

**PARLIAMENT OF VICTORIA**

**Integrity and Oversight Committee**



# **Inquiry into the performance of Victorian integrity agencies 2019/20**

Parliament of Victoria  
Integrity and Oversight Committee

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# Committee membership



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# About the Committee

The Integrity and Oversight Committee is constituted under the *Parliamentary Committees Act 2003* (Vic).

## Functions

### 7 Integrity and Oversight Committee

- (1) The functions of the Integrity and Oversight Committee are—
  - (a) to monitor and review the performance of the functions and exercise of the powers of the Information Commissioner; and
  - (b) to consider and investigate complaints concerning the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and
  - (c) to report to both Houses of Parliament on any matter requiring the attention of Parliament that relates to—
    - (i) the performance of the functions and the exercise of the powers of the Information Commissioner; or
    - (ii) any complaint concerning the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and
  - (d) to examine the annual report of the Information Commissioner and any other reports by the Information 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; and
  - (f) to monitor and review the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO 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, other than those in respect of VAGO officers, that require the attention of the Parliament; and
  - (h) to examine any reports made by the Victorian Inspectorate to the Integrity and Oversight Committee or the Parliament other than reports in respect of VAGO officers; and
  - (i) to consider any proposed appointment of an Inspector under section 18 of the *Victorian Inspectorate Act 2011* and to exercise a power of veto in accordance with that Act; and

- (ia) to receive and assess public interest disclosures about conduct by or in the Victorian Inspectorate and engage an independent person to investigate any such disclosure that it has assessed to be a public interest complaint; and
  - (j) to monitor and review the performance of the duties and functions of the IBAC; and
  - (k) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament; and
  - (l) to examine any reports made by the IBAC to the Integrity and Oversight Committee or the Parliament; and
  - (m) to consider any proposed appointment of a Commissioner under section 20 of the *Independent Broad-based Anti-corruption Commission Act 2011* and to exercise a power of veto in accordance with that Act; and
  - (n) to carry out any other function conferred on the Integrity and Oversight Committee by or under—
    - (i) the *Ombudsman Act 1973*; and
    - (ii) the *Independent Broad-based Anti-corruption Commission Act 2011*; and
    - (iii) the *Victorian Inspectorate Act 2011*; and
    - (iv) the *Public Interest Disclosures Act 2012*.
- (2) Despite anything to the contrary in subsection (1), the Integrity and Oversight Committee cannot—
- (a) reconsider a decision of the Information Commissioner or Public Access Deputy Commissioner in relation to a review of a particular matter; or
  - (b) reconsider any recommendations or decisions of the Information Commissioner or Public Access Deputy Commissioner in relation to a complaint under the *Freedom of Information Act 1982*; or
  - (c) reconsider any findings in relation to an investigation under the *Freedom of Information Act 1982*; or
  - (d) reconsider the making of a public interest determination under the *Privacy and Data Protection Act 2014*; or
  - (e) reconsider the approval of an information usage arrangement under the *Privacy and Data Protection Act 2014*; or
  - (f) reconsider a decision to serve a compliance notice under the *Privacy and Data Protection Act 2014*; or
  - (g) disclose any information relating to the performance of a duty or function or exercise of a power by the Ombudsman, the Victorian Inspectorate or the IBAC which may—

- (i) prejudice any criminal proceedings or criminal investigations; or
  - (ii) prejudice an investigation being conducted by the Ombudsman, the IBAC or the Victorian Inspectorate; or
  - (iii) contravene any secrecy or confidentiality provision in any relevant Act; or
- (h) investigate a matter relating to the particular conduct the subject of—
- (i) a particular complaint or notification made to the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
  - (ii) a particular disclosure determined by the IBAC under section 26 of the *Public Interest Disclosures Act 2012* to be a public interest complaint; or
  - (iii) any report made by the Victorian Inspectorate; or
- (i) review any decision by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011* to investigate, not to investigate or to discontinue the investigation of a particular complaint or notification or a public interest complaint within the meaning of that Act; or
- (j) review any findings, recommendations, determinations or other decisions of the IBAC in relation to—
- (i) a particular complaint or notification made to the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
  - (ii) a particular disclosure determined by the IBAC under section 26 of the *Public Interest Disclosures Act 2012* to be a public interest complaint; or
  - (iii) a particular investigation conducted by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
- (k) review any determination by the IBAC under section 26 of the *Public Interest Disclosures Act 2012*; or
- (l) disclose or share any information that is likely to lead to the identification of a person who has made an assessable disclosure and is not information to which section 53(2)(a), (c) or (d) of the *Public Interest Disclosures Act 2012* applies; or
- (m) review any decision to investigate, not to investigate, or to discontinue the investigation of a particular complaint made to the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*; or
- (n) 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*.

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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 to the Parliament of Victoria, the Integrity and Oversight Committee's (IOC) report on its Inquiry into the Performance of Victorian Integrity Agencies 2019/20.

The IOC is responsible for monitoring and reviewing the performance of the duties and functions of Victoria's principal integrity agencies, which play a crucial role in the State's integrity system. As in 2020, COVID-19 continues to present challenges to the Victorian public sector and members of the public. In particular, the pandemic has required innovation and flexibility from integrity agencies regarding the exercise of their diverse functions, including complaint handling, investigations, reviews and education. Their resilience in doing so is to be commended.

Before turning to the report, I would like to acknowledge the contributions of the previous Chair of this Committee, Mr Steve McGhie MP, from its establishment until 8 June 2021. It should be recognised, in particular, that much of the work upon which this report is based was completed during his tenure.

The report reviews the performance of the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC), the Victorian Inspectorate (VI) and the Victorian Ombudsman (VO), mainly through close examination of their annual reports for 2019/20. The agencies also appeared before the Committee at public hearings, and answered written questions on notice relating to their performance during 2019/20. The Committee appreciates the agencies' participation in its public hearings, their cooperation throughout the Inquiry and their conscientious work on behalf of Victorians.

The report begins with an overview of Victoria's integrity system and the agencies' performance in 2019/20, followed by detailed examination of each agency's performance during the year under review. This examination focuses on the agencies' performance with respect to complaint handling, investigations and oversight, public information and education, governance and workplace, and accountability.

IBAC has continued to produce high-quality public information as well as investigative, intelligence and research reports. IBAC has often emphasised the positive interrelationships between its investigative and education work in helping prevent and combat corruption and other misconduct in the public sector. In this spirit, during 2019/20 IBAC began a systematic review of its corruption-prevention and education strategy, and will also draw on lessons identified in the Committee's current Inquiry into the education and prevention functions of Victoria's integrity agencies.

While IBAC was unable to meet its timeliness targets for assessment of complaints and notifications, this can be attributed to the impacts of the pandemic and an increased burden with respect to whistleblower complaints. It should be noted, however, that,

even in the midst of the COVID-19 challenges, IBAC was able to undertake more reviews of Victoria Police investigations of police-related complaints. The Committee recognises IBAC's reviews as a vital part of the agency's distinctive police oversight function.

With regard to workplace culture, the Committee has recommended that IBAC review its OH&S strategies, policies and practices and report the findings to the Committee. This will help ensure that its governance and workplace culture are exemplary.

One of OVIC's achievements during 2019/20 was its adaptability regarding its education and training activities. It was able to smoothly move its face-to-face training courses, disrupted by COVID-19, online, and increase the number of education initiatives it delivered. Their education and training courses and content continue to be well regarded within Victoria's public sector.

While the Committee has previously expressed concern over the timeliness of OVIC's exercise of review and complaint-handling functions, during the year, pleasingly, it made significant improvements in these areas. This has been due, in part, to its increased emphasis on alternative dispute resolution.

The VI faced some challenges in adapting its secure information technology, information management and telephony systems to the demands of the COVID-19 environment, including work-from-home arrangements and obstacles to on-site inspections of records. These challenges also affected the efficiency and timeliness of its complaint handling and exchange of information with relevant agencies. The VI has since adjusted well to the demands of remote-work arrangements and the electronic exchange of information. Nevertheless, the Committee encourages the VI to review its policies, procedures and systems for remote working so that it is better able to operate remotely and flexibly when necessary.

Among the VI's accomplishments during 2019/20 was the development of its Integrity Response Guidelines, which provide clear guidance on the agency's options in responding to the risk or reality of non-compliance by the agencies it oversees.

The VO's education and training initiatives continue to be well-received by participants. The VO also continued its important and wide-ranging complaint-handling and investigative work to help improve public administration. The agency met all its Budget Paper Number 3 performance indicators during the year, with the exception of the timeliness indicator requiring the resolution of complaints within 30 calendar days of receipt.

It is commendable that the VO not only continues to closely monitor, and report on, the implementation of its recommendations by public sector bodies, but that such a high proportion of its recommendations are accepted.

The pandemic has accentuated many of the challenges already faced by vulnerable Victorians, and those living or working in regional areas. For this reason, the Committee has recommended that the VO prioritise these populations in their outreach and engagement efforts during 2021/22 and beyond.

The Committee looks forward to continuing its constructive engagement with the integrity agencies in their efforts to enhance the transparency, integrity and accountability of the Victorian public sector.

I express my appreciation for the work of my Committee colleagues during the course of this Inquiry and the production of this report: Brad Rowswell MP (Deputy Chair), Stuart Grimley MLC, Dustin Halse MP, Harriet Shing MLC, Jackson Taylor MP and Hon Kim Wells MP.

I also acknowledge the work of the Committee Secretariat throughout this Inquiry.

I commend this report to the Parliament.

A handwritten signature in black ink, reading "Jill Hennessy". The signature is written in a cursive style with a large, sweeping flourish at the end.

**Hon Jill Hennessy MP**  
**Chair**



# Recommendations

## 2 Independent Broad-based Anti-corruption Commission

**RECOMMENDATION 1:** That the Independent Broad-based Anti-corruption Commission review its occupational health and safety strategies, policies and practices, and report to the Committee on the methodologies, processes and outcomes of that review. The review should focus on bullying, sexual harassment, occupational violence and discrimination. It should encompass both the conditions and steps necessary to ensure psychological safety in the workplace and the safe reporting of misconduct.

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## 5 Victorian Ombudsman

**RECOMMENDATION 2:** That the Victorian Ombudsman prioritise its outreach efforts to the most vulnerable communities and to people in regional Victoria.

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## 1.1 Overview of Victoria's integrity system

Accountability and transparency are two key principles that underpin responsible government. Victoria's integrity system is comprised of a number of bodies, each of which performs a particular role in maintaining trust and confidence in public administration. Together, they help protect the integrity of the Victorian public sector.

The Independent Broad-based Anti-corruption Commission (IBAC) is responsible for identifying, exposing and preventing corrupt conduct in the Victorian public sector. Its functions include a specific focus on overseeing Victoria Police. It is also the central agency for receiving, assessing and investigating disclosures about improper conduct by a public officer or public body.

The Office of the Victorian Information Commissioner (OVIC) oversees Victoria's freedom of information (FOI), information privacy and information security regimes. It aims to facilitate greater access to information while safeguarding privacy and data in appropriate circumstances.

The Victorian Ombudsman (VO) investigates and resolves complaints about the administrative actions of Victorian government agencies, including local councils. It is also empowered to enquire into any administrative action that is incompatible with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

The Victorian Inspectorate (VI) oversees a number of key integrity agencies, including IBAC, OVIC and the VO, by monitoring their compliance with the law, their use of coercive powers and their conformity with procedural fairness requirements.

These integrity agencies are not subject to the direction or control of the executive government and are directly accountable to Parliament through the Integrity and Oversight Committee (IOC).

## 1.2 The Integrity and Oversight Committee

The IOC is a joint investigatory committee of the 59th Parliament of Victoria established under the *Parliamentary Committees Act 2003 (Vic)* ('*PC Act 2003 (Vic)*'). The IOC is responsible for monitoring and reviewing the performance of the duties and functions of some of Victoria's leading integrity agencies. It performs this oversight role through, among other actions,

- monitoring and reviewing the performance of the duties and functions of IBAC, OVIC, the VI and the VO
- examining the agencies' reports, including annual reports

- reporting to both Houses of Parliament on any matter requiring the attention of Parliament.<sup>1</sup>

As noted, the Committee monitors and reviews the agencies' performance of their duties and functions. These agency duties and functions include public information, education and prevention responsibilities; complaint-handling, investigations and reviews of public sector body investigations; and inquiries into public sector bodies and associated recommendations. In addition to the examination of agency reports, including annual reports, the Committee exercises oversight by monitoring information about the performance of agencies that it has received from complainants; that is in the public domain; or that has come from integrity agencies themselves through correspondence, briefings and appearances at Committee hearings. Further, the Committee has power to inquire into matters that have been referred to it by the Parliament of Victoria or which have been self-referred by the Committee under the *PC Act 2003 (Vic)*.<sup>2</sup>

In terms of its own investigatory power, the Committee may, in the circumstances prescribed in the *PC Act 2003 (Vic)*, investigate complaints about the Information Commissioner and the operation of OVIC.<sup>3</sup> However, it cannot investigate complaints about IBAC, the VI or the VO.<sup>4</sup> While the Committee cannot investigate these kinds of complaints, it can review and monitor them, and seek further information from the integrity agency concerned, where the Committee considers that a complaint has identified an issue that bears on the performance of the agency (for example, its professionalism and timeliness in responding to a complaint).<sup>5</sup> The *PC Act 2003 (Vic)* expressly prohibits the Committee, however, from reconsidering the decisions, findings or recommendations made by IBAC, OVIC, the VI and the VO.<sup>6</sup>

The IOC is authorised to engage an independent investigator to investigate public interest disclosure complaints ('whistleblower complaints') about the VI.<sup>7</sup> The IOC did not receive any public interest disclosures about the VI or a VI officer during 2019/20.

Under the governing legislation, the budgets of IBAC, the VI and the VO 'for each financial year ... [are] to be determined in consultation with the Parliamentary Committee [IOC] concurrently with ... [their] annual plan[s]'.<sup>8</sup> Before the beginning of each financial year, each of these agencies must prepare and submit a draft annual

1 *Parliamentary Committees Act 2003 (Vic)* ('*PC Act 2003 (Vic)*') s 7(1).

2 *PC Act 2003 (Vic)* s 33(1), (3).

3 *PC Act 2003 (Vic)* s 7(1)(b).

4 *PC Act 2003 (Vic)* s 7(2); *Ombudsman Act 1973 (Vic)* s 26H(2).

5 *PC Act 2003 (Vic)* s 7(1); IOC, *Function of the Committee*, <<https://www.parliament.vic.gov.au/ioc/function-iao>> accessed 12 August 2021; IOC, *IOC complaint fact sheet*, <[https://www.parliament.vic.gov.au/images/stories/committees/IOC/IOC\\_Complaint\\_Fact\\_Sheet.pdf](https://www.parliament.vic.gov.au/images/stories/committees/IOC/IOC_Complaint_Fact_Sheet.pdf)> accessed 12 August 2021.

6 *PC Act 2003 (Vic)* s 7(2); *Ombudsman Act 1973 (Vic)* s 26H(2).

7 *Public Interest Disclosures Act 2012 (Vic)* ('*PID Act 2012 (Vic)*') s 56A.

8 *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* ('*IBAC Act 2011 (Vic)*') s 167. There are provisions to the same effect with regard to the VI and the VO: *Victorian Inspectorate Act 2011 (Vic)* ('*VI Act 2011 (Vic)*') s 90A; *Ombudsman Act 1973 (Vic)* s 24A.

plan describing their proposed work program for that financial year for the IOC's consideration.<sup>9</sup>

Further, the IOC is required to recommend to Parliament the appointment of an independent person to conduct performance audits of IBAC, the VI and the VO at least once every four years.<sup>10</sup> The independent performance audit must determine whether these agencies are achieving their objectives effectively, economically and efficiently and in compliance with the governing legislation.<sup>11</sup> The Committee has begun the tender process for the appointment of the first performance auditor. The first audits are due to commence in the second half of 2021.

In summary, the Committee oversees the integrity agencies by monitoring and reviewing the performance of their duties and functions, examining their reports, maintaining a watch over their handling of complaints and undertaking inquiries into matters of public interest within its jurisdiction.

### 1.3 Overview of integrity agencies' performance in 2019/20

In preparing this report, the IOC has analysed the annual reports of IBAC, OVIC, the VI and the VO for 2019/20 and considered reports and recommendations relevant to the integrity agencies and oversight committees from previous parliaments.

As part of this Inquiry, public hearings were held for IBAC, OVIC, the VI and the VO on 15 March 2021 (see Appendix A).<sup>12</sup> The hearings provided the agencies with an opportunity to present publicly on their performance during 2019/20 and answer questions from members of the Committee. Following their appearances before the Committee, the agencies also provided answers to questions taken on notice during the public hearings and supplementary questions.

The performance of IBAC, OVIC, the VI and the VO were, like all organisations, naturally affected by the emergence of the COVID-19 pandemic in the early part of 2020 and its escalation throughout the year. Given the importance of on-the-ground and face-to-face operations to the integrity agencies' investigative and inspection functions, and the sensitivity of the information and intelligence that they gather and receive, the pandemic affected them considerably. The Victorian Government's Stay at Home Directions also required the agencies to adapt to remote-work conditions and implement new ways of receiving, assessing and communicating information securely. The agencies and their staff are to be acknowledged for their adaptability and resilience in performing their functions under extraordinary circumstances.

<sup>9</sup> *IBAC Act 2011* (Vic) s 168(1); *VI Act 2011* (Vic) s 90B(1); *Ombudsman Act 1973* (Vic) s 24B(1).

<sup>10</sup> *IBAC Act 2011* (Vic) s 170; *VI Act 2011* (Vic) s 90D; *Ombudsman Act 1973* (Vic) s 24D.

<sup>11</sup> *IBAC Act 2011* (Vic) s 170(4); *VI Act 2011* (Vic) s 90D(4); *Ombudsman Act 1973* (Vic) s 24D(4).

<sup>12</sup> IOC, *Hearings and transcripts*, 2021, <<https://www.parliament.vic.gov.au/ioc/article/4621>> accessed 25 May 2021.

### 1.3.1 IBAC

During 2019/20, IBAC made a number of improvements to the public information it provides about its functions and jurisdiction, particularly in relation to complaints and public interest disclosures and police oversight. It enhanced the accessibility of its website and increased the number of translated publications available, which benefits Victoria's culturally and linguistically diverse (CALD) communities. The year saw a 58% increase in unique traffic to its website, which increases the reach of IBAC, enhances the impact of its educative and preventive activities and helps reduce the number of misdirected complaints it receives that lie outside its jurisdiction.

IBAC has also committed to implement recommendations from the IOC's first agency performance report:<sup>13</sup> to improve the usefulness and navigability of its publications web page, enhance the rigour of the information it provides about the implementation of IBAC recommendations by public sector bodies, and publish the number of complaints and notifications it has received with respect to OVIC and the VO. This enhances transparency and helps keep public sector bodies accountable in implementing IBAC recommendations.

With regard to its corruption-prevention and education (CPE) functions, IBAC began a thorough review of its CPE Strategy, which will be informed by the IOC's Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies. IBAC has explained that it considers that a review of its CPE strategy, which was developed in 2015, is timely given changes in IBAC's jurisdiction and functions over time, changes to the broader integrity system, and new evidence and practice in the anti-corruption field.<sup>14</sup> As IBAC has elaborated:

Over the past five years, there have been significant changes in the Victorian public sector, Victoria's integrity system and in IBAC's operating model, resourcing, capabilities, caseload and data holdings. A stronger evidence base has increased our understanding of emerging corruption and police misconduct risks and there are insights from new approaches to prevention in anti-corruption and other settings.<sup>15</sup>

While the agency continued to receive positive responses to its education initiatives, its face-to-face programs were naturally severely affected by public-health restrictions made necessary by the pandemic. Positively, IBAC increased the range and depth of its engagement with Victoria Police and the State's legal sector, which is especially important given the findings of the 'Lawyer X' royal commission.<sup>16</sup> IBAC also participated in forums related to Victoria Police, on topics such as the use of body-worn cameras and the enforcement of public-health restrictions.

<sup>13</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 14–15, 123.

<sup>14</sup> IBAC, *Submission to the IOC Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies*, 30 September 2020, p. 19.

<sup>15</sup> Ibid. IBAC's corruption-prevention strategy is further discussed in Section 2.2.2 of Chapter 2 in this report.

<sup>16</sup> *Royal Commission into the Management of Police Informants: an inquiry into Victoria Police's use of Nicola Gobbo as a human source*, <<https://www.rcmpi.vic.gov.au>> accessed 25 May 2020. See also Attorney-General Jaclyn Symes, *Strengthening the Victorian criminal justice system*, media release, Victorian Government, Melbourne, 7 May 2021, <<https://www.premier.vic.gov.au/strengthening-victorian-criminal-justice-system>> accessed 25 May 2021.

IBAC was unable to meet its Budget Paper Number 3 (BP3) timeliness targets with respect to the assessment of complaints and notifications about public sector bodies and Victoria Police, citing an increased burden with the new public interest disclosures regime and the impacts of COVID-19 on complaint-handling resources, processes and infrastructure. Positively, IBAC exceeded its targets for the timely completion of investigations.

While IBAC was able during 2019/20 to increase the number of reviews of Victoria Police investigations of police-related complaints it completed, it has not yet been able to put this on a sustainable footing. The Committee therefore reiterates its view that the number and depth of IBAC reviews of Victoria Police complaint investigations remains insufficient. In other police oversight work, IBAC continued its audit of Victoria Police's handling of complaints from Aboriginal and Torres Strait Islander complainants and intends to report its findings in 2020/21.

Finally, concerns over the health of IBAC's workplace culture came to the Committee's attention through public reports of bullying, sexual harassment and related misconduct at the agency. While IBAC has made, and is committed to making, improvements to its workplace culture, the Committee has recommended that the agency review its occupational health and safety strategies, policies and practices (with a focus on bullying, sexual harassment, occupational violence and discrimination) and report back to the Committee on the findings.

### 1.3.2 OVIC

With the onset of the pandemic, there was an increased reliance on information and data in a dynamic environment, amplified by the shift to remote working arrangements. In these circumstances, the information security and privacy protections overseen by OVIC become even more important.

The IOC continues to have a keen interest in the timeliness of OVIC's completion of FOI reviews. OVIC achieved a marked improvement in the proportion of reviews it completed within the time line agreed by FOI applicants. There was also a significant improvement in the average time taken to complete a review. While ameliorated to some degree by the 2020 COVID-19 Omnibus Regulations<sup>17</sup>—which allowed public sector bodies to provide copies of documents to OVIC by secure electronic means—OVIC's capacity to progress FOI review applications was nevertheless affected by the disruptive effects of the pandemic. These effects included delays due to remote work arrangements, the impracticality of on-site document inspections and the delayed provision of information by complainants. During 2019/20, OVIC also took strides in improving the timeliness of its handling and finalisation of complaints relating to FOI requests. This was partially due to OVIC's renewed 'focus on fast, early, informal,

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<sup>17</sup> COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020 (Vic).

practical resolution'.<sup>18</sup> OVIC also made progress in the timely handling and finalisation of privacy complaints under the *Privacy and Data Protection Act 2014* (Vic).<sup>19</sup>

With regard to law enforcement data security, the Committee has observed that the digital adaptations necessitated (and sometimes embraced) in the face of COVID-19 will have created new information security risks and posed new challenges for Victoria Police. Transparency and oversight become even more important in this new environment. Accordingly, the Committee reiterates its past recommendation that OVIC publish in its annual report the number of information security incidents reported by Victoria Police each year.<sup>20</sup>

During 2019/20, OVIC successfully delivered 183 education and training initiatives, more than double the number of the previous financial year. As with IBAC, OVIC's usual face-to-face training had to be postponed due to COVID-19 public-health restrictions. Of particular note, however, OVIC adapted quickly to provide public sector bodies with information on how to comply with their data-handling and privacy obligations while working remotely. OVIC has maintained a reputation for high-quality public information, education and training, as evidenced by a stakeholder engagement survey conducted in 2019.

### 1.3.3 VI

During 2019/20, the VI continued to exercise its wide-ranging oversight functions over a diverse group of integrity agencies and related public sector bodies. As with other integrity agencies, the VI had to adapt quickly with the onset and worsening of the pandemic. In particular, its complaint-handling and on-site inspections functions were significantly affected.

The VI faced challenges in adapting its secure IT, information and telephony systems, all of which affected the efficiency and timeliness of its complaint handling and exchange of information with relevant agencies. Nevertheless, with the benefit of the COVID-19 Omnibus Regulations,<sup>21</sup> new remote-work policies and practices and a protocol for managing and communicating sensitive electronic information securely, the VI was able to adapt reasonably well. Nevertheless, looking to the future, the Committee encourages the VI to review its policies, procedures and systems for remote working. This will help the VI improve its policies, procedures and systems for remote and flexible working, especially with the continuing constraints of the COVID-19 environment.

The VI is the principal oversight body with respect to the use of coercive powers by IBAC, OVIC and the VO.<sup>22</sup> These integrity agencies are authorised to exercise coercive powers to support their investigations, which include the summoning and compulsory

<sup>18</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 9.

<sup>19</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, pp. 27–29.

<sup>20</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 67.

<sup>21</sup> *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020* (Vic).

