



**PARLIAMENT OF VICTORIA**  
Accountability and Oversight Committee

**Report into Victorian  
oversight agencies 2015-16**

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

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

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

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

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

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

# Committee membership



**Mr Neil Angus MP**  
Chair  
Forest Hill



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



**Ms Melina Bath MLC**  
Eastern Victoria



**Mr Michael Gidley MP**  
Mount Waverley



**Mr James Purcell MLC**  
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**Mr Nick Staikos MP**  
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This report is available on the Committee's website.

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# Chair's foreword

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

This report examines the 2015–16 annual reports of the Freedom of Information (FOI) Commissioner, the Victorian Ombudsman and the Victorian Inspectorate.

The year in review was an evolving time for Victoria's integrity system.

In March 2016, the Victorian Government began a community consultation process as part of its review of the state's integrity and accountability framework. In June 2016 it introduced into Parliament the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 which, at the time of this report being finalised, is still being considered by the Legislative Council.

On 1 July 2016 the *Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016*, came into operation. The legislation amended the Ombudsman Act to allow greater flexibility with complaints handling and improved information sharing arrangements between the Ombudsman's office and other integrity agencies.

In terms of performance, during the 2015–16 year, the FOI Commissioner's office responded to 6375 enquiries and had the highest number of finalised reviews (227) and resolved complaints (328). There was an increase in agency FOI requests (34,249), up from 33,209 in the 2014–15 year. There was also a reduction in the number of FOI appeals to VCAT.

The year in review produced some consistent trends on previous reporting periods. Notably, the health sector accounted for the largest percentage of FOI requests made, with full access being granted in more than 90 per cent of cases. The Committee therefore reiterates the need to develop a protocol to release (outside the FOI Act) information that is frequently requested under the FOI Act *and* routinely granted. This would reduce the number of routine FOI requests, save money and free up resources to address other important FOI matters.

Similarly, the Ombudsman completed a substantial volume of work in 2015–16. This included managing 39,470 initial contacts to her office, 17,469 of which were referred to a more suitable authority through its website or phone redirection service, leaving the Ombudsman's office to respond to 22,001 contacts from the public. The Ombudsman finalised 2988 enquiries, conducted 33 formal investigations and examined 24 protected disclosure complaints. The Victorian Inspectorate also reported no substantive issues in its oversight of the Ombudsman during the year.

In May 2016, a delegation of the Committee travelled to Sydney and Brisbane and met with representatives from interstate integrity bodies. The Committee extends its gratitude to the agency representatives who gave their time and expertise to provide valuable insights and experiences of the New South Wales and Queensland integrity systems.

This report into the 2015–16 oversight agencies annual reports makes 10 recommendations to the Victorian Government, including:

- reviewing the requirement that complaints submitted to the FOI Commissioner (or the new Information Commissioner) and Victorian Inspectorate must be made in writing
- collecting data on the timeframes of FOI complaints resolution and agency data across the four sectors of Health, Government, Emergency Services and Statutory Authorities, to determine the cost of administering FOI requests
- collaboration between the FOI Commissioner (or the new Information Commissioner) and the health sector to provide commonly requested information that is routinely granted, outside of the *Freedom of Information Act 1982*
- clarification of the Victorian Civil and Administrative Tribunal's jurisdiction regarding agency freedom of information searches
- allowing for the referral by the Ombudsman of misdirected complaints to relevant bodies
- reviewing the complaints handling process by the Ombudsman, to reduce the number of complaints that take more than 30 days to resolve
- clarifying the Accountability and Oversight Committee's responsibility to receive and investigate complaints into the FOI Commissioner (or the new Information Commissioner), the Victorian Ombudsman and the Victorian Inspectorate.

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), Ms Melina Bath MLC, Mr Michael Gidley MP, Mr James Purcell MLC, Mr Nick Staikos MP and Hon Marsha Thomson MP.

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

I commend this report to the Parliament.



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

# List of recommendations

## 2 The Victorian Freedom of Information Commissioner

**RECOMMENDATION 1:** That the Victorian Government reviews the current requirement that complaints submitted to the Freedom of Information Commissioner must be made in writing. 14

**RECOMMENDATION 2:** That the Freedom of Information Commissioner (or the new Information Commissioner) provides data in annual reports on the timeframes of complaint resolution. 15

**RECOMMENDATION 3:** That the Freedom of Information Commissioner (or the new Information Commissioner) continues to work with the Health sector to provide commonly requested information that is routinely granted, outside the *Freedom of Information Act 1982*. 19

**RECOMMENDATION 4:** That the Freedom of Information Commissioner (or the new Information Commissioner) collates agency data across the four sectors of Health, Government, Emergency Services and Statutory Authorities, on the cost of administering freedom of information requests, for collation in subsequent annual reports. 19

**RECOMMENDATION 5:** That the Victorian Government clarifies the Victorian Civil and Administrative Tribunal's jurisdiction:

- to make determinations on agency freedom of information searches
- to order agencies to undertake freedom of information subsequent searches and produce documents. 20

## 3 The Victorian Ombudsman

**RECOMMENDATION 6:** That the Victorian Government considers as part of its review of the integrity and accountability framework, amendments to the *Ombudsman Act 1973* to allow for:  

- the referral by the Ombudsman of misdirected complaints to relevant bodies
- greater collaboration between the Ombudsman and other public sector agencies. 32

**RECOMMENDATION 7:** That the Victorian Government, as part of its review of the Victorian integrity framework, reviews the appropriateness of the Victorian Ombudsman's target measure of 95 per cent of complaints resolved within 30 days. 36

**RECOMMENDATION 8:** That the Victorian Government and the Victorian Ombudsman review the complaints handling process to reduce the number of complaints requiring more than 30 days for resolution. 37

## 4 The Victorian Inspectorate

**RECOMMENDATION 9:** That the Victorian Government clarifies through an appropriate formal mechanism the responsibility of the Accountability and Oversight Committee to receive and investigate complaints into:

- the Freedom of Information Commissioner (or the new Information Commissioner)
- the Victorian Ombudsman
- the Victorian Inspectorate. 47

**RECOMMENDATION 10:** That the Victorian Inspectorate reviews the current requirement that complaints must be submitted in writing. 48

# List of acronyms

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<b>FOI</b>	Freedom of information
<b>IBAC</b>	Independent Broad-based Anti-corruption Commission
<b>VAGO</b>	Victorian Auditor-General's Office
<b>VCAT</b>	Victorian Civil and Administrative Tribunal

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# 1

## Introduction

### AT A GLANCE

#### Background

The Accountability and Oversight Committee oversees the Freedom of Information Commissioner, the Victorian Ombudsman and the Victorian Inspectorate. It is empowered to monitor the performance of these bodies and to review any reports tabled by these bodies, including annual reports.

This report examines the 2015–16 annual reports of these three agencies.

### 1.1 Background

This is the fourth report of the Victorian Parliament’s Accountability and Oversight Committee (the Committee), and its third in the 58th Parliament. This report examines the 2015–16 annual reports of the three agencies the Committee oversees: the Freedom of Information (FOI) Commissioner, 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 framework in Victoria.<sup>1</sup>

The Accountability and Oversight Committee, along with the Independent Broad-based Anti-corruption Commission (IBAC) Committee, was re-established in April 2015 in the 58th Parliament.

Both the *Parliamentary Committees Act* and the *Ombudsman Act 1973* provide the Committee with powers to oversee the three integrity agencies.

Under both Acts, the Committee is empowered to analyse the outputs of the FOI Commissioner and the Victorian Ombudsman and monitor their overall operational performance. In the case of the Victorian Inspectorate, the Committee oversees only those aspects of the Victorian Inspectorate’s work dealing with conduct of Victorian Ombudsman officers.

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<sup>1</sup> *Parliamentary Committees Act 2003* (Vic), 110 of 2003.

1

In addition, the Committee can review any reports tabled by the FOI Commissioner and the Ombudsman in the Parliament and reports of the Victorian Inspectorate in respect of the Victorian Inspectorate's oversight of the Ombudsman.

### 1.3 The Victorian integrity framework

Victoria's integrity system was inaugurated in July 2012 with the establishment of new integrity bodies: IBAC, the Public Interest Monitor, the FOI Commissioner and the Victorian Inspectorate.

The functions of the former Office of Police Integrity and the Office of the Special Investigations Monitor were integrated into IBAC and the Victorian Inspectorate, respectively. There were also amendments to the powers of the Victorian Ombudsman and the Victorian Auditor-General's Office (VAGO) as part of the new system.

In addition, the Victorian Parliament established the Accountability and Oversight Committee and the IBAC Committee to oversee the integrity framework.

In 2015–16 the Victorian Government introduced a range of amendments to the Victorian integrity framework. These included:

- the *Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016*
- a Victorian Government review of the integrity and accountability framework
- the Freedom of Information (Office of the Victorian Information Commissioner) Amendment Bill 2016.

These amendments are discussed throughout the report.

### 1.4 The Committee's roles and responsibilities

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

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



The Committee's legislative functions include:

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

### 1.4.1 Oversight of agency performance, functions and duties

The Committee scrutinises each agency's annual reports to identify issues affecting their operational performance.

The Committee is empowered by legislation to specifically examine:

- the FOI Commissioner's annual report
- any reports tabled by the Ombudsman and the FOI Commissioner
- any report made by the Victorian Inspectorate in respect of Ombudsman officers.

Due to legislative requirements, the Committee cannot investigate decisions, findings and recommendations made by an agency in its investigation of specific cases. The Committee can only review processes followed by agencies when making decisions rather than overturning a decision or recommending an agency reconsider its decision.

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. The agencies the delegation met with included:

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

The Committee extends its gratitude to the agency and parliamentary representatives who gave their time to provide their insights and experiences of the New South Wales and Queensland integrity systems.

## 1.5 Structure of the report

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

The following three chapters will examine in greater detail each of the three annual reports for the 2015–16 financial year of the agencies the Committee oversees.

Chapter 2 examines the performance of the FOI Commissioner.

Chapter 3 examines the performance of the Victorian Ombudsman.

Chapter 4 examines the performance of the Victorian Inspectorate in respect of the Victorian Ombudsman.

# 2

## The Victorian Freedom of Information Commissioner

### AT A GLANCE

#### Background

The Freedom of Information (FOI) Commissioner's role is to review FOI requests and investigate the handling of requests and complaints relating to FOI.

In 2015–16 the FOI Commissioner responded to the highest number of complaints over a one-year period since the office's establishment three years ago.

Appeals to the Victorian Civil and Administrative Tribunal on agency decisions decreased from 74 in 2014–15 to 72 in 2015–16.

At the time of writing the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 is before the Parliament. Some key provisions of the Bill are to:

- abolish the FOI Commissioner and Commissioner for Privacy and Data Protection, and merge the functions into the Victorian Information Commissioner
- provide increased powers to the Information Commissioner on FOI matters
- introduce new complaint categories for FOI applications
- modify timeframes for agencies to respond to FOI requests.

