



PARLIAMENT OF VICTORIA

**Independent Broad-based Anti-corruption
Commission Committee**

The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate—2016/17

Parliament of Victoria
Independent Broad-based Anti-corruption Commission Committee

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Committee functions

The IBAC Committee is constituted under section 12A of the *Parliamentary Committees Act 2003*.

1. The functions of the Committee are—
 - a. to monitor and review the performance of the duties and functions of the IBAC;
 - b. 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;
 - c. to examine any reports made by the IBAC;
 - d. to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - e. to carry out any other function conferred on the IBAC Committee by or under this Act or the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - f. to monitor and review the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO officers or Ombudsman officers;
 - 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 that require the attention of the Parliament, other than those in respect of VAGO officers or Ombudsman officers;
 - h. to examine any reports made by the Victorian Inspectorate, other than reports in respect of VAGO officers or Ombudsman officers;
 - i. to consider any proposed appointment of an Inspector and to exercise a power of veto in accordance with the *Victorian Inspectorate Act 2011*.
- 1A. Despite anything to the contrary in subsection (1), the IBAC Committee cannot—
 - a. 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 *Protected Disclosure Act 2012*, to be a protected disclosure complaint;
 - b. 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 protected disclosure complaint within the meaning of that Act;
 - c. 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 *Protected Disclosure Act 2012*, to be a protected disclosure complaint; or

- iii. a particular investigation conducted by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - ca. review any determination by the IBAC under section 26(3) of the *Protected Disclosure Act 2012*;
 - d. disclose any information relating to the performance of a function or the exercise of a power by the IBAC which may—
 - i. prejudice any criminal investigation or criminal proceedings; or
 - ii. prejudice any investigation being conducted by the IBAC; or
 - iii. contravene any secrecy or confidentiality provision in any relevant Act.
2. Despite anything to the contrary in subsection (1), the IBAC Committee cannot—
- a. investigate a matter relating to particular conduct the subject of any report made by the Victorian Inspectorate;
 - b. 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*;
 - c. 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*;
 - d. disclose any information relating to the performance of a function or exercise of a power by the Victorian Inspectorate which may —
 - i. prejudice any criminal investigation or criminal proceedings; or
 - ii. prejudice an investigation being conducted by the IBAC; or
 - iii. contravene any secrecy or confidentiality provision in any relevant Act.

Committee membership



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This report is available on the Committee's website.

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Chair's foreword

I am pleased to present the fifth report of the Parliament of Victoria's Independent Broad-based Anti-corruption Commission Committee.

The Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI) each have a vital role in helping to maintain and improve Victoria's integrity system. This system is essential to honest public administration, government and law enforcement. It is an essential check against corruption, abuse of power and privilege and other misconduct.

Established in 2012, the Committee has the responsibility of monitoring and reviewing the performance of IBAC and the VI. This year, the Committee has examined the annual reports of IBAC and the VI to gain a better understanding of their work throughout 2016/17, to make a general assessment of their performance and to identify improvements that should be made. In undertaking this oversight work, the Committee also sought and examined written responses regarding the annual reports from the IBAC Commissioner, Mr Stephen O'Bryan QC, and the Inspector, Mr Robin Brett QC. Further, the Committee requested additional statistical information and clarifications from IBAC. Finally, the Committee read a number of reports and other material referred to in the annual reports for IBAC and the VI.

This report gives an overview of the activities of IBAC and the VI during the year, including their achievements, and the challenges they faced, in their respective roles as anti-corruption and oversight bodies. These achievements and challenges range across the legislated functions of identifying, investigating, exposing and preventing corruption and misconduct and ensuring that anti-corruption and integrity bodies comply with the law.

The report makes four recommendations. They concern the improvement of IBAC's reporting of statistical information and analysis in its annual reports; the need for the VI to review the design and content of its website so it can serve users better; and the opportunity for greater collaboration between integrity agencies in producing accessible information for the general public.

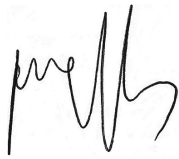
This report has also identified a number of areas that it will investigate further in its current inquiry into the external oversight of police corruption and misconduct in Victoria. This will include an examination of IBAC's approach to prioritising investigations, Victoria Police's regional complaints-handling systems, and the way police and integrity agencies communicate with complainants.

The Committee notes that the annual reports for 2016/17 will be the last tabled by the current IBAC Commissioner, Mr Stephen O'Bryan QC, and the current Victorian Inspector, Mr Robin Brett QC, with their statutory terms expiring on

31 December 2017. The Committee would like to congratulate the Commissioner and Inspector for their success in establishing their organisations as invaluable institutions within Victoria's anti-corruption, integrity and oversight system.

I would also like to thank my Committee colleagues for their cooperative and bipartisan approach to the preparation of this report: Hon Marsha Thomson MP (Deputy Chair), Mr Sam Hibbins MP, Mr Danny O'Brien MP, Mr Simon Ramsay MLC, Mr Tim Richardson MP and Ms Jaclyn Symes MLC. Finally, I would like to thank the Secretariat for their hard work: Ms Sandy Cook, Executive Officer; Dr Stephen James, Research Officer; and Ms Justine Donohue, Committee Administrative Officer.

I commend this report to Parliament.

A handwritten signature in black ink, appearing to read 'Kim Wells', is positioned above the printed name.

Hon Kim Wells MP
Chair

Recommendations

RECOMMENDATION 1: That the Independent Broad-based Anti-corruption Commission include in its annual report a dedicated chapter on the work it undertakes in relation to police, including investigation and oversight work.	13
RECOMMENDATION 2: That the Independent Broad-based Anti-corruption Commission provide comprehensive and detailed statistical information in its annual report, including analysis of complaints, notifications and allegations about police and how they were handled, across previous financial years.	13
RECOMMENDATION 3: That the Victorian Inspectorate undertake a systematic review of the design and content of its website.	57
RECOMMENDATION 4: That the Victorian Inspectorate and the Independent Broad-based Anti-corruption Commission collaborate, where appropriate, to produce easily accessible, accurate and consistent plain-language information about how to make complaints and disclosures about improper conduct in Victoria.	57

Under the *Parliamentary Committees Act 2003* (Vic), the Independent Broad-based Anti-corruption Commission Committee is required to ‘monitor and review the performance of the duties and functions’ of the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI) and examine their reports.¹ Exercising this function, the Committee decided to examine IBAC’s *Annual report 2016/17*, tabled in Parliament on 21 September this year. It also decided to examine, with respect to IBAC, the VI’s *Annual report 2016–2017*, which was tabled in Parliament on 31 October this year.

In undertaking this work, the Committee reviewed the annual reports and sought and examined written responses to questions regarding the reports from the IBAC Commissioner, Mr Stephen O’Bryan QC, and the Inspector, Mr Robin Brett QC. In addition, the Committee has read a number of key reports and other material referred to in the IBAC and VI annual reports for 2016/17. The Committee also requested additional statistical information from IBAC as well as further clarification of a number of issues that were referred to in its annual report.

These annual reports will be the last tabled by the current IBAC Commissioner, Mr Stephen O’Bryan QC, and the current Victorian Inspector, Mr Robin Brett QC, with their statutory terms expiring on 31 December 2017. The Committee recognises that IBAC and the VI play vital roles in addressing corruption and misconduct in the public sector and in helping to ensure its integrity, effectiveness and efficiency. The Committee would like to congratulate the Commissioner and Inspector on their success in establishing their organisations as invaluable institutions within Victoria’s anti-corruption, integrity and oversight system.

This report highlights some of the activities and achievements of IBAC and the VI during the year, as well as some of the challenges they faced. It also briefly discusses IBAC’s and the VI’s plans for 2017/18, and makes recommendations to improve their performance. Following its examination of the annual reports, this report summarises the key monitoring and review activities that the Committee undertook during 2016/17. This included a review of Victoria’s whistleblowing regime, a framework for monitoring the performance of IBAC and the commencement of an inquiry into the oversight of police corruption and misconduct.

¹ *Parliamentary Committees Act 2003* (Vic) s 12A(1)(a)(b)(c) (on IBAC) and s 12A(1)(f)(g)(h) (on the VI). But the Committee cannot monitor and review the performance of the duties and functions of the VI, examine its reports, or report to Parliament regarding officers of the Victorian Auditor-General’s Office or the Victorian Ombudsman (s 12A(1)(f)(g)(h)).

The Independent Broad-based Anti-corruption Commission

The IBAC annual report details IBAC’s work towards a ‘corruption-resistant Victoria’.² Specifically, it discusses how IBAC has carried out its functions of identifying, exposing, investigating and preventing corruption, and educating Victorians and public sector bodies about its characteristics and impact.³

IBAC describes the annual report as a

key accountability document and the principal way in which we report on our activities and outcomes to our stakeholders: the Parliament of Victoria, Victoria Police and public sector leaders and employees, the Victorian community, and our oversight bodies ...⁴

The annual report is structured around IBAC’s strategic goals for 2015–18:

- Investigating and exposing corrupt conduct and police misconduct
- Preventing, and informing Victorians about, corrupt conduct and police misconduct
- Building IBAC as an organisation
- Ensuring accountability and independence.⁵

It also includes IBAC’s Financial Report.

Following this structure, this report discusses IBAC’s activities and achievements under each goal, any challenges it has identified and the outlook for the future. The Committee gives most attention to the first two goals: investigating and exposing public sector corruption and police misconduct, and preventing and informing Victorians about corruption and police misconduct.

² IBAC, *Annual report 2016/17* 1.

³ *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* (*‘IBAC Act 2011 (Vic)’*) s 15; Victoria, *Strengthening Victoria’s key anti-corruption agencies?*: IBAC Committee, Parl Paper No 126 (2016) 23–5 (*‘Strengthening Victoria’s key anti-corruption agencies?’*); Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 3.

⁴ IBAC, *Annual report 2016/17* 1.

⁵ Corporate Plan 2015–18, cited in IBAC, *Annual report 2016/17* 17. In discussing these goals, the Committee draws substantially from IBAC’s *Annual report 2016/17*.

2.1 Investigating and exposing corrupt conduct and police misconduct

2.1.1 Activities

During 2016/17, IBAC received 2098 complaints/notifications and assessed 4990 allegations in relation to them.⁶ While the number of complaints/notifications received was comparable to the previous year, the number of allegations assessed by IBAC increased from 4576 in 2015/16.⁷ It should be noted that a single complaint may contain a number of allegations, and that IBAC's Case Management System (CMS) identifies and works on the basis of 'allegations'.⁸

IBAC referred most (1264) complaints and notifications to agencies that it considered were best-suited to respond to them.⁹ For example, public sector maladministration complaints were referred to the Victorian Ombudsman and most complaints about police were referred to Victoria Police for action as they were considered less serious matters.¹⁰ In this regard, the IBAC Commissioner, Mr Stephen O'Bryan QC, noted that

the current model of [police oversight] is similar to that of other Australian jurisdictions, with IBAC assessing all police complaints, received directly or via mandatory notifications from Victoria Police, and retaining the most serious or systemic matters that we have the capacity to handle for investigation. The remaining matters are referred to Victoria Police to investigate.¹¹

Allegations

As shown in Table 2.1, IBAC dismissed 2730 allegations and investigated 45. Dismissed matters include those that have been investigated previously, lack sufficient information, are too old, are vexatious or frivolous, or which have been withdrawn by the complainant.¹²

⁶ IBAC, *Annual report 2016/17* 20.

⁷ Ibid.

⁸ Ibid 20; IBAC, Correspondence, 30 November 2017.

⁹ IBAC, *Annual report 2016/17* 20; Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 4. Sections 15 and 73 of the *IBAC Act 2011* (Vic) authorise IBAC to make these kinds of referrals.

¹⁰ IBAC, *Annual report 2016/17* 4, 20; IBAC, *Annual report 2015/16* 4, 15-16.