<sup>22</sup> VI, *Annual report 2019–20*, Melbourne, pp. 8, 38.

examination of persons.<sup>23</sup> Given that coercive powers ‘limit the freedoms and rights of individuals’,<sup>24</sup> integrity agencies are required to notify the VI of their exercise.<sup>25</sup> The VI may then review a notification to ensure that the relevant coercive power has been ‘exercised lawfully’.<sup>26</sup> As the VI has explained:

Notifications are received from bodies required to inform the VI when they exercise a coercive power. These notifications are an important source of information for monitoring how bodies exercise their coercive powers. The VI has discretion as to which notifications to review but the scope of each review must comply with legislative requirements. Due to its limited resources, the VI takes a risk-based approach to reviewing notifications.<sup>27</sup>

The IOC has previously noted the VI’s concern that it is not able to review as many agency coercive power notifications as it would like, or as deeply as it would like.<sup>28</sup> The VI has advised that, while it is making efforts to increase the number of notifications it reviews, it must still approach reviews strategically through a triage process. In determining which notifications will be reviewed in depth, the VI takes into account a number of factors, including ‘the type of notification, likelihood or history of [agency] compliance, and the presence of risk or strategic oversight factors’.<sup>29</sup>

Despite disruptions caused by the pandemic, the VI can count among its achievements in 2019/20 the development of its well-considered Integrity Response Guidelines, which guide its responses to the risk or reality of agency non-compliance. The VI was also able to help improve the performance of various integrity agencies with regard to the handling and assessment of police-related complaints, the treatment of witnesses and persons of interest, and timeliness.

### 1.3.4 VO

In 2019/20, the VO in its complaint-handling capacity recorded the second-highest number of complaints it had ever received. The number of public interest disclosures (PIDs) referred to it by IBAC was also up significantly: referrals have risen by 96% since 2017/18. The VO’s capacity to handle this extra workload was further challenged by the onset of COVID-19.

In response to the public health emergency, the VO diverted phone calls to voicemail. However, complainants remained able to submit complaints via email, voicemail or an online complaint form. The VO has, however, advised the IOC that an increased burden from handling disclosures under the expanded whistleblower protection

<sup>23</sup> Ibid., p. 38.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., pp. 12, 38.

<sup>26</sup> Ibid., pp. 8–9.

<sup>27</sup> Ibid., p. 12. The VI’s review of coercive power notifications is further discussed in Section 4.2.2 in Chapter 4 of this report.

<sup>28</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 86.

<sup>29</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 41.

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scheme meant that it had to refer more investigations to the relevant authorities and undertake fewer investigations itself.<sup>30</sup> Rather than directly investigating these matters, the VO has had to assume ‘more of an oversight role’ in order to ‘maintain its legislative mandate on PIDs’.<sup>31</sup>

One of the VO’s functions under the *Ombudsman Act 1973* (Vic) is to make recommendations to public sector bodies for improvements following lessons identified in Ombudsman investigations. Ninety-nine per cent of the 83 recommendations the VO made to public sector bodies in 2019/20 were accepted in full or in part.

In the domain of public education, the VO has continued to receive a positive response to its education and training initiatives, with 90% of participants endorsing the usefulness of the content and engaging manner in which it is presented.<sup>32</sup> The agency is committed to expanding its online offerings—a recognition of the increasing salience and distinctive virtues of online formats in the current environment. While the VO will continue to offer face-to-face training when safe and practicable, online delivery holds the promise of bridging distances and extending reach (including to regional Victoria).

Relatedly, the VO continues to increase its level of engagement with professional stakeholders, community organisations and members of the public. The VO is planning to do this by engaging more intensively with community legal centres as a channel for raising awareness of its role, particularly with respect to complaint handling.

In a similar spirit, the Committee recognises that it is critical for the VO to continue to reach out to the most vulnerable communities, and those living and working in regional Victoria. For that reason, the Committee has recommended that the VO prioritise these outreach activities as part of the latter’s community engagement strategy and reflect the importance of this work in the Ombudsman’s annual plan for 2021/2022.

## 1.4 Report structure

The report is organised into six chapters. This chapter has given an overview of Victoria’s integrity system and the agencies’ performance in 2019/20.

The remaining chapters evaluate each agency’s performance in greater depth by examining their key activities, achievements and challenges under the following themes:

- complaint handling, investigations and oversight
- public information and education
- governance and workplace
- accountability.

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<sup>30</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 1.

<sup>31</sup> *Ibid.*, pp. 1–2.

<sup>32</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 81.



Chapter 2 examines the performance of IBAC.

Chapter 3 examines the performance of OVIC.

Chapter 4 examines the performance of the VI.

Chapter 5 examines the performance of the VO.

Chapter 6 concludes the report with brief reflections on the agencies' performance and the Committee's recommendations.



## 2.1 Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) is the principal anti-corruption body in Victoria. IBAC's jurisdiction encompasses the Victorian public sector, including public service departments and government agencies, local councils, Victoria Police, the Parliament of Victoria and the judiciary. IBAC's functions include identifying, exposing, investigating and preventing corruption and other misconduct, and educating the public sector and public about them.<sup>1</sup> Specifically, IBAC's functions include:

- receiving, handling, assessing and potentially investigating public complaints and agency notifications about alleged corruption and other misconduct
- referring matters back to appropriate bodies for investigation (for example, a public service department, Victoria Police or an integrity agency)
- reviewing external investigations—for example, investigations by a public sector body or Victoria Police
- undertaking own-motion investigations into possible corruption and other misconduct
- exercising wide-ranging oversight with respect to the public sector, including Victoria Police
- performing a range of functions under the *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)'), which includes assessing and potentially investigating public interest disclosures ('whistleblower complaints'), producing guidelines and reviewing public sector procedures
- producing reports and making recommendations as part of its investigative, audit, research and intelligence activities
- educating public sector bodies and members of the public about the harm corruption and misconduct cause—and how to address corruption and misconduct.<sup>2</sup>

In exercising these functions, IBAC is authorised to use a range of investigative powers, including coercive and covert powers such as physical and electronic surveillance

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<sup>1</sup> *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('IBAC Act 2011 (Vic)'); IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 5–20, 25–70.

<sup>2</sup> *IBAC Act 2011* (Vic); *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)'); IBAC *Annual report 2018/19*, Melbourne, 2019; IBAC, *Annual report 2019/20*, Melbourne, 2020.

and the summoning and questioning of witnesses in public and private examinations ('hearings').<sup>3</sup>

Among other accountabilities, IBAC is oversighted by the Victorian Inspectorate (VI) and the Integrity and Oversight Committee (IOC). The VI focuses on IBAC's compliance with applicable legislation, in particular the lawful use of its coercive powers, while the IOC monitors and reviews its overall performance.<sup>4</sup>

In this chapter, the Committee reviews the performance of IBAC across its educative, preventive, complaint-handling, investigative, review and audit functions, with particular reference to the agency's 2019/20 annual report. The Committee also examines IBAC's performance with respect to its governance, workplace systems and culture and the discharge of its accountabilities.

## 2.2 Public information, education and prevention

Under the *Independent Broad-based Anti-corruption Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), IBAC has a range of specific educative and preventive functions.<sup>5</sup> These functions include:

- assisting in the prevention of corrupt conduct
- facilitating the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and ways to prevent corrupt conduct
- helping to improve the capacity of the public sector to prevent corrupt conduct.<sup>6</sup>

IBAC recognises that the provision of well-designed, carefully targeted and accessible print and digital information is necessary if members of the public and the public sector are to understand, and have confidence in, IBAC's functions within the Victorian integrity system.<sup>7</sup>

Effective public information, education and prevention activities on IBAC's part can help inform the public and public sector about corruption and misconduct risks, vulnerabilities and harms; how and where to safely report corruption and misconduct; and how corruption and misconduct can be prevented or addressed.<sup>8</sup>

<sup>3</sup> *IBAC Act 2011* (Vic); IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 5–20, 25–70; *Surveillance Devices Act 1999* (Vic); *Telecommunications (Interception and Access) Act 1979* (Cth).

<sup>4</sup> *Victorian Inspectorate Act 2011* (Vic) ('*VI Act 2011* (Vic)'); *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)'); IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 6–7, 78–79.

<sup>5</sup> *IBAC Act 2011* (Vic) ss 8, 15; *PID Act 2012* (Vic) s 55(2); IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 8.

<sup>6</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 8. See also *IBAC Act 2011* (Vic) ss 8, 15.

<sup>7</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 8, 11, 13–15, 19; IBAC, *Annual report 2017/18*, Melbourne, 2018, especially pp. 4–7, 11, 34–46; IBAC, *Annual report 2018/19*, Melbourne, 2019, especially pp. 1, 5–7, 12–20, 23, 37, 47–57.

<sup>8</sup> *Ibid.*

While in practice IBAC's public information, educative and preventive activities overlap, for ease of analysis, public information (focused on raising awareness about IBAC) and education and prevention (focused on applied research and public sector capacity-building) are discussed separately in the following sections.

## 2.2.1 Public information

The IOC notes that IBAC produces a wide range of high-quality, plain-language and accessible information about Victoria's integrity system. This information covers IBAC's role, functions and jurisdiction; the nature of public sector corruption and misconduct, and how to report it; public interest disclosure (PID) processes and protections; and the outcomes of IBAC's research projects, investigations, reviews and audits (including recommendations to the public sector).<sup>9</sup>

During 2019/20, IBAC made a number of enhancements to its public information, improving the accessibility of its website and increasing the range of translated publications available.<sup>10</sup> There were 161,902 unique visits to the agency's website, 58% more than in 2018/19.<sup>11</sup>

### Response to IOC recommendations in its report on 2017/18–2018/19

In its report on the performance of integrity agencies during the period 2017/18–2018/19, the IOC made three recommendations to IBAC:

Recommendation 1: That the Independent Broad-based Anti-corruption Commission add a prominent drop-down menu on the 'Publications and resources' section of its website to enable users to search for publications by year of publication.<sup>12</sup>

Recommendation 2: That the Independent Broad-based Anti-corruption Commission consolidate public sector body and Victoria Police responses to its recommendations on a dedicated web page that is organised by public sector body type, easily searchable and regularly updated.<sup>13</sup>

Recommendation 8: That the Independent Broad-based Anti-corruption Commission publish in its annual report the number of complaints and notifications of corrupt conduct it receives in relation to the Office of the Victorian Information Commissioner and the Victorian Ombudsman.<sup>14</sup>

<sup>9</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, especially pp. 8–9, 13–17; IBAC, *Annual report 2017/18*, Melbourne, 2018; IBAC, *Annual report 2018/19*, Melbourne, 2019; IBAC, *Guidelines for handling public interest disclosures*, Melbourne, January 2020, <<https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf>> accessed 21 February 2020; IBAC, *Guidelines for public interest disclosure management*, Melbourne, January 2020, <<https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf>> accessed 21 February 2020; IBAC, *Publications and resources*, <<https://www.ibac.vic.gov.au/publications-and-resources>> accessed 21 February 2020. See also *IBAC Act 2011* (Vic) ss 8, 15; *PID Act 2012* (Vic) ss 55(2), 57–61, 66–67.

<sup>10</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 5, 27.

<sup>11</sup> *Ibid.*, p. 5.

<sup>12</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 14.

<sup>13</sup> *Ibid.*, p. 15.

<sup>14</sup> *Ibid.*, p. 123.

IBAC has advised the IOC that it has accepted these recommendations and begun their implementation.<sup>15</sup> With respect to the first two recommendations, IBAC will deliver the recommended changes to its website by 30 June 2022.<sup>16</sup> In relation to Recommendation 8, IBAC will publish the requested information in its 2020/21 annual report and subsequent annual reports.<sup>17</sup>

## 2.2.2 Education and prevention

### Corruption-prevention strategy

IBAC's corruption-prevention strategy has been developed through drawing on its own experience and research, the approaches of interstate and international anti-corruption agencies and international and regional standards developed by bodies such as the United Nations and the Organisation for Economic Co-operation and Development (OECD).<sup>18</sup>

IBAC's strategy has four main dimensions. First, increasing public and public sector knowledge of corruption and misconduct and the harm they cause. Secondly, encouraging effective reporting of public sector wrongdoing. Thirdly, enhancing the capacity of the public sector to identify and address wrongdoing and become corruption-resistant. Fourthly, informing organisations of the 'latest' applied research and intelligence so their knowledge is up to date, and they can anticipate and respond to emerging corruption risks.<sup>19</sup> In 2019/20, IBAC commenced a review of its corruption-prevention strategy. IBAC's CEO, Ms Marlo Baragwanath, has advised that the agency will also be informed by the IOC's inquiry into the exercise of education and prevention functions by Victoria's integrity agencies.<sup>20</sup>

### Corruption-prevention activities

IBAC delivered 75 corruption-prevention 'initiatives' in 2019/20, with a 'satisfaction rating' of 93%; the Budget Paper Number 3 (BP3) targets were 90 initiatives with a rating of 95%.<sup>21</sup> Understandably, IBAC did not meet the BP3 targets due to the severe impacts of COVID-19 on the possibility of, and interest in, face-to-face corruption-prevention events.<sup>22</sup>

<sup>15</sup> Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 4 February 2021.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 10; United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption*, New York, 2004, <[https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)> accessed 22 February 2020; OECD, *Anti-corruption and integrity in the public sector*, <<https://www.oecd.org/governance/ethics>> accessed 22 February 2020.

<sup>19</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 10–11; IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 15; IBAC, *Annual report 2017/18*, Melbourne 2018, pp. 4–5, 16; IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, December 2017, p. 5.

<sup>20</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 10; Integrity and Oversight Committee (IOC), *Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies*, <<https://www.parliament.vic.gov.au/ioc/inquiry/1002>> accessed 30 March 2021.

<sup>21</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 5, 20.

<sup>22</sup> Ibid., p. 20.

In October 2019, prior to the onset of the pandemic, IBAC organised and hosted in Melbourne the successful and well-attended Australian Public Sector Anti-Corruption Conference in which over 500 delegates participated.<sup>23</sup>

Other corruption-prevention highlights included:

- The public hearings for Operation Sandon, which is investigating allegations of corruption in planning and development decisions in local government.
- The publication of five reports on topics such as access to, and disclosure of, information; the management of conflicts of interest; and procurement risks.
- The holding of regional corruption-prevention events in Geelong and Ballarat.
- Continued delivery of education programs to Victoria Police.
- Increased engagement with Victoria's legal sector (including forums discussing police body-worn cameras and the oversight of policing during COVID-19).<sup>24</sup>

## 2.3 Complaint handling, investigations, reviews and audits

Under the *IBAC Act 2011* (Vic), IBAC exercises a range of complaint-handling, investigative, review and auditing functions in accordance with its oversight of Victoria's public sector.<sup>25</sup>

IBAC receives complaints about public sector bodies, including Victoria Police, directly from members of the public as well as notifications of possible corruption, improper conduct under the *PID Act 2012* (Vic) and police misconduct.<sup>26</sup> Further, through a 'Provide information' option on IBAC's website, the agency can receive anonymous reports of alleged wrongdoing without a complaint being made.<sup>27</sup>

In addition to investigating complaints itself, IBAC can also refer complaints back to a public sector body, including Victoria Police, and, under certain conditions, an integrity agency, such as the Victorian Ombudsman.<sup>28</sup> IBAC can also dismiss complaints 'if there are grounds to do so'.<sup>29</sup> Subject to the operation of a range of other provisions in the *IBAC Act 2011* (Vic), s 67(1) provides that 'IBAC, in its absolute discretion, may determine that a complaint or a notification' to it 'does not warrant investigation'. Under the Act, IBAC may determine, for instance, that a complaint does not warrant investigation because it is 'trivial', or 'unrelated to the functions of the IBAC', or 'frivolous or

<sup>23</sup> Ibid., pp. 25, 70.

<sup>24</sup> Ibid., pp. 25, 68–74, 77.

<sup>25</sup> See also *PID Act 2012* (Vic).

<sup>26</sup> *IBAC Act 2011* (Vic) ss 51–52, 57; *Victoria Police Act 2013* (Vic) ss 167, 169–170; *PID Act 2012* (Vic) ss 4–5; pt 2; ss 22, 55.

<sup>27</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 18; IBAC, *Provide information*, <<https://www.ibac.vic.gov.au/reporting-corruption/report/provide-information>> accessed 5 February 2020; *IBAC Act 2011* (Vic) s 56.

<sup>28</sup> *IBAC Act 2011* (Vic) ss 58, 73, 73A.

<sup>29</sup> *IBAC Act 2011* (Vic) s 58.

vexatious', or lacking in 'substance or credibility', or 'mischievous' or because, 'in all of the circumstances, the conduct does not warrant investigation'.<sup>30</sup>

While, under s 15(1A) of the *IBAC Act 2011* (Vic), IBAC is required to 'prioritise' the exposure and investigation of conduct that it considers may amount to 'serious' or 'systemic' corruption, this requirement is expressly qualified. The requirement 'does not restrict the IBAC's discretion to determine to investigate *any matter* that the IBAC considers may constitute corrupt conduct'.<sup>31</sup> IBAC also has jurisdiction to identify, expose and investigate police misconduct.<sup>32</sup>

In particular circumstances, IBAC can undertake coordinated investigations with other agencies.<sup>33</sup> IBAC also has the power to conduct investigations on its own motion.<sup>34</sup>

As an exercise of its oversight functions, IBAC can, further, undertake reviews of public sector-body and Victoria Police investigations, to ensure they are fair, thorough and timely, and audit selected public sector and police policies, procedures and practices.<sup>35</sup>

### 2.3.1 Complaint handling

#### Key data: a snapshot

During 2019/20, 2,419 complaints and notifications were received by IBAC.<sup>36</sup> Of the total complaints and notifications, 74% were complaints and 26% were notifications.<sup>37</sup> There were 1,787 complaints from members of the public.<sup>38</sup> In comparison with 2018/19, there was a 3% increase in complaints and notifications to IBAC and a 2% increase in the number of allegations it assessed.<sup>39</sup>

Each complaint and notification may involve a number of allegations, which IBAC assesses individually.<sup>40</sup> In 2019/20, IBAC assessed 5,955 allegations.<sup>41</sup> Of these, 3,081 were dismissed, 2,370 were referred to another body (for example, Victoria Police), 72 were investigated by IBAC itself and 432 did not require further action (including, for example, withdrawn complaints).<sup>42</sup> For further details, see Figure 2.1.

<sup>30</sup> *IBAC Act 2011* (Vic) s 67(2) (note that this subsection provides an inclusive list of possible grounds). See also *IBAC 2011* (Vic) s 67(3).

<sup>31</sup> *IBAC Act 2011* (Vic) s 15(1B) (emphasis added).

<sup>32</sup> *IBAC Act 2011* (Vic) s 15(2)(b) (see also s 15(3)–(4)).

<sup>33</sup> *IBAC Act 2011* (Vic) s 72.

<sup>34</sup> *IBAC Act 2011* (Vic) ss 60(1)(c), 64(1)(c) (see also s 59B).

<sup>35</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36 (citing *IBAC Act 2011* (Vic) ss 15–16). See also *IBAC Act 2011* (Vic) ss 78 (information provided to IBAC about a referred complaint or notification) and 79 (IBAC's withdrawal of a referral made by it to another body).

<sup>36</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 36.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, p. 37.

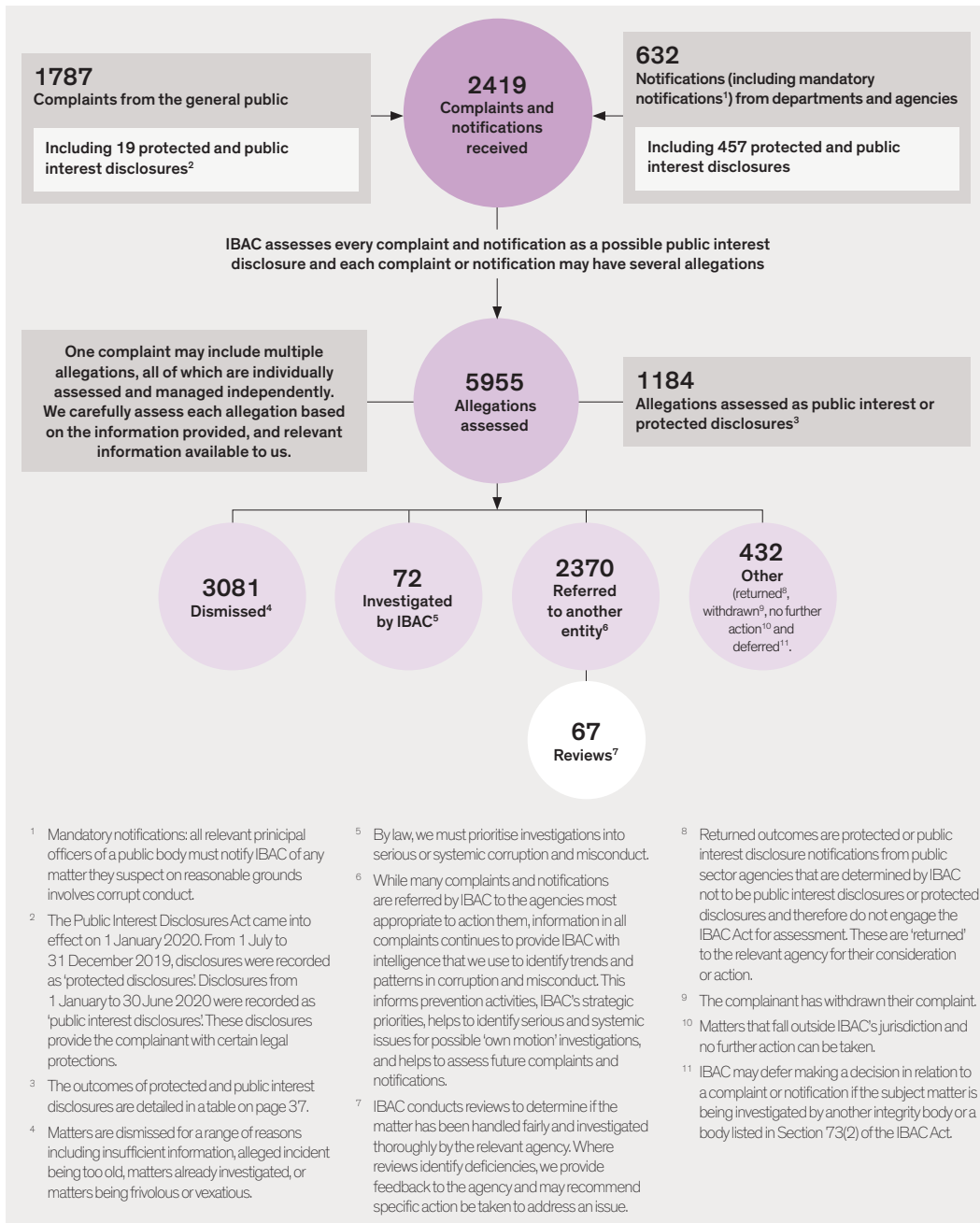
<sup>40</sup> *Ibid.*, p. 36.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*



**Figure 2.1** Total complaints and notifications assessed by IBAC during 2019/20

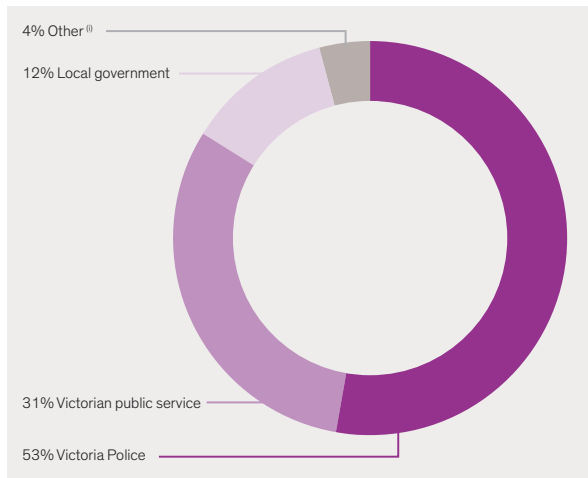


Source: Reproduced from IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 36.

Of the total number of allegations received by IBAC, 53% were about Victoria Police, 31% about the public service and 12% about local government.<sup>43</sup> See Figure 2.2.

43 Ibid., p. 38.

**Figure 2.2 Allegations by sector**

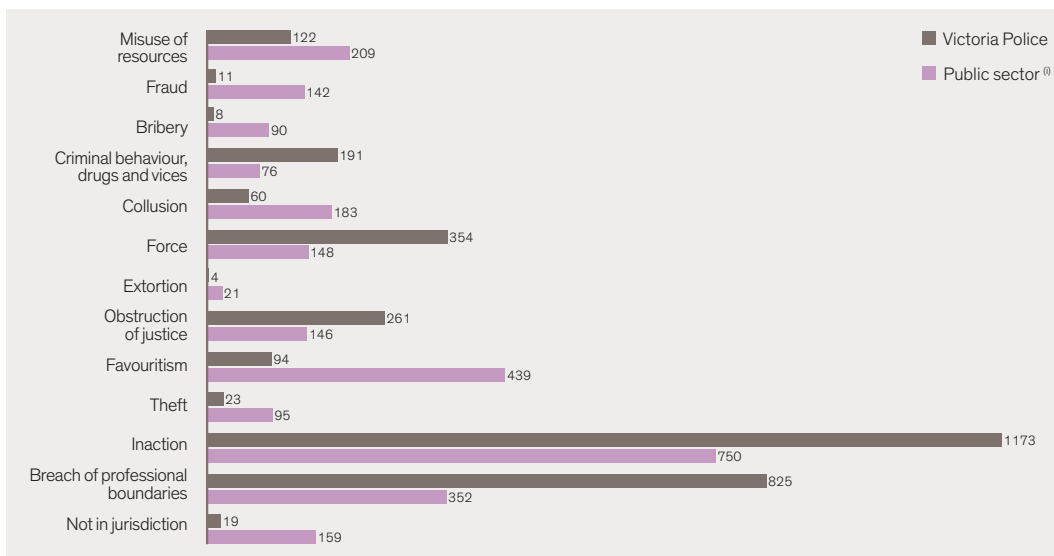


(i) Other includes judiciary, parliament and not in jurisdiction.