#### Recommendations

1. That the Victorian Government reviews the current requirement that complaints submitted to the Freedom of Information Commissioner must be made in writing.
2. That the Freedom of Information Commissioner (or the new Information Commissioner) provides data in annual reports on the timeframes of complaint resolution.
3. That the Freedom of Information Commissioner (or the new Information Commissioner) continues to work with the Health sector to provide commonly requested information that is routinely granted, outside the *Freedom of Information Act 1982*.
4. That the Freedom of Information Commissioner (or the new Information Commissioner) collates agency data across the four sectors of Health, Government, Emergency Services and Statutory Authorities, on the cost of administering freedom of information requests, for collation in subsequent annual reports.
5. That the Victorian Government clarifies the Victorian Civil and Administrative Tribunal's jurisdiction:
  - to make determinations on agency freedom of information searches
  - to order agencies to undertake freedom of information subsequent searches and produce documents.

## 2.1 Introduction

The Freedom of Information (FOI) Commissioner was established in Victoria in December 2012 as part of a range of reforms to Victoria's integrity system. The FOI Commissioner's role is to ensure there is a fair and transparent release of information held by government agencies. This is achieved by reviewing FOI requests and investigating how government agencies handle FOI requests.

The FOI Commissioner reports directly to Parliament and the Special Minister of State.

The position of FOI Commissioner has been vacant since 5 September 2015. Mr Michael Ison (previously Assistant FOI Commissioner) has been acting in the role since then.

In May 2016 the Special Minister of State, Hon. Gavin Jennings MLC, announced the Government's intention to undertake a comprehensive review of Victoria's FOI landscape. This includes creating the Office of the Victorian Information Commissioner, which merges the offices of the Freedom of Information Commissioner and the Office of the Commissioner for Privacy and Data Protection.<sup>2</sup>

In June 2016, the Government introduced into Parliament legislation to create the Office of the Victorian Information Commissioner. At the time this report was prepared, the Bill was still before the Legislative Council. This is discussed further in section 2.3.

One of the Committee's primary functions is to monitor and review the performance of the FOI Commissioner. The Committee is also required to investigate complaints made against the Commissioner and the office.

During the 2015–16 year, the Committee received and responded to four formal complaints against the FOI Commissioner. These contained specific concerns over the way the complainants believed their FOI matter had been handled by the FOI Commissioner's office.

One of the complainants raised a number of systemic and administrative issues that may have applicability for other FOI complainants. These issues are discussed in section 2.6.

## 2.2 The Freedom of Information Commissioner's functions

The functions and powers of the FOI Commissioner are detailed in the *Freedom of Information Act 1982*. These include:

- to promote understanding and acceptance by agencies of the Act and its objectives

<sup>2</sup> Hon. Gavin Jennings MLC, Special Minister of State, *Improving transparency for Victorians*, Media release, Victorian Government, Melbourne, 24 May 2016.

- to conduct reviews of FOI decisions by agencies
- to receive and handle complaints about how agencies handled FOI requests
- to provide advice, education and guidance to agencies on compliance with any FOI professional standards issued by the relevant minister
- to monitor compliance by agencies with those professional standards
- to provide advice, education and guidance to agencies and the public about the FOI Commissioner's functions
- to report on the operation of the Act
- on request, to provide advice to the relevant minister on the operation and administration of the Act.<sup>3</sup>

The Commissioner's primary focus is on conducting reviews of FOI decisions and receiving and handling FOI complaints. Those people who are not satisfied with FOI decisions or handling of matters by a government agency can contact the Commissioner for a review of the decision or to make a complaint.

The FOI Commissioner's reviews of FOI decisions of agencies are discussed in section 2.4.1. Complaints investigated by the Commissioner are discussed in section 2.4.2.

In addition, the Commissioner provides a number of advice, education and guidance initiatives to agencies, government departments and the public on the functions of the office and FOI matters more generally. These are discussed in section 2.4.3.

## 2.3 Amendments to the Victorian freedom of information framework

In June 2016 the Victorian Government introduced the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016. It later passed the Legislative Assembly and at the time of writing was before the Legislative Council.

The Bill proposes a number of major amendments to Victoria's FOI framework. Some of the key purposes of the Bill are to:

- abolish the offices of the FOI Commissioner and Commissioner for Privacy and Data Protection, and to merge their functions into the Office of the Victorian Information Commissioner
- create the position of the Victorian Information Commissioner, supported by a Public Access Deputy Commissioner and Privacy and Data Protection Deputy Commissioner

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

- provide that the Information Commissioner’s duties, functions and exercise of powers will not be subject to ministerial direction or control, instead reporting directly to Parliament through the Accountability and Oversight Committee (discussed in section 2.3.1)
- establish new complaint categories
- introduce reduced time limits for agencies responding to applicant requests.

The Bill would grant increased powers to the Information Commissioner, including:

- allowing the Commissioner to review decisions made by ministers and principal officers<sup>4</sup>
- allowing the Commissioner to review decisions to exempt Cabinet documents
- allowing the Commissioner to amend professional standards issued by the minister
- the ability to conduct own motion investigations
- the use of coercive powers to compel documents or attendance to give evidence.

These changes would bring the Information Commissioner’s powers in line with the Ombudsman, Auditor-General and Victorian Inspector.

In addition, the Commissioner would be subject to oversight by the Victorian Inspectorate. This is discussed further in Chapter 4.

### 2.3.1 Amendments to Accountability and Oversight Committee’s functions

The Bill proposes to amend the *Parliamentary Committees Act 2003* to give the Committee oversight responsibility of the Information Commissioner. In addition, the Commissioner would report directly to Parliament through the Committee, as opposed to also reporting to the relevant minister.<sup>5</sup>

The Committee’s functions would remain largely unchanged compared to its existing functions in respect of the FOI Commissioner. The Bill also contains provisions that specifically prohibit the Committee from reconsidering:

- any findings of an FOI investigation
- the making of a public interest determination
- approval of an information usage arrangement
- a decision to serve a compliance notice under the *Privacy and Data Protection Act 2014*.<sup>6</sup>

<sup>4</sup> A department head, chief administrative officer of a local council, office holders.

<sup>5</sup> At the time of writing, Special Minister of State.

<sup>6</sup> Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 (Vic), section 131(2).

## 2.4 Performance of FOI Commissioner

Some of the highlights reported in the FOI Commissioner's annual report for the 2015–16 year include:

- the highest number of review decisions finalised (227) and highest number of complaints resolved (328) to date
- responding to 6375 enquiries by phone and email
- agencies reported that 93.15 per cent of FOI applications were processed within the statutory timeframe of 45 days
- applicants received full access to their request in 68.4 per cent of cases
- a reduction in the number of FOI appeals to the Victorian Civil and Administrative Tribunal (VCAT) from 74 in 2014–15 to 72 in 2015–16
- an increase in education and training activities from 16 to 27 compared to 2014–15.<sup>7</sup>

In 2015–16, the FOI Commissioner exceeded the quantity target (550) for completed reviews and complaints (692). This was achieved due to the office's focus on completing outstanding and aged reviews and complaints, in addition to addressing complaints and reviews received in the year 2015–16.<sup>8</sup>

As outlined in Table 2.1, the vast majority of applications for review of decisions and complaints were from individual members of the public, with the remainder submitted by the media, organisations and Members of Parliament.

**Table 2.1** Profile of applicants and complainants in the 2015–16 financial year

	Reviews	Complaints
Members of the public	360	274
Organisations	28	5
Members of Parliament	21	59
Media	19	3
<b>Total</b>	<b>428</b>	<b>341</b>

Source: Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, pp. 26, 31.

<sup>7</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016.

<sup>8</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 22.

## 2.4.1 Reviews of FOI decisions

An applicant seeking information under the FOI Act may apply to the Commissioner for review of a decision of an agency:

- to refuse access to a document
- to defer access to a document
- not to waive or reduce an application fee
- not to amend a document.<sup>9</sup>

The FOI Commissioner cannot review a decision of a minister or the principal officer of an agency.<sup>10</sup> In these cases, the applicant must apply directly to VCAT for review.

Applications for reviews of government decisions can result in a formal fresh decision made either by the FOI Commissioner or the government agency concerned. Fresh decisions of the Commissioner can be appealed at VCAT.

In 2015–16, the FOI Commissioner received 428 applications for review of agency decisions. These represent 1.25 per cent of all FOI requests made between 1 July 2015 and 30 June 2016. These reviews related to FOI decisions of 95 government agencies.<sup>11</sup>

In total, 364 reviews were completed in the 2015–16 year. As at 30 June 2016, 220 review applications remained outstanding. 157 applications for review were carried over from 2014–15, and of these 137 were completed in the 2015–16 year.

Table 2.2 below provides a summary of the requests for reviews received, carried over and finalised.

**Table 2.2** Summary of FOI reviews in the 2015–16 financial year

	2014–15	2015–16	Total
Requests for reviews received		428	<b>428</b>
Unfinalised reviews carried over	157	—	<b>157</b>
Reviews finalised	(137)	(227)	<b>(364)</b>
• Formal decisions made by FOI Commissioner			<b>227</b>
• Fresh decisions made by agencies			<b>16</b>
• Dismissed under s49G			<b>35</b>
• Applications not accepted			<b>40</b>
• Withdrawn by applicants			<b>46</b>
<b>Total reviews outstanding</b>	<b>20</b>	<b>200</b>	<b>220</b>

Source: Compiled by the Accountability and Oversight Committee.

<sup>9</sup> *Freedom of Information Act 1982* (Vic), 9859 of 1982, section 49A.

<sup>10</sup> *Freedom of Information Act 1982* (Vic), 9859 of 1982, section 49A(3).

<sup>11</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 24.



At the end of 2015–16, 20 reviews were still outstanding from the 2014–15 year. The Commissioner stated this was due to the volume and complexity of the documents and in some cases, the need for ongoing enquiries with the relevant agency.<sup>12</sup>

### Outcomes of FOI reviews

Informal resolution is a preferred methodology for handling requests for review by the FOI Commissioner's office. Informal resolution includes cases of fresh agency decisions, matters withdrawn by applicants or matters dismissed with the applicant's agreement.

During the 2015–16 year, the FOI Commissioner made a total of 227 formal decisions. In 135 of these, the agency decision was upheld and in 92 cases the FOI Commissioner's decision differed from that of the agency.

There were 40 applications that were not accepted as they were outside statutory time limits or outside the Commissioner's jurisdiction. In addition, 46 applications for review were withdrawn by applicants following preliminary enquiries by the office.

Of the 35 applications for review that were dismissed by the FOI Commissioner:

- 6 were dismissed with the applicant's agreement
- 7 were dismissed on the grounds the FOI Commissioner considered a review was not appropriate in the circumstances
- 18 were dismissed as the FOI Commissioner considered the review would be more appropriately dealt with by VCAT
- 4 were dismissed on the grounds that the FOI Commissioner was unable to contact the applicant following reasonable attempts to do so.

In 16 cases, agencies made fresh decisions that were accepted by applicants.<sup>13</sup>

### Appeals to VCAT

An applicant or agency may appeal a fresh decision or dismissal by the FOI Commissioner to VCAT.

In addition, the FOI Commissioner may determine not to accept an application or initiate a review if he considers the matter would be more appropriately dealt with by VCAT.

The report states that in 2015–16 there were 46 appeals to VCAT of fresh decisions made by the FOI Commissioner. A summary of these is as follows:

<sup>12</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 27.

<sup>13</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 27.