¹¹ IBAC, *Annual report 2016/17* 4.

¹² Ibid 20.

Table 2.1 Allegations and outcomes

	2013/14	2014/15	2015/16	2016/17
Enquiries received	1023	1415	903	808
Complaints/notifications received	2567	2196	2041	2098
Allegations assessed	4860	4443	4576	4990
% allegations assessed within 45 days (target reduced from 60 days in 2015/16)	n/a	n/a	94%	94%
Referred to another entity	1783	1206	1523	1264
Investigated by IBAC	64	38	47	45
Dismissed*	1917	1818	2048	2730

* This includes matters that are withdrawn, have insufficient information, are too old, have already been investigated or are frivolous or vexatious. Other outcomes not included in the above table include 'noted' and 'returned'.

Note: A complaint may include multiple allegations, all of which are individually assessed.

Source: IBAC, *Annual report 2016/17* 20.

Table 2.2 shows that, of the 3856 allegations received by IBAC for assessment as possible protected disclosures under the *Protected Disclosure Act 2012 (Vic)* ('*PD Act 2012 (Vic)*'), IBAC granted *protected disclosure status* to 579.¹³ This status gives a discloser a number of protections, including immunity from certain lawsuits, such as defamation, and protection against reprisal actions.¹⁴

Of the 579 allegations granted protected disclosure status, IBAC dismissed 138.¹⁵ As noted above, dismissed matters can include old, unsubstantiated or vexatious allegations, or ones that have already been investigated. IBAC referred 424 protected disclosures, 125 to the Victorian Ombudsman, 299 to the Chief Commissioner of Police and zero to the Victorian Inspectorate, for investigation, and investigated 17 protected disclosures itself.¹⁶

¹³ IBAC, *Annual report 2016/17* 21.

¹⁴ *PD Act 2012 (Vic)*; Victoria, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 4; IBAC, *Guidelines for making and handling protected disclosures* (October 2016); Victoria, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)*: IBAC Committee, Parl Paper No 288 (2017).

¹⁵ IBAC, *Annual report 2016/17* 21.

¹⁶ *Ibid*; IBAC, Correspondence, 8 December 2017.

Table 2.2 Protected disclosures and outcomes

	2013/14	2014/15	2015/16	2016/17
Matters assessed for protected disclosure status	314	210	653	579
Referred to Victorian Ombudsman, Chief Commissioner of Police or Victorian Inspectorate for investigation	230	171	597	424
Investigated by IBAC	43	14	24	17
Dismissed*	38	25	32	138
No. of disclosures IBAC was unable to investigate or refer	0	0	0	0

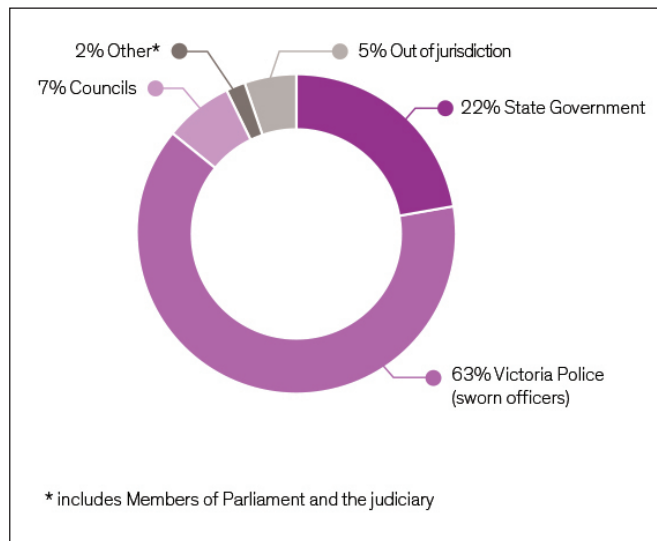
* This includes matters that are withdrawn, have insufficient information, are too old, have already been investigated or are frivolous or vexatious. Other outcomes not included in the above table include 'noted' and 'returned'.

Note: A complaint may include multiple allegations, all of which are individually assessed.

Source: *Annual report 2016/17* 21.

The report also identified the subjects of allegations by sector (see Figure 2.1), including allegations against Victoria Police, State Government and local councils. Sixty-three per cent of allegations were made against sworn police officers.¹⁷

Figure 2.1 Allegations by sector



Source: IBAC, *Annual report 2016/17* 20.

Investigations

In 2016/17 IBAC started 26 investigations and finalised 18. The average duration of an investigation was 367 days. During 2016/17, IBAC had 46 investigations that were active, which was a 35 per cent increase from the previous year. Forty-four per cent of investigations were with respect to Victoria Police (see Figure 2.2).¹⁸

17 Ibid 20.

18 Ibid 22-3.

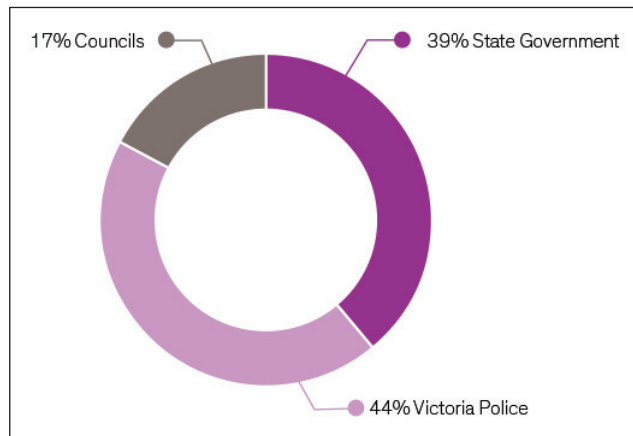
Table 2.3 Investigations

	2013/14	2014/15	2015/16	2016/17
Preliminary inquiries*	n/a	n/a	n/a	10
Investigations commenced	24	16	19	26
Investigations finalised	15	15	7	18
Open investigations at 30 June	13	14	27	28
Average investigation duration (days)	175	209	252	367

* As of 1 July 2016, IBAC may now conduct a preliminary inquiry to help us determine whether to dismiss, refer or investigate a complaint or notification. For more information, visit the IBAC website.

Source: IBAC, *Annual report 2016/17* 22.

Figure 2.2 Investigations by sector



Source: IBAC, *Annual report 2016/17* 23.

As Table 2.4 shows, in 7 of the investigations IBAC made formal recommendations; in 5, criminal proceedings were initiated or a brief of evidence was given to the Office of Public Prosecutions; and, in 6, there were reports to Parliament.¹⁹ During the year, IBAC’s investigations led to 23 people being charged with 416 charges under relevant State and Commonwealth legislation. As a result of 2 IBAC investigations, proceedings for the confiscation of the proceeds of crime were commenced.²⁰

¹⁹ Ibid 22.

²⁰ Ibid.

Table 2.4 Investigation outcomes

	2013/14	2014/15	2015/16	2016/17
Formal recommendations	2	3	7	7
Criminal proceedings or brief of evidence to Office of Public Prosecutions	0	3	3	5
Reports to Parliament	1	1	2	6
No further action	7	6	3	6

Source: IBAC, *Annual report 2016/17* 22.

The IBAC annual report provides short narrative accounts of the nature and course of a number of its investigations, as well as their outcomes and significance.²¹ These investigations include:

- Operation Ross: serious police misconduct at Ballarat Police Station
- Operation Dunham: corrupted Department of Education and Training (DET) ‘Ultranet’ computer project
- Operation Ettrick: illicit drug use and ‘inappropriate associations’ at a Victorian prison
- Operation Nepean: corrupt procurement processes at a women’s prison
- Operation Liverpool: corruption at Bendigo Health
- Operation Exmouth: corrupt conduct at Places Victoria
- Operations Apsley, Hotham and Yarrowitch: Victoria Police personnel misconduct, including illicit drug use.²²

These operations are further discussed in Section 2.1.3 of this report.

2.1.2 Reporting on complaints about police

IBAC has jurisdiction to receive and investigate complaints about corrupt conduct and police misconduct. As noted earlier, IBAC’s annual report is structured around its strategic goals for 2015–2018, which includes the goal of ‘investigating and exposing corrupt conduct and police misconduct’. The Committee understands IBAC’s logic in structuring its annual report around its strategic goals. However, this means that material relating to the investigation and oversight of Victoria Police is presented in a number of places in the annual report across a number of chapters. This fragmented approach makes it difficult for readers to gain an overall understanding of IBAC’s work in one of its key legislated functions.

²¹ Ibid 25–32.

²² Ibid.

Moreover, in order to make accurate and meaningful comparisons of IBAC activity regarding its investigation and oversight of complaints about police, it is essential that IBAC report comprehensive and detailed statistics, including analysis of complaints, notifications and allegations about police and how they were handled across previous financial years. These were not included in the annual report for 2016/17.

In the preceding section, the Committee relied on statistics relating to complaints that were reported in IBAC's 2016/17 annual report. However, in preparing its report the Committee identified a number of discrepancies in the reported statistics, particularly in relation to complaints about police and how they were handled.

The Committee therefore sought further statistical information across the previous four financial years, with detailed analysis of complaints, allegations and notifications about police, as well as IBAC's handling of them—for example, statistics on IBAC investigations, referrals to Victoria Police and dismissals. It also sought data about protected disclosures ('whistleblowing') in relation to police. The Committee's report therefore uses the most recent data it has received from IBAC relating to the police.

In reviewing IBAC's responses to the Committee's requests for further statistical analysis, the Committee became aware that some of the limitations of IBAC's reporting in this area are due to deficiencies with IBAC's present electronic Case Management System (CMS) and that IBAC is planning to develop a system that can both handle complaints and allow for comprehensive statistical reporting.²³

The Committee requested statistical information and analysis from IBAC in relation to complaints, allegations and allegation outcomes in relation to police. For details of the specific information the Committee requested from IBAC, see Appendix 1. Box 2.1 presents selected IBAC responses²⁴ to the Committee's requests along with comments from the Committee.

²³ Ibid 7; IBAC, Correspondence, 30 November 2017.

²⁴ IBAC, Correspondence, 30 November 2017. Note: The material in Box 2.1 quotes directly from IBAC's responses to the Committee's requests.

BOX 2.1: Police: further information from IBAC*Complaints made against police*

IBAC records cases, complaints, notifications and allegations on its Case Management System (CMS). A case is a complaint or a notification addressing a particular subject, individual(s) or agency. Complaints are made by individuals directly to IBAC whereas notifications are made by public bodies. An individual complaint or notification may be comprised of multiple allegations.

It is important to note that police do not consider Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) to be complaints. As IBAC explained:

Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) are Victoria Police classifications that are intended to deal with customer service and low level performance issues.

Because LMRs and MIMs deal with low level matters, Victoria Police does not consider them to be complaints. Therefore, such matters fall outside the scope of section 169 of the *Victoria Police Act 2013* which requires the Chief Commissioner of Police to provide IBAC with written details of all complaints made to a police officer or protective services officer about the misconduct of a police officer or protective services officer.

Consequently, LMRs or MIMs are not included in the reported number of notifications or allegations received from Victoria Police.

IBAC's 'Audit of Victoria Police complaints handling systems at the regional level' identified some issues with the way Victoria Police handles MIMs and LMRs. IBAC is currently examining a sample of LMR files closed during 2017 which includes a consideration of whether such matters were appropriately classified.

Allegations

... IBAC's CMS records information about the notifying body and the allegation body at the allegation level, not the complaint or notification level. This provides greater clarity as, for example, a single complaint or notification may contain multiple allegations relating to different public bodies.

