined FOI and privacy functions.</p>	<p>Annual report tabled in Parliament.</p> <p>Legal Affairs and Community Safety Committee.</p>
Western Australia	Office of the Information Commissioner	<p>Main focus on FOI (WA does not have a legislative privacy regime).</p>	<p>Annual report tabled in Parliament.</p> <p>Accountable directly to Parliament.</p>
Northern Territory	Office of the Information Commissioner	<p>Combined FOI and Privacy functions.</p>	<p>Annual report tabled in Parliament.</p> <p>No specific parliamentary oversight committee.</p>
South Australia	Ombudsman SA	<p>Appeal and review of FOI decisions through Ombudsman, and to the District Court.</p>	<p>Annual report tabled in Parliament.</p>

Jurisdiction	Organisation	Governance structure/functions	Parliamentary oversight
Tasmania	Ombudsman Tasmania	As of July 1 2010, the <i>Right to Information Act 2009</i> (the RTI Act) replaced the <i>Freedom of Information Act 1991</i> .	Annual report tabled in Parliament.
New Zealand	NZ Ombudsman Privacy Commissioner	Ombudsman responsible for reviewing government agencies handling of Official Information Act (OIA) requests.  Privacy Commissioner investigates complaints about privacy breaches.	Annual report tabled in Parliament.  Select Committee on Government Administration.
United Kingdom	UK Cabinet Office (prior to 17 July 2015, responsibility for FOI was with Ministry of Justice) & Information Commissioner's Office (ICO).	FOI reforms part of Government's transparency & accountability policy.	Annual report to Parliament.  Independent Commission on FOI (independent & cross party commission established in July 2015 to review FOI Act & report to government through Minister for the Cabinet Office).  Committee on Standards in Public Life.
Sweden	Ombudsman	Right to information part of Swedish Constitution, Freedom of the Press Act and Public Access to Information & Secrecy Act.	Reports tabled in Parliament  Riksdag (Swedish Parliament), Committee on the Constitution & Parliamentary Ombudsman.
Canada - Federal	Canadian Information Commissioner  Privacy Commissioner	Canadian Information Commissioner investigates FOI complaints re: decisions of government agencies.  Privacy Commissioner investigates complaints and undertakes audits on privacy breaches.	Reports to Parliament  House of Commons Standing Committee on Access to Information, Privacy and Ethics
Canada - Ontario	Information & Privacy Commissioner (IPC) for Ontario.  Ontario Ministry of Health & Long Term Care.	IPC role established in three statutes: the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act and the Personal Health Information Protection Act. The IPC acts independently of government with aim of upholding and promoting open government and the protection of personal privacy.	Reports to Parliament  Legislative Assembly



Jurisdiction	Organisation	Governance structure/functions	Parliamentary oversight
Canada - British Columbia	<p>Information &amp; Privacy Commissioner for British Columbia</p> <p>Special Committee to Review the Freedom of Information and Protection of Privacy Act, in response to government inquiry undertaken in 2015 by former Information &amp; Privacy Commissioner.</p>	<p>Established in 1993, the Office of the Information and Privacy Commissioner provides independent oversight and enforcement of BC's access and privacy laws, including:</p> <ul style="list-style-type: none"> <li>The <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA), which applies to over 2,900 public bodies, including ministries, local governments, schools, crown corporations, hospitals, municipal police forces and</li> <li>The <i>Personal Information Protection Act</i> (PIPA), which applies to over 380,000 private sector organisations, including businesses, charities, associations, trade unions and trusts.</li> </ul> <p>In May 2016 the Committee released its unanimous report including 39 recommendations to strengthen access to information and privacy protection for British Columbians.</p> <p>The report summarises the results of the committee's public consultations where 193 presentations and written submissions were received from stakeholders and British Columbians on ways to improve information rights and the collection, use, disclosure, and protection of personal information by public bodies. Major recommendations include enhancing proactive disclosure and adding a duty to document to the Act.</p>	<p>Reports to Parliament</p> <p>External Advisory Board (est. 2011)</p> <p>Legislative Assembly</p> <p>Special Committee to Review the Freedom of Information and Protection of Privacy Act, in response to government inquiry undertaken in 2015 by former Information &amp; Privacy Commissioner.</p>
Canada - Québec	<p>Commission d'accès à l'information du Québec</p> <p>Ministère du Conseil exécutif (access to information/ documents)</p> <p>Santé et Services Sociaux Québec (access to e-health records)</p>	<p>The focus of the Commission d'accès à l'information is to promote access to documents held by public bodies and the protection of personal information in the public and private sectors, and monitoring, examining and determining review applications and appeals.</p>	<p>Annual report tabled in Parliament</p> <p>National Assembly of Québec (Assemblée nationale du Québec).</p>