- 4 agencies appealed 4 decisions to VCAT. Of these, 1 matter was set aside, 1 was struck out and 2 remained outstanding at 30 June 2016.
- A business also sought a review of an FOI decision. This was struck out at VCAT.
- Applicants made 41 appeals to VCAT. Of these:
  - 11 matters were withdrawn
  - 8 matters were struck out
  - 6 matters were varied
  - 3 matters were dismissed
  - 2 matters were upheld
  - 1 matter was set aside
  - 10 matters remained outstanding at the end of the reporting period.<sup>14</sup>

In addition, the office exceeded its quantitative output target for 2015–16 of FOI Commissioner applicants that appeal to VCAT. The 12.9 per cent total was significantly lower than the 30 per cent target for 2015–16.<sup>15</sup>

The Commissioner noted that these figures may differ from those reported by VCAT and other agencies. The report attributed this in part to agencies not always notifying the FOI Commissioner’s office of an appeal to VCAT, despite the requirement to do so under the FOI Act.<sup>16</sup> This issue was also raised previously in the Committee’s *Report into Victorian oversight agencies 2014–15*.

The Commissioner informed the Committee that he received advice from VCAT that access to this data requires Ministerial approval under the *Victorian Civil and Administrative Tribunal Act 1998*. The Commissioner has requested approval from the Attorney-General and at the time of writing is awaiting a response.

### Timeliness

In 2015–16 only 59 per cent of reviews and complaints were completed within the timeframe agreed by FOI applicants. This was significantly short of the 85 per cent full year target.<sup>17</sup>

The Commissioner attributed this to the office’s ‘continued focus on completing ageing and complex reviews’.<sup>18</sup> While the Committee accepts this explanation, it will closely monitor the Commissioner’s timeliness output for 2016–17 to ensure this is an isolated situation.

<sup>14</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 30.

<sup>15</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 22.

<sup>16</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 30.

<sup>17</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 22.

<sup>18</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 22.

In the 2015–16 year applicants agreed to time extensions 565 times in total, during 399 reviews.<sup>19</sup> Reasons for extensions requested by the FOI Commissioner included:

- late lodgement of submissions
- significant number of documents involved
- complexity or sensitivity of documents
- need to attend agency premises to inspect documents
- instances where agencies took a defensive legal approach to the review provisions of the FOI Act.<sup>20</sup>

### 2.4.2 Complaints

The FOI Commissioner may receive and investigate complaints about a Victorian Government department, agency or council's handling of an FOI request.

The types of complaints the Commissioner can investigate include:

- an action taken or failed to be taken by an agency, including a decision that a document does not exist or cannot be located
- a delay by a minister in dealing with a request
- an action taken or failed to be taken by a minister in making a decision to:
  - defer access to a document
  - disclose a document that is claimed to be exempt under sections 33<sup>21</sup> or 34<sup>22</sup> of the FOI Act.<sup>23</sup>

In addition, the Commissioner can refer complaints to other bodies or oversight agencies that have jurisdiction or are more appropriate to deal with the complaint.<sup>24</sup> Similarly, the Commissioner can be referred complaints by other agencies and oversight bodies.

Complaints are dealt with informally wherever possible. Most relate to decisions that documents do not exist or cannot be located, or to delays in processing FOI requests within the statutory time limit of 45 days.<sup>25</sup> This has been common since the office's establishment.

<sup>19</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 27.

<sup>20</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 27.

<sup>21</sup> Documents affecting personal privacy.

<sup>22</sup> Documents relating to trade secrets or other business, commercial or financial matters.

<sup>23</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 30.

<sup>24</sup> *Freedom of Information Act 1982* (Vic), 9859 of 1982, section 61C.

<sup>25</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 31.

Complaints do not lead to formal fresh decisions on the applicant's FOI matter, and complaint outcomes cannot be appealed to VCAT.

The Committee notes that the FOI Act requires complaints to be made in writing. In addition, the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 does not contain provisions to remove this requirement.

The Committee is concerned that this may inhibit members of the public from making complaints to the Commissioner. In line with recent changes that allow the Ombudsman to receive complaints in forms other than in writing (discussed in Chapter 3), the Committee considers there is a need to review the same requirement for FOI complaints.

**RECOMMENDATION 1:** That the Victorian Government reviews the current requirement that complaints submitted to the Freedom of Information Commissioner must be made in writing.

The Commissioner reported 155 complaints were carried over from 2014–15 into 2015–16. This number does not reconcile with the figure of 152 reported by the Committee in its *Report into Victorian oversight agencies 2014–15*.<sup>26</sup>

The FOI Commissioner informed the Committee that this was due to the office's introduction of a new case management system. The data used previously was unable to be reconciled with that contained in the new system. Accordingly, the office settled on the figure of 155 recorded in the new case management system for future reporting. The Committee accepts the Commissioner's explanation, however it will be monitoring future reporting of complaints carried over to ensure they reconcile with this data.

Of the 155 complaints carried over from 2014–15, 145 were completed in 2015–16. The Commissioner reported the remaining 10 case remained outstanding due to the complexity of the matters.<sup>27</sup>

In 2015–16, the FOI Commissioner received 341 complaints, of which 274 were made by members of the public, 59 by Members of Parliament, 5 by organisations and 3 by the media.<sup>28</sup>

A total of 328 complaints were finalised in 2015–16, the highest number resolved by the office in a reporting timeframe.<sup>29</sup> A breakdown of how the complaints were resolved is listed in Table 2.3 below. At the end of the reporting period, 168 complaints were carried over into 2016–17.

<sup>26</sup> Accountability and Oversight Committee, *Report into Victorian oversight agencies 2014–15*, Victorian Parliament, Melbourne, 2015, p. 16.

<sup>27</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 33.

<sup>28</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 31.

<sup>29</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 7.

**Table 2.3** Outcomes of complaints resolved in 2015–16

Outcome	No.
Not accepted or outside jurisdiction	22
Resolved informally	218
Dismissed	87
Resolved through conciliation	1
<b>Total</b>	<b>328</b>

Source: Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 33.

The report details the process for informal resolution as follows:

- information gathering:
  - the office contacts the complainant to seek information on their complaint and clarify what they are seeking from the agency
  - office staff will discuss the complainant’s options with them
  - the office makes preliminary inquiries with the relevant agency to explore options for informal resolution
- examination of information:
  - the office considers the information provided by both parties to assess possible options for informal resolution
- follow up:
  - the office will follow up with complainant and agency to identify if informal resolution is possible
  - the options are discussed with the complainant in the context of FOI legislation and the Commissioner’s powers.<sup>30</sup>

### Timeliness

As previously identified in the Committee’s *Report into Victorian oversight agencies 2014–15*, the Commissioner’s 2015–16 annual report does not provide data on complaint timeframes. The Committee’s previous report recommended this data be included in subsequent annual reports of the office.

Although the FOI Commissioner’s response to the report indicated a broad support of the recommendations, the data has still not been provided in the report. The Committee reiterates the need to transparently report timeframes of complaints.

**RECOMMENDATION 2:** That the Freedom of Information Commissioner (or the new Information Commissioner) provides data in annual reports on the timeframes of complaint resolution.

<sup>30</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 31.

### 2.4.3 Advice, education and guidance initiatives

The FOI Commissioner has responsibility under the FOI Act to provide advice, education and guidance to agencies. It also requires the Commissioner to promote understanding and acceptance of the objectives of the Act.<sup>31</sup>

In 2015–16 the FOI Commissioner conducted 27 formal education and training activities. This exceeded the Commissioner’s target of 20 and was a significant increase from the two previous years (15 and 16 respectively).<sup>32</sup> The report noted that whilst the Commissioner’s initial focus was establishment of the office, a focus in 2015–16 was to improve operations by increased engagement with agencies.<sup>33</sup>

Advice, education and guidance initiatives for 2015–16 highlighted in the report include:

- the first sector-specific FOI practitioners forum, presented to local government in consultation with the Municipal Association of Victoria
- monthly participation in the Whole of Victorian Government FOI Managers Network, which consists of managers from each government department and Victoria Police
- providing joint privacy and FOI awareness education sessions with the Commissioner for Privacy and Data Protection in Bendigo, Geelong and Melbourne, as part of Privacy Awareness Week
- collaboration with the Dispute Settlement Centre of Victoria to assist with conciliating complaints where the cause of the complaint is an underlying non-FOI issue
- providing FOI awareness sessions for staff of individual agencies at their offices
- providing 6 FOI awareness training sessions for the Victorian Public Service Graduate Recruitment and Development Scheme
- publishing three guides online:
  - Fees and charges — A guide to calculating costs in FOI requests
  - FOI Act — Key provisions (ready reckoner)
  - FOI in practice — Edition 1: Substantial and unreasonable requests
- the Acting FOI Commissioner became an active member of the Association of Information Access Commissioners.<sup>34</sup>

<sup>31</sup> *Freedom of Information Act 1982* (Vic), 9859 of 1982, section 6C.

<sup>32</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 7; 22.

<sup>33</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 36.

<sup>34</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, pp. 36–37.

The Commissioner reported that the number of agency staff attending face-to-face education and awareness sessions increased from 330 in 2014–15 to 415 in 2015–16.

The Committee also wishes to highlight the positive feedback about the FOI practitioners forum presented to local government. The Commissioner reported that:

- 100 per cent of attendees agreed or strongly agreed that information presented was relevant and provided new information about the office
- interactive sessions with staff were extremely well received
- attendees were particularly interested with a presentation on FOI decision trends in local government
- a significant number of attendees enjoyed the forum’s sector-specific nature, the chance to network with colleagues, and gaining a deeper understanding of the FOI Act.<sup>35</sup>

In addition, a number of submissions to the Committee’s Inquiry into education, training and communications initiatives of Victorian oversight agencies mentioned the effectiveness of this forum.

The annual report notes the difficulty in engaging with the public on the FOI framework and raising awareness of the office. The FOI Commissioner stated that the office recognises it:

... does not have the resources to educate the entire Victorian community about the functions of the FOI Commissioner and the activities of the Office. The Office’s strategic approach is to try and ensure that those members of the public who do use FOI are aware of the Office and the support and services it can provide to them.<sup>36</sup>

The Commissioner considers that agency decision letters are a key tool to raise public awareness about FOI. The report notes that applicants would have been informed of the role of the Commissioner in over 28,000 instances if all agencies complied with their obligation to notify applicants in decision letters.<sup>37</sup>

The Committee will examine the FOI Commissioner’s advice, education and guidance initiatives further in its Inquiry into education, training and communications initiatives of Victorian oversight agencies.

<sup>35</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.

<sup>36</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.

<sup>37</sup> Freedom of Information Commissioner, *Annual report 2015–16*, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 38.



## 2.5 Operation of the *Freedom of Information Act 1982*

The 2015–16 annual report provides an analysis of FOI trends over the past three years. Some of the highlights identified include:

- reporting by agencies that 93.1 per cent (94.5 per cent in 2014–15) of requests were processed in 45 days or less
- a decrease in personal requests (64.6 per cent, down from 73.4 per cent in the 2014–15 year)
- the total number of FOI requests made to agencies has increased over this period (34,249, up from 33,209 in the 2014–15 year and 34,126 in 2013–14)
- appeals to VCAT by complainants on agency decisions fell from 74 in 2014–15 to 72 in 2015–16
- increases in the five most frequently cited grounds for exemption<sup>38</sup> in the initial FOI decisions by agencies:
  - an increase in the proportion of decisions citing section 33, from 6998 (and 18 VCAT appeals) in the 2014–15 year to 7970 (and 11 VCAT appeals) in the 2015–16 year
  - increase in use of sections 38, 30, 31 and 35
- across all four sectors of Health, Government, Emergency Services and Statutory Authorities, there has been a decrease in percentage of decisions to grant access in full
- there has been an increase in the percentage of decisions to grant access in part in the Health, Emergency Services and Statutory Authorities sectors and a slight decrease in Government agencies granting access in part
- the health sector continues to account for the largest percentage of FOI requests made.<sup>39</sup>

Of note, there has been a significant decrease in Statutory Authorities granting full access (30.38 per cent in 2015–16, from 49.17 per cent in 2014–15). Conversely, there was a significant increase in Statutory Authorities granting part access (65.37 per cent in 2015–16 compared with 47.29 per cent in 2014–15).