The table below outlines allegations assessed that relate to Victoria Police for the last four financial years.¹

Allegation source	2013 / 2014		2014 / 2015		2015 / 2016		2016 / 2017	
Complaints made by individuals directly to IBAC ²	1803	50%	1635	55%	1697	57%	2005	63%
Notifications and protected disclosure notifications from Victoria Police ³	833	23%	1083	36%	1093	37%	1083	34%
Notifications from other sources ⁴	947	26%	261	9%	168	6%	76	2%
Total allegations about Victoria Police	3583		2979		2958		3164	

¹ Note that percentage columns may not total 100 per cent because of rounding.

² This includes all complaints made by individuals to IBAC under the *IBAC Act 2011* and section 167 of the *Victoria Police Act 2013*. It includes complaints made directly to IBAC by individual Victoria Police officers.

³ This includes all notifications from Victoria Police made under section 57 of the *IBAC Act 2011*, section 169 of the *Victoria Police Act 2013*, section 86M of the *Police Regulation Act 1958*, sections 21 and 22 of the *Protected Disclosure Act 2012*.

⁴ This includes notifications from the Victorian Ombudsman under section 16E of the *Ombudsman Act 1973* and notifications from the Victorian Auditor General's Office under section 19A of the *Audit Act 1994*.

Numbers of cases, complaints, notifications and allegations drawn from IBAC's CMS are accurate at the date they are generated. Changes to allegation numbers can occur due to additional information being received at a later date resulting in subsequent assessments. For example, allegations subject to preliminary enquiries that run across financial years may have their assessment changed at the conclusion of those enquiries (eg from dismiss to refer). Other cases may be merged following the receipt of additional information: as CMS does not allow for multiple assessment dates to be recorded against an allegation, any previous assessment dates are superseded by subsequent assessments. Consequently, there can be small changes (less than 1 per cent) in allegation numbers over time.

IBAC is currently procuring a new CMS to replace the existing system inherited from the Office of Police Integrity. IBAC is designing specifications for its new CMS aimed to enhance our statistical reporting of complaints, notifications and allegations.

Allegations made by police about police

Since changes to the *Protected Disclosure Act 2012* which took effect on 1 July 2015, all allegations of misconduct and corrupt conduct made by police about other police are recognised as protected disclosures.

The table below lists the number of allegations assessed as protected disclosures due to the allegations coming from a police officer and relating to another police officer as per section 5 of the *Protected Disclosure Act 2012*.

Source of allegations	2015/2016	2016/2017
Complaints (ie made directly to IBAC) ⁵	121	172
Notifications (ie made via Victoria Police) ⁶	231	202
Total	352	374

Assessments

IBAC receives complaints directly from individuals and notifications from public bodies. Under the *IBAC Act 2011* and the *Victoria Police Act 2013*, the Chief Commissioner of Victoria Police is required to notify IBAC of complaints about corrupt conduct or police personnel misconduct.⁷

IBAC assesses all complaints, notifications and allegations that are received. This includes all complaints, notifications and allegations about police.

The Committee notes that, as discussed earlier, police do not consider Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) to be complaints.

⁵ This is a count of all allegations that come via complaints made directly to IBAC by police officers under the *IBAC Act 2011* and section 167 of the *Victoria Police Act 2013*.

⁶ This is a count of all allegations that come via notifications from Victoria Police made under section 57 of the *IBAC Act 2011*, section 169 of the *Victoria Police Act 2013*, section 86M of the *Police Regulation Act 1958*, sections 21 and 22 of the *Protected Disclosure Act 2012*.

⁷ Section 57 of the *Independent Broad-based Anti-corruption Commission Act 2011* and section 169 of the *Victoria Police Act 2013*.

continued

Outcomes of allegations

The table below outlines allegation outcomes for allegations relating to Victoria Police for the last four financial years. Percentages reflect the percentage of total allegations against Victoria Police in that financial year.

Because a single complaint or notification can include multiple allegations relating to different public bodies, IBAC links allegations (rather than complaints or notifications) to public bodies. Furthermore, because a single complaint or notification can include multiple allegations, outcomes such as dismissed, referred and investigated are recorded against allegations, not complaints or notifications.

Allegation outcome	2013 / 2014		2014 / 2015		2015 / 2016		2016 / 2017	
Investigated ⁸	23	0.6%	17	0.6%	7	0.2%	18	0.6%
Referred	1414	39.5%	863	29%	1109	37.5%	921	29.1%
Dismissed ⁹	1422	39.7%	1074	36.1%	1044	35.3%	1432	42.3%
Total	3583		2979		2958		3164	

As per the standard approach adopted in IBAC's Annual Reports, the above figures are based on the date allegations were assessed. Other outcomes not included in the above table include 'noted' and 'returned'.

'Noted' is an outcome used by IBAC when IBAC receives notifications from Victoria Police under section 169 of the *Victoria Police Act 2013*. Unless determined by IBAC to investigate, these matters are managed by Victoria Police. IBAC 'notes' them, writes to Victoria Police advising of IBAC's assessment, and awaits an outcome report at the completion of action taken by police, following which IBAC may review Victoria Police's investigation.

'Returned' is an outcome used when IBAC receives a notification under section 21 or 22 of the *Protected Disclosure Act 2012* and determines the disclosure is not a 'protected disclosure complaint'. Because the notification does not engage the *IBAC Act*, it does not result in an assessment under section 57 of the *IBAC Act* to refer, dismiss or investigate. These notifications are returned to the notifying agency (including Victoria Police) and captured on the IBAC records as 'returned'.

⁸ 'Investigated' does not include investigations conducted under IBAC's own motion under section 64(1)(c) of the *IBAC Act 2011*.

⁹ Dismissed includes matters that are withdrawn or have no further action because they have insufficient information, are too old, have already been investigated or are frivolous or vexatious.

The Committee will investigate the outcomes 'Noted' and 'Returned', and IBAC's rationale for using them, in its inquiry into the external oversight of police corruption and misconduct in Victoria.

The Committee believes that comprehensive statistical information provides important insights into IBAC's police oversight work. In order to ensure that the kind of detailed statistical information provided above is included in IBAC's annual reports in the future, the Committee therefore makes the following recommendations.

RECOMMENDATION 1: That the Independent Broad-based Anti-corruption Commission include in its annual report a dedicated chapter on the work it undertakes in relation to police, including investigation and oversight work.

RECOMMENDATION 2: That the Independent Broad-based Anti-corruption Commission provide comprehensive and detailed statistical information in its annual report, including analysis of complaints, notifications and allegations about police and how they were handled, across previous financial years.

This will allow for more accurate and meaningful comparisons of IBAC activity with regard to its investigation and oversight of complaints about police.

2.1.3 Achievements

With regard to its overall work, IBAC reported a number of achievements during 2016/17, including:

- the timeliness of its assessment of allegations (94 per cent were assessed within 45 days)
- a 35 per cent increase in the number of investigations commenced
- the finalisation of 18 investigations and the tabling of 6 reports in Parliament
- the laying of charges against 23 people arising out of its investigations.²⁵

More broadly, the IBAC Commissioner emphasised IBAC's success in identifying, investigating and exposing serious corruption within DET, especially relating to the multi-million dollar schools 'Ultranet' computer project.²⁶ This success was due to the judicious and effective use of IBAC's wide range of powers in its Operation Dunham.²⁷ Operation Dunham exposed a corrupted tender process, improperly diverted funds, conflict of interest issues and mismanagement that wasted public money.²⁸ IBAC has been encouraged by the wideranging reforms DET has undertaken in response to the findings and recommendations in the report on Operation Dunham and the earlier Operation Ord:

The exposure of serious and entrenched corruption through these major IBAC investigations has prompted swift action from the departmental Secretary and across the public sector to strengthen systems and practices to prevent corruption.²⁹

²⁵ IBAC, *Annual report 2016/17* 19.

²⁶ *Ibid.* 4.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

The IBAC Commissioner also pointed to IBAC's successful investigations and oversight related to Victoria Police, including exposing police misconduct related to vulnerable persons in police custody, illicit drug use and improper associations by Victoria Police personnel.³⁰ Finally, the Commissioner referred to IBAC's commencement of investigations, including public examinations, into possible corrupt conduct at South West Institute of TAFE, Bendigo Kangan Institute and V/Line as part of Operation Lansdowne.³¹

Similarly, the Chief Executive Officer of IBAC, Mr Alistair Maclean, observed that 'IBAC is now known for investigating serious corruption and misconduct in the Victorian public sector'.³² Importantly, IBAC's investigations have led to positive ripple effects, both in public sector organisations directly subject to IBAC investigations and recommendations and in the wider public sector:

IBAC has been encouraged by the response of many public sector agencies to our work. Many organisations are using the information provided by IBAC to assess corruption risks and to improve their systems, practices, policies and controls. While some agencies are required to respond to formal IBAC recommendations following our investigations, other responses are voluntary. It is evident that there is a willingness to learn from the 'red flags' exposed across all of our work, to help maintain community confidence in the integrity of our public sector.³³

The following section provides snapshots of what IBAC was able to achieve through a number of operations undertaken during 2016/17.

Operation Ross

IBAC's investigation into the Ballarat Police Station commenced in May 2016, following the receipt of CCTV footage from Victoria Police showing the alleged abuse of a woman in custody at the station. IBAC found evidence of 'systemic issues ... including excessive use of force and questionable treatment of vulnerable people'.³⁴ The investigation exposed inadequacies in Victoria Police's policies and procedures, including with respect to compliance with Victoria Police's strip-search policy and the Victorian Charter of Human Rights.³⁵

IBAC made recommendations to Victoria Police to address these issues and also recommended that it consider charging the officers. Operation Ross was the subject of a special report which was tabled in Parliament in November 2016. Victoria Police subsequently charged the two officers with assault, and they were stood down from operational duties. Victoria Police must report back to IBAC by November 2017 in relation to its implementation of the report's recommendations.³⁶

30 Ibid 4–5, 25, 31.

31 Ibid 5, 34.

32 Ibid 6.

33 Ibid.

34 Ibid 25.

35 Ibid.

36 Ibid.

Operation Dunham

The investigation of DET's multimillion-dollar Ultranet project uncovered a number of corrupt practices on the part of senior departmental staff in relation to the tendering process and the awarding of contracts for the project, including preference being given to a specific bid 'despite serious concerns about its credentials'.³⁷

IBAC recommended that DET review its arrangements on how schools and related organisations deal with commercial opportunities and that it strengthen its procurement and governance arrangements to ensure 'accountability and transparency'.³⁸ Further, the Victorian Public Sector Commission was advised to consider 'a ban on public sector employees receiving any gift, benefit or hospitality'³⁹ from existing or potential suppliers. IBAC also recommended that the Department of Treasury and Finance reconsider the way it reviews high value and/or high risk projects.⁴⁰

DET accepted the recommendations. IBAC is putting together a brief of evidence for the Office of Public Prosecutions in relation to a number of people involved in the project.⁴¹

Operation Ettrick

While IBAC's investigation into illicit drug use and improper conduct by staff of an unnamed Victorian prison found allegations of drug smuggling to be unsubstantiated, IBAC was able to identify significant areas of vulnerability due to inappropriate conduct.⁴² IBAC recommended that Corrections Victoria address these concerns by:

- developing and implementing a more detailed policy regarding staff contact with former prisoners, prisoners' families and other persons with known criminal history
- developing and delivering regular training to staff on the importance of professional boundaries
- developing and implementing random and targeted drug testing of corrections officers and other people with regular access to prisoners.⁴³

The Department of Justice has advised IBAC that it is working on the development of relevant policies and reviewing its training.⁴⁴

37 Ibid 26.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid 27.

43 Ibid.

44 Ibid.

Operation Nepean

The investigation of procurement processes at Dame Phyllis Frost Centre (DPFC) commenced in 2014 and concluded in April 2017 with the tabling of a special report in Parliament. IBAC identified several vulnerabilities at DPFC that facilitated the corrupt behaviour, including inadequate oversight of the activities of the former facilities manager and a failure to respond to concerns about conflicts of interest. IBAC made recommendations to DPFC to examine these matters and also recommended an overall review of Corrections Victoria's policies and procedures to address vulnerabilities across its prison facilities. Corrections Victoria responded to these recommendations, including those pertaining to DPFC.⁴⁵