Source: Reproduced from IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 38.

The type of conduct alleged ranged from ‘inaction’, resource misuse, ‘favouritism’ and excessive use of force, to crimes such as fraud, bribery, extortion, theft and obstruction of justice. See Figure 2.3 for details.

**Figure 2.3 Allegations by sector and type**



(i) Public sector includes local government, judiciary, parliament, not-for-profit bodies and not in jurisdiction.

Source: Reproduced from IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 38.

## Complaints and notifications: timeliness of assessment

IBAC has BP3 timeliness targets with respect to its assessment of complaints and notifications about public sector (excluding police) corrupt conduct and 'police personnel conduct and police personnel corrupt conduct'.<sup>44</sup>

The 2019/20 targets for timely assessment of these complaints and notifications were as follows:

- Assessment of 85% of complaints and notifications about corrupt conduct in the public sector (excluding police) by IBAC within 45 days.
- Assessment of 90% of 'police personnel conduct and police personnel corrupt conduct' by IBAC within 45 days.<sup>45</sup>

IBAC did not meet these targets. It assessed 79% of complaints and notifications about the public sector and 68% of complaints and notifications about police within 45 days.<sup>46</sup> See Table 2.1.

IBAC attributed the shortfall in relation to the public sector to two main factors: the 'process and resource impacts' of the new public interest disclosures regime and the significant disruptions due to COVID-19.<sup>47</sup> These disruptions included

office closures; remote-working arrangements; staff on special leave; delays in receiving information from other agencies; and difficulties in processing incoming and outgoing mail.<sup>48</sup>

These impacts contributed to delays in assessing these complaints and notifications.<sup>49</sup>

With regard to complaints and notifications about police, IBAC explained that similar impacts delayed assessments, and that the

difference between the public sector and police results is largely attributed to the higher volume of police complaints and notifications received, representing about 60 per cent of all complaints and notifications.<sup>50</sup>

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<sup>44</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 20.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

**Table 2.1** Budget Paper Number 3 performance measures: timeliness of IBAC complaint and notification assessments

Performance measure	2019/20 target (%)	2019/20 actual (%)
Complaints or notifications about <i>public sector</i> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) assessed by IBAC within 45 days	85	79
Complaints or notifications about <i>police</i> personnel conduct and police personnel corrupt conduct assessed by IBAC within 45 days	90	68

Source: Adapted from IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 20.

### 2019 internal review of complaints and notifications assessment processes

In November 2019, IBAC carried out a ‘process mapping exercise’ to identify how its assessment processes could be made more efficient.<sup>51</sup> As a result of this review, IBAC has informed the Committee that it has made improvements to its assessment processes, case management and communication with complainants by:

- developing a process map which documents the assessment process, particularly in relation to assessing Public Interest Disclosure complaints and/or notifications
- triaging incoming complaints and notifications and ‘streaming’ them into pathways to create efficiencies. This is important as there are other government bodies awaiting the outcome of IBAC’s assessment in order to take further action.
- developing guidance material for Assessment and Review (A&R) staff in relation to the assessment process. This was rolled out via A&R staff assessment training in September 2020 and has been incorporated into the induction and training of new A&R staff.
- continued development of IBAC’s case management system, Condor to facilitate a more streamlined approach to the management of cases
- progressing improvements to the online complaint form and initial acknowledgement letters to assist complainants to better understand what IBAC can and cannot deal with and to facilitate provision of better quality information from the outset
- commencing a review of all template letters to improve the way in which IBAC communicates with complainants.<sup>52</sup>

<sup>51</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, p. 2.

<sup>52</sup> Ibid., pp. 2-3.

## 2.3.2 Investigations

### Key data: a snapshot

During 2019/20, IBAC instigated 12 preliminary inquiries, ‘to help determine whether to dismiss, refer or investigate a complaint or notification’, and 12 investigations.<sup>53</sup> See Table 2.2 for the source of these inquiries and investigations.

During the year, IBAC finalised 4 preliminary inquiries, 5 standard investigations and 19 complex investigations.<sup>54</sup> IBAC classifies an investigation as standard or complex after assessing ‘a number of factors, including’:

- number of persons of interest
- offending period (limited or extensive)
- number of corruption or misconduct behaviours identified
- number of criminal offences suspected
- volume of evidence (limited or extensive).<sup>55</sup>

IBAC has explained further that ‘standard investigations generally require less specialist skills, such as forensic accounting and financial analysis’.<sup>56</sup>

**Table 2.2** Source of IBAC investigations and preliminary inquiries commenced in 2019/20

Source	Number
Own motion	10
Complaint	4
Notification	10

Source: Adapted from IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 48.

### Timely completion of IBAC investigations

The relevant 2019/20 BP3 performance measure sets targets of the completion of 60% of IBAC’s standard public sector and police investigations within 9 months and complex investigations within 18 months.<sup>57</sup> IBAC exceeded these targets by considerable margins (see Table 2.3 for details).

<sup>53</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 48.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., p. 47.

<sup>56</sup> Ibid., p. 20.

<sup>57</sup> Ibid., pp. 20–21.

**Table 2.3** Budget Paper Number 3 performance measures: timely completion of IBAC investigations

Performance measure	2019/20 target (%)	2019/20 actual (%)
Proportion of <b>standard</b> IBAC investigations into <b>public sector</b> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) completed within 9 months	60	100
Proportion of <b>complex</b> IBAC investigations into <b>public sector</b> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) completed within 18 months	60	75
Proportion of <b>standard</b> IBAC investigations into <b>police</b> personnel conduct and police personnel corrupt conduct completed within 9 months	60	100
Proportion of <b>complex</b> IBAC investigations into <b>police</b> personnel conduct and police personnel corrupt conduct completed within 18 months	60	71

Source: Adapted from IBAC, *Annual report 2019/20*, Melbourne, 2019, pp. 20–21.

### 2.3.3 Referral of complaints back to Victoria Police

As identified by the IOC, and by one of its predecessor committees, the IBAC Committee, IBAC refers the vast majority of complaints it receives about Victoria Police for investigation and only investigates a very small proportion of those complaints itself.<sup>58</sup> The IBAC Committee concluded that the proportion of such complaints investigated by IBAC was insufficient, and recommended that it generally investigate all complaints about serious police misconduct.<sup>59</sup>

IBAC has advised the IOC that, while it would like to increase the number of investigations of police-related complaints that it undertakes, its highly selective approach is driven by its prioritisation of what it sees as serious and systemic corruption, as well as by funding constraints and limitations to its investigative capacities (for example, its lack of forensic science capabilities and authorisation under the present law).<sup>60</sup>

The IOC remains concerned that an insufficient number of complaints about police are investigated by IBAC itself, and that complaints about serious police misconduct continue to be referred back to Victoria Police for investigation.<sup>61</sup> This concern is

<sup>58</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 32–34; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 126.

<sup>59</sup> Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 251.

<sup>60</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 32–34; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 246–248; IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, pp. 3–4.

<sup>61</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 44, 48; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 32–34.

reinforced by IBAC's statement, in its 2019/20 annual report, that during the year it had to be 'very selective in undertaking new investigations, even when the allegations in the complaint or notification met the criteria of being serious or systemic'.<sup>62</sup>

Noting this approach, the IOC sought further information from IBAC about the factors that lead it to undertake an investigation itself or refer a matter to another body for investigation. IBAC responded as follows:

IBAC considers the following when deciding whether it will refer or investigate a complaint or notification or conduct an own motion investigation:

- Jurisdiction—does the subject matter fall within IBAC's statutory jurisdiction (i.e. does it constitute public sector corruption or police misconduct) and is the subject matter of the complaint or notification relevant to the performance of the duties and functions or the exercise of powers of another body which would be more appropriate to undertake the investigation.
- Seriousness and complexity—to determine this, IBAC considers whether the conduct relevant to the subject matter constitutes a potential criminal offence; does the subject matter reflect systemic issues relevant to IBAC's prevention and education responsibilities; on the face of it, is the matter an isolated incident or representative of more significant sectoral vulnerabilities which if not remedied constitute significant risk to the public interest; are vulnerable persons or public interest disclosers involved who may be at ongoing risk with respect to the matter; and does IBAC have the necessary expertise to investigate the subject matter satisfactorily (for example are specialised forensic and scientific resources required).
- Resourcing—does IBAC have the capacity to effectively investigate the matter. In assessing its capacity to investigate a matter, IBAC considers the complexity and operational approach to the investigation. The subsequent investigative strategy then dictates the type and number of investigative and specialist capability resources required to achieve an outcome.
- Tactical and strategic opportunities—IBAC also considers what the likelihood is of an investigative outcome being reached based on the age of the subject matter; if it is current or ongoing behaviour/conduct; likely availability of evidence; persons of interest knowledge of the subject matter having been brought to the attention of IBAC (which risks subsequent loss/destruction of evidence and loss of integrity of the investigation), and whether the subject matter has been previously investigated.<sup>63</sup>

Regarding the basis for decisions to refer complaints to Victoria Police under s 73 of the *IBAC Act 2011* (Vic), and the processes involved, IBAC responded to the IOC's enquiries as follows:

IBAC considers a range of criteria when referring a complaint or notification for investigation back to Victoria Police including:

- the seriousness of the matters alleged

<sup>62</sup> IBAC, *Annual report 2019/20*, Melbourne, p. 48.

<sup>63</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, pp. 3-4.

- whether Victoria Police is the most appropriate body to refer the matter to (i.e. can Victoria Police resolve the issue by investigating it)
- whether the matters involve systemic issues, and
- whether there is a public interest in IBAC investigating the complaint or notification.

The decision to refer a complaint or notification back to Victoria Police is made by an IBAC Deputy Commissioner following an assessment of the matter and after consideration of IBAC's operational and intelligence holdings. In addition, all assessments are considered by IBAC's Operational Governance Committee on a fortnightly basis. The Operational Governance Committee is attended by the Commissioner, CEO, Deputy Commissioners and Executive Directors.

A decision to refer a complaint or notification back to Victoria Police is recorded in IBAC's case management system.<sup>64</sup>

The Victorian Government gave its initial response to the IBAC Committee's police oversight inquiry as part of its response to the recommendations of the Royal Commission into the Management of Police Informants in May 2021,<sup>65</sup> and the IOC will continue to monitor developments in this area.

### 2.3.4 Reviews

IBAC considers its selected reviews of other agencies' internal investigations of complaints and other matters as an important complement to its investigative work.<sup>66</sup> First, IBAC's reviews compensate, to a degree, for the limited number of investigations, particularly with respect to Victoria Police, that it presently undertakes.<sup>67</sup> Secondly, IBAC considers reviews an efficient way to exercise its oversight functions, relying on agencies' familiarity with, and expertise in relation to, their own systems and personnel, while making efforts to ensure that internal investigations are thorough, timely, fair and impartial.<sup>68</sup> Thirdly, reviews help build the capacity of public sector bodies and Victoria Police to conduct better investigations and develop professional cultures that comply fully with the law; maintain ethical standards and human rights; and be responsible and accountable for preventing, resisting and addressing corruption.<sup>69</sup> Fourthly, reviews contribute to IBAC's intelligence and strategic understandings, allowing it to better

<sup>64</sup> Ibid., p. 3.

<sup>65</sup> Attorney-General Jaclyn Symes, *Strengthening the Victorian criminal justice system*, media release, Victorian Government, Melbourne, 7 May 2021, <<https://www.premier.vic.gov.au/strengthening-victorian-criminal-justice-system>> accessed 10 May 2021; *Royal Commission into the Management of Police Informants* (Final Report, November 2020), especially pp. 234–235 (Recommendation 61).

<sup>66</sup> IBAC, *Annual report 2018–19*, Melbourne, 2019, p. 15.

<sup>67</sup> See, for example, Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 126 ('When the number of dismissed allegations are taken into consideration, in 2016/2017 IBAC investigated 1.8% of all allegations [relating to Victoria Police] that it determined warranted investigation.').

<sup>68</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15, 36; IBAC, *Exposing and preventing corruption in Victoria—Special report: IBAC's first five years*, Melbourne, December 2017, pp. 6, 9, 18; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 249–250.

<sup>69</sup> Ibid.



identify systems, trends and risks related to the emergence, prevention and addressing of corruption and misconduct in Victoria's public sector.<sup>70</sup>

In 2019/20, IBAC undertook 8 reviews of public sector investigations (a 37% decrease from 2018/19) and 59 reviews of police investigations (a 31% increase from 2018/19).<sup>71</sup>

In its report on the performance of Victoria's integrity agencies 2017/18–2018/19, the Committee noted the importance of IBAC increasing the number of reviews it undertakes of police investigations, especially given the small proportion of complaints about police that IBAC investigates itself.<sup>72</sup> It is encouraging that IBAC was able to undertake more reviews of police investigations of complaints during 2019/20. Its reviews of these Victoria Police investigations identified issues over:

- adherence to processes to manage perceived, possible and actual conflicts of interest
- consideration of the Charter of Human Rights
- timeliness of investigations.<sup>73</sup>

However, in response to the Committee's question on how IBAC managed to increase the number of reviews carried out in 2019/20, the agency responded as follows:

In January 2020, IBAC allocated a team of staff to work solely on reviews (normally staff work on both assessments of incoming complaints and reviews of completed investigations) as a pilot. This focused review team enabled a 31% increase in the number of completed Reviews in 2019/20. However, it had a negative impact on our ability to complete assessments in a timely manner.

Whilst the pilot program highlighted that increased numbers of reviews can be delivered by dedicated resources, it is not possible to maintain this focus within IBAC's current budget allocation without significantly impacting on the timeliness of IBAC's complaints assessment.<sup>74</sup>

While it is encouraging that IBAC was able to increase the number of reviews completed during the year, the Committee is concerned that the increase in the number of reviews of police investigations of complaints in 2019/20 has not yet been put on a sustainable footing. This concern is supported by evidence that IBAC considers it is unable to undertake as wide-ranging and in-depth reviews of Victoria Police investigations as it would like:

[G]iven IBAC's resource constraints, the vast majority of Victoria Police complaints must be referred back to Victoria Police for investigation (for example, in the last fortnight alone, IBAC had to refer 37 matters to Victoria Police for investigation). IBAC flags

<sup>70</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 7, 13, 15, 36–37, 47, 52–57, 61, 65–67, 69; IBAC, *Exposing and preventing corruption in Victoria—Special report: IBAC's first five years*, Melbourne, December 2017, pp. 9, 16, 18, 21.

<sup>71</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 5, 62.

<sup>72</sup> IOC, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 50.

<sup>73</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 63.

<sup>74</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, pp. 1–2.

matters for review that it considers to be strategically significant and once Victoria Police has completed its investigation, IBAC focuses its review efforts on those matters. Resource constraints prevent IBAC from monitoring investigations referred back to Victoria Police. Those resource limitations permit IBAC to review only a very small portion of investigations conducted by Victoria Police. The limited resources available has also meant that there is a large backlog of reviews which cannot be conducted in a timely way.

Whilst IBAC is exploring ways it could obtain more transparent reporting from Victoria Police on all matters referred to it (for example, number of matters in progress, time taken to investigate and investigation outcome), IBAC's resource limits mean that this will only be in the nature of information gathering and transparency, rather than meaningful review of Victoria Police's work.<sup>75</sup>

Finally, IBAC has made little use of its power under s 79 of the *IBAC Act 2011* (Vic) to withdraw a police-related complaint investigation from Victoria Police, and undertake its own investigation.<sup>76</sup> IBAC has informed the IOC that the s 79 power was last exercised in April 2019 at the request of Victoria Police themselves because, in IBAC's words, the police force 'had concerns of misconduct'.<sup>77</sup> In its 2018 police oversight report, the IBAC Committee gave close attention to the nature of the s 79 power and its infrequent use by IBAC<sup>78</sup> despite IBAC's criticisms of Victoria Police's handling and investigation of complaints about alleged misconduct by its officers.<sup>79</sup> The IBAC Committee recommended that s 79 be amended to require IBAC to withdraw a police-related complaint investigation from Victoria Police 'when IBAC considers that Victoria Police is not investigating the complaint fairly, thoroughly and without unreasonable delay'.<sup>80</sup>

As noted earlier, in May 2021 the Victorian Government announced that it would conduct a review of current integrity agency and police oversight legislation in conjunction with relevant stakeholders in response to the IBAC Committee's police oversight report.<sup>81</sup> The IOC welcomes this announcement, and will monitor future developments in this area.

<sup>75</sup> Ibid., p. 4. See also Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 21.

<sup>76</sup> Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 234–236; IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, p. 4.

<sup>77</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, p. 4.

<sup>78</sup> Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 234–236.

<sup>79</sup> See, for example, IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016; IBAC, *Audit of complaints investigated by Professional Standards Command*, Victoria Police, Melbourne, June 2018.

<sup>80</sup> Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 236 (Recommendation 34).

<sup>81</sup> Attorney-General Jaclyn Symes, *Strengthening the Victorian criminal justice system*, media release, Victorian Government, Melbourne, 7 May 2021, <<https://www.premier.vic.gov.au/strengthening-victorian-criminal-justice-system>> accessed 10 May 2021.

### 2.3.5 IBAC audits

While the purpose and nature of IBAC audits overlap with reviews, they are less tied to individual agency investigations. Instead, IBAC's audits explore more broadly the efficacy and lawfulness of public sector body and Victoria Police policies, procedures and practices.

#### **Audit of Victoria Police handling of complaints by Aboriginal people**

As discussed in the IOC's first performance-review report,<sup>82</sup> IBAC is conducting an audit of 55 Victoria Police files, finalised in 2018, which involve Aboriginal people and Torres Strait Islanders affected by serious incidents involving police action.<sup>83</sup> The chief aims are to help Victoria Police handle complaints from Aboriginal complainants better and also to raise awareness of IBAC's police oversight functions.<sup>84</sup>

IBAC advises that the consultation process for this audit has been disrupted by COVID-19.<sup>85</sup> Nevertheless, IBAC has been able to conduct some 'one-on-one' telephone consultations and plans to report on the audit during 2020/21.<sup>86</sup> In the interim, IBAC has informed the Committee that the issues identified so far include the need for Victoria Police to ensure that Aboriginal people can have confidence in the complaints system and to address concerns over the treatment of Aboriginal minors when in the custody of police.<sup>87</sup>

## 2.4 Governance and workplace

### 2.4.1 Overview

In July 2018, IBAC's Executive endorsed the agency's 2018–21 Corporate Plan, which identifies four areas of focus:

1. Exposing and preventing corruption and police misconduct.
2. A highly-capable and forward-looking organisation.
3. A respected, trusted independent statutory agency.
4. Investing in our people.<sup>88</sup>

A key focus for the Committee in assessing the agency's performance during 2019/20 has been on occupational health and safety (OH&S), including workplace culture,

<sup>82</sup> IOC, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 38–39.

<sup>83</sup> IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 25, 77.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid., p. 77.

<sup>87</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, p. 2.

<sup>88</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 12; IBAC, *2018–21 Corporate Plan*, Melbourne, 2018, <<https://www.ibac.vic.gov.au/publications-and-resources/HTML/ibac-corporate-plan-2018-21>> accessed 8 February 2020.

psychological safety (the confidence of staff to raise concerns about workplace practices in a safe environment without reprisal)<sup>89</sup> and the reporting of suspected wrongdoing. Given IBAC's oversight role with regard to integrity and governance standards in public sector workplaces in Victoria's public sector, it is important that its own workplace culture is exemplary.

### 2.4.2 External review of OH&S

In December 2019, IBAC engaged an external consultant to review its workplace culture and approach to OH&S.<sup>90</sup> The review identified the need for improvements in leadership, staff participation and engagement, communication and health and safety.<sup>91</sup> In response, IBAC has developed a three-year plan to make improvements in these areas, finalised an OH&S strategy for 2021–2024 and implemented a new 'risk reporting' system, known as PeopleStreme.<sup>92</sup>

### 2.4.3 Workplace culture

Concerns over the health of IBAC's workplace culture came to the attention of the Committee through public accounts of alleged bullying, sexual harassment and related misconduct at the agency.<sup>93</sup> In a public hearing on 15 March 2021 as part of its review of integrity agency performance, the Committee gave IBAC an opportunity to respond to these concerns and followed up with questions on notice.<sup>94</sup> IBAC responded to these questions on notice as follows:

As Victoria's integrity agency responsible for preventing and exposing public sector corruption and police misconduct, IBAC has consistently publicly encouraged a culture of speaking up and reporting wrongdoing.

IBAC has well-established internal policies and practices to manage the risk of misconduct and corruption. As set out in IBAC's submission to the IOC's inquiry into the education and prevention functions of Victoria's integrity agencies, our internal corruption prevention framework includes: risk and integrity management, ethical culture and leadership, training and awareness, and detection mechanisms.

<sup>89</sup> See Amy Edmondson, 'Psychological safety and learning behaviour in work teams', *Administrative Science Quarterly*, vol. 44, no. 2, 1999, p. 354 ('a sense of confidence that the [work] team will not embarrass, reject, or punish someone for speaking up'). Professor Edmondson, Harvard Business School, is an expert on psychological safety in the workplace: <<https://www.hbs.edu/faculty/Pages/profile.aspx?facid=6451>> accessed 11 May 2021.

<sup>90</sup> IBAC, *Annual report 2019/20*, Melbourne, 2019, p. 33; IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, p. 5.

<sup>91</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, p. 5.

<sup>92</sup> Ibid.

<sup>93</sup> Nino Bucci, 'Senior IBAC police oversight lawyer resigns amid string of leadership departures', *The Guardian*, 10 December 2020, <<https://www.theguardian.com/australia-news/2020/dec/10/senior-ibac-police-oversight-lawyer-resigns-amid-string-of-leadership-departures>> accessed 15 May 2021; Nino Bucci, 'More female executives quit Victoria's corruption watchdog amid workplace bullying concerns', *The Guardian*, 13 March 2021, <<https://www.theguardian.com/australia-news/2021/mar/13/more-women-executives-quit-victorias-corruption-watchdog-amid-workplace-bullying-concerns>> accessed 15 May 2021.

<sup>94</sup> Mr Stuart Grimley MLC; Ms Harriet Shing MLC; Hon Robert Redlich AM QC, Commissioner, and Ms Marlo Baragwanath, CEO, IBAC: public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, pp. 22–24; Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 22 March 2021.

The importance of fostering an internal organisational culture that encourages and supports staff to speak up and report any suspected wrongdoing is well-recognised. IBAC's employees are openly encouraged, and regularly reminded through our internal communication channels, about the avenues available to raise issues or any concerns about improper behaviour. These include their supervisor, their Executive Director, an online Human Resources incident reporting process, IBAC's OH&S risk reporting system *PeopleStreme*, and direct reporting to the CEO as part of a well-publicised initiative, *You can ask that at IBAC*.

In the last three years, with these reporting mechanisms and increased focus on appropriate behaviour and OHS, *IBAC has only received two formal complaints*. None of these complaints related to discrimination, sexual harassment or occupational violence. All complaints were fully and independently investigated and none were substantiated.

While it is disappointing that the Guardian Australia has reported these alleged IBAC staff concerns, IBAC continues to not only encourage and support its employees to speak out about negative workplace behaviours but educate them to identify such behaviours via behavioural workplace training. Like any public sector organisation, IBAC needs to remain vigilant to preventing the risk of misconduct and corruption and promoting a culture of integrity.<sup>95</sup>

The Committee requested and received from IBAC the full results from the 2019 People Matter Survey, which were consistent with a number of concerns identified in *The Guardian* accounts discussed above.<sup>96</sup>

The Committee is concerned that 14% of IBAC staff reported they had experienced bullying; 11%, discrimination; 7%, occupational violence; and 13%, sexual harassment.<sup>97</sup> It is important to note, however, that the 2019 People Matter Survey question on 'aggression or violence',<sup>98</sup> often termed 'occupational violence and aggression',<sup>99</sup> asked whether '[d]uring the last 12 months' the respondent had 'been subject to aggression or violent behaviour *at work*',<sup>100</sup> so the 7% figure includes conduct by people other than the respondent's colleagues.<sup>101</sup> Although IBAC only received two formal complaints

<sup>95</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, pp. 5–6 (emphasis added). See also Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 24.

<sup>96</sup> Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 22 March 2021; Ms Marlo Baragwanath, CEO, IBAC, to Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, correspondence, 7 May 2021.

<sup>97</sup> Nino Bucci, 'Senior IBAC police oversight lawyer resigns amid string of leadership departures', *The Guardian*, 10 December 2020, <<https://www.theguardian.com/australia-news/2020/dec/10/senior-ibac-police-oversight-lawyer-resigns-amid-string-of-leadership-departures>> accessed 14 October 2021.

<sup>98</sup> Victorian Public Sector Commission, *People Matter Survey 2019*, pp. 17–18, <<https://vpssc.vic.gov.au/wp-content/uploads/2019/02/People-Matter-Survey-2019-finalised-questions.pdf>> accessed 23 May 2021.

<sup>99</sup> WorkSafe (Victoria), *Prevention and management of violence and aggression in health services*, Edition No. 2, June 2017, p. 5 ('OVA [occupational violence and aggression] involves incidents in which a person is abused, threatened or assaulted in circumstances relating to their work ...'), <<https://www.worksafe.vic.gov.au/resources/prevention-and-management-violence-and-aggression-health-services>> accessed 23 May 2021.

<sup>100</sup> Victorian Public Sector Commission, *People Matter Survey 2019*, p. 17 (emphasis added) <<https://vpssc.vic.gov.au/wp-content/uploads/2019/02/People-Matter-Survey-2019-finalised-questions.pdf>> accessed 23 May 2021.