The Committee will continue to monitor this data in subsequent annual reports to identify any trends developing over time.

<sup>38</sup> Section 33: protection of an individual's personal affairs; Section 38: where a secrecy or confidentiality provisions of legislation apply to documents; Section 30: internal working documents containing opinions, advice or recommendations where it would not be in the public interest for those documents to be released; Section 31: documents related to law enforcement activities; Section 35: information obtained in confidence by government agencies.

<sup>39</sup> Freedom of Information Commissioner, Annual report 2015–16, Office of the Freedom of Information Commissioner, Melbourne, 2016, p. 43



In its *Report into Victorian oversight agencies 2014–15*, the Committee noted that although the health sector accounted for the largest percentage of requests made, full access was granted in more than 90 per cent of such cases.<sup>40</sup> The 2015–16 year result is also consistent with this.

The Committee previously recommended to the Government that the FOI Commissioner develop a protocol for releasing information that is frequently requested under FOI, where requests are routinely granted. This would reduce the number of FOI requests and reduce the administrative burden on releasing the information.

As the government response to the Committee's 2013–14 and 2014–15 reports into Victorian oversight agencies did not address any recommendations directed to each oversight agency, this recommendation was not responded to.

Therefore, the Committee reiterates this recommendation. The Committee also looks forward to receiving a complete response to all recommendations made in subsequent government responses.

**RECOMMENDATION 3:** That the Freedom of Information Commissioner (or the new Information Commissioner) continues to work with the Health sector to provide commonly requested information that is routinely granted, outside the *Freedom of Information Act 1982*.

In addition, the Committee believes there is merit in the FOI Commissioner developing a system for each agency across the four sectors to provide data on the cost of administering FOI requests. This information should be collated in the FOI Commissioner's subsequent annual reports.

This method may assist in identifying areas where administration costs could be reduced through the proactive release of information.

**RECOMMENDATION 4:** That the Freedom of Information Commissioner (or the new Information Commissioner) collates agency data across the four sectors of Health, Government, Emergency Services and Statutory Authorities, on the cost of administering freedom of information requests, for collation in subsequent annual reports.

## 2.6 Complaints received by the Committee

During 2015–16, four complainants requested the Committee look into how their complaints have been handled by the FOI Commissioner. Of these, one complainant raised wider administrative and systemic issues.

The complainant requested the Committee provide guidance to VCAT on agency search powers, as well as seeking various amendments to the FOI Act.

<sup>40</sup> Accountability and Oversight Committee, *Report into Victorian oversight agencies 2014–15*, Victorian Parliament, Melbourne, 2015, p. 18.

In particular, the complainant raised the following issues:

- The complainant sought guidance on VCAT’s powers to make determinations on agency searches and requested this be clarified as part of the broader legislative changes to the FOI framework being considered by Government.
- VCAT’s jurisdiction to order agencies to undertake subsequent searches and produce documents.
- Complainants who are requesting a review of a decision by the FOI Commissioner should have their options to appeal clearly outlined. At the time the complaint to the FOI Commissioner was submitted, there was no discretion under the FOI Act to accept a review application after the 28-day limit had passed. However the Committee notes that a 2014 amendment to the FOI Act inserted a provision for the FOI Commissioner to accept an application for review outside of the time frame.<sup>41</sup>

### 2.6.1 Committee’s jurisdiction

The matters raised by the complainant are outside the Committee’s powers and functions. Therefore, the Committee has no legislative jurisdiction to make any recommendations or resolutions on the complaint specifically.

However, as part of the Government’s review of the Victorian FOI framework, the Committee believes the Government should consider the issues raised by the complainant.

**RECOMMENDATION 5:** That the Victorian Government clarifies the Victorian Civil and Administrative Tribunal’s jurisdiction:

- to make determinations on agency freedom of information searches
- to order agencies to undertake freedom of information subsequent searches and produce documents.

<sup>41</sup> *Freedom of Information Act 1982* (Vic), 9859 of 1982, section 49B(3).

# 3

## The Victorian Ombudsman

### AT A GLANCE

#### Background

The Victorian Ombudsman has a broad range of functions and jurisdiction over more than 1000 public sector bodies. The core work of the Ombudsman includes investigation of:

- complaints about administrative actions of government agencies
- systemic issues
- certain protected disclosure complaints.

The Ombudsman's office completed a substantial volume of work in 2015–16. This included responding to 22,001 contacts from the public, finalising 2988 enquiries, conducting 33 formal investigations and investigating 24 protected disclosure complaints.

In November 2015, the Victorian Parliament's Legislative Council referred an allegation to the Ombudsman that members of the Australian Labor Party misused members' staff budget entitlements. This is only the third referral from the Victorian Parliament to the Ombudsman since the office was established.

In 2015–16 amendments were made to the *Ombudsman Act 1973* to:

- give the Ombudsman greater flexibility in how complaints are dealt with
- reduce barriers for the Ombudsman to share information with other agencies.

#### Recommendations

6. That the Victorian Government considers as part of its review of the integrity and accountability framework, amendments to the *Ombudsman Act 1973* to allow for:
  - the referral by the Ombudsman of misdirected complaints to relevant bodies
  - greater collaboration between the Ombudsman and other public sector agencies.
7. That the Victorian Government, as part of its review of the Victorian integrity framework, reviews the appropriateness of the Victorian Ombudsman's target measure of 95 per cent complaints resolved within 30 days.
8. That the Victorian Government and the Victorian Ombudsman review the complaints handling process to reduce the number of complaints requiring more than 30 days for resolution.

## 3.1 Introduction

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

Ms Deborah Glass OBE was appointed as Victorian Ombudsman in March 2014 for a term of 10 years. At 30 June 2016 the Ombudsman's office comprised 76.5 full time equivalent staff members.<sup>42</sup>

The Ombudsman's website states that its mission is to 'promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector' through:

- independently investigating, reviewing and resolving complaints concerning administrative actions of Victorian Government departments, local councils and statutory authorities
- reporting the results to complainants and the agencies involved
- reporting to Parliament
- improving accountability
- promoting fair and reasonable public administration.<sup>43</sup>

## 3.2 The Victorian Ombudsman's functions

The Ombudsman's functions and powers are broad and contained in multiple Acts of Parliament.<sup>44</sup> Its principal function under the Ombudsman Act is to investigate maladministration in public sector agencies.<sup>45</sup>

The core work of the Ombudsman's office falls into three main categories:

- receiving complaints about administrative actions by public sector agencies
- investigating systemic issues
- investigating protected disclosure complaints about improper conduct.<sup>46</sup>

The Ombudsman's jurisdiction spans more than 1000 public sector bodies, including:

- Victorian Government departments
- statutory authorities

<sup>42</sup> Victorian Ombudsman, *Annual report 2015-16*, Ombudsman Victoria, Melbourne, 2016, p. 45.

<sup>43</sup> Victorian Ombudsman, 'Fact Sheet 1 – About the Victorian Ombudsman', viewed 11 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>44</sup> Victorian Ombudsman, 'Governing legislation', viewed 19 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>45</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 13.

<sup>46</sup> Victorian Ombudsman, *Annual report 2015-16*, Ombudsman Victoria, Melbourne, 2016, p. 8.

- professional boards
- local councils
- universities and government schools
- prisons (including private prisons)
- authorised officers on public transport
- private agencies that carry out statutory responsibilities of government.<sup>47</sup>

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

- Victoria Police
- private organisations such as banks, finance companies or shops
- administrative actions that appear to involve corrupt conduct (except by referral from the Independent Broad-based Anti-Corruption Commission [IBAC])
- disputes between individuals
- departments and authorities of jurisdictions outside of Victoria
- decisions by ministers
- decisions made by courts and tribunals.<sup>48</sup>

### 3.2.1 Complaints

The majority of the work of the Ombudsman's office is dealing with complaints made by the public into administrative actions of government authorities.

For each complaint, the Ombudsman may conduct enquiries to determine whether a formal investigation is necessary or whether the matter may be resolved informally.<sup>49</sup> The majority of complaints are resolved through an informal resolution process.

To assist how complaints are dealt with initially by agencies, the Ombudsman produced two guides in 2016:

- *Complaints: Good practice guide for public sector agencies*<sup>50</sup>
- *Ombudsman enquiries: Resolving complaints informally*.<sup>51</sup>

<sup>47</sup> Victorian Ombudsman, 'Fact Sheet 1 – About the Victorian Ombudsman', viewed 11 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>48</sup> Victorian Ombudsman, 'What We Can and Cannot Investigate', viewed 10 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>49</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 13A(1).

<sup>50</sup> Victorian Ombudsman, 'Complaints: Good Practice Guide for Public Sector Agencies September 2016', viewed 9 November 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>51</sup> Victorian Ombudsman, 'Resolving complaints informally', viewed 9 November 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

These guides focus on changing agency cultures and processes so that complaints are addressed appropriately before the complainant sees a need to contact the Ombudsman. Whilst the guides were produced outside of this reporting period, the Committee welcomes these initiatives and will monitor their impact on complaints in subsequent reports.

Complaints are discussed further in section 3.4.1.

In addition, the Ombudsman may use 'own motion' powers under the Act to conduct enquiries, formal investigations or resolve cases without a formal complaint initiating the process. These are discussed in section 3.4.2.

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

- more than 12 months old
- that could more appropriately be decided by another court or tribunal.<sup>52</sup>

The Victorian Ombudsman is also required to investigate certain types of protected disclosures under the *Protected Disclosure Act 2012*. Although IBAC has overall responsibility for administration of the Act, the Ombudsman's roles include:

- receiving disclosures relating to a Victorian councillor, the Freedom of Information (FOI) Commissioner, the Commissioner for Privacy and Data Protection or the Health Services Commissioner
- referring to IBAC protected disclosures that are received by the Ombudsman
- investigating certain protected disclosure complaints referred by IBAC
- reporting to Parliament on protected disclosure investigations.<sup>53</sup>

For protected disclosure complaints received from IBAC, the Ombudsman will conduct an investigation under the provisions of the Ombudsman Act. Protected disclosures are discussed further in section 3.4.2.

### 3.3 Changes to Ombudsman's functions

#### 3.3.1 *Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016*

In December 2015 the Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015 was introduced into the Victorian Parliament. It passed both Houses and received Royal Assent in May 2016, and came into effect as of 1 July 2016.

<sup>52</sup> Victorian Ombudsman, 'What We Can and Cannot Investigate', viewed 10 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>53</sup> Victorian Ombudsman, 'Disclosures', viewed 20 October 2016, <<https://www.ombudsman.vic.gov.au/>>.