Operation Liverpool

Operation Liverpool, which commenced in 2014 as an investigation into corrupt conduct by a former construction manager of Bendigo Health, was expanded in May 2015 to encompass allegations against its then Chief Executive.⁴⁶

IBAC found that the construction manager had taken Bendigo Health 'property and materials without authorisation' and 'circumvented procurement controls' for his personal benefit and that of particular contractors. The construction manager later pleaded guilty to charges of theft, obtaining property by deception and attempting to obtain financial advantage by deception.⁴⁷

With respect to the Chief Executive, IBAC found that he had 'used Bendigo Health resources for his own benefit' in breach of the Victorian Public Sector Code of Conduct and Bendigo Health's explicit organisational values. While the 'corrupt conduct' allegations concerning the Chief Executive's remuneration arrangements were not substantiated by IBAC, Bendigo Health and the Department of Health and Human Services (DHHS) continued to investigate the allegations and the Chief Executive was later dismissed.⁴⁸

Operation Liverpool exposed organisational and structural vulnerabilities which enabled corrupt practices to take place at Bendigo Health. IBAC recommended that Bendigo Health address these issues and that the DHHS investigate where these vulnerabilities might exist elsewhere in the Victorian health system. A special report on the investigation was tabled before Parliament in March 2017. Bendigo Health and the DHHS were required to report to IBAC by September 2017 regarding the actions taken in response to the recommendations.⁴⁹

45 Ibid 28.

46 Ibid 29.

47 Ibid.

48 Ibid.

49 Ibid.

Operation Exmouth

Operation Exmouth concerned an IBAC investigation into allegations of improper conduct against a senior employee of Places Victoria. It was alleged that the senior employee had dishonestly awarded contracts to entities with which he had family ties, and that he had flouted procurement, conflict of interest, information management and recruitment policies. IBAC found most of the allegations against him to be substantiated.⁵⁰

IBAC's investigation also exposed a range of organisational and systemic weaknesses that meant the senior employee's corrupt conduct had gone undetected.⁵¹ IBAC recommended that Places Victoria improve its 'recruitment processes and information security and enhance training for new staff'.⁵² A special report on Operation Exmouth was tabled in October 2016. Places Victoria has responded to IBAC's recommendations.⁵³

Operations Apsley, Hotham and Yarrowitch

Commencing in December 2015, these three 'complex investigations'⁵⁴ centred on allegations of personnel misconduct within Victoria Police, particularly with respect to the use, possession and trafficking of illicit drugs, including cocaine, ecstasy, methamphetamine, LSD and ketamine. IBAC employed a range of powers to investigate and uncover a culture of social drug use among some Victoria Police officers. Allegations against eight police officers were substantiated and charges were laid.⁵⁵

The findings of the three operations were the subject of a special report, tabled in Parliament in December 2016, which included a range of recommendations concerning Victoria Police's policies and practices regarding drug use, recruitment and drug testing.⁵⁶ Victoria Police is required to submit a progress report, and a final report by 30 June 2018, to IBAC on the implementation of 'a more robust framework' to address the detection and prevention of illicit drug use in Victoria Police.⁵⁷

Prosecution outcomes

As Table 2.5 shows, IBAC's investigation operations led to a number of successful prosecutions that 'have continued to expose the impact of corrupt conduct in the public sector and the consequences for people involved.'⁵⁸

50 Ibid 30.

51 Ibid.

52 Ibid.

53 Ibid.

54 Ibid 31.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid 32.

Table 2.5 Prosecution outcomes

Investigation	Date	Who	Outcome
Operation Liverpool: investigation into the conduct of two officers of Bendigo Health	October 2016	Adam Hardinge	Mr Hardinge plead guilty to seven charges of theft, one charge of obtain property by deception and one charge of attempt to obtain financial advantage by deception. He was convicted on all criminal charges. He was fined \$15,000 in relation to the theft charges, and gave an undertaking to pay \$5,000 to the Bendigo Health Foundation on the other two charges.
Operation Royston: investigation into allegations of corrupt procurement transactions at the City of Ballarat	March 2017	Rik McCaig	Mr McCaig plead guilty to giving a council employee \$8,000 in return for being awarded contracts. He was found guilty without conviction, fined \$8,000 and sentenced to 200 hours of community work.
	June 2017	Derryn Ladson	Mr Ladson plead guilty to paying \$21,245 in secret commissions to a council employee. He was found guilty without conviction, and fined \$15,000.
Operation Fitzroy: investigation into alleged serious corruption in the former Department of Transport and Public Transport Victoria	April 2017	Albert Ooi	Mr Ooi plead guilty to conspiring to defraud the State of Victoria, and another charge of receiving a secret commission in awarding works contracts during his employment with Public Transport Victoria, the Department of Transport and the Department of Infrastructure. He was sentenced to eight years jail with a non-parole period of six years. An order to repay \$2.3 million was also made. Mr Ooi is appealing his sentence.
Operation Yarrowitch: investigation into alleged use of illicit drugs by Victoria Police members	June 2017	First Constable Jacqueline Rogash	Ms Rogash plead guilty to one charge of perjury regarding answers given during two private examinations before IBAC. She was convicted, placed on an 18-month Community Corrections Order and ordered to complete 200 hours of unpaid community work. Ms Rogash is appealing her sentence.
Operation Apsley: investigation into alleged drug trafficking involving Victoria Police officers	June 2017	Senior Constable Sheree Cocks	Ms Cocks plead guilty to one charge of inciting another to mislead IBAC. She was convicted and fined \$5,000. Ms Cocks is appealing her sentence.

Source: IBAC, *Annual report 2016/17* 32.

2.1.4 Challenges

IBAC has identified a number of challenges in carrying out its investigative and exposure functions. These are ensuring natural justice, adapting to the demands of mandatory reporting, the nature of the misconduct in public office offence (MIPO), investigating complaints about police, meeting the challenge of new technologies, and recruiting and retaining specialist investigative staff.⁵⁹

⁵⁹ IBAC, *Annual report 2016/17* 5–7, 33; Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

Ensuring natural justice

Before tabling public reports of its investigations, IBAC is required to give people and organisations affected by them a reasonable opportunity to be heard and to provide a response to any adverse findings or commentary.⁶⁰ IBAC satisfies this natural justice requirement by setting out the views of affected parties in the relevant report and/or by making any necessary corrections or amendments to it.⁶¹ IBAC noted that during 2016/17 it ‘responded to a large volume of concerns raised by public entities and individuals who may have been subject to adverse comment in an IBAC report.’⁶² In this way, IBAC seeks to balance the need for robust investigations and reports that identify and expose corruption with the requirement that those subject to them are treated fairly throughout.⁶³ Natural justice issues are further discussed in Section 2.4.2 of this report.

Adapting to mandatory reporting

Between 1 December 2016 (when mandatory reporting of suspected corruption was introduced) and 31 October 2017, IBAC received 100 mandatory notifications, with 55 from Victorian state government agencies and 45 from local councils. IBAC assessed 278 allegations arising out of these notifications, leading to the following outcomes:

- 51 per cent were returned to agencies to handle internally
- 29 per cent were dismissed for various reasons including lack of evidence
- 20 per cent were retained by IBAC for preliminary inquiry or investigation.⁶⁴

While the introduction of the legislated requirement for the mandatory reporting of suspected corruption by the heads of public sector agencies and other relevant officials (‘principal officers’) is welcomed by IBAC, it presents some new challenges.⁶⁵ First, IBAC has sought to assist public sector bodies and principal officers to better understand the legal requirements and IBAC’s jurisdiction to investigate.⁶⁶ For example, of the 60 mandatory notifications IBAC had received by 30 June 2017, 77 per cent were dismissed or sent back to the agency to handle.⁶⁷ Some of these matters were sent back to the agency because they consisted of administrative or disciplinary issues that fell below IBAC’s investigative threshold.⁶⁸ A second challenge is ensuring that principal officers

⁶⁰ IBAC, *Annual report 2016/17* 5. Similar considerations and obligations apply to IBAC determinations to hold public examinations—Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017 (discussing sections 117(1)(c) and 162 of the *IBAC Act 2011* (Vic)).

⁶¹ IBAC, *Annual report 2016/17* 5.

⁶² *Ibid.*

⁶³ Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

⁶⁴ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017; IBAC, Correspondence, 8 December 2017.

⁶⁵ IBAC, *Annual report 2016/17* 4, 6, 33.

⁶⁶ *Ibid* 4, 6, 19, 33.

⁶⁷ *Ibid* 33.

⁶⁸ *Ibid.*

report suspected corruption in a timely way and before taking any corrective action themselves which may compromise or otherwise undermine an IBAC investigation.⁶⁹

IBAC has also identified that some public sector bodies have found it difficult to know what conduct qualifies as suspected corrupt conduct that must be reported to IBAC. In addition, public sector bodies have sometimes found it difficult to strike the right balance between carrying out their own inquiries to determine if there is corrupt conduct and reporting conduct to IBAC in a prompt fashion that does not risk undermining an IBAC investigation. As the IBAC Commissioner explained:

Another challenge identified by agencies is how they balance discreetly gathering sufficient information to form a reasonable suspicion that corrupt conduct is occurring or has occurred, and reporting the matter to IBAC in a timely manner to avoid compromising any potential investigation. IBAC is developing additional information and resources, including case studies and statistics, to further assist state government agencies and local councils to comply with the mandatory notification requirements.⁷⁰

The nature of the misconduct in public office offence

IBAC has welcomed the introduction of misconduct in public office (MIPO) as an offence under the *IBAC Act 2011* (Vic). However, IBAC has noted some reluctance on the part of prosecutors to pursue MIPO given its complexity as a common law offence.⁷¹ It has also observed that there are differing views among various agencies about ‘the nature and seriousness of the offence’, particularly in relation to the employment of ‘special investigative powers’ in relation to it.⁷²

As a result of these concerns the IBAC Commissioner has suggested that Parliament consider making MIPO a statutory, rather than common law, offence, ‘both to create greater certainty in relation to prosecutions arising out of IBAC investigations, and to reflect the nature and seriousness of the offence’.⁷³ The Committee notes this suggestion.

Investigating complaints about police

IBAC considers that its jurisdiction with regard to its legislated powers to investigate complaints and disclosures about police corruption and misconduct is sufficiently clear.⁷⁴ It draws attention to the legislative requirement that IBAC ‘prioritise’ the investigation and exposure of ‘serious corrupt conduct or systemic corrupt conduct’.⁷⁵ This requirement is found in section 15(1A) of the *IBAC Act 2011* (Vic):

⁶⁹ Ibid 19, 33.

⁷⁰ Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017. See also IBAC, *Annual report 2016/17* 19, 33.

⁷¹ Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷² Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷³ Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷⁴ Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷⁵ Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017.

- (1A) In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct or systemic corrupt conduct.

IBAC also notes its power to refer complaints and notifications to other appropriate bodies for investigation (section 73, *IBAC Act 2011* (Vic)).⁷⁶

IBAC observes that the Act does not define ‘serious’ or ‘systemic’ corrupt conduct.⁷⁷ Indeed, section 15(1A) states that IBAC must prioritise *what it considers* ‘may constitute serious corrupt conduct or systemic corrupt conduct’. In determining what constitutes serious or systemic corruption, the Commissioner has described IBAC’s approach as follows:

... IBAC assesses each complaint or notification on a case by case basis having consideration of the nature of the alleged conduct, the maximum penalty of any potential offences and other factors including:

- the severity of any alleged harm or potential harm
- the likelihood the alleged conduct will continue if no action is taken
- whether the alleged conduct has the potential to diminish public confidence in the public sector
- whether there are systemic issues or the conduct has broader impacts on the public sector (including Victoria Police)
- the presence of any aggravating circumstances
- whether there is evidence of wilfulness or culpability.