Source: Compiled by the Accountability and Oversight Committee

## 5.4 Comparison of Ombudsman oversight regimes

Jurisdiction	Organisation	Governance structure /Functions	Parliamentary oversight
Australia - Federal	Commonwealth Ombudsman	<p>Considers and investigates complaints about unfair or unreasonable treatment by an Australian Government department or agency, as well as a <i>prescribed</i> private sector organisation, including Australia Post, Centrelink, Child Support (DHS), and Department of Immigration and Border Protection.</p> <p>Seeks to ensure that departmental/ agency administrative actions are fair and accountable by handling complaints, conducting investigations, performing audits and inspections, encouraging good administration and discharging specialist oversight tasks.</p> <p>Cannot override the decisions of agencies - only makes recommendations.</p> <p>The Commonwealth Ombudsman's Office has six major functions, these are:</p> <ol style="list-style-type: none"> <li>(1) Complaint investigations</li> <li>(2) Own-motion investigations</li> <li>(3) Compliance audits</li> <li>(4) Immigration detention oversight</li> <li>(5) The Commonwealth Public Interest Disclosure scheme</li> <li>(6) Private health insurance consumer information</li> </ol> <p>From 1 July 2015 the Ombudsman is also the Private Health Insurance Ombudsman (responsible for protecting the interests of private health insurance consumers), in addition to the Defence Force Ombudsman, Immigration Ombudsman, Law Enforcement Ombudsman, ACT Ombudsman, Postal Services Ombudsman and Overseas Students Ombudsman.</p>	<p>Commonwealth Ombudsman part of the Department of Prime Minister &amp; Cabinet portfolio.</p> <p>Annual report tabled in Parliament.</p> <p>External scrutiny of the Ombudsman through court &amp; tribunal litigation, reviews of decisions brought by the Office of the Australian Information Commissioner and jurisdiction of the Australian Human Rights Commission.</p> <p>Commonwealth Ombudsman National office is located in Canberra with State offices in Adelaide, Brisbane, Melbourne, Perth and Sydney</p>
Victoria	Victorian Ombudsman	<p>Independent officer of the Victorian Parliament. Office investigates complaints about administrative actions taken by Victorian government agencies.</p> <p>Jurisdiction &gt;1000 Victorian public bodies, incl. government departments, statutory authorities, professional boards, councils, universities, government schools, prisons (including private prisons) and authorised officers on public transport. In addition, the Ombudsman can investigate private organisations contracted to perform functions for government agencies.</p>	<p>Annual report tabled in Parliament.</p> <p>Accountability &amp; Oversight Committee.</p>

Jurisdiction	Organisation	Governance structure /Functions	Parliamentary oversight
New South Wales	Ombudsman NSW	<p>NSW Ombudsman is the most comprehensive ombudsman office in Australia, in terms of breadth and depth of functions, scope and work areas/programs. They are currently expanding their work areas to include new roles in training, disability support and aboriginal programs.</p> <p>Two new roles the Office commenced in 2014-15 were: disability reportable incident jurisdiction, to raise awareness of the scheme among agencies and staff providing residential care to people with disability; and new position of Deputy Ombudsman (Aboriginal Programs), to support the office's Aboriginal unit office to talk to and meet with communities.</p> <p>Seeks to assist agencies to address problems with their performance. Focus on improving the conduct and decision-making of those agencies.</p> <p>Ombudsman scrutinises agency processes/systems, oversees investigations and reviews delivery of services, namely:</p> <ul style="list-style-type: none"> <li>agencies delivering public services – including police, correctional centres and state-owned corporations;</li> <li>organisations delivering services to children – including schools and child-care centres;</li> <li>organisations delivering community services – including services for people with disabilities, people who are homeless and elderly people; and</li> <li>agencies conducting covert operations, including the Crime Commission and the Independent Commission Against Corruption.</li> </ul> <p>Ombudsman NSW also has specific functions relating to the protection of children in NSW, the delivery of community services, the causes and patterns of deaths of children and people with a disability in care, the use of powers to conduct controlled operations, and the operation of a number of new pieces of legislation conferring additional powers on police.</p>	<p>Annual report tabled in Parliament.</p> <p>Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission (joint statutory committee).</p> <p>Review performance, functions and annual reports.</p> <p>No inquiries in the current parliament, however, strong emphasis in the past on police integrity.</p> <p>Can endorse or veto an appointment of office-holder.</p>