<sup>101</sup> The People Matter Survey 2019 asks respondents who have experienced violence or aggression whether the perpetrator was a 'Colleague', 'Group of colleagues', 'immediate manager or supervisor', 'senior manager', subordinate, 'Client/customer/patient/ stakeholder' or 'Member of the public'— Victorian Public Sector Commission, *People Matter Survey 2019*, p. 18, <<https://vpssc.vic.gov.au/wp-content/uploads/2019/02/People-Matter-Survey-2019-finalised-questions.pdf>> accessed 23 May 2021.

about inappropriate workplace behaviour, it is significant that only 49% of IBAC respondents were confident they would be protected from reprisal if they reported improper conduct.<sup>102</sup>

The phenomenon of unreported misconduct is well known to anti-corruption and integrity practitioners and researchers, including those who have specialised in the study of whistleblower behaviour.<sup>103</sup> IBAC has itself recognised the risk of unreported misconduct due to fears of reprisal, particularly in relation to Victoria Police.<sup>104</sup> It is important to recognise, therefore, that the number of formal complaints received, and their outcomes, is not necessarily a reliable indicator of psychological health in the workplace—the key instead is a high level of confidence among staff that they can report misconduct without fear of reprisal.

The Committee asked about improvements IBAC has made through its 2019/20 OH&S strategy and its complementary efforts to improve staff mental health and wellbeing.<sup>105</sup> IBAC gave the following response:

While adapting to the COVID-19 environment has been challenging, IBAC has been committed to best supporting its employees through targeted health and safety and mental health and wellbeing initiatives. We have:

- introduced a new incident reporting system, *PeopleStreme* to enable staff to easily raise H&S issues and incidents
- engaged consultant, Simplify Risk to review its OHS performance and policy and to assist in the development of a new OHS three-year strategy which is being implemented and overseen by IBAC's OHS Committee comprising of staff representatives from each part of IBAC as well as management representatives
- engaged Recover to deliver Manager/People leader training in relation to OHS responsibilities to ensure that all managers are aware of their obligations and responsibilities. Six workshops were conducted with 96% attendance.
- relaunched our Employee Assistance Program with Converge as the appointed provider. Services which are available to staff and their families include incident management, financial counselling, counselling on personal issues and career planning. Converge also provide multiple programs online for all staff covering issues such as resilience and coping with working remotely.

<sup>102</sup> Nino Bucci, 'Senior IBAC police oversight lawyer resigns amid string of leadership departures', *The Guardian*, 10 December 2020, <<https://www.theguardian.com/australia-news/2020/dec/10/senior-ibac-police-oversight-lawyer-resigns-amid-string-of-leadership-departures>> accessed 15 May 2021.

<sup>103</sup> See, for example, Parliament of Victoria, IBAC Committee, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)*, Melbourne, June 2017, pp. 10–14, 115–118, 132–136; AJ Brown (ed), *Whistleblowing in the Australian public sector: enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, 2008; Mary Gentile, *Giving voice to values: how to speak your mind when you know what's right*, Yale University Press, New Haven and London, 2010; Amy Edmondson, 'Psychological safety and learning behaviour in work teams', *Administrative Science Quarterly*, vol. 44, no. 2, 1999, pp. 350–383; Narelle Beer, 'Police corruption may be inevitable, but is it foreseeable?', PhD thesis, Australian Graduate School of Policing and Security, Charles Sturt University, 2020.

<sup>104</sup> See, for example, IBAC, *Perceptions of corruption: survey of Victoria Police employees*, Melbourne, December 2017. See also Neil Comrie, *Taskforce Deliver 2018: investigation into the falsification of Preliminary Breath Tests within Victoria Police*, Melbourne, November 2018, pp. 7, 108.

<sup>105</sup> Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 22 March 2021. See also IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 10, 32–34, 79.

- had two workshops from Beyond Blue on mental health awareness conducted for all people leaders with 100% completion. These workshops were to raise awareness about what a people leader should do if one of their team members is experiencing mental health issues.
- delivered online training from Aspect Mental Health with a 99% of staff participate [sic]. This was a self-awareness course to enable individuals to understand the impact of Mental Health on life and work, and
- rolled out a virtual leadership workshop about how to support and motivate staff working in a virtual world.<sup>106</sup>

The Committee acknowledges these conscientious efforts to improve OH&S strategy and policy, transform management and leadership practices, assist staff with their mental health, better inform them about risks to their mental health, and provide more effective organisational responses to mental health challenges. IBAC further informed the Committee that,

[i]n light of the challenging COVID-19 environment, the focus of IBAC's strategy in 2020 was on raising awareness regarding mental health and wellbeing, which was informed by compulsory mental health training.

While IBAC appreciates that mental health issues can be triggered by bullying behaviour, the focus of the strategy was not addressing this. Consequently, together with zero bullying complaints and/or workcover [sic] claims, IBAC cannot comment on the effectiveness of its strategy in the context of preventing and responding to allegations of bullying.

IBAC is committed to providing a safe workplace for all employees, with a zero-tolerance for all negative behaviours, including harassment and bullying. To this end, in April this year IBAC has conducted compulsory sexual harassment and workplace bullying e-training; staff have developed divisional action plans, committing to actions to prevent negative workplace behaviours such as bullying; launching a *Team Talks* program which encourages teams to engage in active discussion about workplace behaviour training and how the training can be practically implemented; regularly promoting IBAC's Employee Assistance Program and rolling out compulsory bystander training in late 2021.<sup>107</sup>

The Committee notes IBAC's view that while it 'appreciates that mental health issues can be triggered by bullying behaviour, the focus of the [OH&S] strategy was not addressing this'.<sup>108</sup> However, the Committee considers that IBAC should respond to the risks and occurrence of workplace bullying, and related workplace harms, in a systematic and vigorous fashion.<sup>109</sup> Identifying the risk of workplace bullying and its

<sup>106</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 7 May 2021, pp. 6–7.

<sup>107</sup> Ibid., p. 7.

<sup>108</sup> Ibid. See also Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 24.

<sup>109</sup> There is a wealth of information available on these issues. See, for instance, WorkSafe (Victoria), *Bullying in the workplace*, <<https://www.worksafe.vic.gov.au/bullying-workplace>> accessed 23 May 2021; Department of Health and Human Services, *Occupational violence and aggression (OVA) guide for the Victorian Public Service*, Melbourne, May 2019.

various forms and its effects, together with a systematic plan for effective responses, should be a significant part of IBAC's OH&S strategy.

**RECOMMENDATION 1:** That the Independent Broad-based Anti-corruption Commission review its occupational health and safety strategies, policies and practices, and report to the Committee on the methodologies, processes and outcomes of that review. The review should focus on bullying, sexual harassment, occupational violence and discrimination. It should encompass both the conditions and steps necessary to ensure psychological safety in the workplace and the safe reporting of misconduct.

## 2.5 Accountability

IBAC is accountable to a number of parliamentary, integrity and judicial bodies, and also conducts its own risk-management and auditing activities.<sup>110</sup>

### 2.5.1 The IOC

The IOC monitors and reviews the performance of IBAC. There are a number of other accountabilities, described briefly below.

#### Complaints

While the IOC is prohibited from investigating, reviewing or challenging IBAC investigative decisions, complaint determinations, findings or recommendations, from time to time the IOC receives complaints about IBAC. The IOC's approach is to consider whether a complaint raises any systemic issues that bear on IBAC's performance (such as timeliness), which therefore come within the IOC's broad monitoring and review function. The Committee can then raise any concerns with IBAC and, if necessary, seek further information, explanations or assurances. It can also make formal and informal recommendations to IBAC.

During 2019/20, the IOC received 6 complaints about IBAC within the Committee's jurisdiction and finalised 10 (which included some received in 2018/19). For details, see Table 2.4.

<sup>110</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 19, 78–79, 81–83.



**Table 2.4** Complaints about IBAC received by the IOC 2019/20

Within jurisdiction	6
Finalised	10
Referred to another agency	4
Closed, no action taken	4
Monitored	2

Source: IOC data.

### Review of annual plan and budget

In accordance with the *IBAC Act 2011* (Vic), the IOC reviews IBAC’s draft annual plan and budget, which are determined in consultation with the Committee. IBAC must submit its draft annual plan to the IOC and cause the final plan to be transmitted to the Parliament before the start of the relevant financial year—for this year’s review, before 1 July 2020.<sup>111</sup>

### Performance audit

Under the *IBAC Act 2011* (Vic), IBAC is subject to an independent performance audit under the auspices of the Committee at least once every four years (that is, in practice, before 1 July 2024).<sup>112</sup>

## 2.5.2 The VI

The VI oversees IBAC’s compliance with the *IBAC Act 2011* (Vic) and other relevant legislation—as well as the performance of functions under the *Protected Disclosure Act 2012* (Vic) (now named the *PID Act 2012* (Vic))—and handles and potentially investigates complaints about the agency.<sup>113</sup> For the VI’s oversight of IBAC during 2019/20, see, further, Chapter 4 in this report.

## 2.6 Conclusion

IBAC continues to enhance the public information it provides about its various functions as well as the risks and harms of corruption and other misconduct and how to combat them in the public sector.

During 2019/20, IBAC improved the accessibility of its website and increased the number of translated resources available. IBAC has also accepted the IOC’s

<sup>111</sup> *IBAC Act 2011* (Vic) ss 167–169; *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) (No. 2 of 2019), s 2(4); pt 5 div 2.

<sup>112</sup> *IBAC Act 2011* (Vic) ss 170–170A; *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) (No. 2 of 2019), s 2(4); pt 5 div 2.

<sup>113</sup> IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 78; VI, *Annual report 2019–20*, Melbourne, 2020; *VI Act 2011* (Vic); *PID Act 2012* (Vic).

recommendations from its preceding report to improve the navigation and usability of its publications web page and published information on the monitoring and implementation of its recommendations for public sector bodies and Victoria Police.

With regard to IBAC's complaint-handling functions, the agency reported that it was unable to meet its timeliness targets for assessments due to the demands of the new public interest disclosure regime and the significant impacts of the COVID-19 pandemic. IBAC further informed the Committee that, while it was able to increase the number of reviews it undertook of Victoria Police complaint investigations during the year, this increase is not sustainable. With respect to investigations of police-related complaints, IBAC still refers the overwhelming proportion of matters to Victoria Police for investigation, even serious matters the agency would prefer to investigate itself. In this regard, the IOC reiterates that the proportion of police-complaint investigations conducted by IBAC remains insufficient and looks forward to the Victorian Government's review of integrity agency and police oversight legislation, which it announced in May 2021.

Public reports of concerns over workplace culture at IBAC, including bullying and sexual harassment, came to the attention of the Committee during 2020 and 2021. The Committee notes that the low number of formal complaints about these kinds of misconduct received by IBAC is not a decisive indicator when it comes to a safe and healthy workplace. The IOC has therefore recommended that IBAC review (and report to the Committee on) its OH&S strategies, policies and practices to ensure that the conditions for psychological safety in the workplace have been satisfied.

# 3

## Office of the Victorian Information Commissioner

### 3.1 Introduction

The Office of the Victorian Information Commissioner (OVIC) was established on 1 September 2017. OVIC's goal is to entrench in the Victorian Public Sector (VPS) 'a culture that promotes fair access to information while ensuring its proper use and protection'.<sup>1</sup>

Mr Sven Bluemmel is the current Information Commissioner, having been appointed on 25 September 2017. Ms Joanne Kummrow was appointed the Public Access Deputy Commissioner on 14 May 2019 and Ms Rachel Dixon the Privacy and Data Protection Deputy Commissioner on 28 November 2017.<sup>2</sup>

OVIC's functions, as set out in the *Freedom of Information Act 1982 (Vic)* ('*FOI Act 1982 (Vic)*'), are 'to promote understanding and acceptance' of freedom of information (FOI) among public sector bodies and the community; handle complaints and conduct reviews of decisions made by public sector bodies and ministers; provide advice, information, education and guidance to public sector bodies and the public in relation to OVIC's functions; and 'monitor compliance' and provide education in relation to Professional Standards. OVIC issued the inaugural Professional Standards during 2019/20, which came into force in December 2019.<sup>3</sup>

OVIC's functions under the *Privacy and Data Protection Act 2014 (Vic)* ('*PDP Act 2014 (Vic)*') are to promote awareness of the Information Privacy Principles (IPPs); monitor compliance and receive complaints about potential IPP breaches by the public sector; and research and produce reports, guidelines and other materials relevant to information privacy. OVIC released updated IPP guidelines in November 2019.<sup>4</sup>

With the onset of COVID-19, OVIC, unsurprisingly, found its functions gaining more prominence in an increasingly data-driven environment, with many workers moving to remote work arrangements. This development, in turn, increased the significance of information security and privacy protections.<sup>5</sup>

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1 OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 6.

2 Office of the Information Commissioner (OVIC), *Commissioners*, Melbourne, 2019, <<https://ovic.vic.gov.au/about-us/who-we-are/commissioners>> accessed 9 February 2021.

3 OVIC, *What we do*, Melbourne, n.d., <<https://ovic.vic.gov.au/about-us/what-we-do>> accessed 9 February 2021; OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 2.

4 OVIC, *What we do*, Melbourne, n.d., <<https://ovic.vic.gov.au/about-us/what-we-do>> accessed 9 February 2021; OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 34.

5 OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 1.

OVIC issued revised editions of the Victorian Protective Data Security Standards (VPDSS 2.0) and the Victorian Protective Data Security Framework (VPDSF 2.0) in October 2019 and February 2020 respectively.<sup>6</sup> It has an ongoing role in promoting the uptake of the VPDSF 2.0 and VPDSS 2.0 by the VPS; monitoring and assessing compliance with the VPDSS; and undertaking research and publishing guidance material relating to protective and law enforcement data security.<sup>7</sup>

This chapter reviews OVIC's performance with reference to the following areas: complaint handling, investigations and oversight, public information and education, governance and workplace, and accountability.

## 3.2 Complaint handling, investigations and oversight

### 3.2.1 The operation of the *Freedom of Information Act 1982 (Vic)*

#### Freedom of information trends

According to OVIC's annual report, a record 34,895 FOI decisions were made in 2019/20.<sup>8</sup> Compared with the preceding year, the number of FOI applications granted in full increased in 2019/20. This represented a reversal of the downward trend of recent years, and was the first time in more than a decade that there had been an increase of more than 1% in the percentage of decisions granted in full.<sup>9</sup> The percentage of FOI applications which were 'granted in part' and 'denied' decreased in 2019/20.<sup>10</sup>

**Table 3.1** FOI outputs

Freedom of information indicator	2018/19	2019/20
Number of FOI decisions	34,564	34,895
Percentage of FOI applications granted in full	64.79	65.85
Percentage of FOI applications granted in part	31.20	30.52
Percentage of FOI applications denied	4.01	3.63
Number of FOI complaints received	506	522
Number of FOI complaints finalised	551	556
Number of days to finalise an FOI complaint	117	71

Source: OVIC, *Annual report 2018–19*, Melbourne, 2019, pp. 68, 77, 82–84, 87; OVIC, *Annual report 2019–20*, Melbourne, 2020, pp. 71, 75–76, 86, 91.

<sup>6</sup> Ibid.

<sup>7</sup> OVIC, *What we do*, Melbourne, n.d., <<https://ovic.vic.gov.au/about-us/what-we-do>> accessed 9 February 2021.

<sup>8</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 86.

<sup>9</sup> Ibid., p. 91.

<sup>10</sup> Ibid.

## Freedom of information reviews

The Committee continues to take a strong interest in the timeliness with which OVIC completes its FOI reviews. In 2019/20, OVIC completed 48% of reviews within the time line agreed by FOI applicants, short of the revised performance target of 60%.<sup>11</sup> However, this was an improvement from 24% in 2018/19.<sup>12</sup> There was also a marked improvement in the average time taken to complete a review, from 197 days in 2018/19 down to 139 days in 2019/20.<sup>13</sup>

OVIC stated in its annual report that ‘modified work practices’ made it difficult to progress FOI review applications in 2019/20.<sup>14</sup> Staff were required to work from home following the implementation of OVIC’s Business Continuity Plan in response to the COVID-19 pandemic.<sup>15</sup> This meant certain FOI review applications could not proceed due to the inability of staff to conduct document inspections at agency premises and the inaccessibility of hard-copy documents and CCTV footage.<sup>16</sup> In other cases, delays were caused by applicants not providing information to OVIC in a timely manner.<sup>17</sup>

Some of these obstacles were overcome with the making of the *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020* (Vic) on 19 May 2020. The regulations included a provision permitting agencies to provide copies of documents to OVIC through ‘secure electronic means’.<sup>18</sup> At the time the regulations were made, approximately 46 FOI reviews were on hold.<sup>19</sup> The file-sharing infrastructure which was introduced by OVIC to enable the secure transmission of documents will continue to be used to allow OVIC to ‘carry out its functions more efficiently ... and reduce delays’.<sup>20</sup>

OVIC also notes the challenges presented by ‘the current wording’ in the *FOI Act 1982* (Vic), which fails to take into account circumstances such as the ‘number and complexity’ of the documents under review.<sup>21</sup> It has argued for the amendment of the legislation so that the 30-day time frame for a review only commences upon OVIC receiving ‘a copy of all exempt documents’ and other necessary information from all parties.<sup>22</sup>

<sup>11</sup> Ibid., p. 14.

<sup>12</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 1.

<sup>13</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 68.

<sup>14</sup> Ibid., p. 14.

<sup>15</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 1.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020* (Vic) reg 6.

<sup>19</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 4.

<sup>20</sup> Ibid., p. 5.

<sup>21</sup> Ibid., p. 1.

<sup>22</sup> Ibid.

### Improvements in the handling of freedom of information complaints

Any person can make a complaint to OVIC arising from an FOI request. This can relate to matters such as a delay in processing an FOI request or the outcome of an FOI decision.<sup>23</sup>

In 2019/20, OVIC received 522 FOI complaints, an increase of 3.16% from the previous year.<sup>24</sup> The number of FOI complaints finalised also slightly increased from 551 in 2018/2019 to 556 in 2019/20.<sup>25</sup> The time taken by OVIC to finalise a complaint in 2019/20 was 71 days, compared with 117 days in 2018/19.<sup>26</sup>

The Information Commissioner gave evidence before the Committee at a public hearing on 15 March 2021 that OVIC continues to place emphasis on ensuring that its ‘staff are appropriately trained in alternative dispute resolution’, and stressed that there is ‘a real focus on fast, early, informal, practical resolution’.<sup>27</sup> It is encouraging to note the Information Commissioner’s stance on supporting his staff:

[W]e have given them really clear licence that once they are experienced and have demonstrated their skills in the office, they are to use their experience and judgement to try and resolve matters early where the parties can be brought to a form of agreement.<sup>28</sup>

The clear improvement in timeliness by OVIC, both in the completion of FOI reviews and finalisation of FOI complaints, is pleasing to see.

The Information Commissioner ‘may determine not to accept ... or may dismiss’, a complaint for a number of reasons set out in s 61B of the *FOI Act 1982* (Vic), including that the Commissioner considers ‘that a complaint is not appropriate in the circumstances’.<sup>29</sup> In 2019/20, OVIC ‘dismissed’ or ‘declined to accept’ 23 complaints on this basis.<sup>30</sup>

OVIC has clarified that this provision is engaged when the subject matter of the complaint does not constitute a breach of the *FOI Act 1982* (Vic) or where the breach is considered minor and the agency’s explanation for the breach appears to be reasonable.<sup>31</sup> Examples where s 61B(2) was engaged included:

- where the ‘agency had not yet made a decision on an FOI request but was still inside the statutory timeframe to do so’
- where the delay complained about was ‘relatively short’ and OVIC was satisfied with the agency’s reason for the delay

<sup>23</sup> *FOI Act 1982* (Vic) s 61A.

<sup>24</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 71.

<sup>25</sup> *Ibid.*, p. 75.

<sup>26</sup> *Ibid.*, p. 76.

<sup>27</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 9.

<sup>28</sup> *Ibid.*

<sup>29</sup> *FOI Act 1982* (Vic) s 61B(2).

<sup>30</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 4.

<sup>31</sup> *Ibid.*

- where the complainant considered that the relevant agency had failed to meet an obligation under the *FOI Act 1982* (Vic) but OVIC was satisfied that this was not the case
- where the matter fell outside OVIC's jurisdiction.<sup>32</sup>

### Introduction of the Freedom of Information Professional Standards

On 9 September 2019, the Information Commissioner issued 33 Professional Standards, pursuant to pt IB of the *FOI Act 1982* (Vic).<sup>33</sup> These standards, which took effect from 2 December 2019, prescribe how public sector bodies must discharge their FOI obligations.<sup>34</sup> However, as COVID-19 made compliance with the Professional Standards more difficult, OVIC adopted a more 'flexible approach to enforcement', particularly 'in relation to minor breaches'.<sup>35</sup>

In June 2020, OVIC finalised its review into the capacity of six government bodies to comply with the standards.<sup>36</sup> The review found that, while the agencies were mostly compliant, their levels of compliance were affected at times by a lack of staff.<sup>37</sup> Other challenges experienced by the agencies related to the 'informal release of information', third-party consultations regarding 'disclosure of personal information', and the electronic payment of fees and charges.<sup>38</sup> OVIC has advised that these findings will be used to develop 'a self-assessment tool' and other guidance material to assist organisations to satisfy their obligations under the Professional Standards.<sup>39</sup>

OVIC plans to develop further resources to assist agencies to fulfil their obligations under the Professional Standards.<sup>40</sup> It will also continue to assess the efficacy of these standards by monitoring the data collected under its review and complaints functions, and recording each breach or engagement of the Professional Standards in its case management system.<sup>41</sup>

The Professional Standards must be reviewed at least once every four years.<sup>42</sup> OVIC intends to conduct its first review of the standards after 2 December 2021.<sup>43</sup>

<sup>32</sup> Ibid.

<sup>33</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 81.

<sup>34</sup> Ibid.

<sup>35</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 3.

<sup>36</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 20.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 3.

<sup>42</sup> *FOI Act 1982* (Vic) s 6X(1).

<sup>43</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 3.

### 3.2.2 The operation of the *Privacy and Data Protection Act 2014 (Vic)*

The *PDP Act 2014 (Vic)* enshrines the rights of Victorians to privacy in specific circumstances. The Act contains ten IPPs that explain how VPS organisations are to manage personal information. Privacy complaints continued to rise in 2019/20, with 106 complaints made compared with 86 in 2018/19.<sup>44</sup> The number of privacy complaints finalised in 2019/20 also jumped to 119, up 43 from the previous year.<sup>45</sup> The average time taken to finalise a privacy complaint in 2019/20 decreased by the significant margin of 41 days compared with 2018/19.<sup>46</sup>

**Table 3.2** OVIC's privacy outputs

Privacy indicator	2018/19	2019/20
Percentage of written enquiries responded to within 15 days relating to the legislated responsibilities of OVIC	98	97
Number of privacy complaints received	86	106
Number of privacy complaints finalised	76	119
Percentage of privacy complaints finalised without the need to refer to the Victorian Civil and Administrative Tribunal (VCAT)	75	75
Average number of days to finalise complaints	185	144
Number of data breaches voluntarily reported by agencies to OVIC	83	96

Source: OVIC, *Annual report 2019–20*, Melbourne, 2020, pp. 14, 28, 30, 32; OVIC, *Annual report 2018–19*, Melbourne, 2019, p. 14.

The impact of COVID-19 and the resulting budgetary pressures mean it is incumbent on all agencies to identify efficiencies, wherever possible. For example, despite an increase in privacy complaints, OVIC states that it has been able to improve its handling of privacy complaints by empowering staff to 'provide preliminary views' to agencies, if it appears that there has been a breach of the IPPs, and to complainants on the merits of their cases.<sup>47</sup> According to OVIC, this communication of clear advice early in the process means that complainants are less likely to continue with complaints that they have been advised are unlikely to succeed.<sup>48</sup> This approach also produces savings for both privacy complainants and respondents by reducing the need to resort to VCAT proceedings.<sup>49</sup>

In response to the Committee's question on notice regarding the proportion of preliminary views given by OVIC staff that are later overturned, OVIC advised that there have been *no* instances where:

<sup>44</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, pp. 27–28.

<sup>45</sup> *Ibid.*, p. 28.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, p. 29.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*



- OVIC has provided a preliminary view that there has been ‘interference with privacy’, only for it to later change its view
- where OVIC has provided a preliminary view that there has been no ‘interference with a complainant’s privacy’, only for VCAT to decide otherwise.<sup>50</sup>

### 3.2.3 Achieving regulatory change

Unlike its mandatory reporting scheme for information security incidents, the reporting of privacy breaches by government agencies remains entirely voluntary.<sup>51</sup> As such, OVIC can only encourage agencies to report privacy breaches as a way of ‘improving trust in government information handling and meeting community expectations’.<sup>52</sup> Once OVIC is notified of a privacy breach, it works with the relevant agency to make sure the data breach is contained, the impact of the privacy breach on the affected individual is minimised (by notifying them) and ‘the risk of recurrence’ is reduced by examining the cause of the breach and taking preventive steps.<sup>53</sup>

OVIC received 96 voluntary data breach notifications in 2019/20, an increase of 13 from the previous year.<sup>54</sup> This continues an upward trend in the reporting of privacy data breaches.

The Committee notes that a voluntary reporting scheme may result in the underreporting of privacy breaches. OVIC has advised that it would support legislative change requiring notification of privacy breaches across the VPS.<sup>55</sup>

In August 2019, OVIC published an investigative report on the disclosure of myki travel information by Public Transport Victoria (PTV).<sup>56</sup> The investigation, which was an exercise of OVIC’s powers under s 8C(2)(e) of the *PDP Act 2014* (Vic), highlighted the shortcomings and practical difficulties of information-sharing.<sup>57</sup> OVIC found that PTV breached the Act by releasing a dataset for use in a datathon and ‘failing to address’ the possibility that persons could be re-identified by cross-referencing information in the dataset with other information sources.<sup>58</sup>

The report made seven recommendations, which included requiring the Department of Transport (the department responsible for PTV) to take specified action to strengthen its policies and procedures, ‘data governance’, training and reporting.<sup>59</sup>

<sup>50</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, pp. 5–6.