The Act made a range of changes to Victoria's integrity framework, including amendments to the Ombudsman's functions under the Ombudsman Act. Some key changes included:

- the ability for the Ombudsman to take complaints over the phone (previously, complaints had to be made in writing)
- reduced barriers to sharing information between the Ombudsman's office and other integrity agencies
- greater discretion for the Ombudsman to decide whether to investigate a protected disclosure or whether to discontinue an investigation
- greater flexibility to undertake preliminary enquiries
- raising the threshold of reporting to the Victorian Inspectorate actions of IBAC, Ombudsman or officers of the Victorian Auditor-General (from any relevant 'conduct' to 'misconduct')
- the ability to table reports out of session.<sup>54</sup>

The Committee acknowledges these changes and will monitor their impact on the Ombudsman's performance in a subsequent report.

### 3.3.2 Victorian Government review of integrity and accountability framework

In March 2016 the Victorian Government began a community consultation process for its review of the state's integrity and accountability framework. The review is intended to build on the reforms introduced by the 2016 amendments.

At the start of the review, the Government released a series of discussion papers, including one presenting options to contemporise the role of the Ombudsman. The discussion paper included nine questions for discussion on the Ombudsman's role and functions, which are listed in Box 3.1 below.

<sup>54</sup> Victorian Ombudsman, *The impact of amendments to the Ombudsman Act*, Media release, Ombudsman Victoria, Melbourne, 26 May 2016; Victoria, Legislative Assembly 2015, *Debates*, vol. 19, 10 December 2015, p. 5534.

### BOX 3.1: Victorian Ombudsman Discussion paper – Questions for discussion

1. What is the appropriate role for the Ombudsman in overseeing non-government bodies that receive public funding, deliver public services or perform other public functions?
2. How should the Ombudsman work with other bodies? Which bodies are appropriate to collaborate with, and what should be the limits or safeguards on collaboration?
3. What is the appropriate role for the Ombudsman to play in the protected disclosure system while maintaining independent assessment of complaints?
4. What methods should the Ombudsman have available to resolve complaints?
5. In light of the changes to IBAC's jurisdiction proposed in the 2015 Bill, what role should the Ombudsman play in investigating corrupt conduct?
6. What role should the Ombudsman have in reviewing and improving public sector complaint handling practices?
7. What information should the Ombudsman be able to share with the public and other bodies? What restrictions or safeguards are appropriate?
8. 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?
9. What other changes should be made to ensure that the Ombudsman can best perform her role?

Source: Department of Premier and Cabinet, *Review of the Victorian integrity and accountability framework – The Victorian Ombudsman discussion paper*, Victorian Government, Melbourne, 2016.

As part of the consultation process, the Government invited submissions from the public on the review's discussion papers. Submissions closed in May 2016.

The Ombudsman made two submissions to the review. The first addressed the discussion paper on the role of the Ombudsman and made 10 recommendations addressing the questions in the discussion paper. These are listed in Box 3.2 below.



### BOX 3.2: Ombudsman's recommendations to Victorian Government's review of integrity and accountability framework

**Recommendation 1:** The *Ombudsman Act 1973* should be amended to provide clarity and consistency of jurisdiction in dealing with complaints and protected disclosures, to ensure that publicly funded services are subject to a consistent level of oversight, including the obligation to act compatibly with the *Charter of Human Rights and Responsibilities Act 2006*.

**Recommendation 2:** The *Ombudsman Act 1973* should be amended to allow for:

- the referral of misdirected complaints to relevant bodies
- greater collaboration between the Ombudsman and other public sector agencies for the purpose of improving public administration.

**Recommendation 3:** The *Ombudsman Act 1973* should be amended to permit the Ombudsman to share or release information 'in the public interest'.

**Recommendation 4:** The *Ombudsman Act 1973* should be amended to provide the Ombudsman with an education function for the purposes of improving public administration.

**Recommendation 5:** The *Ombudsman Act 1973* should be amended to address the inconsistencies affecting privileges of witnesses and access to information.

**Recommendation 6:** The *Ombudsman Act 1973* should be amended to provide the Ombudsman with:

- the power to retain investigations where corruption is revealed during the investigation, except where it involves 'serious or systemic corruption'
- absolute discretion in dealing with protected disclosure complaints referred by IBAC
- the ability to easily exchange information with IBAC
- the power to conduct joint investigations with IBAC.

**Recommendation 7:** The functions of the Ombudsman under the *Ombudsman Act 1973* should be amended to include an explicit complaint handling function.

**Recommendation 8:** The *Ombudsman Act 1973* should be amended to empower the Ombudsman to resolve complaints as she sees fit.

**Recommendation 9:** Budgetary arrangements for the Ombudsman should be brought into line with those in place for the Auditor-General and the Electoral Commissioner through an appropriation direct from Parliament.

**Recommendation 10:** Subject to the ability of individuals directly affected by coercive powers to complain to an independent oversight body, the Ombudsman should be accountable directly to the Parliament through a Committee established to oversee the overall performance of the office and the discharge of its statutory functions.

Source: Victorian Ombudsman, Submission, Review of the Victorian integrity and accountability framework, Department of Premier and Cabinet, Victorian Government, 20 May 2016.

The second was a joint submission made with the Auditor-General and IBAC Commissioner commenting on the review more broadly. The submission highlighted four key areas where great consistency between legislation would improve the integrity system:

- mandate and jurisdictional reach, particularly in standardising the legislative definitions of the ‘public’ sector
- information access and disclosure, specifically implementing a consistent set of principles for capacities to ‘obtain documents, call witnesses, enter premises, access privileged information, operate confidentially and offer procedural fairness’
- independence from the Executive, particularly in provisions governing the appointment, tenure, immunity, removal and remuneration of the roles of the three officers
- consistent approaches to oversight and accountability.<sup>55</sup>

The Committee acknowledges the Ombudsman’s input to the review and discusses recommendations relevant to the performance of the office throughout this chapter.

### 3.4 Performance of the Ombudsman

Some of the highlights reported in the Ombudsman’s annual report for the 2015–16 year include:

- 39,470 contacts<sup>56</sup> to the office, 17,469 of which were referred to a more appropriate authority through its website or phone redirection service
- completing 2988 enquiries, 15 of which were own motion
- completing 33 formal investigations, 4 of which were own motion
- conducting 10 information sessions in regional Victoria, including 9 sessions allowing members of the public to make complaints in person
- tabling of 8 reports in Parliament
- providing submissions to 11 government reviews and parliamentary inquires.<sup>57</sup>

Table 3.1 lists the Ombudsman’s reports that were tabled in Parliament during the 2015–16 year.

55 Victorian Auditor-General, Victorian Ombudsman, Independent Broad-Based Anti-Corruption Commission Commissioner, *Submission*, 20 May 2016, Review of the Victorian integrity and accountability framework, Department of Premier and Cabinet, Victorian Government.

56 ‘Contacts’ includes complaints, non-jurisdictional complaints and requests for information received by the office.

57 Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 3.

**Table 3.1** Ombudsman reports tabled in Parliament in 2015–16

Title	Instigated	Date tabled
<i>Conflict of interest by an executive officer in the Department of Education and Training</i>	Protected disclosure	3 September 2015
<i>Investigation into the rehabilitation and reintegration of prisoners in Victoria</i>	Own motion	17 September 2015
<i>Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations</i>	Protected disclosure	25 November 2015
<i>Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – Incident reporting</i>	Own motion	9 December 2015
<i>Investigation into public transport fare evasion enforcement</i>	Own motion	26 May 2016
<i>Investigation into the misuse of council resources</i>	Protected disclosures	9 June 2016
<i>Investigation into Casey City Council's Special Charge Scheme for Market Lane</i>	Complaints	22 June 2016
<i>Report on recommendations</i>	Own motion	23 June 2016

Source: Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 48.

Table 3.2 below lists the government and parliamentary inquiries and reviews that the Ombudsman made submissions to in 2015–16.

**Table 3.2** Ombudsman submissions made in 2015–16

Submission	Date
Review of the <i>Local Government Act 1989</i>	18 December 2015
IBAC Committee's Inquiry into strengthening Victoria's key anti-corruption agencies?	4 January 2016
Family and Community Development Committee's Inquiry into services for people with autism spectrum disorder	4 February 2016
Victorian Equal Opportunity and Human Rights Commission 2015 annual report on the <i>Charter of Human Rights and Responsibilities Act 2006</i>	18 February 2016
Department of Justice and Regulation's access to justice review	29 February 2016
Senate Community Affairs References Committee's Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia	7 April 2016
IBAC Committee's Review of protected disclosures	17 May 2016
Department of Premier and Cabinet's review of the Victorian integrity and accountability framework	20 May 2016
Response to the Accountability and Oversight Committee's <i>Report into Victorian oversight agencies 2014–15</i>	10 June 2016
National Children's Commissioner's review of the Optional Protocol to the Convention Against Torture (OPCAT) in the context of youth justice detention centres	24 June 2016
Legal and Social Issues Committee's Inquiry into the retirement housing sector	1 July 2016

Source: Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 43.

In addition, in November 2015 the Ombudsman was referred an Investigation into allegations of misuse of members' staff budget entitlements by the Victorian Parliament's Legislative Council. The Ombudsman noted that this is the third referral from Parliament in the 43-year history of the office.<sup>58</sup> The reference is discussed further in section 3.4.4.

### 3.4.1 Contacts from the public

In 2015–16 the Ombudsman received 39,470 contacts from members of the public. Of these, 17,469 were redirected to a more appropriate authority through the office's website and phone auto-redirect service.

Of the 22,021 contacts closed by the Ombudsman in 2015–16, 13,964 were within jurisdiction. For within-jurisdiction contacts, 2,988 were closed after making enquires, and 33 after formal investigations. A comparison of contacts received and closed with the two previous financial years is shown below in Table 3.3 and Table 3.4 respectively.

**Table 3.3 Summary of Ombudsman contacts**

	2013–14	2014–15	2015–16
Contacts received	34 374	38 980	39 470
Contacts redirected via website and telephone transfers	(8 916) <sup>(a)</sup>	(17 251)	(17 469)
<b>Total contacts</b>	<b>25 458</b>	<b>21 729</b>	<b>22 001</b>

(a) Seven months of phone auto-transfer only. Website transfers were not recorded in the Ombudsman's 2013–14 annual report.

Source: Compiled by the Accountability and Oversight Committee.

**Table 3.4 Summary of Ombudsman contacts closed**

	2013–14	2014–15	2015–16
Contacts within jurisdiction	13 152	13 864	13 987
Contacts outside jurisdiction	11 763	7 389	7 751
Requests for information	485	334	283
<b>Total contacts closed (not including auto re-directed approaches)</b>	<b>25 400</b>	<b>21 587</b>	<b>22 021</b>
Contacts closed through enquiries	2 672	3 222	2 988
Contacts closed through investigations	70	34	33
Contacts closed informally	22 658	18 331	19 000
<b>Total contacts closed (not including auto re-directed approaches)</b>	<b>25 400</b>	<b>21 587</b>	<b>22 021</b>

Source: Compiled by the Accountability and Oversight Committee.

<sup>58</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 4.