Jurisdiction	Organisation	Governance structure /Functions	Parliamentary oversight
Queensland	Queensland Ombudsman	<p>The Ombudsman investigates complaints about the actions and decisions of Queensland public agencies: government departments, local councils and other public agencies delivering services, such as workers' compensation, legal aid and universities and TAFES, and their staff that may be unlawful, unreasonable, unfair, improperly discriminatory or otherwise incorrect.</p> <p>In accordance with the <i>Ombudsman Act 2001</i>, Ombudsman has a dual role to:</p> <ul style="list-style-type: none"> <li>• provide a fair and impartial investigative service for people who believe they have been adversely affected by a decision or action of a public sector agency; and</li> <li>• assist public sector agencies to improve their decision-making and administrative practice.</li> </ul>	<p>Annual report tabled in Parliament.</p> <p>Legal Affairs and Community Safety Committee (portfolio committee of the Legislative Assembly). May refer matters to the Ombudsman for investigation and reporting.</p> <p>Review performance, functions and annual reports, strategic (efficiency) review of the office every 5 years. Conducts hearings and scrutinises legislation.</p>
Western Australia	Ombudsman Western Australia	<p>Oversight of parliamentary officers and public sector agencies more broadly.</p> <p>Independent officer of Parliament with responsibility to investigate the actions of public authorities including State government departments, prisons, hospitals, schools and technical colleges, local government and public universities.</p> <p>Ombudsman has broader remit, including child deaths, family and domestic violence fatalities and acts as the Energy &amp; Water Ombudsman.</p> <p>Ombudsman also inspects the records of the Western Australia Police and the Corruption and Crime Commission to ensure compliance with telecommunications interception legislation.</p>	<p>Annual report tabled in Parliament.</p> <p>Public Administration Committee (standing legislative council committee).</p>
South Australia	Ombudsman SA	<p>Independent officer appointed by Parliament who has comprehensive power to:</p> <ul style="list-style-type: none"> <li>• investigate complaints about state government departments and authorities, and local government</li> <li>• investigate misconduct and maladministration in public administration on referral by the Independent Commissioner Against Corruption</li> <li>• review agencies' determinations about the release of information under the Freedom of Information Act</li> <li>• receives information confidentially from a person who wishes to disclose improper or illegal action by officers in agencies.</li> </ul>	<p>Annual report tabled in Parliament.</p> <p>Crime and Public Integrity Policy Committee (joint standing committee).</p> <p>Examines the performance of functions and exercise of powers.</p>