<sup>51</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 32.

<sup>52</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 7.

<sup>53</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 32.

<sup>54</sup> *Ibid.*

<sup>55</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 7.

<sup>56</sup> OVIC, *Disclosure of myki travel information: investigation under section 8C(2)(e) of the Privacy and Data Protection Act 2014* (Vic), Melbourne, 2019.

<sup>57</sup> *Ibid.*

<sup>58</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 19.

<sup>59</sup> OVIC, *Disclosure of myki travel information: investigation under section 8C(2)(e) of the Privacy and Data Protection Act 2014* (Vic), Melbourne, 2019, pp. 40–41.

OVIC has advised that five of the seven recommendations have been implemented.<sup>60</sup> This includes a recommendation that OVIC itself improve the guidance it gives to assist agencies to conduct Privacy Impact Assessments.<sup>61</sup> The implementation of the outstanding recommendations, the scope of which extend beyond the Department of Transport to the rest of the VPS,<sup>62</sup> has been delayed by COVID-19.<sup>63</sup> These recommendations relate to the delivery of training programs to enhance data capabilities, and the development of a process for publishing public data.<sup>64</sup>

OVIC was also part of a National COVID-19 Privacy Team, which was formed to enable privacy regulators 'to exchange information on COVID-related developments in each jurisdiction' and 'to respond to government proposals with national implications'.<sup>65</sup> These proposals related to:

- legislative amendments to 'support the roll out of the COVIDSafe app and ... privacy protections in relation to COVIDSafe data'
- '[d]eveloping guidance for the public and organisations on topical issues relating to contact tracing and privacy'.<sup>66</sup>

### 3.2.4 Law enforcement data security

As part of its monitoring and assurance functions under the *PDP Act 2014 (Vic)*, OVIC had planned to conduct four site inspections of Victoria Police in 2019/20.<sup>67</sup> However, the spread of COVID-19 resulted in the cancellation of two inspections<sup>68</sup> and the postponement of another.<sup>69</sup>

At the public hearing on 15 March 2021, the Committee asked how, based on one facility inspection in 2019/20, OVIC was able to form a view that that Victoria Police has demonstrated a 'commitment to identifying, reviewing and acting on hard-copy documentation'<sup>70</sup> according to the 'retention, archiving, and destruction obligations'.<sup>71</sup> OVIC clarified that it is yet to form a final view on this matter and is awaiting 'the

<sup>60</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 9; Dr Ted Lipiarski, Chief Operating Officer, OVIC, correspondence, 19 April 2021.

<sup>61</sup> Dr Ted Lipiarski, Chief Operating Officer, OVIC, correspondence, 19 April 2021.

<sup>62</sup> OVIC, *Disclosure of myki travel information: investigation under section 8C(2)(e) of the Privacy and Data Protection Act 2014 (Vic)*, Melbourne, 2019, pp. 41–42.

<sup>63</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 9.

<sup>64</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 9.; OVIC, *Disclosure of myki travel information: investigation under section 8C(2)(e) of the Privacy and Data Protection Act 2014 (Vic)*, Melbourne, 2019, pp. 41–42.

<sup>65</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 37; OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 6.

<sup>66</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 6.

<sup>67</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 20.

<sup>68</sup> Ibid.

<sup>69</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 7.

<sup>70</sup> Mr Stuart Grimley MLC, Integrity and Oversight Committee, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 10.

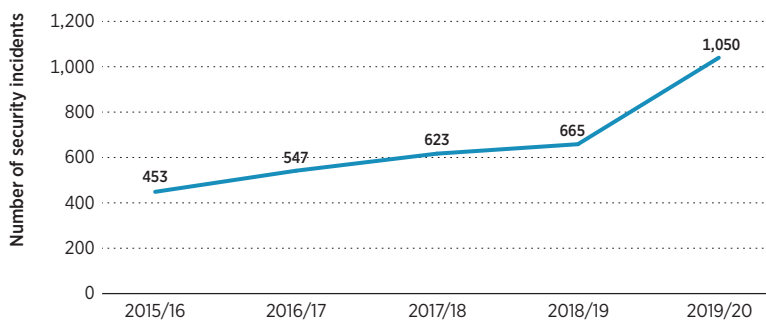
<sup>71</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 20.

completion of Victoria Police's Information Governance Implementation Review, which is expected to contain some elements related to management and handling of hard copy information'.<sup>72</sup>

Under Standard 9 of the VPDSS 2.0, Victoria Police are required to report security incidents with a Business Impact Level (BIL)<sup>73</sup> equal to or greater than two.<sup>74</sup> Victoria Police reported 1,050 security incidents to OVIC in 2019/20. However, the Committee notes that Victoria Police have been reporting all security incidents to OVIC during this reporting period, not just those which have a BIL of two or higher.<sup>75</sup> The notifications are then 'reviewed by the Information Commissioner or the Privacy and Data Protection Deputy Commissioner with OVIC's information security team on a weekly basis'.<sup>76</sup>

Like any other workplace, the digital response necessitated by the COVID-19 pandemic would have created new information security risks and posed new challenges to Victoria Police's adaptability. Transparency and proper oversight become even more important in this heightened state of data security. For these reasons, the Committee reiterates its recommendation from its *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19* report that OVIC publish in its annual report the number of information security incidents reported by Victoria Police each year.<sup>77</sup>

**Figure 3.1** Number of security incidents reported to OVIC by Victoria Police



Source: Office of the Commissioner for Privacy and Data Protection (CPDP), *Annual report 2015–16*, Melbourne, 2016, p. 30; Office of the CPDP, *Annual report 2016–17*, Melbourne, 2017, p. 24; OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 13; OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 8.

<sup>72</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 8.

<sup>73</sup> 'Business Impact Level' is a grading developed by OVIC, which is 'used to determine the security value of public sector information': OVIC, *Business Impact Level App*, Melbourne, n.d., <<https://ovic.vic.gov.au/data-protection/for-agencies/business-impact-level-app>> accessed 21 May 2021.

<sup>74</sup> OVIC, *Victorian Protective Data Security Standards Version 2.0 Implementation Guidance V2.1*, Melbourne, n.d., p. 25, <<https://ovic.vic.gov.au/wp-content/uploads/2021/02/20210216-VPDSS-V2.0-Implementation-Guidance-V2.1.pdf>> accessed 21 May 2021; OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 8.

<sup>75</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 8.

<sup>76</sup> Ibid.

<sup>77</sup> IOC, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, 2019, p. 67.

### 3.3 Public information and education

OVIC has a legislated function to promote the acceptance and understanding of the *FOI Act 1982* (Vic) and to disseminate guidance, advice and education materials on OVIC's functions and compliance with the Professional Standards.<sup>78</sup> Under the *PDP Act 2014* (Vic), OVIC promotes 'awareness and understanding' of the IPPs, issues guidelines and conducts research on information privacy, promotes the uptake of protective data security standards by the VPS and undertakes research on matters relating to protective data security.<sup>79</sup>

During 2019/20, OVIC delivered 183 education and training activities, more than double the number from the previous year.<sup>80</sup> These activities included existing e-learning modules on privacy and FOI, a revised *Introduction to FOI* module to coincide with the launch of the Professional Standards and a new e-module on *Managing the privacy impacts of a data breach*.<sup>81</sup> OVIC also conducted bespoke training sessions for regional participants in Ballarat and Wodonga.<sup>82</sup>

OVIC's in-person training on FOI and privacy was attended by almost four thousand government practitioners and other members of the public in 2019/20.<sup>83</sup> These training sessions are highly regarded by most participants, with the facilitator, materials and venue being ranked 4.5–5 out of 5.<sup>84</sup> Due to COVID-19, however, these sessions had to be held online following the cancellation of all face-to-face training in March 2020.<sup>85</sup> OVIC reported that 'anecdotal feedback from participants and the higher attendance numbers per session indicate the effectiveness of the online medium in delivering the training'.<sup>86</sup> Both OVIC's face-to-face training and e-learning modules are provided free to participants.<sup>87</sup> OVIC had yet to recommence the delivery of in-person training as at March 2021.<sup>88</sup> In the future, OVIC intends to deliver training using face-to-face, online and hybrid models to 'capitalise on the strengths of each delivery mode'.<sup>89</sup>

In 2019/20, OVIC published a series of guidance materials to assist agencies to better meet their privacy and FOI obligations, in addition to material on the 'application of information rights to specific technologies'.<sup>90</sup> This included specific materials to assist public sector organisations to respond to the impact of COVID-19 (including information on data-handling obligations under the IPPs, respecting privacy while working remotely

<sup>78</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 8; *FOI Act 1982* (Vic) s 6I.

<sup>79</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 8.; *PDP Act 2014* (Vic) s 8D.

<sup>80</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 22.

<sup>81</sup> *Ibid.*, p. 23.

<sup>82</sup> *Ibid.*, p. 22.

<sup>83</sup> *Ibid.*, p. 23.

<sup>84</sup> *Ibid.*, p. 24.

<sup>85</sup> *Ibid.*, p. 23.

<sup>86</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 9.

<sup>87</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 22.

<sup>88</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 9.

<sup>89</sup> *Ibid.*

<sup>90</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 8.

and privacy challenges that may arise when new technologies are used).<sup>91</sup> OVIC also published an extensive range of ‘information security guidance’ materials, including a VPDSS Implementation Guide and ‘an information sheet on OVIC’s Information Security Incident Notification Scheme’.<sup>92</sup>

Further, OVIC raises the profile of its Office and promotes its functions through public engagement activities. In 2019/20, this included running Privacy Awareness Week as a virtual campaign,<sup>93</sup> holding a public forum on ‘community expectations’ on FOI for Right to Know Day,<sup>94</sup> the launch of an e-book on artificial intelligence<sup>95</sup> and providing public guidance on data breaches and privacy rights.<sup>96</sup> OVIC also increased its presence on Twitter and began using LinkedIn to further engage with its stakeholders.<sup>97</sup>

In 2019, OVIC undertook a stakeholder engagement survey which indicated that ‘OVIC is seen as a source of high-quality information and education activities’.<sup>98</sup> OVIC received 324 responses from 212 stakeholders.<sup>99</sup> Based on this, OVIC has

- developed ‘new agency guidance materials’
- undertaken website accessibility and usability testing and ‘user research’ to improve the functionality of its website as well as its content
- expanded its education and events program to cater to ‘new segments’, such as senior VPS executives
- transitioned to virtual events that target public sector staff who are working remotely or based in rural and regional areas.<sup>100</sup>

OVIC will continue to implement its ‘information security agency engagement program’ by producing new audio-visual content and train-the-trainer resources.<sup>101</sup>

In 2020, OVIC commenced research on how to improve the accessibility and usability of its website.<sup>102</sup> The research recommended that OVIC increase the ‘readability and discoverability’ of its website content; publish resources in HTML first and Word and PDF where possible; implement ‘text-size controls, accessible tables and web-reader software to assist those with vision impairments’; and enhance and streamline the homepage and training registration processes.<sup>103</sup> OVIC has indicated it will continue to

<sup>91</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 36.

<sup>92</sup> *Ibid.*, p. 48.

<sup>93</sup> *Ibid.*, p. 42.

<sup>94</sup> *Ibid.*, p. 22.

<sup>95</sup> *Ibid.*, p. 33.

<sup>96</sup> *Ibid.*, p. 35.

<sup>97</sup> *Ibid.*, pp. 23–24.

<sup>98</sup> *Ibid.*, p. 21.

<sup>99</sup> *Ibid.*

<sup>100</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 10.

<sup>101</sup> *Ibid.*

<sup>102</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 23.

<sup>103</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 11.

improve its website, based on the research recommendations, and complete this work by the end of 2021.<sup>104</sup>

## 3.4 Governance and workplace

### 3.4.1 Governance

OVIC reported that no breaches of the *Code of Conduct for Victorian Public Sector Employees of Special Bodies* were identified in 2019/20.<sup>105</sup> Further, IBAC did not refer to OVIC for investigation any public interest complaints concerning OVIC's work environment.<sup>106</sup>

### 3.4.2 The impact of COVID-19 and general staff wellbeing

OVIC activated its Business Continuity Plan for the first time in March 2020 due to COVID-19, with staff required to work remotely.<sup>107</sup>

The Information Commissioner acknowledged the difficulties of onboarding and offboarding staff in a remote working environment, noting that the 'hardest thing was getting ... [staff] to feel part of a team'.<sup>108</sup> OVIC managed this by encouraging staff to check in on one another, regularly circulating newsletters and holding virtual social events.<sup>109</sup>

OVIC participated in the Victorian Public Sector Commission's (VPSC) 2020 People Matter Survey Wellbeing Check—a shorter survey focused on staff wellbeing, in response to COVID-19.<sup>110</sup>

According to OVIC:

- 96% of staff responded positively in relation to Job Enrichment
- 85% of staff responded positively in relation to Senior Leadership
- 89% of staff responded positively in relation to Manager Support
- 88% of staff responded positively in relation to Workgroup support [sic]
- 94% of staff responded positively in relation to Meaningful Work
- 71% of staff responded positively in relation to Workload.<sup>111</sup>

<sup>104</sup> Ibid.

<sup>105</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 15.

<sup>106</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 11.

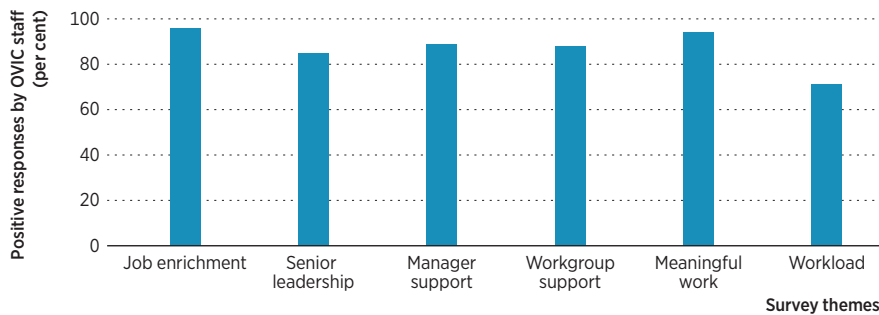
<sup>107</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 1.

<sup>108</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 12.

<sup>109</sup> Ibid., p. 13.

<sup>110</sup> Victorian Public Sector Commission, *2020 People Matter Survey Wellbeing Check—About the survey*, Melbourne, 2020, <<https://vpvc.vic.gov.au/html-resources/survey-information-kit-people-matter-survey/about-the-survey>> accessed 7 April 2021.

<sup>111</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 11.

**Figure 3.2** Extract of OVIC's results from the VPSC's 2020 People Matter Survey Wellbeing Check

Source: OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 11.

While the survey results were broadly positive, five staff members reported experiencing some form of negative behaviour relating to a 'lack of civility'.<sup>112</sup> Further, a small number of staff communicated concerns over, 'or expressed a lack of awareness' about, the support services OVIC makes available to staff affected by stress.<sup>113</sup>

OVIC advised the Committee that it is planning to conduct separate workshops for managers and staff to address each of these issues.<sup>114</sup> The workshops will be informed by staff input and advice from OVIC's Employee Assistance Program (EAP) provider.<sup>115</sup>

In 2019/20, staff education included training on 'work relations and bullying prevention, wellbeing and workload management, recruitment and selection training, and the application of protective markings'.<sup>116</sup> OVIC intends to seek further guidance from its EAP provider about the additional steps it can take regarding its approach to employee welfare.<sup>117</sup>

## 3.5 Accountability

### 3.5.1 Victorian Inspectorate

The Victorian Inspectorate's (VI) jurisdiction in relation to OVIC officers was altered by the enactment of the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic).<sup>118</sup> Previously, the VI had general monitoring and complaints functions in respect of OVIC's 'compliance with procedural fairness obligations' under the *FOI Act 1982* (Vic) and *PDP Act 2014* (Vic).

<sup>112</sup> Ibid., p. 11.

<sup>113</sup> Ibid., pp. 11-12.

<sup>114</sup> Ibid., p. 12.

<sup>115</sup> Ibid.

<sup>116</sup> OVIC, *Annual report 2019-20*, Melbourne, 2020, p. 9. See also OVIC, *Practitioner guide: protective markings v2.0*, Melbourne, November 2019, p. 7 ('Protective markings are security labels assigned to public sector information.').

<sup>117</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 30 March 2021, p. 12.

<sup>118</sup> VI, *Annual report 2019-20*, Melbourne, 2020, p. 66.

As of 1 January 2020, the VI monitors the exercise of coercive powers and compliance with procedural fairness requirements by OVIC officers:

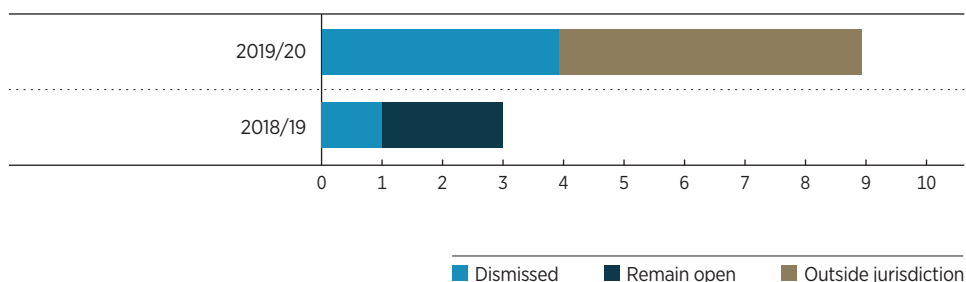
- in the exercise (or purported exercise) of coercive powers, conduct of investigations, making of recommendations and making of investigation reports, under the *FOI Act 1982* (Vic); and
- in the exercise (or purported exercise) of coercive powers and making of compliance notices, under the *PDP Act 2014* (Vic).<sup>119</sup>

The VI also receives and investigates complaints about the conduct of OVIC officers.<sup>120</sup>

In 2019/20, the VI received nine complaints about OVIC officers, four of which fell within jurisdiction.<sup>121</sup> Two of these complaints were dismissed at the assessment stage and the remaining two were dismissed after the VI considered additional information.<sup>122</sup>

OVIC issued its first-ever notice to produce documents under s 49KB of the *FOI Act 1982* (Vic).<sup>123</sup> The Committee notes that feedback from the VI in relation to the level of detail required by s 61ZD of the *FOI Act 1982* (Vic) has been well received by OVIC.<sup>124</sup> This information will be used by OVIC to improve its level of reporting on the use of coercive powers to the VI.<sup>125</sup>

**Figure 3.3** VI outcomes for complaints received about OVIC



Source: VI, *Annual report, 2018–19*, Melbourne, 2019, p. 36; VI, *Annual report, 2019–20*, Melbourne, 2020, p. 33.

### 3.5.2 Integrity and Oversight Committee

The Committee has functions to monitor and review the performance of OVIC, to consider and investigate complaints concerning the Information Commissioner and the operation of OVIC, and to inquire into and report to Parliament on any matter relating to the performance of OVIC, including its annual reports and matters concerning freedom of information.<sup>126</sup>

<sup>119</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 66; *Victorian Inspectorate Act 2011* (Vic) ('VI Act 2011 (Vic)') s 11(5)(a).

<sup>120</sup> VI Act 2011 (Vic) s 11(5)(b)–(c).

<sup>121</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 33.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid., p. 66.

<sup>124</sup> Ibid., p. 68.

<sup>125</sup> Ibid.

<sup>126</sup> *Parliamentary Committees Act 2003* (Vic) s 7(1)(a)–(e).



The IOC received and finalised two complaints relating to OVIC during 2019/20. The Committee monitored one matter and was satisfied by the oversight provided by the VI. The other complaint was referred to the VI for appropriate action.<sup>127</sup>

## 3.6 Conclusion

The past year has seen OVIC take some important strides towards maturing as an agency, as it completes its third full year of operation.

The COVID-19 pandemic impacted OVIC's work this year by limiting its ability to deliver its education and training activities in person and complete its full inspection program of Victoria Police facilities. Nevertheless, OVIC 'adapt[ed] effectively to change',<sup>128</sup> which the Committee notes was a central theme of its annual report, by making the necessary modifications to ensure it continued to perform its functions under the *FOI Act 1982 (Vic)* and *PDP Act 2014 (Vic)* with as little disruption as possible.

OVIC successfully transitioned its face-to-face training courses on FOI and privacy online and produced several resources to assist agencies to fulfil their obligations under the newly issued Professional Standards and the second iteration of the VPDSS. Its efforts to deliver 183 education and training activities, an increase of 74 from 2018/19, and still be regarded as a 'high quality' education provider,<sup>129</sup> are commendable, particularly in the current environment.

The Committee has previously highlighted the timeliness of FOI reviews as a matter requiring further attention. It is encouraging to see the improvement in this area, as well as a reduction in the time taken to finalise FOI and privacy complaints. OVIC's emphasis on alternative dispute resolution and faith in the experience and judgement of its staff will no doubt continue to provide future efficiencies for the agency and the public.

<sup>127</sup> IOC, *Complaints data—2019/20*, Melbourne, 2020.

<sup>128</sup> OVIC, *Annual report 2019–20*, Melbourne, 2020, p. 1.

<sup>129</sup> *Ibid.*, p. 21.



# 4 Victorian Inspectorate

## 4.1 Introduction

The Victorian Inspectorate (VI) has extensive oversight functions and powers in relation to Victorian integrity bodies, including the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC) and the Victorian Ombudsman (VO).<sup>1</sup> This includes specific jurisdiction to receive, assess and investigate complaints and public interest disclosures (PIDs) about the conduct of these bodies and their officers; to monitor compliance with legislative and record-keeping requirements; and to review certain policies and procedures.<sup>2</sup> The VI can also initiate investigations and inquiries into these bodies on its own motion, make public and private recommendations and table reports in the Parliament of Victoria.<sup>3</sup>

In exercising its oversight functions, the VI gives particular attention to integrity bodies' use of coercive and covert powers, the summoning and questioning of persons during investigations, the conduct of undercover ('controlled') operations, the interception of telecommunications and the deployment of surveillance devices.<sup>4</sup>

The VI's main oversight functions are set out briefly, and in general terms, in Table 4.1. As noted earlier in this report, the Integrity and Oversight Committee (IOC) monitors and reviews the performance of the VI, except with respect to officers of the Victorian Auditor-General's Office (VAGO).<sup>5</sup>

<sup>1</sup> *Victorian Inspectorate Act 2011* (Vic) ('VI Act 2011 (Vic)'), especially ss 1, 5, 11-14.

<sup>2</sup> *VI Act 2011* (Vic); *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)'); VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-8, 10, 14-27; *Public Interest Monitor Act 2011* (Vic); VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, especially pp. 5, 13-27.

<sup>3</sup> *VI Act 2011* (Vic); VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-27.

<sup>4</sup> VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-10, 14-27; *VI Act 2011* (Vic).

<sup>5</sup> *Parliamentary Committees Act 2003* (Vic) ('PC Act 2003 (Vic)') s 7(1)(f)-(h). The Victorian Parliament's Public Accounts and Estimates Committee (PAEC) reviews the performance of the VI with respect to VAGO officers: *PC Act 2003* (Vic) s 14(1)(ab)-(ad); VI, *Annual report 2018-19*, Melbourne, 2019, p. 14.

Table 4.1 Oversight functions of the VI

Body oversighted by the VI	The VI's oversight functions
IBAC	<ul style="list-style-type: none"> <li>• Receive, assess and investigate complaints and disclosures about IBAC and IBAC officers</li> <li>• Monitor use of coercive and covert powers and inspect applicable records</li> <li>• Assess effectiveness and appropriateness of certain policies and procedures</li> <li>• Oversee performance of functions under the <i>Public Interest Disclosures Act 2012</i> (Vic)</li> <li>• Review public interest disclosure (PID) procedures</li> <li>• Monitor compliance with the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic) and other applicable laws</li> <li>• Conduct own-motion investigations and inquiries</li> <li>• Produce reports and make recommendations</li> <li>• Monitor interactions between IBAC and other integrity bodies</li> </ul>
Judicial Commission of Victoria	<ul style="list-style-type: none"> <li>• Notify possible PIDs to IBAC for assessment</li> <li>• Monitor use of coercive powers</li> <li>• Review PID procedures</li> <li>• Limited jurisdiction to make recommendations and request reports</li> </ul>
Office of Chief Examiner	<ul style="list-style-type: none"> <li>• Receive, assess and investigate complaints about the Chief Examiner or Examiners</li> <li>• Limited jurisdiction to conduct own-motion investigations</li> <li>• Notify possible PIDs to IBAC for assessment</li> <li>• Monitor use of coercive powers</li> <li>• Assess effectiveness and appropriateness of policies and procedures</li> <li>• Produce reports and make recommendations</li> <li>• Monitor compliance with the <i>Major Crime (Investigative Powers) Act 2004</i> (Vic)</li> </ul>
OVIC	<ul style="list-style-type: none"> <li>• Receive, assess and investigate complaints about OVIC officers</li> <li>• Conduct own-motion investigations, produce reports and make recommendations regarding OVIC's performance</li> <li>• Monitor use of coercive powers</li> <li>• Monitor compliance with procedural fairness requirements</li> </ul>
Public Interest Monitor	<ul style="list-style-type: none"> <li>• Receive, assess and investigate disclosures about a Public Interest Monitor</li> <li>• Inspect records kept under the <i>Public Interest Monitor Act 2011</i> (Vic) and the <i>Witness Protection Act 1991</i> (Vic) to monitor compliance with the law and report results to the Minister and Parliament</li> </ul>
VAGO	<ul style="list-style-type: none"> <li>• Receive, assess and investigate complaints about VAGO officers</li> <li>• Notify possible PIDs to IBAC for assessment</li> <li>• Limited jurisdiction to conduct own-motion investigations</li> <li>• Monitor use of coercive powers</li> <li>• Monitor compliance with procedural fairness requirements</li> <li>• Produce reports and make recommendations regarding VAGO's performance of its functions</li> </ul>

Body oversighted by the VI	The VI's oversight functions
Victoria Police	<ul style="list-style-type: none"> <li>• Oversee Victoria Police's compliance with the <i>Major Crime (Investigative Powers) Act 2004</i> (Vic)</li> <li>• Receive reports and request information and assistance from Victoria Police to assess its compliance with information-sharing and record-keeping requirements under the <i>Major Crime (Investigative Powers) Act 2004</i> (Vic)</li> <li>• Inspect records regarding covert and/or intrusive investigative powers, such as telecommunications interceptions and use of surveillance devices and undercover ('controlled') operations</li> <li>• Oversee use of covert search warrants, preventative detention decisions and special police powers under the <i>Terrorism (Community Protection) Act 2003</i> (Vic)</li> </ul>
VO	<ul style="list-style-type: none"> <li>• Receive, assess and investigate complaints about VO officers</li> <li>• Notify possible PIDs to IBAC for assessment</li> <li>• Monitor use of coercive powers</li> <li>• Monitor compliance with procedural fairness requirements</li> <li>• Review PID procedures</li> <li>• Produce reports and make recommendations</li> </ul>

Source: Reproduced with only minor modifications from information in VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–27, 51, 86.