The above considerations are not exhaustive and other factors could be considered depending on the circumstances and context of the complaint.⁷⁸

However, the Committee notes that section 15(1A) should not be read in isolation. Other legislative provisions reinforce IBAC’s functions to identify, expose and investigate any ‘corrupt conduct’—as opposed to only ‘serious corrupt conduct or systemic corrupt conduct’—as well as police personnel misconduct.⁷⁹ In this regard, sections 15(1B) and (2) of the *IBAC Act 2011* (Vic) are relevant. They read as follows:

- (1B) Subsection (1A) does not restrict the IBAC’s discretion to determine to investigate *any matter* that the IBAC considers may constitute corrupt conduct. [emphasis added]
- (2) Without limiting the generality of subsection (1) [the functions conferred on IBAC], the IBAC has the following functions—
- (a) to identify, expose and investigate corrupt conduct;
 - (b) to identify, expose and investigate police personnel misconduct;
 - (c) to assess police personnel conduct.

⁷⁶ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷⁷ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷⁸ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁷⁹ See, for example, *IBAC Act 2011* (Vic) ss 3(1) (definition of ‘relevant offence’), 4 (‘corrupt conduct’), 15(1), 15(1B), 15(2).

The Committee notes that while IBAC must under the law prioritise the investigation of serious and systemic corruption, this does not mean that it should do this to the exclusion of other types of corruption, and police misconduct.

IBAC's prioritisation of serious and systemic corruption is reflected in the following statistics, which show that it only investigates a small proportion of complaints about police. Of the 3164 allegations about police that IBAC received during 2016/17,

- 1432 (42.3 per cent) were dismissed
- 921 (29.1 per cent) were referred to Victoria Police, and
- 18 (0.6 per cent) were investigated by IBAC.⁸⁰

The IBAC Commissioner has reported that the proportion of investigations it carries out is comparable with police oversight bodies in other Australian states.⁸¹ IBAC provides information on its website about the factors it considers when deciding whether to investigate a matter and also has a fact sheet on how to report corruption and misconduct and how it handles these reports.⁸²

The overwhelming majority of complaints about police are therefore either dismissed by IBAC or referred by it to Victoria Police for investigation, with most then passed on to its regions, departments or commands for investigation.⁸³ The Committee will further investigate IBAC's approach to the prioritisation of investigations, and its practice of referrals of complaints to Victoria Police, in its current inquiry into the external oversight of police corruption and misconduct.

Regional complaint-handling by Victoria Police

In 2016, IBAC's audit of Victoria's regional complaints-handling system found a number of serious defects with it, including incorrect classification of complaints, use of inappropriate investigators, problems with the management of conflicts of interest and failure to take account of officers' complaint histories.⁸⁴

IBAC made a number of recommendations to Victoria Police to improve the system.⁸⁵ In April of this year, Victoria Police gave IBAC a progress report on its implementation of the report's recommendations, all of which the police had accepted.⁸⁶ Progress thus far has included ensuring that police officer complaint histories are included in files, managing conflicts of interest better and reviewing

⁸⁰ IBAC, Correspondence, 30 November 2017.

⁸¹ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁸² Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017; *What we investigate*, IBAC, viewed 23 November 2017, <www.ibac.vic.gov.au/investigating-corruption/what-we-investigate>; *Reporting corruption and misconduct* (July 2017), IBAC, viewed 23 November 2017, <www.bac.vic.gov.au/publications-and-resources/article/reporting-corruption-and-misconduct>.

⁸³ IBAC, *Audit of Victoria Police complaints handling systems at regional level* (September 2016) 7, 11; Victorian Equal Opportunity and Human Rights Commission, *Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police, Phase One Report* (2015) 320.

⁸⁴ IBAC, *Audit of Victoria Police complaints handling systems at regional level* (September 2016).

⁸⁵ *Ibid* (especially at 93).

⁸⁶ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

human rights compliance.⁸⁷ IBAC expects Victoria Police to further report before the end of 2017 on the progress it has made in implementing the report's recommendations. That report will be published by IBAC on its website.⁸⁸

The Committee notes that the quality of regional complaints-handling in Victoria Police is an important issue given that the bulk of investigations of complaints about police are carried out by regions, departments or commands.⁸⁹ The Committee will examine this issue as part of its current inquiry into the external oversight of police corruption and misconduct.

Responding to encryption technology

Another challenge for IBAC's investigatory and exposing functions is the increasing availability and use of encryption technology, especially the increased use of messaging applications that are available commercially.⁹⁰ IBAC is confident that it can meet this challenge by using comparably sophisticated technology while satisfying the rigorous compliance requirements that it is subject to.⁹¹

Recruiting and retaining specialists

Finally, there is the challenge of recruiting and retaining appropriately skilled and experienced investigators and other operational staff who embody IBAC's values of integrity.⁹² As the annual report observes, recruitment

can be challenging for IBAC due to the specific requirement for highly technical and specially skilled people. In the Operations Division, IBAC requires applicants to have contemporary investigations skills and experience and also demonstrate values that match IBAC's. If needed, IBAC is willing to go back to the marketplace to ensure we secure people that are the right 'fit' for the organisation.⁹³

This issue is further discussed in Section 2.3.2 in this report.

2.1.5 Looking ahead

The annual report notes IBAC's commencement of investigations into alleged corruption at South West Institute of TAFE, Bendigo Kangan Institute and V/Line.⁹⁴ Public examinations began on 27 June and were to conclude on 21 July 2017. These investigations, known as Operation Lansdowne, concerned,

⁸⁷ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁸⁸ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

⁸⁹ IBAC, *Audit of Victoria Police complaints handling systems at regional level* (September 2016) 7, 11; Victorian Equal Opportunity and Human Rights Commission, *Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police, Phase One Report* (2015) 320.

⁹⁰ IBAC, *Annual report 2016/17* 19, 33.

⁹¹ *Ibid* 33.

⁹² *Ibid* 19, 34.

⁹³ *Ibid* 34.

⁹⁴ *Ibid*.

variously, arrangements for the awarding of qualifications, third-party training agreements, recruitment of staff and contractors and the expenditure of public money.⁹⁵ This work will continue in 2017/18.

In order to strengthen its investigative, exposing and reviewing functions, in June 2017 IBAC advertised for 16 positions to comprise a new multidisciplinary team. The positions include investigators, intelligence agents and forensic accountants. This team is expected to enhance IBAC's operational capacity.⁹⁶

2.2 Preventing, and informing Victorians about, corrupt conduct and police misconduct

Under its governing legislation, IBAC has 'education and prevention functions for the purpose of achieving the objects' of the Act.⁹⁷ These objects include helping to prevent corrupt conduct and police misconduct by:

- facilitating education of the public sector and the community about the harm of corrupt conduct and police misconduct
- advising, training and educating public sector agencies and the police about corruption and police misconduct
- publishing information about how to prevent corruption and police misconduct.⁹⁸

In pursuit of these objects, IBAC consults with, informs and educates the public sector, the police and the community about corruption, and other kinds of misconduct, and builds their capacity to prevent it.⁹⁹

In addition, as part of its oversight and prevention functions, IBAC carries out external reviews of matters that it has referred back to public sector bodies and Victoria Police. These and related activities help IBAC identify systemic vulnerabilities in organisations and how they might be addressed. As a result, the capacity of these organisations to identify, expose and prevent corruption and misconduct can be increased.¹⁰⁰

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ *IBAC Act 2011* (Vic) s 15(5).

⁹⁸ *IBAC Act 2011* (Vic) ss 8, 15.

⁹⁹ IBAC, *Annual report 2015/16* 7, 33; IBAC, *Annual report 2016/17* 35–46. See also Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 11–17.

¹⁰⁰ Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 11–12.

2.2.1 Activities

External reviews

IBAC's reviews of matters it has referred to Victoria Police and public sector agencies are an important part of its oversight functions. The reviews help IBAC assess whether internal investigations have been carried out thoroughly and fairly, and the effectiveness of police and public sector agencies' policies and procedures in detecting and preventing corruption. The reviews also help IBAC build invaluable relationships with the public sector.¹⁰¹ In 2016/17, IBAC reviewed 81 investigations conducted by police and public sector agencies. Eighty-nine per cent of the reviews were conducted within 90 days.¹⁰² The annual report provides summaries of a number of reviews it conducted and their outcomes regarding conflict of interest issues within Victoria Police, deficiencies in a government department's approach to procurement and issues with a local council's policies and procedures.¹⁰³ The Commission also audited more than 400 complaints handled at the regional level by Victoria Police.¹⁰⁴

Recommendations to public sector agencies

In addition to IBAC's reviews of investigations by external agencies, it also carries out its own investigations.¹⁰⁵ During investigations, IBAC considers what 'wider systems and gaps and weaknesses' might have allowed corruption to take root and flourish. It can then make formal recommendations to public sector agencies so they can improve their 'systems, practices and controls'.¹⁰⁶ The agency then has a specific period within which to respond, generally six months, and responses are usually posted on the IBAC website.¹⁰⁷ During 2016/17, IBAC's own investigations led it to make 47 formal recommendations to public sector agencies 'to improve their systems, practices and controls'.¹⁰⁸

Corruption-prevention initiatives

During 2016/2017 IBAC delivered 93 corruption-prevention initiatives, an increase from the 78 initiatives delivered in 2015/2016.¹⁰⁹ IBAC attributed this increase to the support given to principal officers of public sector agencies and Victoria Police with the introduction of mandatory notifications and the delivery

¹⁰¹ Ibid; IBAC, *Annual report 2016/17* 36.

¹⁰² Ibid 36.

¹⁰³ Ibid 38–9.

¹⁰⁴ Ibid 42.

¹⁰⁵ Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 12.

¹⁰⁶ IBAC, *Annual report 2016/17* 37; Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 12.

¹⁰⁷ Ibid 37; IBAC, Correspondence, 8 December 2017.

¹⁰⁸ IBAC, *Annual report 2016/17* 37. This was more than double the number of recommendations made during 2015/2016.

¹⁰⁹ Ibid.

of IBAC's corruption prevention strategy, including the launch of its targeted anti-corruption media campaign. IBAC reported a 99% satisfaction rating for these initiatives.¹¹⁰

2.2.2 Achievements

IBAC's prevention and engagement activities are an important way of informing the community about the risks and impacts of corruption as well as educating the public on how to identify, report and prevent corruption.¹¹¹ In addition, IBAC has reported a number of achievements with respect to its police oversight work.

Launching IBAC's first anti-corruption community education campaign

In 2016 IBAC launched *When something's not right. Report it.*—a fully integrated campaign incorporating all media, it aimed to promote the community's understanding of corruption and encourage reporting. Short, animated videos on how to recognise and report suspected corruption appeared on digital media and catch-up TV, and this was supported by an outdoor advertising campaign and radio advertisements directing people to IBAC's website and telephone number. Translated advertisements and supporting stories aimed at Victorians from culturally and linguistically diverse backgrounds appeared in targeted community media.¹¹²

Feedback from stakeholders, the digital advertisement metrics and the 84,000 unique visits to the IBAC website indicate that the campaign was successful in its aim of educating the community on the detrimental impact of public sector corruption as well as how to spot and report corruption.¹¹³

IBAC provided an evaluation of the campaign to the Department of Premier and Cabinet as part of the processes for whole-of-government advertising.¹¹⁴ The evaluation demonstrated that IBAC had positive outcomes with respect to 7 of its 8 benchmarks for the campaign:

- 226 per cent above target measure one (number of people clicking on our digital adverts appearing on popular news and entertainment websites and going to our website)
- 533 per cent above target measure two (number of people viewing our campaign video)
- 447 per cent above target measure three (number of people clicking on our digital adverts appearing on LinkedIn and visiting our website)
- 123 per cent above target measure four (average weekly site visits to IBAC)
- 133 per cent above target measure five (average number of IBAC webpages viewed per visit)

¹¹⁰ Ibid 37.