## Quantity measures

As in the previous year, the Ombudsman's output target for contacts closed that are within jurisdiction in 2015–16 was 14,000. The actual number was 13,987, falling just short of the target. The Ombudsman commented that 'quantity measure results are contingent on circumstances which arise during the year including the number of [contacts]'.<sup>59</sup>

In addition, the 2015–16 year included a new output measure for the proportion of jurisdictional complaints that are independently investigated by the Ombudsman. During this period the Ombudsman independently investigated 22 per cent of jurisdictional complaints, falling short of the 25 per cent target.<sup>60</sup> The Ombudsman informed the Committee this was due to:

- the kinds of matters addressed by the office, and whether or not they warrant investigation
- resources required to address protected disclosure complaints.

The Committee notes that misdirected contacts — those redirected via website and phone transfers or closed as outside jurisdiction — are steadily increasing. These comprise a significant proportion of total contacts to the office.

The Ombudsman also raised this in her submission to the Victorian Government's review of the integrity and accountability framework. She discussed the legislative barriers to referring contacts to more appropriate agencies:

I receive thousands of misdirected complaints each year that I should be able to pass direct to the appropriate body to ensure the complainant's concerns are addressed. Current legislation makes such an action unlawful, even with the complainant's consent.

... my office — as the integrity agency with the greatest public contact — should be empowered to act as a clearing house for complaints, resolving them or referring them to other agencies as appropriate. This would enable the office to fully develop a single complaints portal for the public sector, improving access, efficiency, transparency and accountability.<sup>61</sup>

The Committee previously recommended development of a one-stop shop framework in its *Report on oversight agencies 2013–14*. The Government's response indicated in-principle support, stating:

The Government agrees that a 'one-stop shop' framework could reduce complexity for people who wish to make a complaint about public bodies. The Government is supportive of the Ombudsman giving further consideration to enhancements that might be desirable to its existing frameworks to streamline the complaints system.<sup>62</sup>

<sup>59</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 51.

<sup>60</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 51.

<sup>61</sup> Victorian Ombudsman, *Submission*, 20 May 2016, Review of the Victorian integrity and accountability framework, Department of Premier and Cabinet, Victorian Government, p. 6.

<sup>62</sup> Victorian Government, *Response to Accountability and Oversight Committee's Reports into Victorian oversight agencies 2013–14 and 2014–15*, Victorian Government, Melbourne, 2016, p. 2.

Accordingly the Committee endorses the Ombudsman's recommendation to the review of the Victorian integrity and accountability framework to reduce legislative barriers for referral of misdirected complaints. The Committee considers this would greatly assist members of the public to navigate the complaints framework.

**RECOMMENDATION 6:** That the Victorian Government considers as part of its review of the integrity and accountability framework, amendments to the *Ombudsman Act 1973* to allow for:

- the referral by the Ombudsman of misdirected complaints to relevant bodies
- greater collaboration between the Ombudsman and other public sector agencies.

### Quality measures

As in the previous year, the quality measures of outcomes of complaints were very positive in 2015–16. Internal reviews of complaints only resulted in a new outcome in 0.04 per cent of cases, significantly under the target of less than 1.5 per cent.<sup>63</sup>

Similarly, 100 per cent of recommendations made to agencies on completion of investigation were accepted. The Ombudsman attributed this to the office's effort in making recommendations, including seeking input from the agencies to ensure recommendations are 'well founded, reasonable, practical and achievable'.<sup>64</sup>

### Contacts outstanding

In its *Report into Victorian oversight agencies 2014–15*, the Committee noted discrepancies between contacts received and redirected/closed by the end of the 2014–15 year. The Committee's investigations indicated this was due to a growing number of contacts that were not closed within a 12-month period. However, the annual report did not contain adequate data for the Committee to calculate the exact number that were outstanding.

Accordingly the Committee recommended improvements to the Ombudsman's annual reporting process to improve transparency on contacts not closed within a 12-month period. The Committee is pleased that the Ombudsman accepted the recommendation and has included the data in the 2015–16 annual report. This is summarised in Table 3.5 below.

<sup>63</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 51.

<sup>64</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 51.

**Table 3.5** Contacts outstanding at 30 June 2016

	<b>Number</b>
Contacts open at 1 July 2015	548
Open contacts finalised	(540)
Contacts outstanding (from 2014–15)	8
Contacts outstanding (from 2015–16)	520
<b>Total outstanding at 30 June 2016</b>	<b>528</b>

Source: Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016 p. 10.

The decrease of 20 contacts outstanding at year end (from 548 to 528) reconciles with the difference in contacts received and contacts closed by the Ombudsman (22,001 and 22,021), as shown in Table 3.3 and Table 3.4.

The Ombudsman reported that the eight matters from 2014–15 were all formal investigations. The oldest has been ongoing for 18 months.<sup>65</sup> The Ombudsman informed the Committee that of the remaining cases:

- three had been ongoing for 12 months
- the other four cases had been open for 12.5, 13.5, 14.5 and 15.5 months respectively.

At the time of writing six of the eight matters remained open and all were protected disclosure complaints.

### Formal enquiries and investigations

The majority of contacts to the Ombudsman's office do not warrant an investigation and are resolved through informal resolution. Section 13A of the Ombudsman Act also allows the Ombudsman to conduct enquiries to determine whether a matter may be resolved informally or whether an investigation is necessary.<sup>66</sup>

The Ombudsman has a number of coercive powers available during formal investigations. These include:

- the ability to summons witnesses
- compelling production of documents
- requiring witnesses to give evidence under oath or affirmation
- overriding certain privileges and secrecy provisions.<sup>67</sup>

<sup>65</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 10.

<sup>66</sup> Victorian Ombudsman, 'Fact Sheet 5 — Investigations and Section 15B of the Ombudsman Act 1973', viewed 17 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>67</sup> Victorian Ombudsman, 'Fact Sheet 5 — Investigations and Section 15B of the Ombudsman Act 1973', viewed 17 October 2016, <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

As shown in Table 3.6 below, the Ombudsman's office finalised 2988 formal enquiries and 33 formal investigations in 2015–16. Of these, 15 enquiries and 4 investigations were initiated through the Ombudsman's own motion powers. Own motion enquiries and investigations are discussed in section 3.4.2.

**Table 3.6** Enquiries and investigations completed

		2013–14	2014–15	2015–16
Enquiries completed	From complaints	2 666	3 208	2 973
	Own motion	6	14	15
	<b>Total</b>	<b>2 672</b>	<b>3 222</b>	<b>2 988</b>
Investigations completed	From complaints	61	30	29
	Own motion	9	4	4
	<b>Total</b>	<b>70</b>	<b>34</b>	<b>33</b>

Source: Compiled by the Accountability and Oversight Committee.

### Method of contact

The majority of contacts to the Ombudsman's office are by phone or email. Table 3.7 below lists the number of contacts by method in 2016–16.

**Table 3.7** Contacts in the 2015–16 financial year

Method of contact	Number of contacts
Phone	15 690
Phone auto-transfer	11 725
Website auto-transfer	5 744
Email	3 041
Online	1 894
Letter	1 045
In person	305
Fax	26
<b>Total</b>	<b>39 470</b>

Source: Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 9.

The annual report noted that more contacts are occurring electronically. Compared to 2014–15, email contacts increased 18 per cent and contact through the office's online form increased by 10 per cent.<sup>68</sup> Similarly, complaints submitted by fax or letter fell from 5 per cent in 2014–15 to under 3 per cent in 2015–16.<sup>69</sup>

<sup>68</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 9.

<sup>69</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 9.



In addition, the Ombudsman reported that contacts made outside the office increased from 29 to 89 since the previous financial year. She attributed this to the office's increased regional visits as part of its community engagement focus.<sup>70</sup> Community engagement is discussed further in section 3.4.5.

Due to the requirement to lodge complaints in writing, some contacts made by phone did not result in a complaint. The Ombudsman reported that 519 people who were advised they needed to make their complaint in writing subsequently did not do so.<sup>71</sup>

The requirement to make complaints in writing was removed by the *Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016*, which came into effect on 1 July 2016. The Ombudsman considered the amendment would 'improve access to our office and allow us to consider complaints made over the phone without having to ask people to write to us'.<sup>72</sup> The Committee also welcomes this amendment and will monitor its impact on the complaints process and the Ombudsman's performance.

### Timeliness

Table 3.8 shows that the Ombudsman's performance for timeliness of closed contacts is relatively consistent with the previous two financial years.

**Table 3.8** Timeframes of contact resolutions

	2013-14		2014-15		2015-16	
	No.	per cent	No.	per cent	No.	per cent
On day received	17 559	69.1	13 196	61.1	13 940	63.3
1-7 days	3 993	15.7	3 846	17.8	3 488	15.8
8-30 days	2 761	10.9	2 819	13.1	2 825	12.8
<b>Total &lt;30 days</b>	<b>24 313</b>	<b>95.7</b>	<b>19 861</b>	<b>92.0</b>	<b>20 253</b>	<b>91.9</b>
1-3 months	857	3.4	1 352	6.3	1 229	5.6
3-6 months	177	0.7	310	1.4	434	2.0
>6 months	53	0.2	64	0.3	105	0.5
<b>Total &gt;30 days</b>	<b>1 087</b>	<b>4.3</b>	<b>1 726</b>	<b>8.0</b>	<b>1 768</b>	<b>8.1</b>
<b>Total</b>	<b>25 400</b>	<b>100</b>	<b>21 587</b>	<b>100</b>	<b>22 021</b>	<b>100</b>

Source: Compiled by the Accountability and Oversight Committee.

In 2015-16, the Ombudsman resolved 92 per cent of contacts within 30 days. This is consistent with 2014-15 (92 per cent) and slightly lower than 2013-14 (95 per cent).

<sup>70</sup> Victorian Ombudsman, *Annual report 2015-16*, Ombudsman Victoria, Melbourne, 2016, p. 9.

<sup>71</sup> Victorian Ombudsman, *Annual report 2015-16*, Ombudsman Victoria, Melbourne, 2016, p. 13.

<sup>72</sup> Victorian Ombudsman, *Annual report 2015-16*, Ombudsman Victoria, Melbourne, 2016, p. 13.

The Committee notes that this slight decrease in performance can be attributed in-part to the introduction of the Ombudsman's website and phone auto-redirection services in 2013–14 (see also Table 3.2). This means that contacts outside of the Ombudsman's jurisdiction are redirected before they reach the Ombudsman's office. Whilst this reduces the percentage of contacts that are resolved on the day received (17,559 in 2013–14 compared with 13,196 and 13,940 in 2014–15 and 2015–16 respectively), in practice this results in a similar outcome for the complainant.

The Ombudsman's output measure for timeliness as noted in the 2015–16 State Budget Papers is the number of in jurisdiction complaints resolved within 30 days, rather than contacts to the office. In 2015–16, the Ombudsman fell short of the 95 per cent target, with only 88 per cent of complaints resolved within this timeframe. This is the same result as in 2014–15 and is also lower than the Ombudsman's performance in 2013–14, where over 92 per cent of complaints were resolved in 30 days.

The Ombudsman attributed this to the result of an increase in workload over the last three years due to:

- the impact of the Victorian integrity framework
- an increase of in-jurisdiction cases handled by the office
- an increase in the number of complaints the Ombudsman personally enquires into or investigates.<sup>73</sup>

The Committee notes that the Ombudsman has performed below the target of 95 per cent of complaints resolved within 30 days in the past three years. The Committee accepts the Ombudsman's explanation detailed above.

The Committee also notes that the Ombudsman's output is measured in complaints completed, whilst the annual report focuses on contacts to the office. As shown in Table 3.4, a significant number of approaches to the Ombudsman are not within jurisdiction. The Committee considers it appropriate to review this output target.