Jurisdiction	Organisation	Governance structure /Functions	Parliamentary oversight
Tasmania	Ombudsman Tasmania	<p>Independent officer appointed by the Governor, and answerable to Parliament.</p> <p>Role is to investigate the administrative actions of public authorities to ensure their actions are lawful, reasonable and fair.</p> <p>Seeks to resolve complaints and address systemic problems, with the stated aim of improving the quality and standard of Tasmanian public administration.</p> <p>Jurisdiction includes government departments, local councils, water and sewerage corporations, prisons, state-owned companies and Government Business Enterprises.</p>	<p>Annual report tabled in Parliament.</p> <p>Joint Standing Committee on Integrity.</p> <p>Monitoring of powers and functions of integrity bodies.</p>
Northern Territory	Ombudsman NT	<p>Parliamentary officer and independent of government.</p> <p>Receives and considers complaints from public about Northern Territory government departments, statutory authorities, local government, Northern Territory Police or Correctional Services.</p>	<p>Annual report tabled in Parliament.</p> <p>No specific parliamentary oversight committee.</p>
New Zealand	New Zealand Ombudsman	<p>Processes complaints and investigates administrative conduct of state sector agencies, including official information requests.</p> <p>Ombudsman has jurisdiction over ministers, government departments/agencies and local government authorities.</p> <p>Also carries out a range of roles that aims to protect rights, including monitoring places of detention, and the implementation of the UN Disabilities Convention.</p> <p>Provides advice, guidance and training to state sector agencies, incl. community outreach.</p>	<p>Annual report tabled in Parliament.</p> <p>Select Committee on Government Administration.</p>
United Kingdom	Parliamentary and Health Service Ombudsman	<p>Acts at the final stage of complaints about the National Health Service (NHS) in England and public services delivered by the UK Government.</p> <p>Ombudsman established by Parliament to provide an independent complaint handling service.</p> <p>Investigates complaints about an alleged injustice or hardship where an organisation has not acted properly or fairly or has given a poor service.</p>	<p>Annual report tabled in Parliament.</p> <p>Public Administration and Constitutional Affairs Committee (select committee).</p> <p>Committee examines constitutional issues and the quality and standards of administration in the British Civil Service. It monitors complaints about the Parliamentary and Health Service Ombudsman as a way of scrutinising the work of her office and identifying systemic problems.</p> <p>The Committee does not review individual cases.</p>

Jurisdiction	Organisation	Governance structure /Functions	Parliamentary oversight
Sweden	Parliamentary Ombudsmen	<p>Review complaints and investigates issues re: government agencies, under 4 'supervisory areas':</p> <p>Supervisory area 1: courts, enforcement authority, planning and construction service, land survey service, environment and health protection, tax agency, Chief Guardians and communications system.</p> <p>Supervisory area 2: Prison and Probation Service, Social Insurance Agency, Pensions Agency, Armed Forces and number of authorities incl. National Board for Consumer Disputes, Equality Ombudsman and Swedish Competition Authority.</p> <p>Supervisory area 3: health and medical care, education system and social services.</p> <p>Supervisory area 4: police and prosecution authorities, Customs, non-nationals and employment, and government offices and municipal operations.</p>	<p>Four ombudsman (incl. chief ombudsman) appointed by Riksdag (parliament) for 4 year terms.</p> <p>Undertakes investigations and reviews and reports back to Parliament.</p>
Canada - Federal	<p>No national ombudsman.</p> <p>Sectoral ombudsman established.</p> <p>National association group Forum of Canadian Ombudsman (FCO) acts as an information network for ombudsman offices from all sectors/types.</p> <p>Office of the Ombudsman for the Department of National Defence and the Canadian Forces.</p> <p>Veterans Ombudsman</p> <p>Ombudsman for Victims of Crime</p>	<p>Sector specific ombudsmen e.g. Taxpayers' Ombudsman, Pension Ombudsman, Veterans Ombudsman, First Nations Ombudsman, Procurement Ombudsman, Federal Ombudsman for Victims of Crime, and the National Defence and Canadian Forces Ombudsman.</p>	<p>Reports to Parliament</p> <p>House of Commons</p> <p>Standing Committee on National Defence</p> <p>Standing Committee on Veterans Affairs</p> <p>Standing Committee on Public Safety and National Security</p>

Jurisdiction	Organisation	Governance structure /Functions	Parliamentary oversight
Canada - Ontario	Ombudsman Ontario	<p>Independent officer of the Legislature who investigates complaints from the public about Ontario government services, including &gt;1 000 broader public sector bodies, provincial ministries, Crown corporations, tribunals, agencies, boards and commissions.</p> <p>Recommends governance improvements and resolves individual issues.</p> <p>On 1 September 2015, the Ombudsman's mandate was expanded to include school boards, children's aid societies and police and — as at 1 January 2016 — local municipalities and universities.</p> <p>However, Ombudsman cannot investigate hospitals and long-term care facilities.</p>	<p>Reports to Parliament</p> <p>Legislative Assembly</p>
Canada - British Columbia	Ombudsperson British Columbia	<p>Independent statutory office of the provincial Legislature, impartially investigates individual complaints about unfair administrative actions in &gt;2800 B.C. public authorities, and seeks to resolve individual matters.</p> <p>Investigates whether provincial public authorities acted fairly and reasonably and whether their actions and decisions were consistent with relevant legislation, policies and procedures.</p>	<p>Reports to Parliament</p> <p>Legislative Assembly</p>
Canada - Québec	Québec Ombudsman (Protecteur du Citoyen)	<p>Impartial and independent ombudsman that seeks to prevent or correct infringements of rights, abuse, negligence, inaction or errors that affect citizens in their dealings with a provincial department or agency, or a health and social services sector agency.</p>	<p>Reports to Parliament</p> <p>National Assembly of Québec (Assemblée nationale du Québec)</p>