¹¹¹ Ibid 35.

¹¹² Ibid 40.

¹¹³ Ibid 43.

¹¹⁴ Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

- 119 per cent above target measure six (average weekly visits to the online complaints form)
- 120 per cent above target measure seven (average number of complaints received during campaign period).¹¹⁵

IBAC noted, however, that there was mixed success with respect to one its benchmarks. It concerned to what extent the campaign encouraged relevant complainants to come forward to IBAC.¹¹⁶ As the IBAC Commissioner put it,

The eighth campaign measure, number of complaints dismissed during the campaign period, rose by 9 per cent (from 57 per cent to 66 per cent). So while the campaign served to drive awareness of IBAC and increase complaints, it had a mixed result with regard to attracting relevant complaints.¹¹⁷

In response, IBAC now includes its toll free telephone number on its campaign materials so people can make an enquiry by telephone to clarify if IBAC is the right body for their complaint rather than simply lodging a formal complaint in writing at the outset.¹¹⁸

Building capacity to prevent corruption in the public sector in regional Victoria

IBAC held a series of corruption prevention and integrity insight forums in Mildura and Wangaratta. Presenters from Victoria's key oversight agencies shared 'insights, knowledge and practical advice on how to strengthen integrity and corruption resilience in public sector organisations' with public sector employees from state government bodies, local councils and Victoria Police.¹¹⁹

Enhancing IBAC's communications and resources

While legal and operational requirements sometimes limit what information IBAC is able to share with the public, it strives to produce 'high quality and relevant communications ... to raise awareness about corruption and share information on how it can be prevented.'¹²⁰ For example, its quarterly *IBAC Insights* newsletter reaches over 2000 people. IBAC also produced informative podcasts and other multimedia, and its website received more than 84,000 unique visits during 2016/17.¹²¹

In 2016/17, IBAC continued its focus on creating resources that are accessible to all Victorians by translating some of its most popular information sheets into 20 community languages.¹²²

¹¹⁵ Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹¹⁶ Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹¹⁷ Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹¹⁸ Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹¹⁹ IBAC, *Annual report 2016/17* 43.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

IBAC also intends to further improve the accessibility of its resources in 2017/18.¹²³ The Committee has identified that currently the Commission publishes almost all of its reports as PDFs, which presents a barrier to accessibility for some users with disabilities. IBAC does, however, provide summary extracts of its public reports in HTML and will be publishing full versions of some reports in that format.¹²⁴

IBAC has recognised that its website could be improved and has therefore commissioned an accessibility audit as well as usability testing of its website, the results of which will be used to guide enhancements to its website and publishing processes.¹²⁵ The audit and testing are scheduled to commence in 2018.¹²⁶

In its 2017 review of the *PD Act 2012* (Vic), the IBAC Committee recommended that investigating agencies such as IBAC ‘make greater use of a range of digital forms of communication, such as online videos, to explain the protected disclosure regime to the public service and the public generally’.¹²⁷ The Committee is pleased that IBAC has accepted this recommendation. As the IBAC Commissioner notes,

IBAC is acting on the IBAC Committee’s recommendation to use a range of digital communication to help explain the protected disclosure regime to public sector workers and the wider community.¹²⁸

Measures taken by IBAC in response to the recommendation include the following:

- releasing resources that inform the Victorian public sector and the broader community about corruption and the channels for reporting it (including a video for members of the public and a fact sheet aimed at a public sector audience)
- providing information about whistleblower protections under Victoria’s protected disclosure regime
- providing information such as workplace posters and digital banners about corruption and reporting to a range of stakeholders, including all Victorian government departments, big public sector bodies and local councils
- reviewing its social media strategy in accordance with the Victorian Government Digital Framework guidelines, as well as lessons from 2016/17, best practice from the Social Media for Government Summit and the approaches of comparable bodies.¹²⁹

¹²³ Ibid 43, 45.

¹²⁴ Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹²⁵ Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹²⁶ Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹²⁷ Victoria, *Improving Victoria’s whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)*: IBAC Committee, Parl Paper No 288 (2017) 171.

¹²⁸ Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

¹²⁹ Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

Oversight of police

IBAC acknowledges that there is a debate about the best model of independent oversight of police and mentions that the IBAC Committee is currently undertaking an inquiry into this matter.¹³⁰

IBAC's approach is to refer most complaints about police customer service or less serious misconduct back to Victoria Police for investigation. As a matter of principle, this is based on the view that Victoria Police management should have the main responsibility for this conduct. IBAC considers that Victoria Police are in the best position to handle these complaints and that this provides an incentive to embed proper complaint-handling and integrity policies, processes and practices within the organisation.¹³¹ For example, the IBAC Commissioner considers it appropriate for performance issues to be the responsibility of police managers, 'ideally to contribute to staff development and better performance'.¹³²

As a matter of strategy, IBAC believes such an approach allows it to make the best use of its resources by concentrating on systemic corruption and more serious police misconduct.¹³³ This is consistent with the legislative requirement that, in performing its functions, IBAC prioritise the investigation and exposure of serious or systemic corruption.¹³⁴

In 2016/17, just less than half of IBAC's 'active investigations were into alleged serious misconduct by Victoria Police'.¹³⁵ The Committee notes, however, that, as Table 2.6 shows, IBAC found that 20 (27.3%) of the 73 police investigations it reviewed in 2016/17 were 'deficient' in some respects, continuing a pattern from the previous year.¹³⁶ The annual report states that '[the] main reason why [investigation] files are returned as deficient is a lack of detail'.¹³⁷ The report does not elaborate on other kinds of deficiency.

¹³⁰ IBAC, *Annual report 2016/17* 4.

¹³¹ IBAC, *Annual report 2015/16* 4–5, 33; Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 15–16.

¹³² Mr Stephen O'Bryan QC, Commissioner, IBAC, Closed Hearing, Melbourne, 24 October 2016; IBAC, *Annual report 2015/16* 4–5; Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 15.

¹³³ IBAC, *Annual report 2015/16* 4–5, 16, 30, 33; IBAC, *Annual report 2016/17* 4–5.

¹³⁴ *IBAC Act 2011* (Vic) s 15(1A).

¹³⁵ IBAC, *Annual report 2016/17* 4.

¹³⁶ *Ibid* 36.

¹³⁷ *Ibid*.

Table 2.6 Reviews of investigations by other agencies

	2013/14	2014/15	2015/16	2016/17
Police reviews completed	79	114	96	73
Number returned as deficient	n/a	19	35	20
Public sector reviews completed	0	5	8	8
Number returned as deficient ^(a)	-	3	5	2

(a) The main reason why files are returned as deficient is a lack of detail.

Source: IBAC, *Annual report 2016/17* 36.

Table 2.7, below, identifies IBAC's oversight activities with respect to Victoria Police and details the work undertaken during 2016/2017.

The annual report emphasises IBAC's power to provide 'independent oversight' of all matters it refers to Victoria Police to investigate.¹³⁸ This power is essential, particularly given the corruption and misconduct risks identified by IBAC and reported in three research reports published during the year under review.¹³⁹ They are:

- *Audit of Victoria police complaints handling systems at regional level* (September 2016)
- *An exploration of corruption and misconduct risks in relation to transit PSOs* (December 2016)
- *Drink driving detections of Victoria Police Officers* (December 2016).¹⁴⁰

For more detail on the issues and recommendations made in the reports, see Box 2.2, below.

138 Ibid 41.

139 Ibid 42.

140 Ibid.

Table 2.7 IBAC's police oversight role

Activities	2016/2017
Receiving complaints and notifications about corrupt conduct and police personnel conduct (including complaints received by Victoria Police and mandatorily reported to IBAC).	3164 allegations of the 4990 allegations assessed by IBAC related to Victoria Police (sworn officers). ^(a)
Assessing those complaints and notifications to determine which will be referred to Victoria Police for action, which will be dismissed and which will be investigated by IBAC.	Almost half (44 per cent) of IBAC's active investigations were into alleged serious corruption or misconduct by Victoria Police. Of the 3164 allegations about police that IBAC received, 1432 (42.3%) were dismissed; 921 (29.1%) were referred to Victoria Police; and 18 (0.6%) were investigated by IBAC. ^(a)
Reviewing investigations of selected matters referred to Victoria Police to ensure they were handled appropriately and fairly.	IBAC completed 73 reviews of Victoria Police investigations.
Conducting 'own motion' investigations about police personnel conduct or corrupt conduct.	IBAC finalised Operation Ross, an 'own motion' investigation into the alleged mistreatment of a woman in custody in Ballarat Police Station cells in January 2015.
Conducting private and public examinations to assist investigations into police personnel conduct and corrupt conduct and, in the case of public examinations, exposing systemic issues, encouraging people with relevant information to come forward and to serve as a deterrent to others.	IBAC began to hold public examinations for one investigation (Operation Lansdowne).
Ensuring police officers have regard to the Charter of Human Rights.	In November 2016, following the Operation Ross investigation, IBAC recommended that Victoria Police review and enhance its human rights training for officers. Victoria Police is required to report back to IBAC on actions taken in relation to this (and other) recommendations by November 2017.
Undertaking research and other strategic initiatives to inform Victoria Police and the public on particular systemic issues and risks to help prevent misconduct and corruption, including audits of how Victoria Police handles its complaints.	IBAC released three public research reports examining corruption and misconduct risks within Victoria Police, resulting in 14 recommendations.

(a) These statistics about allegations were provided by IBAC in correspondence dated 30 November 2017. It should be noted that these figures are based on the date allegations were assessed. Other outcomes not included in these figures are 'Noted' and 'Returned'. For further discussion on the terminology used, see Box 2.1.

Source: Adapted from IBAC, *Annual report 20016/2017* 41.

BOX 2.2: Issues identified in research reports on police corruption and misconduct risks

Audit of Victoria Police complaints handling systems at regional level

IBAC conducted an audit of more than 400 files relating to complaints investigated by Victoria Police in two regions during 2014/15.

Issues identified included:

- significant delays in complaint investigations, with almost one-third of files taking longer to complete than they should
- a failure to consider a subject officer's complaint history as part of an investigation
- an overly complex system of determinations or final decisions about an investigation
- poor record keeping
- a lack of clarity in communicating outcomes to complainants and subject police officers.

The report made nine recommendations to Victoria Police to help strengthen its complaint-handling systems and improve community confidence in police integrity and accountability.

An exploration of corruption and misconduct risks in relation to transit PSOs

This report examined corruption and misconduct risks concerning transit Protective Services Officers (PSOs).

From analysis of complaint and use of force data relating to PSOs from February 2012 to December 2015, ... [IBAC] identified the following three key areas of risk in relation to PSO conduct:

- assault and excessive use of force, which represented almost half (42 per cent) of the allegations examined by IBAC
- unauthorised access to and/or disclosure of information obtained in the course of duty
- predatory behaviour involving members of the public, most commonly involving a PSO obtaining a young woman's personal details to facilitate social contact.

IBAC recommended that Victoria Police considers ways to improve community understanding of PSOs' functions and powers, and reviews the training provided to PSOs in relation to effective communication and conflict resolution skills, as well as professional and ethical standards. ...

This report generated extensive coverage and public discussion across Victorian media.

continued

Drink driving detections of Victoria Police officers

To help ensure the public has confidence in how Victoria Police fulfils its duties, including adhering to drink driving laws, IBAC analysed 228 drink driving detections of Victoria Police officers from 2000 to 2015.

The research identified that the typical Victoria Police officer detected for drink driving is a male senior constable with 15 years' service.

It found a steady decline in the number of officers detected drink driving but an increase in the median blood alcohol concentration (BAC) reading of officers detected drink driving. It also found an increase in the proportion of officers detected drink driving after they had been involved in a collision.