**RECOMMENDATION 7:** That the Victorian Government, as part of its review of the Victorian integrity framework, reviews the appropriateness of the Victorian Ombudsman's target measure of 95 per cent of complaints resolved within 30 days.

The Committee also notes that there is an overall increasing trend in real numbers for timeframes of complaint resolution, particularly in the ranges over 30 days. Although the data does not give an indication of the complexity of individual cases, the Committee considers the trend to be of concern.

<sup>73</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 51.

While the Committee accepts this is in part due to the impact of Victoria's evolving integrity framework, there is a need to assess this trend. This particularly needs to be addressed in light of the Ombudsman's ability to now take complaints by phone.

The Committee considers there is scope for the Victorian Government, in consultation with the Ombudsman, to address this performance issue in the review of the integrity framework.

**RECOMMENDATION 8:** That the Victorian Government and the Victorian Ombudsman review the complaints handling process to reduce the number of complaints requiring more than 30 days for resolution.

### 3.4.2 Protected disclosure complaints

One of the roles of the Ombudsman is to assess and investigate protected disclosure complaints. Both the Ombudsman and IBAC can receive such complaints, however the Ombudsman can only investigate protected disclosure complaints if she receives a referral from IBAC.<sup>74</sup> The Ombudsman is required to notify IBAC if an assessable disclosure is received, and the Ombudsman must investigate any protected disclosures referred from IBAC.

In 2015–16 the Ombudsman's office referred 47 protected disclosures to IBAC. In turn, IBAC referred 30 protected disclosure complaints to the Ombudsman.

Of the disclosures referred to the Ombudsman, 24 were investigated and the remaining 6 were dismissed. The Ombudsman reported these were dismissed for reasons including:

- the alleged conduct was known to the person who disclosed it for more than 12 months
- the allegation had already been appropriately investigated by another agency
- the Ombudsman was not reasonably satisfied that the allegations could be substantiated.<sup>75</sup>

As stated in Table 3.1, three of the Ombudsman's parliamentary reports were initiated as a result of protected disclosure complaints.

### 3.4.3 Own motion powers

Under the Ombudsman Act, the Ombudsman may conduct enquiries or investigations without having received a complaint through 'own motion' powers. This is generally when the Ombudsman identifies an issue that requires action, such as issues that are considered systemic or in the public interest.

<sup>74</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 13; 13AA.

<sup>75</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 33.

The Ombudsman's use of own motion powers falls into three categories:

- own motion enquiries (under section 13A)
- own motion investigations (under section 16A)
- own motion cases, where a complaint includes urgent matters that the Ombudsman cannot wait for the complaint to be put in writing.

Own motion investigations often result in significant reports which are tabled in Parliament. As shown in Table 3.1, four reports were tabled in 2015–16 that were instigated by own motion investigations.

Table 3.9 below summarises the Ombudsman's use of own motion powers over the last three financial years.

**Table 3.9**      **Table 3.9: Ombudsman's use of own motion powers**

	2013-14	2014-15	2015-16
Enquiries	6	14	15
Investigations	9	4	4
Cases	945	997	499

Source: Compiled by the Accountability and Oversight Committee.

The Ombudsman informed the Committee that the significant reduction in own motion cases in 2015–16 was due to changes in internal policies and procedures during the year. In addition, the Ombudsman noted that this number should be reduced further in future, due to amendments to the Ombudsman Act which removed the requirement for complaints to be made in writing. Previously, own-motion cases were initiated when the Ombudsman considered that a matter raised in a contact required urgent action, and the office could not wait for a complaint to be made in writing.

#### 3.4.4 Investigations referred from Parliament

Section 16 of the Ombudsman Act allows the Parliament to refer matters to the Ombudsman for investigation and report. On 25 November 2015 the Legislative Council resolved to refer to the Ombudsman an investigation into allegations that members of the Australian Labor Party misused members' staff budget entitlements.<sup>76</sup> The terms of reference required the Ombudsman to investigate and report on:

<sup>76</sup> Victoria, Legislative Council 2015, *Debates*, vol. 16, 25 November 2015, pp. 4864–72.

1. allegations that ALP members of the Victorian Parliament misused members' staff budget entitlements, against the provisions of the Parliament of Victoria Members Guide, that is, 'Electorate officers are employees of the Parliament of Victoria, and are directly accountable to the member in whose electorate office they work ... These positions are provided to support the member in their parliamentary and electorate duties. The Parliament does not fund positions to support the member's political or party duties'; and
2. any other breach of applicable policies, laws or codes in relation to these allegations.<sup>77</sup>

In February 2016, the Ombudsman filed an application seeking a determination by the Supreme Court as to whether she has jurisdiction to investigate the allegations.<sup>78</sup> In August 2016, Justice Anthony Cavanough ruled that the investigation was within the Ombudsman's jurisdiction.

In September 2016, the Victorian Government challenged the decision in the Court of Appeal. At the time of writing the appeal is before the court. Accordingly, the Committee makes no further comment while the case is before the judiciary.

### 3.4.5 Community engagement and collaboration

In 2015–16 the Ombudsman's office undertook a broad range of community engagement and collaboration initiatives. Some highlights identified in the annual report include:

- 10 presentations to peak bodies in regional Victoria
- 9 visits to take complaints in regional Victoria
- 5 presentations to school and university students
- 33 events for community groups in Victoria and interstate
- 21 presentations to public sector agencies
- 10 presentations to local government audiences.<sup>79</sup>

In addition, the Ombudsman produced two animations which were published online about what the office does and how to make a complaint. These were translated into several different languages.

The Ombudsman reported its Twitter presence was growing, with followers almost doubling to 1372 in 2015–16. In addition, the Ombudsman launched a Facebook page in June 2016.<sup>80</sup>

<sup>77</sup> Victoria, Legislative Council 2015, *Debates*, vol. 16, 25 November 2015, pp. 4864–65.

<sup>78</sup> Victorian Ombudsman, *Ombudsman files application in Supreme Court*, Media release, Ombudsman Victoria, Melbourne, 1 February 2016.

<sup>79</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, pp. 36–40.

<sup>80</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 37.

As stated previously in Box 3.2, the Ombudsman recommended introducing a legislative requirement for an education function in her submission to the review of the integrity and accountability framework. The Committee is examining this issue in its Inquiry into education, training and communications initiatives of Victorian oversight agencies and will report its findings in the final report.

### 3.5 Complaints about the Ombudsman

There are review processes available for people who are not satisfied with the outcome of or how the Ombudsman handled their complaints. This includes:

- the office's internal review process (for those people not satisfied with the outcome of their complaint)
- review by the Victorian Inspectorate (for complaints about staff conduct or procedural fairness)
- investigation by IBAC (for allegations of corruption during their contact with the Ombudsman)
- review by the Accountability and Oversight Committee (in some circumstances).

In the 2015–16 year, there were 78 requests from complainants for an internal review of their Ombudsman complaint. The outcomes were as follows:

- In 41 cases the case was internally reviewed by an independent officer who was overseen by the Deputy Ombudsman. Of these, 36 were closed in the 2015–16 year and 5 were carried over into 2016–17. Of the 36 closed cases:
  - the original decision was confirmed in 26 instances
  - in 5 cases, the service provided was considered satisfactory
  - in the remaining 5 cases, the original decision was changed.
- In 23 cases the original decision was upheld, and supporting information or clarification was provided to the complainant.
- In 3 cases further enquiries were made to address the complainant's concerns.
- In the remaining 11 cases the complainant did not respond to requests for information or requested a review before an initial outcome had been provided.<sup>81</sup>

In the 2015–16 year, the Victorian Inspectorate requested information from the Ombudsman on 12 complaints received about the office. The Ombudsman reported that the information was provided for all requests and that no further action was taken by the Inspector on each matter.<sup>82</sup> Complaints received by the Inspectorate concerning Ombudsman officers are discussed in detail in Chapter 4.

<sup>81</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 49.

<sup>82</sup> Victorian Ombudsman, *Annual report 2015–16*, Ombudsman Victoria, Melbourne, 2016, p. 49.

IBAC did not make any requests for information to the Ombudsman in 2015–16.

Whilst the Victorian Inspectorate is the appropriate agency to receive complaints about the outcome of complaints made to the Ombudsman, the Accountability and Oversight Committee can also investigate certain complaints about the office. However, the types of complaints it can investigate are limited by the provisions in the Ombudsman Act. The Committee is legislatively prohibited from investigating matters relating to a specific complaint.

The Committee received no complaints about the performance of the Ombudsman in 2015–16.





# 4 The Victorian Inspectorate

## AT A GLANCE

### Background

The Victorian Inspectorate is a key oversight body in Victoria's Integrity system. It is responsible for independent oversight of the:

- Independent Broad-based Anti-corruption Commission
- Victorian Ombudsman
- Victorian Auditor-General's Office
- Chief Examiner and any other Examiners appointed under the *Major Crime (Investigative Powers) Act 2004*
- Public Interest Monitor.

The Accountability and Oversight Committee has responsibility for oversight of the Victorian Inspectorate's activities relating only to officers of the Victorian Ombudsman.

### Recommendations

9. That the Victorian Government clarifies through an appropriate formal mechanism the responsibility of the Accountability and Oversight Committee to receive and investigate complaints into:
  - the Freedom of Information Commissioner (or the new Information Commissioner)
  - the Victorian Ombudsman
  - the Victorian Inspectorate.
10. That the Victorian Inspectorate reviews the current requirement that complaints must be submitted in writing.

## 4.1 Introduction

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

Under the Act, the Victorian Inspector is an independent officer who reports directly to Parliament. The Inspector is appointed by Governor-in-Council on recommendation from the relevant minister,<sup>83</sup> and is subject to veto by the

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<sup>83</sup> Currently Special Minister of State.

Independent Broad-based Anti-corruption Commission (IBAC) Committee. Mr Robin Brett QC is Victoria's inaugural inspector, appointed in January 2013 for a period of 5 years. The Victorian Inspectorate comprises 9 staff.<sup>84</sup>

Parliamentary oversight of the Victorian Inspectorate is split between three committees. Their functions differ according to the actions taken by the Inspectorate:

- In addition to considering appointment of the Victorian Inspector, the IBAC Committee monitors and reviews the performance of the Victorian Inspectorate, other than that in respect of officers of the Victorian Ombudsman and the Victorian Auditor-General's Office (VAGO).
- The Accountability and Oversight Committee monitors the performance and duties of the Inspectorate in respect to Ombudsman officers.
- The Public Accounts and Estimates Committee monitors the performance and duties of the Inspectorate in respect to VAGO officers.<sup>85</sup>

Each committee is prohibited from reviewing any specific investigations, complaints or determinations of the Inspectorate.<sup>86</sup>

## 4.2 The Victorian Inspectorate's functions

The Victorian Inspectorate's primary functions are to oversee IBAC and ensure it complies with the *Independent Broad-Based Anti-Corruption Act 2011*. It also has specific responsibilities for oversight of:

- the Victorian Ombudsman's office
- VAGO
- the Chief Examiner and Examiners appointed under the *Major Crime (Investigative Powers) Act 2004*
- the Public Interest Monitor.<sup>87</sup>

The bulk of the Inspectorate's work concerns oversight of IBAC.<sup>88</sup>

A key function of the Inspectorate is to monitor the use of coercive powers by these agencies and their compliance with their relevant legislation. Other functions include receiving complaints and enquires about these agencies, which may require the Inspectorate to conduct a formal investigation. The Inspectorate also has the power to conduct an investigation without a complaint being received, through use of own motion powers.