Source: Compiled by the Accountability and Oversight Committee





# 6

## Obstacles and opportunities

Throughout the course of the Inquiry, the Committee learned of various obstacles in relation to the levels of understanding within the public service and the community more broadly of the functions of the three oversight agencies. These obstacles have been highlighted in submissions to the Inquiry, in evidence presented at the Committee's public hearings and study tours and also, most importantly, from members of the public who contacted the Committee regarding their individual matters.

The Committee's recommendations aim to address these obstacles, as well as strengthen engagement between oversight agencies and the agencies that they oversee.

The Committee believes that strengthened engagement between agencies will facilitate greater collaboration which will, in turn, strengthen public administration and foster good governance in Victoria.

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### 6.1 Office of the Victorian Information Commissioner

#### Obstacle

There have been several significant changes to the freedom of information framework in recent years. This includes the establishment of the Freedom of Information Commissioner,<sup>209</sup> reduced decision-making time frames and changes to notification procedures when an application is made to VCAT<sup>210</sup> and, most recently, the establishment of the OVIC.<sup>211</sup>

For the agencies that receive the large majority of requests for information, these changes are not likely to be problematic. However, for smaller agencies that receive few requests for information, the changing FOI framework poses an obstacle to the proper application of the FOI Act by creating additional reporting functions and deadlines which, unless met with enhanced resources, will increase pressure on staff.

#### Opportunity

The Committee received evidence that there will be communications and stakeholder engagement in relation to the establishment of the OVIC, which will help to clarify the associated changes and how these may impact upon the work of public service staff.<sup>212</sup>

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

210 *Freedom of Information and Victorian Inspectorate Acts Amendment Act 2014 (Vic).*

211 *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017 (Vic).*

212 Sally Winton, Acting Public Access Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, Melbourne, 7 August 2017, p. 5.

The roll-out of additional e-learning modules covering the recent amendments to the Act and the most commonly used exemptions will also help public service staff to develop a greater understanding of their legal obligations and how to meet them.

The publication of appropriate decisions of FOI reviews online, in accordance with privacy requirements, and a database of these decisions, would assist FOI decision-makers in applying the FOI Act to the requests they receive.

It is anticipated that the provision of these additional tools to assist public service staff with applying the Act will reduce reliance on costly external independent legal services.

It will also enhance institutional knowledge within agencies in relation to FOI, which will foster improved decision-making and consistency in application of the Act across the public service. The Committee believes that the introduction of binding professional standards will also increase engagement by agencies with the OVIC education and communications resources.

## 6.2 Victorian Ombudsman

### Obstacle

The Committee heard that reported levels of understanding of the functions and processes of the Victorian Ombudsman amongst marginalised or disadvantaged groups is minimal. The Committee considers this to be of concern as those who experience barriers to fair access to government services may be unaware of their rights and the redress available to them through the Ombudsman.

People facing homelessness, people with a disability, young people and people from culturally linguistically diverse communities are more likely to need the services of the Ombudsman. However, they are paradoxically less likely to have heard of the Ombudsman or if they have, know how to access the Ombudsman's services.

### Opportunity

Examining how best to improve engagement with young people and disadvantaged groups through community education and awareness-raising activities would enable the Ombudsman to ensure that subsequent activities are evidence-based and designed to meet the needs of those most at risk within our community.

Providing for a statutory educative function for the Ombudsman would also enable an expansion of the education activities and community engagement, which is currently undertaken through reallocating funds from existing areas of the Ombudsman's work program.

A follow-up to the 2015 survey of public understanding of the role and functions of the Ombudsman could assist with monitoring the impact of the increased engagement, as well as tracking progress against deliverables and targets.