IBAC made several recommendations to Victoria Police to strengthen efforts to discourage officers from drink driving and to respond appropriately when officers are detected driving over the legal BAC limit. ...

Source: Adapted from IBAC, *Annual report 2016/17* 42.

It is pleasing to note that Victoria Police has accepted most of the 14 recommendations made by IBAC across the three reports to improve police systems and practices and has begun implementing them. Information on the actions by Victoria Police will be reported on IBAC's website.¹⁴¹

2.2.3 Challenges

The annual report identifies three main challenges for IBAC in relation to its prevention function: ensuring public sector bodies understand the channels for reporting suspected corruption, informing and supporting Protected Disclosure Coordinators, and strengthening its data analysis.¹⁴² In addition, the Committee notes that IBAC faces some challenges in carrying out its police oversight role with respect to reviews of police and human rights compliance. These reviews help identify systemic problems and contribute towards the prevention of corruption. IBAC has reported that the following approaches are in place to meet the challenges in exercising its education and prevention functions.

Informing the public sector about IBAC and reporting channels

IBAC works with the public sector and other integrity agencies to meet the challenge of ensuring that public sector bodies are well-informed about how and where to report improper conduct and what their legal obligations are.¹⁴³ This is particularly important given the introduction of mandatory reporting which requires public sector body heads to report suspected corruption to IBAC. To support public sector bodies, IBAC holds stakeholder information sessions,

¹⁴¹ Ibid.

¹⁴² Ibid 44–5.

¹⁴³ Ibid 44.

conducts relevant research, publishes reports, undertakes community education, provides print and digital resources and makes recommendations to improve governance, accountability and transparency.¹⁴⁴

Informing and supporting Protected Disclosure Coordinators

Protected Disclosure Coordinators (PDCs) in public sector bodies play a crucial role in providing a positive climate for the reporting of suspected improper conduct by whistleblowers ('protected disclosers').¹⁴⁵ They need to have command of the relevant laws and their organisation's policies and procedures on protected disclosures. They also need to facilitate adequate protection and support for whistleblowers, especially those experiencing reprisals.¹⁴⁶ To help inform and enhance the capacity of PDCs, IBAC held its fourth annual PDC forum, with more than 70 people attending from across Victoria.¹⁴⁷ In addition, IBAC updated its guidelines on protected disclosures and organised a PDC focus group in June 2017 to examine possible additional tools to enhance their knowledge and skills.¹⁴⁸

Further, the Committee is pleased that IBAC has accepted its recommendation to make the PD legislation, and public information about it, more accessible.¹⁴⁹ In 2017/18, 'IBAC will closely monitor expected amendments to the PD legislation and update ... [its] information accordingly, as well as continue to improve its accessibility through the use of short videos and digital channels'.¹⁵⁰

Strengthening data analysis

IBAC observes that IBAC's data analysis, with the exception of Victoria Police, is 'often limited to ... [its] own data holdings' given that other data in the public sector are 'fragmented'.¹⁵¹ During 2017/18, IBAC will continue to examine the utility of using 'broader public sector datasets' and enhance its own data analysis.¹⁵² As noted earlier in this report, in 2017/18 IBAC will also implement a Case Management System (CMS) that will improve its complaint-handling and data analysis.¹⁵³

144 Ibid 6, 44.

145 Ibid 45.

146 Ibid.

147 Ibid.

148 Ibid.

149 Ibid 45; Victoria, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)*: IBAC Committee, Parl Paper No 288 (2017) 171 (Recommendation 20).

150 IBAC, *Annual report 2016/17* 45.

151 Ibid. IBAC reports (*Annual report 2016/17* 45) that '[this] limitation doesn't extend to Victoria Police which ... has well-established consolidated data holdings ... [that] IBAC has access to ... as part of our police oversight role'.

152 IBAC, *Annual report 2016/17* 45.

153 Ibid 7.

Police oversight: reviews, audits and regard for human rights

The IBAC Commissioner has emphasised that while IBAC prioritises the investigation of serious and systemic corruption—and considers it appropriate to refer the vast majority of complaints about police to Victoria Police for investigation—it exercises a vital oversight role in relation to police.¹⁵⁴ The Commissioner has observed that ‘IBAC retains responsibility for monitoring how complaints referred to Victoria Police for investigation are handled’.¹⁵⁵ IBAC’s oversight includes the following measures:

- reviewing selected matters referred to Victoria Police to ensure they were handled appropriately and fairly
- conducting ‘own motion’ investigations about police personnel conduct or corrupt conduct (for example, Operation Ross which investigated allegations of serious police misconduct at Ballarat Police Station)
- undertaking research and other strategic initiatives, including conducting audits of how Victoria Police handles complaints such as the ‘Audit of Victoria Police complaints handling systems at regional level’ published in September 2016.¹⁵⁶

IBAC has the essential function of ensuring that police officers and protective services officers (PSOs) have regard to human rights as embodied in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (‘the Charter’).¹⁵⁷ IBAC discharges this function in a number of ways,¹⁵⁸ including by:

- identifying (as part of its assessment of every allegation about police and PSOs it receives) whether there has been a potential breach of human rights, and taking this into account in its referral decisions
- giving feedback to Victoria Police on human rights compliance that has arisen from IBAC ‘assessments, reviews, investigations and complaint handling audits’¹⁵⁹ (for example, Operation Ross)
- recommending that police investigators undergo better training to address their lack of understanding of the Charter’s human rights provisions.

IBAC recognises that reviews of police in Victoria are an important part of its work to ensure that investigations of complaints are handled fairly and appropriately.¹⁶⁰ It is ‘determined to strengthen ... [its] capacity to review matters investigated by other agencies, in particular Victoria Police’.¹⁶¹ To that end, IBAC is monitoring the resourcing of its review function.¹⁶²

¹⁵⁴ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁵⁵ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁵⁶ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁵⁷ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017. See *IBAC Act 2011* (Vic) ss 15(2) and (3)(b)(iii).

¹⁵⁸ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁵⁹ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁶⁰ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁶¹ Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

¹⁶² Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

The Committee notes the importance of IBAC's oversight role in relation to police as well as its responsibilities in relation to human rights, all of which will be examined in the Committee's current inquiry into the handling of police complaints in Victoria.

2.2.4 Looking ahead

IBAC reports that during 2017/18 it will complete a number of research and intelligence projects relating to police and the public sector and enhance its engagement with the Victorian legal and business sectors with a focus on corruption prevention and corruption-resistance.¹⁶³ IBAC also refers to its plans to hold a Corruption Prevention and Integrity Conference in Melbourne in October 2017 in conjunction with the Victorian Ombudsman, Victorian Auditor-General's Office and the Institute of Public Administration (Victoria).¹⁶⁴

Audits of complaint and incident handling by Victoria Police

In 2017/18, IBAC will finalise an audit into how Victoria Police handles complaints about its personnel.¹⁶⁵ This audit is based on IBAC's analysis of 'a sample of matters investigated by Victoria Police Professional Standards Command, including all allegations of corrupt conduct and complaints characterised as assault [complaints]'.¹⁶⁶

IBAC will also conclude an audit examining 'the oversight of deaths or serious injuries related to police contact, as well as other serious incidents such as escapes from police custody'.¹⁶⁷ These audits examine 'the timeliness, impartiality, thoroughness and appropriateness of investigations and oversights to identify any issues and potential improvements in how Victoria Police handles such matters'.¹⁶⁸

Strategic intelligence assessments

IBAC will complete a strategic intelligence project during 2017/18, which includes examinations of corruption risks in the health and corrections sectors, as well as risks associated with public sector employment practices.¹⁶⁹ Projects like this help to 'inform IBAC's decision-making on operational, prevention and engagement priorities and strategies, and alert the public sector to corruption issues and risks'.¹⁷⁰

¹⁶³ IBAC, *Annual report 2016/17* 46.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

Reviewing local and state government integrity frameworks

Integrity frameworks are the ‘processes, structures and mechanisms’ that encourage integrity and help prevent corruption.¹⁷¹ IBAC is reviewing integrity frameworks in six local councils in regional and metropolitan Victoria.¹⁷² IBAC also plans to review state government integrity frameworks in selected government departments and agencies, building on and allowing for a comparison with its 2013 review.¹⁷³

Enhanced engagement with the legal and business sectors

IBAC plans to further enhance its engagement with Victoria’s legal sector during 2017/18, with a focus on sharing information, improving the sector’s understanding of IBAC’s role and helping it to provide better support to clients reporting corruption and other misconduct as complainants and/or whistleblowers or clients who may be involved in IBAC’s inquiries.¹⁷⁴ IBAC reported that they have already commenced this work by holding meetings with peak sector professional bodies and special interest groups. They have also delivered presentations to legal forums and provided information and communications material to be distributed via various channels such as sector publications.¹⁷⁵

IBAC will also engage further with the business community, with particular attention on the sector’s understanding of the risks of corruption and ‘public sector standards for businesses supplying goods and services to local councils and state government agencies.’¹⁷⁶ This work builds on IBAC’s report on *Perceptions of corruption: survey of Victorian Government suppliers*, which was published in June 2016, and the joint communications project in partnership with the Victorian Government Purchasing Board (VGPB) regarding the VGPB’s Supplier Code of Conduct.¹⁷⁷

2.3 Building IBAC as an organisation

IBAC emphasises that having a ‘highly skilled and motivated workforce is integral to achieving our strategic goals’.¹⁷⁸ The chapter ‘Building our Organisation’ discusses a range of mechanisms IBAC has been using to achieve this goal. IBAC’s workforce profile is described along with the recruitment and employment levels of staff. IBAC has maintained ‘a favourable gender balance, with 72 females and 78 males working across most business areas’.¹⁷⁹

171 Ibid.

172 Ibid.

173 Ibid.

174 Ibid 46; Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

175 Mr Stephen O’Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

176 IBAC, *Annual report 2016/17* 46.

177 Ibid; Mr Stephen O’Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

178 IBAC, *Annual report 2016/17* 47.

179 Ibid.

The chapter also details the learning and development opportunities for staff, including leadership training across the organisation and opportunities for enhancing legal knowledge and building inter-agency relationships.¹⁸⁰ IBAC views these activities as key achievements in developing ‘a highly adaptable and responsive workforce’.¹⁸¹

IBAC’s occupational health and safety strategy and the Disability Action Plan are also explained, along with the organisation’s internal communication strategy, which has been shown to be effective.¹⁸²

2.3.1 Further achievements

In addition to the achievements mentioned above, the Commission identified a range of projects to improve its workplace, including modernising offices and minimising environmental impacts through energy and water efficiency and waste management.¹⁸³

There were also further positive initiatives in relation to information technology. IBAC introduced a new information management platform using SharePoint and launched *The Source*, its corporate intranet.¹⁸⁴

2.3.2 Challenges

Recruitment

One of the challenges IBAC has consistently identified is the recruitment of appropriately qualified people for its highly technical and skilled roles, such as investigators, lawyers with strong criminal and government law backgrounds and IT specialists for its High Tech Crime team.¹⁸⁵ As IBAC points out again in its current annual report, candidates for these positions are

highly sought after in the marketplace, with many organisations seeking individuals with contemporary investigative skills, sharp forensic accounting abilities and bright legal minds.¹⁸⁶

¹⁸⁰ During 2016/2017, \$602,180 was spent on staff training and professional development—IBAC, *Annual report 2016/17* 52.

¹⁸¹ Ibid.

¹⁸² IBAC, *Annual report 2016/17* 52, 56–8. The annual staff survey on the effectiveness of the communication strategy found that 92% of staff were ‘satisfied’ or ‘very satisfied’ with internal communications (IBAC, *Annual report 2016/17* 51).

¹⁸³ Ibid 53.

¹⁸⁴ Ibid.