<sup>84</sup> Victorian Inspector, *Annual report 2015-16*, Victorian Inspectorate, Melbourne, 2016, p. 24.

<sup>85</sup> *Parliamentary Committees Act 2003* (Vic), 110 of 2003.

<sup>86</sup> *Parliamentary Committees Act 2003* (Vic), 110 of 2003.

<sup>87</sup> Victorian Inspector, *Annual report 2015-16*, Victorian Inspectorate, Melbourne, 2016, p. 24.

<sup>88</sup> Victorian Inspector, *Annual report 2015-16*, Victorian Inspectorate, Melbourne, 2016, p. 24.

As noted above, the Committee can only scrutinise the functions and powers of the Victorian Inspectorate in relation to Ombudsman officers. These functions include:

- monitoring the use of coercive powers by Ombudsman officers
- monitoring compliance with procedural fairness by Ombudsman officers, including during enquiries, investigations, reports and recommendations
- receiving and investigating complaints about Ombudsman officers and their conduct, and report and develop recommendations on these matters.<sup>89</sup>

Further, the Inspectorate may refer complaints about Ombudsman officers to other agencies it considers more appropriate to investigate the allegations.<sup>90</sup>

The Victorian Inspectorate may make recommendations to the Ombudsman as a result of enquiries, complaints or investigations. While the Ombudsman is not required to comply with such recommendations, the Inspectorate may require a report to be produced stating the reasons for rejecting the recommended action.<sup>91</sup>

The Ombudsman has a number of responsibilities in relation to the Victorian Inspectorate. The Ombudsman is required to:

- notify the Inspectorate of any complaint involving conduct of IBAC, Ombudsman, VAGO and Chief Examiner personnel<sup>92</sup>
- notify the Inspectorate 3 days after issuing a summons detailing the reasons for it<sup>93</sup>
- provide copies of audio or video recordings for compulsory appearances before the Ombudsman<sup>94</sup>
- provide the Inspectorate with copies of any confidentiality notices or related documents.<sup>95</sup>

#### 4.2.1 Changes to the Victorian Inspectorate's functions

As discussed in Chapter 2, the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 proposes a number of amendments to the Victorian Freedom of Information (FOI) Framework. This includes granting the new Office of the Victoria Information Commissioner the use of coercive powers to compel documents or require a person to attend an examination.<sup>96</sup>

<sup>89</sup> *Victorian Inspectorate Act 2011* (Vic), 70 of 2011, section 11(4).

<sup>90</sup> *Victorian Inspectorate Act 2011* (Vic), 70 of 2011, section 83(3).

<sup>91</sup> *Victorian Inspectorate Act 2011* (Vic), 70 of 2011, section 82.

<sup>92</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 16F.

<sup>93</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 18A; 18F.

<sup>94</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 18A; 18F.

<sup>95</sup> *Ombudsman Act 1973* (Vic), 8414 of 1973, section 26E; 18F.

<sup>96</sup> Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 (Vic), section 66.

The Bill would empower the Inspectorate to monitor the Information Commissioner's:

- use of coercive powers
- compliance with procedural fairness, including during reports and investigations.<sup>97</sup>

In addition, the Bill would provide the Inspectorate with the power to receive complaints, investigate and assess, and report on and make recommendations on the conduct of officers of the Information Commissioner.<sup>98</sup> The types of complaints the Inspectorate could receive include:

- the use or purported use of coercive powers
- compliance with procedural fairness under the *Freedom of Information Act 1982* or the *Privacy and Data Protection Act 2014*
- on the basis that conduct by the Commissioner was:
  - contrary to law
  - unreasonable, unjust, oppressive or improperly discriminatory
  - based on improper motives
  - an abuse of power
  - otherwise improper.<sup>99</sup>

The Committee notes some issues with these provisions. If implemented, the Inspectorate could receive complaints about the Information Commissioner to a similar extent that it can currently receive complaints about the Ombudsman. The Committee accepts that this is designed to bring the proposed Information Commissioner in line with the other Victorian integrity bodies.

However, one of the Committee's functions is also to consider and investigate complaints about the existing FOI Commissioner and operation of the office. The Bill retains this function, amending the Committee's oversight to the new Information Commissioner and its officers. The Committee notes that there is potential for overlap or duplication in the Committee and the Inspectorate having a similar function, which needs to be clarified.

In addition, subsequent to the end of the 2015–16 year the Committee received complaints against the conduct of the Freedom of Information Commissioner, Victorian Ombudsman and Victorian Inspectorate. These will be noted in the Committee's subsequent report on oversight agencies in the 2016–17 year.

<sup>97</sup> Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 (Vic), section 109.

<sup>98</sup> Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 (Vic), section 109.

<sup>99</sup> Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 (Vic), section 112.

The Committee was unable to investigate some aspects of these complaints. These were specifically excluded from the Committee's functions or fell within the jurisdiction of another oversight agency.

The Committee considers there is a need for clarification of its responsibility for complaints about the agencies it oversees. This would provide clarity for complainants, oversight and integrity agencies and the Committee. In addition, it would provide complainants and the agencies with a better expectation of the processes and likely outcomes of complaints.

**RECOMMENDATION 9:** That the Victorian Government clarifies through an appropriate formal mechanism the responsibility of the Accountability and Oversight Committee to receive and investigate complaints into:

- the Freedom of Information Commissioner (or the new Information Commissioner)
- the Victorian Ombudsman
- the Victorian Inspectorate.

## 4.3 Performance of the Victorian Inspectorate's oversight of the Victorian Ombudsman

### 4.3.1 Notifications received from the Ombudsman

Section 16F(2) of the Ombudsman Act requires the Ombudsman to notify the Inspectorate of any complaint received relating to conduct of:

- IBAC or IBAC personnel
- an Ombudsman officer, VAGO officer, the Chief Examiner or an Examiner (other than complaints about corrupt conduct).

Table 4.1 below provides a summary of notifications received by the Victorian Inspectorate from the Ombudsman.

**Table 4.1** Victorian Inspectorate notifications received from the Ombudsman

	2013-14	2014-15	2015-16
Notifications of complaints received	36	9	5
• Concerning IBAC officers		4	4
• Concerning Ombudsman officers		3	1
• Concerning VAGO officers		2	0
Notification of summonses	18	13	26
• To give evidence		4	
• To produce documents		7	
• To produce documents and give evidence		2	
Notification of issue and cancellation of confidentiality notices	16	27	5
Audio recordings of persons compulsorily examined (persons)	167	39	42

Source: Compiled by the Accountability and Oversight Committee.

Notifications from the Ombudsman comprise only a small number of total notifications received by the Inspectorate. By comparison, in 2015–16 the Inspectorate received 932 notifications from IBAC, 78 from the Office of the Chief Examiner and 0 from VAGO.<sup>100</sup>

The Inspector reported that he did not consider it necessary to make requests or recommendations to the Ombudsman about coercive questioning.<sup>101</sup> The Inspectorate informed the Committee this was due to adequate information provided by the Ombudsman on the instances when coercive questioning was used.

### 4.3.2 Enquiries and complaints received about the Ombudsman

The Inspectorate distinguishes between complaints and enquires as follows:

- An enquiry is contact from the public seeking information about the Inspectorate's complaint processes or information. It may or may not proceed to become a complaint.
- A complaint is a matter where the Inspectorate has received in writing a person's clear intention that they wish to make a complaint.<sup>102</sup>

The Inspectorate provides an official complaints form on its website to assist the public in making a complaint. The form is available in PDF and online format.<sup>103</sup> Use of the form is not mandatory, but it is encouraged to ensure complainants provide sufficient and relevant information about their complaint.<sup>104</sup>

In line with other recommendations in this report, the Committee considers it appropriate for the Victorian Inspectorate to review its requirement of receiving complaints in writing. This would also ensure consistency with recent legislative amendments that allow the Ombudsman to accept complaints in other forms, such as by phone.

**RECOMMENDATION 10:** That the Victorian Inspectorate reviews the current requirement that complaints must be submitted in writing.

In 2015–16 the Inspectorate received 40 enquiries and 30 complaints about Ombudsman officers. A comparison with the previous two years is shown in Table 4.2 below.

<sup>100</sup> Victorian Inspector, *Annual report 2015–16*, Victorian Inspectorate, Melbourne, 2016, p. 16.

<sup>101</sup> Victorian Inspector, *Annual report 2015–16*, Victorian Inspectorate, Melbourne, 2016, p. 19.

<sup>102</sup> Victorian Inspector, *Annual report 2015–16*, Victorian Inspectorate, Melbourne, 2016, p. 12.

<sup>103</sup> Victorian Inspectorate, 'Complaints & investigations', viewed 28 October 2016, <vicinspectorate.vic.gov.au>.

<sup>104</sup> Victorian Inspectorate, 'Notes for complainants', viewed 27 October 2016, <vicinspectorate.vic.gov.au>.

**Table 4.2** Enquiries and complaints received by the Victorian Inspectorate about Victorian Ombudsman officers

	2013-14	2014-15	2015-16
Enquiries	25	19	40
Complaints	17	25	30

Source: Compiled by the Accountability and Oversight Committee.

The Committee is pleased to report that the Inspectorate accepted the recommendation in the *Report into Victorian oversight agencies 2014-15*. This required the Inspector to provide clarifying information on complaints received about Ombudsman officers in annual reports.

Of the 30 complaints received about Ombudsman officers:

- 4 complaints were deemed closed, as information requested was not provided by the complainant
- 18 complaints were closed due to insufficient evidence to support the complainant's allegations, or that the Ombudsman's conduct appeared reasonable in the circumstances
- 2 complaints remain on hold at the complainant's request
- 3 complaints related to matters still active with the Ombudsman, and no action would be taken until the matters were closed
- 1 complaint was withdrawn by the complainant
- 1 complaint was outside of the Inspectorate's jurisdiction
- 1 complaint was being considered by IBAC as it related to a protected disclosure, and no action would be taken until IBAC had dealt with the matter.<sup>105</sup>

The Inspectorate informed the Committee that it has a general policy of not accepting complaints about an agency where:

- the substantive matter is still being dealt with by the agency
- there is no indication that the agency had caused undue delay in considering the matter.

### 4.3.3 Monitoring of the Ombudsman and own motion investigations

The Inspectorate monitors compliance by Ombudsman officers with procedural fairness requirements under the Ombudsman Act. This includes monitoring the conduct of enquiries and investigations, and of reports and recommendations made by the Ombudsman.

<sup>105</sup> Victorian Inspector, *Annual report 2015-16*, Victorian Inspectorate, Melbourne, 2016, p. 14.

In 2015–16 the Inspectorate engaged with senior Ombudsman personnel to monitor compliance with the Act. This included reviewing the Ombudsman’s internal procedures manual.

The Inspectorate reported that its survey of the Ombudsman’s compliance with procedural fairness requirements was ongoing. However, it has not identified any instances where the Ombudsman has failed to comply with the requirements.

The Inspectorate did not conduct any own motion investigations relating to the Ombudsman in 2015–16.

**Committee Room**  
**21 November 2016**



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