### **Obstacle**

The Committee heard that government agencies would benefit from increased opportunities for education and training with the Ombudsman, as well as greater communication, particularly around emerging issues and trends in complaints.

This is particularly true of local governments that may have limited resources for addressing systemic compliance issues without external legal advice.

### **Opportunity**

Several recommendations by the Committee aim to improve engagement between the Ombudsman and government agencies.

For example, a monthly e-news bulletin by the Ombudsman would provide an opportunity for the Office to highlight emerging issues and provide best practice guidance so that government agencies can address these issues in their processes and policies.

The development of sector-specific guidelines to help agencies meet their legal obligations would also be particularly beneficial, especially for agencies that do not have significant resources for compliance-related matters.

Initial funding to establish a training program and a statutory educative function would also enable the Ombudsman to deliver more education and training opportunities to public service staff.

This will strengthen institutional knowledge of compliance within government agencies and reduce the reliance on expensive external legal advice.

### **Obstacle**

The Committee believes that education, training and communications resources can play an important part in strengthening administrative decision-making in Victoria.

While the Victorian Ombudsman has started delivering education to the public sector, the funding necessary to fully develop an education program should be linked to the performance of statutory functions, as a way to ensure the targeted delivery of education and communications programs that are measureable.

As such, the opportunity that education and communications can play in promoting systemic change across the public service cannot be fully realised or assessed within the current framework.

### Opportunity

The provision of a statutory educative function for the Victorian Ombudsman, and initial funding to fully establish an education and training program, will considerably broaden the scale and scope of education and training the Ombudsman can deliver. This should improve administrative decision-making, which should, in turn, reduce the number of complaints received by the office and also prevent issues from escalating to the point of investigation.

## 6.3 Victorian Inspectorate

### Obstacle

The Victorian Inspectorate receives a number of complaints that fall outside its jurisdiction, typically by people who are not satisfied with the decision of the Ombudsman and who are seeking a review of their matter.

The Inspectorate, however, does not have powers to review the merits of a matter heard by the Ombudsman and can only investigate whether procedural fairness requirements were met.<sup>213</sup>

This corresponds with the experience of the Committee, which is similarly limited by legislation to assessing whether a complainant has been afforded procedural fairness in the determination of their matter by the Ombudsman.<sup>214</sup>

### Opportunity

The Committee has recommended that the Victorian Inspectorate publish information on its website that clarifies its functions in relation to complaints, including guidance on compliance with procedural fairness and the exercise of coercive powers. The Committee believes it is important that this information is presented in plain English and clearly articulates what the Victorian Inspectorate can – and cannot – consider, including examples to illustrate. The Inspectorate should also provide options for people who remain dissatisfied with a final decision.

This proposal is aimed at managing the expectations of potential complainants to the Inspectorate, particularly those people who the Inspectorate does not have jurisdiction to provide a remedy.

Of note, a person investigating whether to submit a complaint to the Victorian Inspectorate is likely to have exhausted dispute resolution mechanisms that occur in the initial stages of a matter, with the Ombudsman, for example, without achieving a satisfactory outcome.

<sup>213</sup> *Victorian Inspectorate Act 2011* section 4.

<sup>214</sup> *Ombudsman Act 1973* section 26H(2).

There is a real risk that engaging with the Inspectorate on the assumed basis that it may provide a satisfactory outcome, where there is no such scope for this to occur, may foster a sense of frustration with Victoria's oversight framework and processes. This is problematic as public confidence is essential to the proper functioning of Victoria's oversight framework. People will not engage with the mechanisms of oversight agencies where they have no confidence in the capacity of these agencies to uphold their rights or respond to their requests in a fair, equitable and timely manner.

Accordingly, the Committee believes it is important that the Victorian community has access to information that clearly outlines the functions and processes of the Victorian Inspectorate and does this in an accessible way.

The Committee believes that greater guidance and support for complainants earlier on in the dispute process will help them to achieve a satisfactory remedy. Education initiatives aimed at public service staff in government agencies, local government, hospitals and universities, will also contribute to improved communication about the responsibilities of agencies and the rights of members of the community in accessing government services. It is anticipated that this will reduce the probability of complaints about public administration.

**Committee Room**  
**30 October 2017**