This chapter reviews the performance of the VI (with a focus on its oversight of IBAC, OVIC and the VO) in the following domains: complaint handling, investigations and oversight; public information and education; governance and workplace; and accountability.

## 4.2 Complaint handling, investigations and oversight

The VI receives, handles, assesses and investigates complaints and PIDs; reviews agency use of coercive and related powers; and conducts own-motion investigations and inquiries. Before discussing some of the issues in these areas, it useful to have a snapshot of the key data for 2019/20.

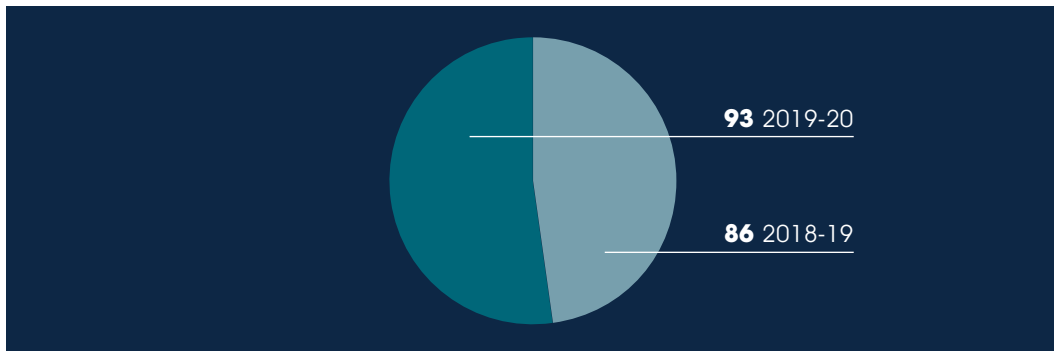
### 4.2.1 Key data: a snapshot

#### Complaints

In 2019/20, 93 complaints were received by the VI, an increase of 6.5% from 2018/19 (see Figure 4.1).<sup>6</sup>

<sup>6</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 29.

**Figure 4.1** Complaints received by the VI: 2018/19, 2019/20



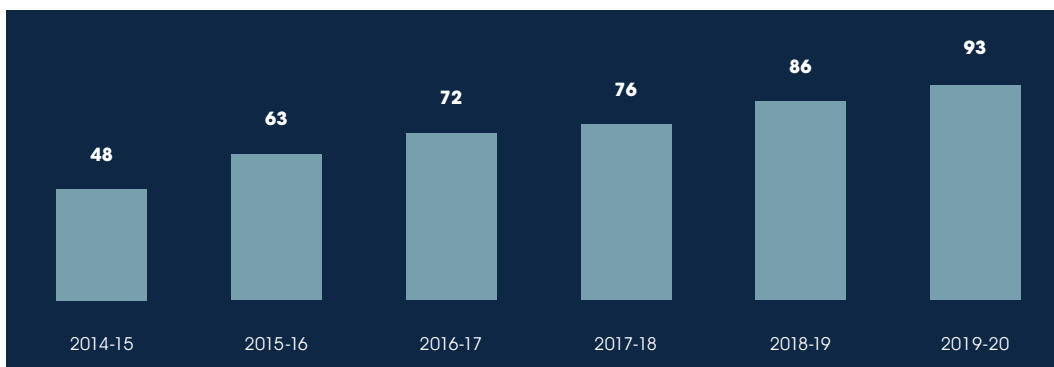
Source: VI, *Annual report 2019–20*, Melbourne, 2020, p. 29.

The breakdown of complaints within jurisdiction, by subject of complaint, is as follows:

- IBAC or IBAC officers: 39
- VO or VO officers: 36
- OVIC officers: 4
- Chief Examiner or an Examiner: 1
- Victorian ‘public sector agencies’: 2 (disclosures).<sup>7</sup>

Since 2014/15, there has been a 93.75% increase in the number of complaints received by the VI (see Figure 4.2).<sup>8</sup> In 2019/20, the VI ‘closed’ 90 complaints compared with 69 in 2018/19.<sup>9</sup>

**Figure 4.2** Complaints received by the VI, 2014/15–2019/20



Source: VI, *Annual report 2019–20*, Melbourne, 2020, p. 31 (Graph A).

<sup>7</sup> Ibid., p. 30.

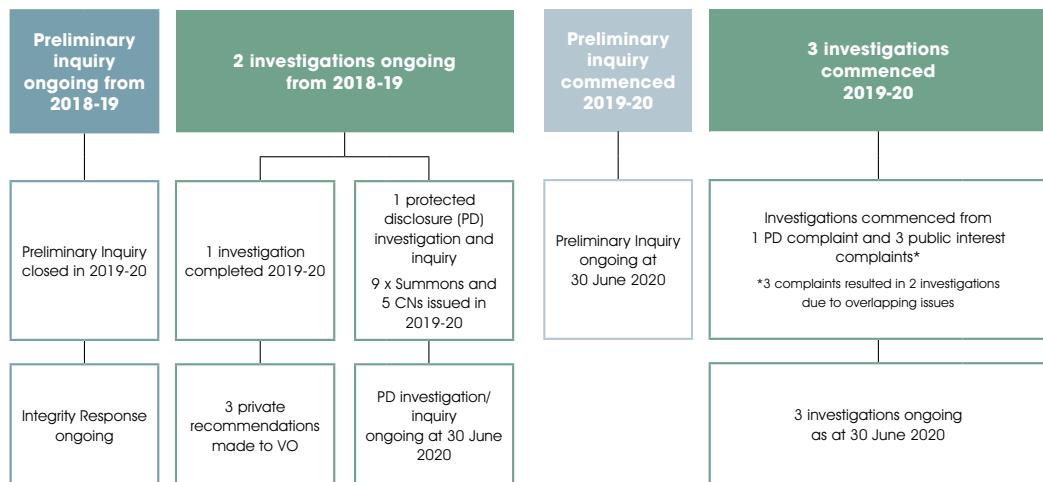
<sup>8</sup> Ibid.

<sup>9</sup> Ibid., p. 31.

## Investigations and inquiries

During 2019/20, the VI completed an investigation relating to the VO's use of coercive powers and procedural fairness compliance and commenced three other investigations concerning whistleblower complaints (see Figure 4.3).<sup>10</sup>

**Figure 4.3** VI investigations and inquiries: 2019/20 activities



Source: VI, *Annual report 2019–20*, Melbourne, 2020, p. 37 (Figure G).

## Coercive power notifications

As the VI has recognised, one of its 'core functions' is the oversight of the use by a range of investigatory and accountability bodies of coercive powers that restrict individuals' rights and freedoms (see Table 4.1, above, for details).<sup>11</sup>

In 2019/20, 890 coercive power notifications were made to the VI, down from 1,091 in 2018/19, most likely due to the effects of COVID-19 on the agencies' operations.<sup>12</sup> The majority of notifications came from IBAC (65%), followed by the VO (19%).<sup>13</sup>

The VI is not required to review all notifications it receives, and the VI has advised the Committee that, taking into account available resources, it undertakes risk assessments in selecting notifications that warrant a full review.<sup>14</sup> The VI 'fully reviewed' 7% of the total notifications received in 2019/20 (see Figure 4.4).<sup>15</sup> For a more detailed discussion of these matters, see Section 4.2.2, below.

<sup>10</sup> Ibid., p. 37.

<sup>11</sup> Ibid., p. 38.

<sup>12</sup> VI, *Annual report 2018–19*, Melbourne, 2019, pp. 39, 42; VI, *Annual report 2019–20*, Melbourne, 2020, p. 38.

<sup>13</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 38.

<sup>14</sup> Ibid., pp. 12, 40–41.

<sup>15</sup> Ibid., p. 42.

**Table 4.2** VI's 2019/20 reviews of coercive power notifications

<b>2019-20 Reviews</b>			
	<b>Received for review</b>	<b>Reviewed</b>	<b>% Reviewed</b>
Confidentiality notices	177	4	2%
Summons/Orders/Notices	495	27	5%
Examinations/recordings	204	30	15%
Public hearing notice	1	1	100%
Other (JCV)	1 <sup>15</sup>	1	100%
<b>Total</b>	<b>878<sup>16</sup></b>	<b>63</b>	<b>7%</b>

<sup>15</sup> Note that the VI received 1 notification from the JCV of 13 exercises of coercive powers. This is recorded as 1 review of 1 notification, as distinct from the number of instances that coercive powers were exercised reported in Table B.

<sup>16</sup> As per note 5 above – this reduces the total number of notifications able to be reviewed from 890 to 878.

Source: Reproduced from VI, *Annual report 2019–20*, Melbourne, 2020, p. 42 (Table D).

## Inspections

The VI undertakes inspections of agencies as part of its oversight of 'covert or intrusive investigatory powers'.<sup>16</sup> The VI exercises oversight of agency use of these functions by:

- Inspecting records of relevant bodies.
- Responding to identified issues, including making formal findings of non-compliance and recommendations to prevent breaches of the law.
- Reporting the outcomes of the VI's inspections to chief officers of bodies and Ministers, and to Parliament where required by the applicable legislation.<sup>17</sup>

The VI's inspection functions relate to agency use of telecommunication interception, surveillance devices, controlled operations and counter-terrorism prevention and response measures.<sup>18</sup> The agencies subject to inspections are IBAC, Victoria Police, the Game Management Authority (GMA), Victorian Fisheries Authority (VFA), the Department of Environment, Land, Water and Planning (DELWP) and the Public Interest Monitor (PIM).<sup>19</sup>

Due to COVID-19, the VI conducted fewer inspections than it has previously (see Table 4.3).<sup>20</sup>

<sup>16</sup> Ibid., p. 44.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., pp. 44–45.

<sup>19</sup> Ibid., pp. 44–46.

<sup>20</sup> Ibid., p. 44.



**Table 4.3** Number of inspections completed by the VI in 2019/20

Agency	Telecommunications interception	Surveillance devices	Controlled operations	Counter-terrorism	PIM records
IBAC	1	1	No controlled operations	Not applicable	Not applicable
Victoria Police	1	1	1	2	Not applicable
GMA	Not applicable	No surveillance warrants to inspect	No controlled operations	Not applicable	Not applicable
VFA	Not applicable	No surveillance warrants to inspect	No controlled operations	Not applicable	Not applicable
DELWP	Not applicable	1	No controlled operations	Not applicable	Not applicable
PIM	Not applicable	Not applicable	Not applicable	Not applicable	2

Source: Devised from data in VI, *Annual report 2019–20*, Melbourne, 2020, pp. 44–46.

The challenges of completing mandatory record inspections during a public health emergency were recognised in the *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020* (Vic) ('*COVID-19 Omnibus Regulations*'), which adjusted the VI's inspection obligations.<sup>21</sup> This is discussed in Section 4.2.2, below.

## 4.2.2 Key issues

### Adapting to COVID-19

The COVID-19 pandemic came to have significant impacts on Victoria with a first wave of infections in March 2020, exacerbated by a second wave later in the year. In response, the Deputy Chief Health Officer of Victoria (Communicable Disease) issued a range of binding Stay at Home Directions under the *Public Health and Wellbeing Act 2008* (Vic).<sup>22</sup> These directions required—describing their effect here in general terms—most Victorians, including staff in integrity agencies, to work from home. These mandatory remote-work conditions affected the operations of integrity agencies considerably, especially given the high level of security involved in agency management and transfer of information related to complaint-handling, reviews, investigations, inspections and other oversight work.

Ms Cathy Cato, Executive Director, Legal and Integrity, at the VI, explained that the agency's IT system's configuration, which by design provides high-level security for

<sup>21</sup> Ibid.

<sup>22</sup> Department of Health and Human Services (Victoria), *Directions from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency*, 30 March 2020, <<https://www.dhhs.vic.gov.au/sites/default/files/documents/202003/Stay%20at%20Home%20Directions%20.pdf>> accessed 23 May 2021. For further discussion of the ramifications of COVID-19 for the VI, see VI, *Annual report 2019–20*, Melbourne, pp. 3, 5–6, 34–35, 38, 41, 44, 52–53, 57, 72, 74, 78, 87.

information, presented challenges when staff were required to work off site due to the pandemic:

[W]e do house our classified information in a secure air-gapped network, which meant that none of our operational material was accessible for remote working, and that was by design to protect that information.<sup>23</sup>

The Inspector, Mr Eamonn Moran PSM QC, elaborated that

[b]ecause so much of our data is stored on our air-gapped server, the VI was not particularly well placed to accommodate the kind of working-from-home arrangements that were made necessary by the COVID-19 government health directions. We needed to put in place some new working practices to allow staff to work flexibly. We developed a working-from-home policy based on three principles: the safety of our staff and the community, the security of our information and maintaining our service output.<sup>24</sup>

The Inspector further reported that the VI's work-from-home arrangements had significant effects on its operations, especially in the areas of complaints, reviews of coercive power notifications and inspections of agency records.<sup>25</sup>

With regard to complaints, the limited and irregular staffing of the VI's office premises meant that the telephone line was closed temporarily.<sup>26</sup> As a result, the capacity of the VI to call, and receive calls from, complainants was also significantly reduced.<sup>27</sup> The VI advised complainants that, consequently, the handling their complaints would be delayed, in part due to delays in securely receiving records from relevant agencies.<sup>28</sup>

Nevertheless, the VI was able, under the supervision of the agency's information security experts, to 'set up especially encrypted folders on the remotely accessible server'.<sup>29</sup> Together with the development and implementation of a tailored protocol for managing the remote use of information, this adaptation enabled staff to work remotely on files.<sup>30</sup> The VI continued to receive complaints online and via email, and handled urgent complaints over the telephone as far as practicable.<sup>31</sup>

The VI is installing a new telephony system, which will be in place by the end of the second quarter of 2020/21, which should help it manage complaints more efficiently when staff are working remotely.<sup>32</sup>

<sup>23</sup> Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 5.

<sup>24</sup> Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 1.

<sup>25</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 3.

<sup>26</sup> *Ibid.*, pp. 3, 35.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 5.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 3, 35. Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 5.

The challenges for the VI and other agencies operating under the constraints of Victoria's pandemic-response regime, including lockdowns, are recognised in the *COVID-19 Omnibus Regulations*.<sup>33</sup> These regulations:

- give the VI more time to complete mandatory inspections of agency records
- authorise the service of documents by alternative methods (such as registered post and electronic communication)
- allow agencies to produce requested documents by electronic means
- authorise attendance of persons before the VI (including as part of private examinations) by audio or audiovisual means.<sup>34</sup>

The VI has reported that as at 30 June 2020, and in compliance with the Regulations, it had begun a second inspection of Victoria Police records.<sup>35</sup>

The VI also made a number of adjustments in response to the pandemic in terms of OH&S, which are summarised below (see Section 4.4.1).

### Reviewing coercive power notifications

In its report on the VI's performance during 2017/18–2018/19, the Committee noted the agency's concern that it could not review as many coercive power notifications as desired, or review them as thoroughly as it would like.<sup>36</sup> The VI has reported that this limited capacity is due to funding and staffing constraints and an increased workload with respect to public interest disclosures, exacerbated by the logistical impacts of COVID-19.<sup>37</sup>

The VI therefore continues to take a 'strategic', 'risk-based' and targeted approach to the review of these notifications.<sup>38</sup> In particular, this approach involves a 'preliminary triage' of notifications.<sup>39</sup> Through this approach, the VI

considers the priority level of all notifications, which may vary according to the type of notification, likelihood or history of compliance, and the presence of risk or strategic oversight factors, such as those associated with an investigation, a witness, or the type of coercive power to be exercised by a body.

...

As a 'preliminary triage' on as many notifications as resources permit, the VI conducts an expedited consideration of both the nexus between the use of the coercive power and

<sup>33</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 24–25. See also *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic).

<sup>34</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 24–25.

<sup>35</sup> *Ibid.*, p. 44.

<sup>36</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 86.

<sup>37</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 3, 5, 38, 41.

<sup>38</sup> *Ibid.*, pp. 12, 40–41

<sup>39</sup> *Ibid.*, p. 41.

the body's investigation, and the scope of the power exercised—to determine whether it appears to be a reasonably appropriate use of the power.<sup>40</sup>

The VI triaged around 25% of notifications it received during 2019/20, which covered confidentiality notices, summons/orders and examinations/recordings.<sup>41</sup>

The VI is working to increase the extent, depth and efficiency of its oversight of coercive power notifications through a request for additional funding and the rollout during 2020/21 of a database to record and manage its reviews.<sup>42</sup>

## Other insights from the VI's oversight of IBAC, OVIC and the VO

### IBAC

During 2019/20, the VI reports that it engaged positively with IBAC, in particular through meetings between the agencies' executive officers as well as the Inspector and Commissioner.<sup>43</sup> These meetings have helped the agencies to keep abreast of each other's activities, as appropriate; discuss issues as they arise concerning policies, procedures, processes and legal developments; and encourage improvements in performance.<sup>44</sup>

In particular, the VI appreciated IBAC's feedback on its Integrity Response Guidelines<sup>45</sup> when they were in development.<sup>46</sup> Equally, IBAC benefited both from the VI's private report on 2019 complaints data concerning IBAC and its monitoring report on how IBAC handles complaints about police.<sup>47</sup> The VI also acknowledged the leadership role played by IBAC in effectively educating and preparing the Victorian public sector for the new PID regime, a role which has also been acknowledged by the Committee.<sup>48</sup>

While the VI's private report on 2019 data on complaints about IBAC and IBAC officers did not make any recommendations, it was able:

- To present a de-identified 12-month data-set of IBAC complaints received by the VI, to provide IBAC with useful data for its continuous improvement activities.
- Reflect the productive engagement and correspondence between the VI and IBAC officers in 2019 on complaints and to record some proposed next steps in that relationship.

40 Ibid.

41 Ibid.

42 Ibid., pp. 5, 41.

43 Ibid., p. 52.

44 Ibid.

45 VI, *Integrity Response Guidelines*, Melbourne, 2020, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 18 February 2021.

46 VI, *Annual report 2019–20*, Melbourne, 2020, pp. 52. See also VI, *Integrity Response Guidelines*, Melbourne, 2020, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 18 February 2021.

47 VI, *Annual report 2019–20*, Melbourne, 2020, pp. 52, 54. See also VI, *Monitoring Project on IBAC: police misconduct complaints*, Melbourne, October 2019, <<https://www.vicinspectorate.vic.gov.au/integrity-reports-victorian-inspectorate>> accessed 18 February 2021.

48 VI, *Annual report 2019–20*, Melbourne, 2020, p. 52; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 17–18.

- Support IBAC’s consideration of some of the themes that emerge from the VI’s complaints data.
- Document issues that, in 2019, the VI communicated to IBAC it had an ongoing interest in.
- Include explanatory information about the VI’s role and complaint-handling processes, for IBAC officers who are new or unfamiliar with the VI’s functions.<sup>49</sup>

The VI has further advised that

[t]he IBAC Commissioner expressed his pleasure with the efforts of both agencies to maintain a positive working relationship, underpinned IBAC’s commitment to the provision of updated operational policies to the VI and foreshadowed the next steps of IBAC’s continuous improvement with respect to its complaint handling.<sup>50</sup>

The VI’s public report on IBAC’s handling of complaints about police<sup>51</sup> made the following recommendations, which were accepted by IBAC:

1. That IBAC, in the continuous improvement of Condor [IBAC’s Case Management System], ensure recommendations and determinations to dismiss allegations are supported by a recorded analysis of the substance and credibility of allegations.
2. That IBAC, in the continuous improvement of Condor, ensure recommendations and determinations to refer allegations are supported by a recorded analysis of the substance and credibility of allegations as well as why the allegations must be referred to the Chief Commissioner of Police for investigation rather than be investigated by IBAC.<sup>52</sup>

The Committee recognises the importance of IBAC recording detailed analyses and justifications of its assessments and determinations of complaints about police—this enhances the transparency, effectiveness and accountability of its complaint-handling systems.<sup>53</sup>

In its report on the performance of Victoria’s integrity agencies 2017/18–2018/19, the Committee emphasised that it would continue to monitor the protection of the welfare of witnesses and others involved in IBAC operations and hearings.<sup>54</sup> The VI has also continued to oversight this aspect of IBAC’s operations, attending five days of IBAC’s public hearings for Operation Sandon (concerning alleged misconduct at the local

<sup>49</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 54.

<sup>50</sup> Ibid.

<sup>51</sup> VI, *Monitoring Project on IBAC: police misconduct complaints*, Melbourne, October 2019, p. 26, <<https://www.vicinspectorate.vic.gov.au/integrity-reports-victorian-inspectorate>> accessed 18 February 2021.

<sup>52</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 57. See also: VI, *Monitoring Project on IBAC: police misconduct complaints*, Melbourne, October 2019, p. 26, <<https://www.vicinspectorate.vic.gov.au/integrity-reports-victorian-inspectorate>> accessed 18 February 2021; VI, Response to Integrity and Oversight Committee questions on notice, 25 March 2021, p. 1; Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 6.

<sup>53</sup> See, further, Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, 172–177, 203–209.

<sup>54</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 35.

government level) and reviewing hearing transcripts.<sup>55</sup> The VI noted with approval that IBAC had made a number of improvements with respect to witness welfare that reflect the intent and substance of the VI's earlier report on these matters.<sup>56</sup>

### **OVIC**

As described by the VI, since amendments that came into operation on 1 January 2020, the agency

has a narrow focus on OVIC's exercise of coercive powers under the FOI [Freedom of Information] and PDP [Privacy Data and Protection] Acts, and OVIC's compliance with procedural fairness requirements in the exercise of those coercive powers, the conduct of investigations and the making of recommendations, investigation reports and compliance notices.<sup>57</sup>

However, in 2019, before this change to its jurisdiction, the VI delivered an Integrity Report to OVIC's Public Access Deputy Commissioner, regarding the agency's handling of two complaints.<sup>58</sup> The report recommended that OVIC make procedural improvements to its handling of FOI complaints and reviews, especially to prevent unreasonable delays.<sup>59</sup> The VI has reported that, in response to the VI's oversight, OVIC's Public Access branch has made the following 'procedural improvements to address delays and to improve timeliness':<sup>60</sup>

- Developing an Internal Formal FOI Reviews Procedures Manual.
- Strengthening its 'new file triage' process through which incoming matters are assessed upon receipt and allocated to a Case Manager in a timely manner.
- Focusing on strengthening its capacity to undertake informal resolution of matters at the earliest opportunity.
- Reinforcing the need for managers to oversee the timely management of matters.
- Establishing a clear escalation process for delays arising on a matter.
- Undertaking quarterly internal audits to identify any areas for improvement.<sup>61</sup>

### **VO**

The VI maintained a constructive relationship with the VO during the period under review and reported that the Ombudsman 'provided a comprehensive response to

<sup>55</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 43, 53. See also IBAC, *Operation Sandon*, 2020, <<https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/operation-sandon>> accessed 18 February 2021.

<sup>56</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 43, 53. See also VI, *Special Report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018; VI, Response to Integrity and Oversight Committee questions on notice, 25 March 2021, p. 1.

<sup>57</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 66. See also *VI Act 2011* (Vic) s 11(5); *Freedom of Information Act 1982* (Vic) s 61ZD; *Privacy and Data Protection Act 2014* (Vic) s 83D.

<sup>58</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 66–67.

<sup>59</sup> *Ibid.*, p. 67.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, p. 68. See also VI, Response to Integrity and Oversight Committee questions on notice, 25 March 2021, p. 1.

all requests for information ... about complaints, coercive power notifications and monitoring activities'.<sup>62</sup>

The VI identified some concerns in relation to the welfare of witnesses during compulsory appearances at the VO, reviewed the agency's procedures and gave feedback, which was under consideration by the VO as at 30 June 2020.<sup>63</sup>

In 2019, the VI published a monitoring report on the VO's interviewing practices and recommended improvements to written information provided to witnesses and persons of interest.<sup>64</sup> The VO accepted and implemented this recommendation by improving applicable fact sheets.<sup>65</sup>

During 2018, the VI undertook an own-motion investigation and inquiry into VO officers' compliance with procedural fairness requirements during a particular investigation.<sup>66</sup> Following discussions between the VI and the VO, the VO accepted a range of private recommendations for improvements to its procedures to ensure procedural fairness.<sup>67</sup> The VI therefore closed the investigation.<sup>68</sup>

## 4.3 Public information and education

While, unlike IBAC and the VO, the VI does not have a legislated education function, it rightly recognises the importance of high-quality public information so members of the public and public sector staff are aware of its role within the Victorian integrity system.<sup>69</sup> One of the VI's achievements in this area was the development of new Integrity Response Guidelines, which were designed to provide Parliament, agencies and the public with enhanced transparency about how, and on what basis, the VI responds to integrity issues that it has identified, including non-compliance risks.<sup>70</sup>

### 4.3.1 Integrity Response Guidelines

The Guidelines, published in June 2020, set out the VI's 'compliance activities', including reviews of coercive power notifications from agencies, assessment and review of complaints, regular inspections of agency records, broader integrity 'monitoring projects', own-motion inquiries and investigations, and reports.<sup>71</sup>

<sup>62</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 58.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid., p. 62. See, further, VI, *Monitoring Project on Victorian Ombudsman interviews*, Melbourne, June 2019, <<https://www.vicinspectorate.vic.gov.au/integrity-reports-victorian-inspectorate>> accessed 19 February 2021.

<sup>65</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 62.

<sup>66</sup> Ibid., p. 61.

<sup>67</sup> Ibid., p. 62.

<sup>68</sup> Ibid.

<sup>69</sup> VI, *Annual report 2017–2018*, Melbourne, 2018, p. 11. See also VI, *Annual report 2018–19*, Melbourne, 2019, p. 28.

<sup>70</sup> VI, *Integrity Response Guidelines*, June 2020, pp. 3–4, 7–8, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 21 February 2021; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 5, 16.

<sup>71</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 16; VI, *Integrity Response Guidelines*, June 2020, pp. 5–7 and Appendix A, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 21 February 2021.

The Guidelines describe a spectrum of the VI's integrity response options: informal feedback and guidance, warning letters, inquiries and investigations, public and private recommendations, monitoring of implementation of recommendations, and referral of matters to law enforcement bodies for further investigation and possible prosecution.<sup>72</sup>

The Guidelines also set out the criteria the VI uses in determining the appropriate response to an agency, and at which stage of the oversight process.<sup>73</sup> For example, if an agency is making good progress in remedying non-compliance the VI might simply rely on consultation, education and guidance.<sup>74</sup> Whereas, if an agency continues to resist the implementation of important recommendations, the VI might table a public report critical of the agency and require it to explain why recommended actions have not been taken.<sup>75</sup>

## 4.4 Governance and workplace

Given the functions and purposes of oversight and integrity bodies—to reduce the risk of corruption, misconduct and other wrongdoing, and effectively and lawfully identify and address them when they exist—it is essential that they exemplify for the public sector best practice in governance and workplace culture. A key challenge for the VI in 2020 was ensuring an effective OH&S response to the impacts of COVID-19.

### 4.4.1 OH&S response to COVID-19

The VI has reported that working-from-home and other flexible work arrangements had been less common given the need for strict security of information.<sup>76</sup> However, due to COVID-19, from March 2020 all VI staff began working from home and a Working from Home policy was launched on 6 April 2020.<sup>77</sup> The VI's approach to OH&S issues emphasised staff and community wellbeing and safety, ensuring the secure handling of information and maintaining productive and efficient work practices as far as practicable under challenging conditions.<sup>78</sup>

<sup>72</sup> VI, *Integrity Response Guidelines*, June 2020, pp. 3, 7, 9 and Appendix C, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 21 February 2021; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 5, 16.

<sup>73</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 5, 16; VI, *Integrity Response Guidelines*, June 2020, p. 9 and Appendix D, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 21 February 2021.

<sup>74</sup> VI, *Integrity Response Guidelines*, June 2020, pp. 7–9 and Appendix D, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 21 February 2021.

<sup>75</sup> VI, *Annual report 2019–20*, Melbourne, 2020, pp. 5, 16; VI, *Integrity Response Guidelines*, June 2020, pp. 7–9 and Appendix D, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 21 February 2021. See also *VI Act 2011* (Vic) s 78(5)–(6).

<sup>76</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 78.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.



## 4.5 Accountability

The VI is accountable to two Victorian parliamentary committees: the IOC and the Public Accounts and Estimates Committee (PAEC).<sup>79</sup> PAEC monitors and reviews the VI's performance of its duties and functions, and examines its reports, in respect of VAGO officers.<sup>80</sup> The IOC monitors and reviews the performance of the VI.<sup>81</sup> Since PAEC, rather than the IOC, is authorised to monitor and review the performance of the VI with respect to VAGO, the following account only addresses the VI's accountability to the IOC.

In general terms, the IOC has the following oversight functions with respect to the VI:

- monitoring and reviewing 'the performance of the duties and functions' of the VI (other than those with respect to VAGO officers)<sup>82</sup>
- reporting 'to both Houses of Parliament on any matter connected with the performance' of those duties and functions (other than those with respect to VAGO officers)<sup>83</sup>
- examining any reports made by the VI to the IOC or the Parliament (other than reports with respect to VAGO officers)<sup>84</sup>
- considering 'any proposed appointment of an Inspector under' s 18 of the *VI Act 2011* (Vic) (including veto power)<sup>85</sup>
- receiving, assessing and determining PIDs 'about conduct by or in the Victorian Inspectorate', and engaging an independent person to investigate public interest complaints<sup>86</sup>
- (from 1 July 2020) annually reviewing the VI's budget and annual plan, including the power to give feedback in relation to a draft annual plan<sup>87</sup>
- (from 1 July 2020) engaging an independent auditor to carry out a performance audit of the VI at least once every four years.<sup>88</sup>

### 4.5.1 Regular, ongoing monitoring and review of the VI

The IOC engages in regular, ongoing monitoring and review of the VI. This oversight includes engagement of the Chair and Committee with the Inspector and senior

<sup>79</sup> VI, *Annual report 2018–19*, Melbourne, 2019, p. 14; *PC Act 2003* (Vic).

<sup>80</sup> VI, *Annual report 2018–19*, Melbourne, 2019, p. 14; *PC Act 2003* (Vic) s 14(1)(ab)–(ad).

<sup>81</sup> VI, *Annual report 2018–19*, Melbourne, 2019, p. 14; *PC Act 2003* (Vic) s 7(1)(f).

<sup>82</sup> *PC Act 2003* (Vic) s 7(1)(f).

<sup>83</sup> *PC Act 2003* (Vic) s 7(1)(g).

<sup>84</sup> *PC Act 2003* (Vic) s 7(1)(h). The *VI Act 2011* (Vic) s 91 and the *PID Act 2012* (Vic) s 68 also specify what must be included in VI annual reports.

<sup>85</sup> *PC Act 2003* (Vic) s 7(1)(i); *VI Act 2011* (Vic) s 19.

<sup>86</sup> *PC Act 2003* (Vic) s 7(1)(ia); *PID Act 2012* (Vic) s 56A.

<sup>87</sup> *VI Act 2011* (Vic) ss 90A–90C.

<sup>88</sup> *VI Act 2011* (Vic) ss 90D–90E.

staff, reviews of VI annual and other reports, and the attendance of the Inspector and senior staff at selected Committee meetings (for example, to provide briefings and answer questions). It also encompasses the conduct of hearings and undertaking of inquiries, requests for information and the consideration of any concerns over the VI's performance.

In order to maintain the independence of the VI, the IOC is prohibited from investigating, reviewing or challenging VI investigative decisions, complaint determinations, findings and recommendations.<sup>89</sup> However, from time to time the IOC receives complaints about the VI. The IOC's approach is to consider whether a complaint raises any systemic issues that bear on the VI's performance (for example, the professional and timely handling of complaints) and therefore comes within the IOC's broad monitoring and review function.<sup>90</sup> The IOC can then raise any concerns with the VI and, if necessary, seek further information, explanations or assurances. It can also make informal and formal recommendations to the VI. During 2019/20, the Committee received 5 complaints within its jurisdiction and finalised 6 (including one from 2018/19). For details, see Table 4.4.

**Table 4.4** Complaints about the VI received by the IOC 2019/20

Within jurisdiction	5
Finalised	6 <sup>a</sup>
Referred to another agency	1
Closed, no action taken	4
Monitored	1
Open at end of 2019/20	1

a. Includes 1 complaint from 2018/19.

Source: IOC data.

## 4.6 Conclusion

The VI has been able to maintain its oversight functions despite challenges presented by COVID-19 since 2020. The Committee notes, however, that complaint handling, reviews of coercive power notifications and agency site inspections were all affected by the impacts of the pandemic and the constraints of public health regulations and directions, leading to delays. Nevertheless, the VI adapted methodically in the face of these challenges, complied with the *COVID-19 Omnibus Regulations* and is committed to completing any delayed oversight activities as soon as practicable.

Looking to the future, the Committee encourages the VI to review its policies, procedures and systems for remote working and make any necessary improvements for its operation during the current pandemic. Along with improvements to its telephony

<sup>89</sup> VI, *Annual report 2018–19*, Melbourne, 2019, p. 14; *PC Act 2003 (Vic)* s 7(2).

<sup>90</sup> *PC Act 2003 (Vic)* s 7(1)(f).

system, and the secure transfer of information from agencies and relevant databases, this will help ensure that the VI can operate remotely with greater confidence and efficiency.

Despite challenges during 2019/20, the VI can count among its accomplishments the enhancement of its working relationships with IBAC, OVIC and the VO; the development of its Integrity Response Guidelines; and agency improvements in record-keeping regarding complaints about police, treatment of witnesses and persons of interest, and timeliness.



# 5 Victorian Ombudsman

## 5.1 Introduction

The Victorian Ombudsman (VO) is an independent officer of the Parliament of Victoria appointed under s 3 of the *Ombudsman Act 1973* (Vic) to enquire into or investigate complaints about the administrative actions of Victorian government authorities. The VO's jurisdiction includes the actions of government departments, statutory bodies, local governments and private entities performing functions on behalf of government.<sup>1</sup>

The Ombudsman can conduct enquiries or investigations in response to the receipt of a complaint<sup>2</sup> or use its 'own motion' powers.<sup>3</sup> It *must* investigate a public interest complaint<sup>4</sup> and *may* investigate a 'complaint' or 'notification', as defined in the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), that has been referred by the Independent Broad-based Anti-corruption Commission (IBAC).<sup>5</sup> The Ombudsman must also investigate matters referred by the Legislative Assembly, Legislative Council or a joint committee of both Houses of Parliament, other than those which concern a judicial proceeding.<sup>6</sup>

The Victorian Ombudsman is Ms Deborah Glass OBE. She was appointed in March 2014 and is supported by a Deputy Ombudsman, Ms Megan Philpot, and 104 staff (96.96 full-time equivalent).<sup>7</sup>

The VO reported having a busy and productive year but, similar to most workplaces, was significantly impacted affected by COVID-19. This necessitated a move to remote working arrangements in the latter half of 2019/20. The Ombudsman recorded the second-highest number of complaints ever received,<sup>8</sup> with the number of public interest disclosures (PIDs) referred by IBAC also up 96% since 2017/18.<sup>9</sup>

In addition, new statutory functions relating to education and training, alternative dispute resolution and the investigation of publicly funded bodies commenced from

1 *Ombudsman Act 1973* (Vic) s 13; Victorian Ombudsman (VO), *Annual report 2020*, Melbourne, 2020, p. 13. See also Column 1 of Schedule 1 for a list of the specified entities that fall under the definition of an 'authority' in s 2 of the Act.

2 *Ombudsman Act 1973* (Vic) s 15B.

3 *Ombudsman Act 1973* (Vic) s 16A.

4 *Ombudsman Act 1973* (Vic) s 15C, subject to the exceptions in ss 15D and 15E.

5 *Ombudsman Act 1973* (Vic) ss 15B, 16C–16D; *IBAC Act 2011* (Vic) s 73.

6 *Ombudsman Act 1973* (Vic) s 16.

7 VO, *Annual report 2020*, Melbourne, 2020, pp. 84, 86; VO, *Victorian Ombudsman*, <<https://www.ombudsman.vic.gov.au/about-us/victorian-ombudsman>> accessed 6 November 2021.

8 VO, *Annual report 2020*, Melbourne, 2020, p. 16.

9 *Ibid.*, p. 62.

1 January 2020, following the enactment of the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic).<sup>10</sup>

The Ombudsman also tabled its first annual plan, which was developed in consultation with the Integrity and Oversight Committee (IOC).<sup>11</sup>

This chapter reviews the VO's performance in 2019/20 in relation to complaint handling, investigations and oversight; public information and education; governance and workplace; and accountability.

## 5.2 Complaint handling, investigations and oversight

### 5.2.1 Overview

Much of the Ombudsman's work is dedicated to receiving, investigating and resolving complaints about the administrative decisions of Victorian statutory bodies, such as government departments and local councils, and bodies receiving public funding to provide services on behalf of the State.<sup>12</sup>

The VO reported that its phone lines, which were temporarily closed from 17 March to 29 May 2020 due to COVID-19, only re-opened 'once measures were put in place to ensure staff felt safe to take phone calls while working remotely'.<sup>13</sup> The Ombudsman later clarified that its phone service was diverted to voicemail during this period, with the prisoner line diverted one week later, and re-opened on 11 May 2020.<sup>14</sup> Further, complainants were always able to submit their complaints via email, voicemail or the online complaints form.<sup>15</sup>

Even with the temporary closure of its phone lines, the VO still received 16,072 complaints and 45,165 contacts during 2019/20, compared with 17,342 complaints and 43,246 contacts in 2018/19 (see Figure 5.1).<sup>16</sup> The Ombudsman explained that the lower number of complaints during 2019/20 might be attributable to

... Victorians focusing on more immediate concerns once unprecedented restrictions were announced, and government agencies/councils taking less enforcement action that would result in complaints to our office.<sup>17</sup>

<sup>10</sup> *Ombudsman Act 1973* (Vic) s 13AA(1)(b) (education and training); pt IIIAC (alternative dispute resolution); s 2(1) (amends the definition of 'authority' to include 'a public body' and inserts a new definition of 'public body'); s 2(2A) (expands the definition of 'public body' to include a body that is publicly funded to perform a public function).

<sup>11</sup> See VO, *Annual report 2020* (includes Annual Plan 2020–21), Melbourne, 2020, pp. 1, 8–9.

<sup>12</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 14.

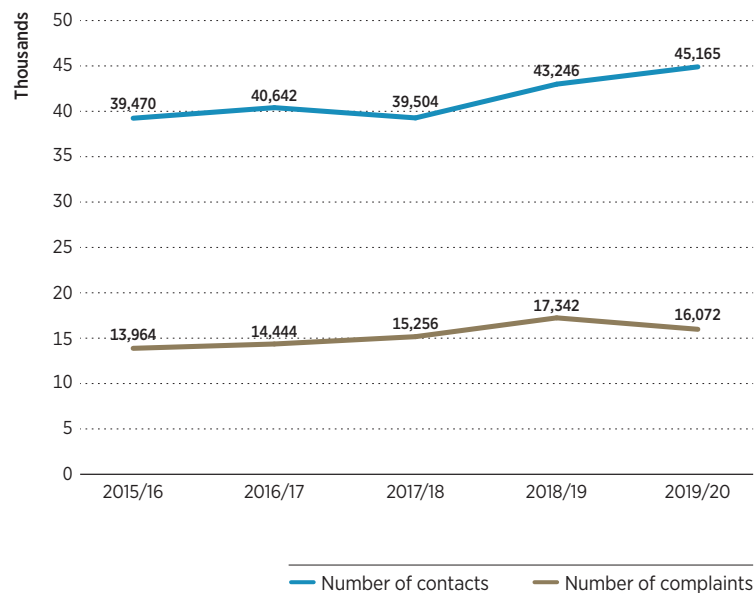
<sup>13</sup> VO, *Annual report 2020*, Melbourne, p. 17; VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 1.

<sup>14</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 1.

<sup>15</sup> Ibid.

<sup>16</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 16.

<sup>17</sup> Ibid., p. 17.

**Figure 5.1** Number of contacts and complaints received by the VO

Source: VO, *Annual report 2020*, Melbourne, 2020, p. 16.

## 5.2.2 Public interest disclosures

The VO's new responsibilities under the *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)') commenced on 1 January 2020.<sup>18</sup> As a 'general receiving entity',<sup>19</sup> the Ombudsman can receive PIDs about most public bodies and private individuals, other than Members of Parliament.<sup>20</sup>

The number of disclosures referred by IBAC to the VO has risen by 96% since 2017/18.<sup>21</sup> In the past year alone, the number of PIDs has increased by 30%.<sup>22</sup> Consequently, greater staffing levels, training and the identification of appropriate skills via recruitment have been required to handle the additional workload brought about by the increase in the number of PIDs.<sup>23</sup>

The Ombudsman has stated that funding shortages have meant that her office has had to take a more limited, oversight, role, referring more investigations (or parts thereof) back to the relevant authorities for action, rather than conducting its own investigations.<sup>24</sup> Given its legislative mandate on PIDs, the VO will redirect resourcing

<sup>18</sup> Ibid., p. 60.

<sup>19</sup> Ibid.

<sup>20</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 60; *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)') pt 2, div 2.

<sup>21</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 62; VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 2.

<sup>22</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 62; VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 2.

<sup>23</sup> Ibid., p. 1.

<sup>24</sup> Ibid.

to meet the increased demand in this area.<sup>25</sup> However, in the VO's view this comes at a cost to the performance of the Ombudsman's other statutory functions.<sup>26</sup>

### 5.2.3 Output performance measures

The VO had five Budget Paper Number 3 (BP3), or output performance, measures for 2019/20.<sup>27</sup> Consistent with previous years, the timeliness measure requiring complaints to be resolved within 30 calendar days of receipt was the only performance measure not met (see Table 5.1 below).<sup>28</sup>

The Ombudsman reported that its performance in this area was, understandably, impacted by COVID-19, noting that '[t]he trade-off for maintaining an accessible, responsive and unbureaucratic service means that some cases take longer to deal with'.<sup>29</sup> The VO's approach to complaints resolution was therefore more accommodating during this period, taking into account 'the pressure State Government agencies and departments are facing in their response to COVID-19'.<sup>30</sup> Doubts over the state of the economy amidst the pandemic also led to an increase in non-jurisdictional contacts and, consequently, a greater consumption of the VO's resources.<sup>31</sup>

**Table 5.1 VO output performance measures for 2018/19 and 2019/20**

Performance measure	2018/19 target	2018/19 actual	2019/20 target	2019/20 actual
Jurisdictional complaints finalised	14,000	17,025	14,000	16,152
Proportion of jurisdictional complaints independently investigated by the VO	25%	30%	25	28
Proportion of jurisdictional complaints where the original outcome is set aside by a review undertaken in accordance with the VO's internal review policy	<1.5%	0.07%	<1.5%	0.1
Recommendations accepted by agencies upon completion of investigations	95%	98%	95	99
Complaints resolved within 30 calendar days of receipt	95%	89%	95	89.6

Source: VO, *Annual report 2020*, Melbourne, 2020, p. 95; VO, *Annual report 2019*, Melbourne, 2019, p. 77.

<sup>25</sup> Ibid., p. 2.

<sup>26</sup> Ibid.

<sup>27</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 95.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.



## 5.2.4 VO recommendations

Part of the VO's remit under the *Ombudsman Act 1973* (Vic) is to make recommendations as it thinks fit following the conduct of an investigation.<sup>32</sup>

The VO reports on the progress of the implementation of its recommendations every two years.<sup>33</sup> On 30 June 2020, the Ombudsman tabled her third such report on recommendations.<sup>34</sup>

Recommendations that were made and acted on included:

- that the Minister for Tourism and Major Events publicly apologise to the victims impacted by the child sexual abuse at Puffing Billy during the 1960s and 1980s<sup>35</sup>
- that, in consultation with State Trustees, the Department of Treasury and Finance and the Department of Health and Human Services (as it was then known) determine the future funding required to ensure State Trustees meets its obligations under the *Guardianship and Administration Act 2019* (Vic) and *Powers of Attorney Act 2014* (Vic)<sup>36</sup>
- that the Wodonga City Council only recover reasonable costs associated with the collection and disposal of refuse, thereby reducing the waste management service charge payable by ratepayers.<sup>37</sup>

The VO reported that 99% of the 83 recommendations that were made to 'public organisations' in 2019/20 were accepted in full or in part.<sup>38</sup> The recommendations that were rejected, or accepted only in part, related to:

- the designation and appropriate resourcing of the Ombudsman as the National Preventive Mechanism under the United Nations's Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- the carrying out of 'a system-wide review' into how young people are managed within the adult prison system, with a view to transferring them to a dedicated facility.<sup>39</sup>

<sup>32</sup> *Ombudsman Act 1973* (Vic) s 23.

<sup>33</sup> VO, *Ombudsman's recommendations—third report*, Melbourne, 2020, p. 8.

<sup>34</sup> *Ibid.*, p. 1.

<sup>35</sup> *Ibid.*, p. 86.

<sup>36</sup> *Ibid.*, p. 53.

<sup>37</sup> *Ibid.*, p. 67.

<sup>38</sup> VO, *Annual report 2020*, Melbourne, p. 20.

<sup>39</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 3.

## 5.3 Public information and education

### 5.3.1 Public sector training

Changes to the *Ombudsman Act 1973* (Vic) in 2019, which took effect on 1 January 2020, enshrined the VO's education function as a statutory obligation.<sup>40</sup>

The Ombudsman currently offers three workshops: *Good complaint handling*, *Dealing with challenging behaviours* and *Conflict of interest risks: lessons from the Victorian Ombudsman*.<sup>41</sup> In 2019/20, the VO ran 37 workshops, nine fewer than 2018/19, due to cancellations caused by the COVID-19 pandemic.<sup>42</sup>

The VO noted that its training courses had been well received.<sup>43</sup> In 2019/20, VO delivered the following workshops: seven workshops were held at the VO's office; three workshops in regional areas (Horsham and Shepparton); one remote workshop; and 26 workshops tailored to the needs of particular workplaces and delivered in-house.<sup>44</sup> The VO's workshops and bespoke training received positive evaluations for all three courses, with 90% of participants indicating they 'agreed or strongly agreed that the "content is useful" and the "facilitator is engaging"'.<sup>45</sup> This is comparable to results achieved in 2018/19.<sup>46</sup>

Like most organisations, the VO has had to adapt its public sector training to accommodate remote working brought about by COVID-19.<sup>47</sup> It is still in the midst of transitioning all of its education and training to online delivery mode.<sup>48</sup> The VO hopes to be able to offer a combination of online and face-to-face delivery to enable public sector staff, particularly those in regional Victoria, to have greater choice in program content.<sup>49</sup> Face-to-face training in regional areas will be delivered on request, subject to COVID-19 safety restrictions.<sup>50</sup>

While modifying the workshops to be delivered online, the VO delivered seven free 30-minute webinars towards the end of June 2020 to maintain public sector engagement.<sup>51</sup> One webinar was delivered to a public sector body while the other

<sup>40</sup> *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic); *Ombudsman Act 1973* (Vic) s 13AA(1).

<sup>41</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 80.

<sup>42</sup> Ibid.

<sup>43</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 81; Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 15.

<sup>44</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 80.

<sup>45</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 81; VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 5.

<sup>46</sup> VO, *Annual report 2019*, Melbourne, 2019, p. 64.

<sup>47</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 81.

<sup>48</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 5.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 5; VO, *Annual report 2020*, Melbourne, 2019, p. 81.

six were delivered to a 'general audience'.<sup>52</sup> These 'short, good-practice webinars'<sup>53</sup> received a satisfaction rating of 85.4%.<sup>54</sup> In the VO's 2020/21 annual plan, the VO reported that subject to additional funding, it intends to 'invest in interactive online education and prevention workshop content' and 'conduct a public sector forum on maladministration'.<sup>55</sup>

The VO did not have a performance measure relating to education in 2019/20. However, new performance measures will be introduced in 2020/21 assessing the number of participants registered to attend VO education and training initiatives and the satisfaction ratings of public sector education programs delivered by the Ombudsman.<sup>56</sup>

The VO provides good practice guides on: *Dealing with challenging behaviour*, *Managing complaints involving human rights*, *Apologies* and *Handling complaints*.<sup>57</sup> In addition, the VO published the first '[q]uarterly online newsletter promoting best practice complaints handling and prevention of maladministration'<sup>58</sup> in September 2020;<sup>59</sup> is seeking to develop a *Complaint handling guide for local government*; and, subject to COVID-19 restrictions, will provide 'training and workshops to support improvements in public sector administration'.<sup>60</sup>

### 5.3.2 Engagement efforts

One of the VO's commitments, as part of its strategic focus on engagement, is to 'educate Victorians on the role of the Ombudsman, how to complain and what they should expect from their dealings with the public sector'.<sup>61</sup> The VO does this by participating in talkback radio on ABC *Statewide Drive*, sponsoring and participating in Law Week, holding a stall at the Midsumma Carnival and participating in Pride March, as well as participating in discussions and presentations to community organisations, government bodies, community legal centres, students and financial counsellors.<sup>62</sup> These engagement activities are similar to those undertaken by the VO in 2018/19.<sup>63</sup>

<sup>52</sup> Ibid.

<sup>53</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 15.

<sup>54</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 5.

<sup>55</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 9.

<sup>56</sup> Department of Treasury and Finance, *Victorian Budget 2020/21, Budget Paper No. 3: service delivery*, Melbourne, 2020, pp. 396–397.

<sup>57</sup> VO, *Good practice guides*, n.d., <<https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides>> accessed 16 February 2021. See also VO, *Good practice guide to dealing with challenging behaviour*, Melbourne, May 2018; VO, *Good practice guide: managing complaints involving human rights*, Melbourne, May 2017; VO, *Apologies*, Melbourne, Melbourne, April 2017; VO, *Complaints: good practice guide for public sector agencies*, Melbourne, September 2016.

<sup>58</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 9.

<sup>59</sup> Ibid., pp. 9, 144.

<sup>60</sup> Ibid., p. 9.

<sup>61</sup> Ibid., p. 15.

<sup>62</sup> Ibid., p. 76.

<sup>63</sup> VO, *Annual report 2019*, Melbourne, 2019, p. 60.

In 2018/19, the Ombudsman also held a regional hub in Geelong to meet with community members and discuss their complaints.<sup>64</sup> The VO has advised that, while it recognises the importance of this outreach activity, the hub failed to ‘generate sufficient numbers of complaints’ to justify it being set up elsewhere in regional Victoria.<sup>65</sup>

The Ombudsman plans to augment its service in regional areas by teaming up with community legal centres.<sup>66</sup> While its initial engagement plan was delayed by COVID-19, the VO is seeking to revisit its engagement with community legal centres and consider how they can ‘provide [its] ... services at a much broader level’.<sup>67</sup> In particular, the VO plans, subject to sufficient funding, to ‘explore partnering with a Community Legal Centre to develop greater awareness of the complaints that can be referred to the Ombudsman’.<sup>68</sup>

A key part of the Ombudsman’s outreach strategy is to make its Office more accessible to a diverse range of communities. During the IOC’s public hearing on 15 March 2021, the VO gave evidence that it is aiming to broaden its contact with communities across regional Victoria and those for which the VO’s services are most vital.<sup>69</sup> Fact sheets and other resources in languages other than English have been particularly effective in engaging with vulnerable communities during COVID-19.<sup>70</sup>

Following a positive ‘mystery shopper’ evaluation by Scope<sup>71</sup> in 2018/19, the VO undertook a number of actions to improve its accessibility and be recognised with Scope’s Communication Access Symbol.<sup>72</sup> This included incorporating an online disability awareness module into its staff induction, improving its online complaint form and developing a *Communication booklet* to assist the public to better engage with the Ombudsman.<sup>73</sup>

To this end, the VO has continued the implementation of its *Accessibility Action Plan 2017–2020*, which aims to lower barriers for persons with a disability and provide them with opportunities to engage with the Ombudsman.<sup>74</sup> It is in the process of developing a new *Accessibility Action Plan* for 2021–2024.<sup>75</sup>

64 Ibid.

65 VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 6.

66 Ibid., p. 5.

67 Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 19.

68 VO, *Annual report 2020*, Melbourne, 2020, p. 9.

69 Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 15.

70 VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 5.

71 Ibid., p. 6. Scope is one of Australia’s largest not-for-profit disability providers: Scope, *Scope approach to services*, n.d., <<https://www.scopeaust.org.au/about-scope/the-scope-approach>> accessed 20 May 2021.

72 VO, *Annual report 2020*, Melbourne, 2020, p. 78. A place or service that displays the Communication Access Symbol is ‘communication accessible’. This means staff are ‘welcoming and treat everyone with dignity and respect’; staff are ‘able to communicate successfully with people with communication difficulties’; and ‘[c]ommunication tools are available’ to promote effective communication: Scope, *Communication access*, n.d., <<https://www.scopeaust.org.au/services-for-organisations/access-and-inclusion-for-businesses/communication-access>> accessed 25 May 2021.

73 VO, *Annual report 2020*, Melbourne, 2020, p. 78.

74 Ibid.

75 Ibid.

The VO's engagement with Aboriginal and Torres Strait Islander peoples has also been solidified through the finalisation of its *Reflect Reconciliation Action Plan* (RAP) and the development of its *Innovate RAP*.<sup>76</sup> Of particular note, the VO invested in staff training and cultural awareness programs, and worked with the Victorian Aboriginal Community Controlled Health Organisation to develop accessible and culturally safe content encouraging Aboriginal and Torres Strait Islander peoples to engage with the Ombudsman's complaint service.<sup>77</sup>

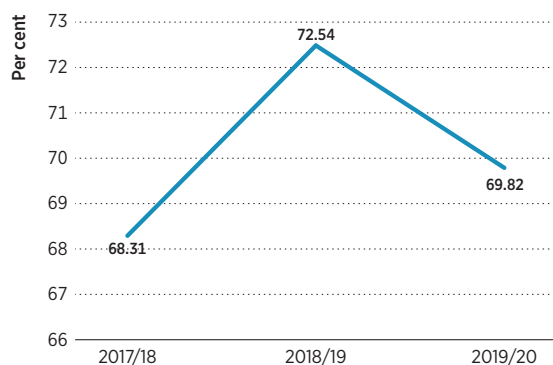
The Ombudsman serves all Victorians, and, during these uncertain times, it is important that it continues to reach out to the most vulnerable communities and those living or working in regional Victoria. Accordingly, the Committee recommends that the VO prioritise its outreach work to these groups to increase the awareness of, and accessibility to, its services.

**RECOMMENDATION 2:** That the Victorian Ombudsman prioritise its outreach efforts to the most vulnerable communities and to people in regional Victoria.

### 5.3.3 Public awareness and understanding

While enquiries received by the VO increased overall, the number of jurisdictional complaints decreased from 72.54% in 2018/19 to 69.82% in 2019/20.<sup>78</sup> The VO notes the influence of COVID-19 as a potential contributing factor to an increase in the number of out-of-jurisdiction complaints.<sup>79</sup>

**Figure 5.2** Percentage of complaints received within the VO's jurisdiction



Source: VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 4; VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 2; VO, *Annual report 2020*, Melbourne, 2020, p. 18.

<sup>76</sup> Ibid., p. 79.

<sup>77</sup> Ibid.

<sup>78</sup> VO, *Annual report 2020*, Melbourne, 2020, pp. 4, 18; VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 4; Mr Sean McNulty, Business Insights Lead, VO, correspondence, 20 May 2021.

<sup>79</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 95.

The VO's reach across Facebook, LinkedIn, YouTube and Twitter increased during 2019/20, with the VO experiencing a 33% growth in social media followers. In addition, the VO's website received a 20% increase in visitors after the launch of its new website in February 2020.<sup>80</sup>

The VO redeveloped its website during 2019/20 to meet the Web Content Accessibility Guidelines Version 2.1 AA Standard. This was achieved by converting PDFs into an accessible format, transcribing and captioning videos, and redrafting content to correspond with an eighth-grade reading level.<sup>81</sup> In November 2020, Vision Australia's Digital Access team provided a Statement of Accessibility for the VO's website, formally recognising the website's accessibility credentials.<sup>82</sup>

The Ombudsman is implementing these digital changes as part of the 'Better Complaints Experience' project and in response to a complainant satisfaction survey undertaken in 2019/20.<sup>83</sup> The VO has clarified that the survey assessed customer satisfaction with its services, 'not their satisfaction with the outcome' of the VO's decisions.<sup>84</sup> Further, it is noted that the survey results suggest that a complainant is less likely to consider the Ombudsman's processes and decisions as 'fair' if the decision does not result in a desired outcome for the complainant.<sup>85</sup>

The decrease in jurisdictional complaints, despite an increase in enquiries overall and a growing social media and website presence, suggests that educating members of the public on the VO's jurisdiction will remain an ongoing challenge for the VO, as noted in the IOC's review of the VO's performance in 2017/18–18/19.<sup>86</sup>

The survey revealed 25% of complainants contacted the VO initially via its website and that 47% of complainants were either 'satisfied' or 'very satisfied' with the service provided by the VO through online channels.<sup>87</sup> The VO has indicated that one of its current priorities is to provide an 'equally good response whether online or on the phone, while managing complainant expectations'.<sup>88</sup> The Ombudsman also noted that the COVID-19 pandemic has highlighted the challenge of ensuring that public sector bodies and the VO's office remain accessible to the community, particularly as not everyone has reliable internet access and can complete online forms.<sup>89</sup>

The Ombudsman received a rating of 56% for the 'overall fairness' of its complaints process.<sup>90</sup> The VO has stated that it is committed to adopting 'best practice continuous

<sup>80</sup> Ibid., p. 76.

<sup>81</sup> Ibid., p. 78.

<sup>82</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 6.

<sup>83</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 89.

<sup>84</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 2.

<sup>85</sup> Ibid.

<sup>86</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 115–118.

<sup>87</sup> VO, *Annual report 2020*, Melbourne, 2020, pp. 89–90.

<sup>88</sup> Ibid., p. 7.

<sup>89</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 15 March 2021, *Transcript of evidence*, p. 18.

<sup>90</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 90.

improvement processes' and will continue to use 'digital technologies' to improve its performance by:

- adding additional functionality to its website to enable complainants to receive 'real-time' responses to common questions or submit complaints via a live-chat facility
- implementing SMS updates so complainants can be notified on the progress of their complaints
- introducing a greater level of personalisation in the complainant's interactions with the VO after their complaint has been submitted by having the VO advise complainants of its complaints process via phone.<sup>91</sup>

The VO has previously observed that public awareness of its office seems to increase when it regularly tables investigation reports. The VO's reports are often accompanied by media interest, which encourages community members to make complaints.<sup>92</sup> In 2019/20, the VO tabled 10 reports in Parliament, the same number as the previous year.

**Table 5.2 VO reports tabled in Parliament in 2019/20**

Title	Instigated by	Date tabled
<i>Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions</i>	Own motion	8 July 2019
<i>OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people</i>	Own motion	5 September 2019
<i>Revisiting councils and complaints</i>	Own motion	7 October 2019
<i>Investigation into improper conduct by a Council employee at the Mildura Cemetery Trust</i>	Protected disclosure complaint	12 November 2019
<i>WorkSafe2: follow-up investigation into the management of complex workers compensation claims</i>	Own motion	3 December 2019
<i>Investigation of matters referred from the Legislative Assembly on 8 August 2018</i>	Parliament of Victoria	12 December 2019
<i>Investigation into three councils' outsourcing of parking fine internal reviews</i>	Own motion	25 February 2020
<i>Investigation of alleged improper conduct by Executive Officers at Ballarat City Council</i>	Protected disclosure complaint	14 May 2020
<i>Investigation into allegations of nepotism in government schools</i>	Protected disclosure complaint	20 May 2020
<i>Ombudsman's recommendations—third report</i>	—	30 June 2020

Source: VO, *Annual report 2020*, Melbourne, 2020, pp. 37–39, 42–43, 45–46, 52–53, 58–59, 64–66, 88.

<sup>91</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 2.

<sup>92</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 116.

## 5.4 Governance and workplace

### 5.4.1 The impact of COVID-19

As mentioned earlier, the VO's phone lines were temporarily closed for two months while its staff transitioned to working remotely from home.<sup>93</sup>

To ensure staff felt safe to take phone calls while working remotely, the VO implemented a number of measures.<sup>94</sup> These included:

- providing staff with a suitable workspace
- upgrading its technology
- ensuring Employee Assistance Provider (EAP) services could be accessed remotely
- increasing the frequency of 'virtual meetings' to facilitate greater collaboration amongst staff and enable discussion of 'complex and challenging' cases
- the development and rolling out of monthly 'health and wellbeing workshops'
- updating its recorded-voice message to emphasise the importance of maintaining respectful dealings between VO staff and members of the public.<sup>95</sup>

The VO was also supportive of flexible working arrangements and allowed staff to take additional leave as needed.<sup>96</sup> Prior to COVID-19, 25 Ombudsman staff, representing 21% of the workforce, were approved for flexible working arrangements.<sup>97</sup> During COVID-19, 20 staff, or 19% of the workforce, sought and were granted permission to work remotely, as distinct from staff who worked from home in line with the Victorian Government's advice.<sup>98</sup>

### 5.4.2 Organisational health

According to the Victorian Public Sector Commission's 2020 People Matter Survey, VO staff experienced greater levels of workload-related stress, recording a result of 64%, compared with the public sector average of 46%.<sup>99</sup> However, staff-engagement levels rose by 2.6%, from 76% in 2018/19 to 78% in 2019/20. This exceeded the score of the VO's comparator agencies by 10.5%.<sup>100</sup>

<sup>93</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 17.

<sup>94</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 1.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., pp. 1, 7.

<sup>97</sup> Ibid., p. 7.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.



The number of Occupational Health and Safety (OH&S) ‘incidents’ reported by staff increased from two in 2018/19 to eight in 2019/20.<sup>101</sup>

VO staff also had access to a range of OH&S and organisational wellbeing activities throughout the year. These included:

- reimbursement initiative for prescription glasses
- on-site influenza vaccinations
- ergonomic assessments
- First Aid Officer training
- 2019 R U Ok Day? activities
- Mental Health First Aid Officer training
- Mental Health Peer Support Officers
- Mental Health and Wellbeing employee workshops
- Mental Health Week activities
- access to a 24/7 confidential counselling service provided via external professionals
- Employee Assistance Program onsite service.<sup>102</sup>

## 5.5 Accountability

### 5.5.1 External oversight

#### IOC

The VO is accountable to Parliament through the IOC. The IOC’s functions in respect of the VO are to—

- monitor and review the performance of the VO’s duties and functions
- report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the VO that requires the attention of the Parliament
- examine any reports by the VO that are laid before a House of the Parliament.<sup>103</sup>

The IOC oversees complaints about the VO under its general function to monitor and review performance.<sup>104</sup> However, the Committee is prohibited from investigating a complaint; reviewing a decision to not investigate a complaint; reviewing any findings,

<sup>101</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 97 (‘Incidents includes injuries and near misses.’).

<sup>102</sup> *Ibid.*, p. 96.

<sup>103</sup> *Ombudsman Act 1973* (Vic) s 26H(1).

<sup>104</sup> *PC Act 2003* (Vic) s 7(1)(n); *Ombudsman Act 1973* (Vic) s 26H(1).

recommendations, determinations or other decisions related to a complaint; and disclosing any information which may prejudice the work of the VO, IBAC or the VI or contravene a secrecy requirement.<sup>105</sup>

In 2019/20, the Committee received four complaints about the VO within jurisdiction and finalised four complaints (two of which were received in 2018/19).<sup>106</sup> One matter was dismissed and the other remained open as of 30 June 2021.<sup>107</sup>

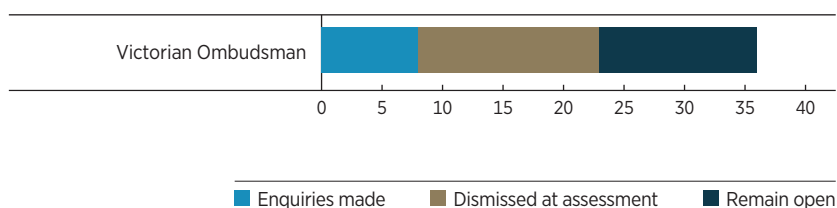
Following a process of consultation with the Committee, the Ombudsman tabled in Parliament its annual plan for 2020/21 on 2 December 2020, along with its 2019/20 annual report.<sup>108</sup>

### Victorian Inspectorate

The Victorian Inspectorate (VI) monitors the Ombudsman's exercise of coercive powers and compliance with procedural fairness, and can receive and investigate complaints about the conduct of VO officers.<sup>109</sup>

In 2019/20, the VI received 36 complaints about the VO or VO officers.<sup>110</sup> Enquiries were made by the VI in 8 of the complaints and 15 complaints were dismissed at assessment.<sup>111</sup> As at 30 June 2020, 13 complaints remained open.<sup>112</sup>

**Figure 5.3** VI outcomes for complaints received about the VO—2019/20



Source: VI, *Annual report 2019–20*, Melbourne, 2019, p. 32.

In June 2019, the VI released an integrity report on the interviewing practices of the VO to assess whether witnesses were being provided with 'sufficient information to make an informed decision about their co-operation' in Ombudsman interviews.<sup>113</sup> The VI made a number of recommendations regarding the provision of information during the VO's initial telephone contact with, and in written material sent to, witnesses.<sup>114</sup>

<sup>105</sup> *Ombudsman Act 1973* (Vic) s 26H(2).

<sup>106</sup> IOC, *Complaints data—2019/20*, Melbourne, 2020.

<sup>107</sup> *Ibid.*

<sup>108</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 1.

<sup>109</sup> *Victorian Inspectorate Act 2011* (Vic) s 11(4).

<sup>110</sup> VI, *Annual report 2019–20*, Melbourne, 2020, p. 32.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> VI, *Monitoring Project on Victorian Ombudsman interviews*, Melbourne, June 2019, p. 1.

<sup>114</sup> *Ibid.*, p. 21.

Since the report was published, the VO has improved its processes in relation to voluntary interviews<sup>115</sup> and compulsory interviews other than by summons,<sup>116</sup> by setting out clear guidance in VO telephone scripts and other written materials:

- that witnesses are not required to attend the interview
- the witnesses' 'rights and obligations in attending an interview' (including whether there is a requirement to answer questions and when an interview may be terminated).<sup>117</sup>

Ombudsman staff have also been provided with guidance on the type of information to provide a potential witness during the first telephone interaction.<sup>118</sup>

The VI was consulted on the revised guidance material before it was finalised by the VO.<sup>119</sup>

## 5.5.2 Internal oversight

The VO has an internal complaints process whereby a review is undertaken upon the receipt of a complaint about the merits of a VO decision or its service delivery.<sup>120</sup>

In 2019/20, 115 matters were reviewed, which was 42% more than the previous year.<sup>121</sup>

Of the 92 involving a merits review:

- the original decision was considered satisfactory in 84 of the cases
- the complaint was reconsidered, or further action was taken, in 8 cases.<sup>122</sup>

Of the 23 complaints about the VO's service delivery:

- service delivery was considered satisfactory in 15 of the cases
- further explanation was provided to the complainant or other actions (for example, an apology) were taken in 8 cases.<sup>123</sup>

<sup>115</sup> The appearance by a person before a VO officer other than a 'compulsory appearance'. Also known as a 'voluntary appearance' under s 2(1) of the *Ombudsman Act 1973* (Vic) (definition of 'voluntary appearance').

<sup>116</sup> The appearance by a person before a VO officer to voluntarily give evidence under oath or affirmation: VI, *Monitoring Project on Victorian Ombudsman interviews*, Melbourne, June 2019, p. 3.

<sup>117</sup> VO, Response to Integrity and Oversight Committee questions on notice, 29 March 2021, p. 3.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> VO, *Annual report 2020*, Melbourne, 2020, p. 88.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

## 5.6 Conclusion

COVID-19 has created a series of unprecedented challenges and uncertainty for public sector bodies and the public at large.

The Committee notes that, even with the temporary closure of its phone lines, the Ombudsman has received the second-highest-ever number of jurisdictional complaints during 2019/20 and a record number of contacts, up 4% from the previous year.<sup>124</sup>

The VO met all its BP3 performance indicators in 2019/20, with the exception of the timeliness indicator requiring complaints to be resolved within 30 calendar days of receipt.<sup>125</sup> The impact of COVID-19 was such that agencies were afforded more time to respond to the Ombudsman's enquiries.<sup>126</sup> The Committee agrees with the VO that an appropriate balance must be struck between maintaining an accessible and responsive service, and allowing sufficient time for matters to be resolved.

In the last year, 99% of the 83 recommendations made by the Ombudsman to public organisations were accepted in part or in full.<sup>127</sup> It is pleasing to see, and important for public accountability, that the implementation of VO's earlier recommendations continue to be monitored.

COVID-19 has exacerbated many of the challenges already faced by vulnerable communities and the regional population. For this reason, the Committee has recommended that the Ombudsman prioritise its outreach efforts to the most vulnerable communities and to people in regional Victoria.

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<sup>124</sup> Ibid., p. 16.

<sup>125</sup> Ibid., p. 95.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid., p. 20.

# 6 Conclusion

Victoria's integrity agencies, like all other organisations in the State, were affected by the onset of the COVID-19 pandemic. Processes and activities that would normally have been carried out face to face or on-site by integrity agencies had to be conducted in other ways. A whole range of functions were affected, from on-the-ground investigative operations, to on-site inspections, the exchange of information between stakeholders, the handling of complaints, the holding of hearings and the delivery of education and prevention programs. Each agency was, however, able to adapt to remote working conditions and ensure the lawful and secure exercise of their functions.

The public health emergency has also highlighted the need for agencies to have sound business continuity plans and occupational health and safety policies and practices, and readiness and flexibility in the face of technological change. The Committee acknowledges the adaptability and resilience of the integrity agencies and their staff during this pandemic.

## 6.1 IBAC

IBAC continues to produce high-quality public information as well as investigative, intelligence and research reports. In 2019/20, IBAC improved the accessibility of its website and made more translated resources available. Further, IBAC has begun to implement the Committee's recommendations from its preceding report<sup>1</sup> with regard to the agency's website, and monitoring and reporting on the progress of public sector body implementation of IBAC recommendations. IBAC has also accepted the Committee's recommendation from that report<sup>2</sup> that the agency publish in its annual reports the number of any complaints or notifications it has received about OVIC or the VO.

IBAC was, however, unable to meet its timeliness targets for assessment of complaints and notifications, attributing this shortfall to the impacts of COVID-19 and an increased burden with respect to public interest disclosures (whistleblower complaints). More positively, during the year IBAC was able to increase the number of reviews it completed of Victoria Police complaint investigations. However, it has not yet been able to put this improvement on a sustainable footing. Given that the agency refers the overwhelming proportion of police-related complaints to Victoria Police for investigation, it is even more important that IBAC increase its monitoring and review of these investigations.

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1 Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 14–15.

2 Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 4 February 2021; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, p. 123.

Concerns over workplace culture at IBAC came to the attention of the Committee during the year. The Committee has therefore recommended that IBAC review its OH&S strategies, policies and practices and report the findings to the Committee. The assurance of psychological safety in the workplace is not only vital for the health and wellbeing of staff but for the effective detection and safe reporting of workplace misconduct.

## 6.2 OVIC

A theme of OVIC's 2019/20 annual report was its relative success in adapting to the demands of the COVID-19 environment. While OVIC's capacity to deliver its education and training activities in person was naturally limited, it adapted by moving its face-to-face training courses online. It is commendable that OVIC was not only able to continue delivering its educational and guidance initiatives but actually increased the number delivered from the previous financial year. OVIC has maintained a reputation for high-quality educational services, as evidenced by a stakeholder survey conducted in 2019.

The Committee has previously expressed concern over the timeliness of OVIC's exercise of review and complaint-handling functions. Encouragingly, however, the agency has made significant progress in improving the timeliness of FOI reviews and the finalisation of FOI and privacy complaints. OVIC has demonstrated a commitment to further improvements in timeliness, and its emphasis on alternative dispute resolution has already helped it achieve substantial efficiencies.

## 6.3 VI

The VI's timely handling of complaints was disrupted significantly with the onset of the pandemic. The necessary security of its IT and telephony systems, combined with the impacts of remote work arrangements on a smaller agency, created a range of challenges for the VI. The agency was, however, able to adapt by developing a protocol for working remotely on encrypted files. Looking to the future, the Committee has encouraged the VI to review its policies, procedures and systems for remote working so that it can exercise its oversight functions remotely with greater confidence. Of note, the VI's oversight of, and engagement with, a range of integrity agencies led to a number of improvements in record-keeping in the police-complaints sphere, enhanced treatment of witnesses and persons of interest and timeliness. The VI's development of a set of systematic guidelines for its responses to the agencies it oversees has no doubt contributed to this progress.

## 6.4 VO

The VO continues to handle a large volume of contacts, complaints and public interest disclosures, even in the midst of the pandemic. The agency was able to meet all its Budget Paper Number 3 performance indicators during the year, with the exception of

the timeliness indicator requiring the resolution of complaints within 30 calendar days of receipt. The Committee agrees with the VO that, in this context, it is nevertheless important to ensure that sufficient time is allowed for the assessment and resolution of complex matters.

In terms of the VO's broader efforts to improve integrity and good governance in the public sector, it was pleasing not only that the agency continues to closely monitor—and report on—the implementation of its recommendations, but that such a high proportion of them were accepted in full or in part.

The pandemic has exacerbated the challenges already faced by vulnerable communities and individuals living or working in regional areas. For this reason, the Committee has recommended that the VO prioritise these populations in their outreach and engagement efforts.

The Committee looks forward to continuing to engage constructively with Victoria's integrity agencies as they seek to strengthen the transparency, accountability and integrity of the Victorian public sector.

**Adopted by the Integrity and Oversight Committee  
Parliament of Victoria, East Melbourne  
8 November 2021**





# Appendix A

## About the Inquiry

### A.1 Public hearings

#### Monday 15 March 2021

Via videoconference

Name	Position	Organisation
Mr Eamonn Moran PSM QC	Inspector	Victorian Inspectorate
Ms Kathryn Phillips	Director, Budget Independence and Strategy	Victorian Inspectorate
Ms Cathy Cato	Executive Director, Legal and Integrity	Victorian Inspectorate
Mr Sven Bluemmel	Information Commissioner	Office of the Victorian Information Commissioner
Ms Joanne Kummrow	Public Access Deputy Commissioner	Office of the Victorian Information Commissioner
Ms Rachel Dixon	Privacy and Data Protection Deputy Commissioner	Office of the Victorian Information Commissioner
Ms Deborah Glass OBE	Ombudsman	Victorian Ombudsman
Ms Megan Philpot	Deputy Ombudsman	Victorian Ombudsman
Dr Marija Maher	Chief Operating Officer	Victorian Ombudsman
Hon Robert Redlich AM QC	Commissioner	Independent Broad-based Anti-corruption Commission
Ms Marlo Baragwanath	Chief Executive Officer	Independent Broad-based Anti-corruption Commission
Mr Glenn Ockerby	Director, Corporate Services	Independent Broad-based Anti-corruption Commission