¹⁸⁵ IBAC, *Annual report 2015/2016* 42; IBAC, *Annual report 2016/17* 54; Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 17.

¹⁸⁶ IBAC, *Annual report 2016/17* 54.

While IBAC has been more successful in attracting highly skilled candidates during 2016/2017, it has determined in the coming year to continue to develop strategies to attract highly skilled staff whose personal values align with IBAC.¹⁸⁷

Preparation for the implementation of changes to the *IBAC Act*

Another challenge confronting IBAC was the need to prepare for the changes to the *IBAC Act 2011* (Vic), which came into effect in 2016. These changes included the introduction of mandatory reporting and the expansion of IBAC's jurisdiction to include the offence of misconduct in public office. IBAC reviewed internal policies, retrained staff, ran external information sessions and developed appropriate resources to provide guidance to the public sector on the changes.¹⁸⁸

Transitioning to a new internal audit system

During 2016/2017, following a competitive procurement process, a new internal auditor was selected. This created a number of challenges for IBAC, including:

- maintaining continuity of service, with the new auditor beginning halfway through the internal audit program
- establishing relationships between the new auditor and key internal and external stakeholders
- adapting to a slightly different process and approach to internal auditing.¹⁸⁹

2.3.3 Looking ahead

As an anti-corruption body committed to the improvement of public sector agencies' integrity and governance systems, IBAC acknowledges that it must continue to institutionalise best practice in its own organisation.¹⁹⁰

In this spirit, IBAC continues to develop more integrated and robust systems and processes. In 2017/2018, the Commission will finalise

- the implementation of new governance, risk and compliance software ...
- [a] new software solution to assist the Audit and Risk Management Committee and internal governance committees ...
- a comprehensive integration of compliance activities and assurance activities across the organisation ...
- [a new] case management system to boost information exchange ...¹⁹¹

¹⁸⁷ Ibid. See also Table 16 in IBAC's *Annual report 2016/17* at 49. During the 2016/17 year, the number of ongoing staff increased 41.5% to 150. This increase might be attributable to IBAC converting all VP5/6 contracts for fixed term positions to ongoing ones in an attempt to attract and retain suitable candidates. See also IBAC, *Annual report 2016/17* 48.

¹⁸⁸ IBAC, *Annual report 2016/17* 4, 6, 33.

¹⁸⁹ Ibid 54.

¹⁹⁰ Ibid 7. See also Victoria, *The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 17.

¹⁹¹ IBAC, *Annual report 2016/17* 55.

It will also invest in modernised and centralised security technologies and in the project and change management skills needed to manage technological changes at IBAC.¹⁹²

2.4 Ensuring accountability and independence

IBAC emphasises that ‘[as] an integrity body ... [it] takes seriously the need to model exemplary standards of accountability and integrity’.¹⁹³ This commitment encompasses two main dimensions: IBAC’s external accountabilities and its internal governance arrangements. IBAC recognises that, given its significant investigative, covert and coercive powers, it is appropriate that it be monitored, scrutinised and reviewed by a range of external agencies and that it comply with various legislated obligations.¹⁹⁴ ‘Our focus,’ IBAC has noted, ‘is on using our powers and resources appropriately and ensuring Victorians have confidence in us’.¹⁹⁵ With regard to internal governance, IBAC regularly carries out audits and reviews of its ‘operational, administrative and financial performance and decisions’.¹⁹⁶

2.4.1 Activities and achievements

External accountabilities

IBAC met all its legislative requirements in relation to reporting and the use of its powers, and engaged constructively with a range of bodies that oversee it. These bodies and offices included the IBAC Committee, Victorian Inspectorate, Victorian Special Minister of State, Victorian Attorney-General, Public Interest Monitor, Supreme Court and Magistrates’ Court, Commonwealth Ombudsman and Commonwealth Attorney-General.¹⁹⁷ In particular, the report noted the IBAC Committee’s review of Victoria’s whistleblower protection regime, as well as the Committee’s consideration of six IBAC special reports tabled in Parliament.¹⁹⁸ The annual report also refers to IBAC’s engagement with ‘various oversight bodies that monitor ... [its] compliance with the law, and ... [its] performance and decisions’.¹⁹⁹ The Committee has recently tabled a report outlining a framework for enhanced monitoring of the performance of IBAC.²⁰⁰

¹⁹² Ibid.

¹⁹³ Ibid 59.

¹⁹⁴ Ibid 59–60.

¹⁹⁵ Ibid 59.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid 59, 60 (Table 19), 61.

¹⁹⁸ Ibid 5, 60, 68. IBAC’s special reports were on operations Exmouth; Ross; Dunham; Liverpool; Nepean; and Apsley, Hotham and Yarrowitch—see IBAC, *Annual report 2016/17* 60.

¹⁹⁹ IBAC, *Annual report 2016/17* 61.

²⁰⁰ Victoria, *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*: IBAC Committee, Parl Paper No 342 (2017).

The annual report also highlights a commendation from the Commonwealth Ombudsman as evidence of the high quality of its controls and procedures in relation to compliance with laws regulating agency access to stored communications and telecommunications data.²⁰¹

Table 2.8 provides an overview of IBAC's accountability to oversight bodies during the year.

Table 2.8 Oversight activity

Body	Role	2016/17 activity
IBAC Parliamentary Committee	<ul style="list-style-type: none"> Monitors and reviews our performance and functions Examines reports published by IBAC 	<p>The Committee conducted two inquiries into IBAC's functions and legislation:</p> <ul style="list-style-type: none"> the operation of, and potential improvements to, Victoria's protected disclosure regime the development of a framework to monitor the performance of IBAC. <p>Transcripts of IBAC's testimony before the Committee's hearings are available at www.parliament.vic.gov.au.</p> <p>The Committee also considered six IBAC special reports tabled before Parliament regarding our operational and prevention activities:</p> <ul style="list-style-type: none"> Operation Exmouth Operation Ross Operations Apsley, Hotham and Yarrowitch Operation Dunham Operation Liverpool Operation Nepean.
Victorian Inspectorate (VI)	<ul style="list-style-type: none"> Monitors our compliance with the IBAC Act and other laws Oversees our performance under the Protected Disclosure Act Receives and investigates complaints about IBAC 	<p>IBAC submitted two reports* setting out statistical data on our controlled operation activity, under the <i>Crimes (Controlled Operations) Act 2004</i>.</p> <p>The Victorian Inspectorate conducted two inspections to ensure record-keeping requirements relating to surveillance devices, telecommunications interception warrants and controlled operations were legally compliant</p>
Victorian Special Minister of State	<p>Receives reports on:</p> <ul style="list-style-type: none"> telecommunications interception warrants 	<p>As required by the <i>Telecommunications (Interception) (State Provisions) Act 1988</i>, we submitted reports* on our use and communication of information obtained by telecommunications interceptions under warrant.</p>
Victorian Attorney-General	<p>Receives reports on:</p> <ul style="list-style-type: none"> telecommunications interception warrants surveillance device warrants assumed identities 	<p>IBAC provided annual reports* detailing statistical data on telecommunications interception warrants, surveillance device warrants and assumed identities. This reporting complied with our obligations under the:</p> <ul style="list-style-type: none"> <i>Crimes (Assumed Identities) Act 2004</i> <i>Telecommunications (Interception) (State Provisions) Act 1988</i> <i>Surveillance Devices Act 1999</i>.

continued

²⁰¹ IBAC, *Annual report 2016/17* 59, 65.

Body	Role	2016/17 activity
Public Interest Monitor	<ul style="list-style-type: none"> Reviews our applications for surveillance device and telecommunications interception warrants 	The Public Interest Monitor appeared at all hearings for IBAC applications for surveillance device warrants and telecommunications interception warrants to test the content and sufficiency of the information relied on and the circumstances of the applications.
Supreme Court Magistrates' Court	<ul style="list-style-type: none"> Receives reports on IBAC surveillance device warrants 	The issuing judge or magistrate for all IBAC surveillance device warrants received reports* setting out details relating to each warrant.
Commonwealth Ombudsman	<ul style="list-style-type: none"> Inspects IBAC's use of stored communications warrants and telecommunications data 	The Ombudsman inspected IBAC's telecommunications data records to ensure compliance with the <i>Telecommunications (Interception and Access) Act 1979</i> .
Commonwealth Attorney-General	<ul style="list-style-type: none"> Receives reports on IBAC's telecommunications interception warrants, telecommunications data authorisations and stored communications warrants 	Under the <i>Telecommunications (Interception and Access) Act 1979</i> , IBAC submitted an annual report* setting out statistical data and other details in relation to telecommunications interception warrants, stored communications and telecommunications data authorisations.

* Due to necessary legal restrictions, the content of these reports cannot be detailed.

Source: Adapted from IBAC, *Annual report 2016/17* 60.

Internal governance arrangements

During 2016/17, IBAC developed a new whole-of-organisation governance framework underpinned by the values of accountability, integrity, proportionality and transparency.²⁰² The IBAC Commissioner has explained that the principles apply across the following eight governance elements that constitute the framework:

- accountability structures
- internal direction
- internal accountability
- risk management
- planning and performance management
- compliance management system
- culture.²⁰³

IBAC also carried out a thorough evaluation of its Corporate Plan with an eye on lessons that could be drawn on in developing its Corporate Plan for 2018–2021.²⁰⁴

Some key findings and recommendations from the evaluation, which have assisted in the development of the 2018–2021 Corporate Plan, include:

- clarifying the connection between outcomes, objectives and strategic goals
- reviewing and improving alignment of performance measures with outcomes, objectives and strategic goals

²⁰² Ibid 59–61.

²⁰³ Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

²⁰⁴ IBAC, *Annual report 2016/17* 59–61.

- clarifying priorities
- establishing common terminology for corporate and business planning.²⁰⁵

As noted in the final chapter of this report, the Committee tabled in November a report detailing a framework for monitoring the performance of IBAC.²⁰⁶ This framework will take into consideration IBAC's 2018–2021 Corporate Plan.

Effective management of a range of risks is another important dimension of IBAC's internal governance regime. These include 'safety, financial, reputational, legal and functional' aspects of risk.²⁰⁷ IBAC manages risk in accordance with its Risk Management Framework, which is oversighted in part by the Audit and Risk Management Committee.²⁰⁸

Risk-management activities by IBAC during the year included the examination of procedures for key operational tasks such as the execution of search warrants, as well as audits in relation to purchasing, accounts, conflicts of interest and IT security.²⁰⁹ The annual report also identified IBAC's strong and clear policy on gifts, benefits and hospitality, under which employees are

required to refuse all offers of gifts or benefits made by a current or prospective supplier or any offers made during any procurement or tender process by a person or organisation involved in the process. Employees must [also] declare all non-token gifts, benefits and hospitality that are offered and whether they are accepted or declined.²¹⁰

2.4.2 Challenges

IBAC has identified two main challenges regarding accountability: fulfilling its 'natural justice' obligations with respect to investigations and reports, and balancing the value of transparency with operational and legal requirements that sometimes restrict it.²¹¹

First, IBAC is required to give those subject to adverse comment or findings in a report a reasonable opportunity to be heard and to correct the public record before it is tabled before Parliament. This is part of the natural justice protections for persons subject to allegations and/or an investigation.²¹² IBAC maintains that, during the year, it fulfilled this requirement by giving persons subject to adverse comment the opportunity to have their responses set out in the published report and/or by making corrections to the report where that was necessary.²¹³ IBAC is confident that its approach

²⁰⁵ Mr Stephen O'Bryan. Commissioner, IBAC, Correspondence, 21 November 2017.

²⁰⁶ Victoria, *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*: IBAC Committee, Parl Paper No 342 (2017).

²⁰⁷ IBAC, *Annual report 2016/17* 63.

²⁰⁸ *Ibid* 62–4.

²⁰⁹ *Ibid*.

²¹⁰ *Ibid* 65.

²¹¹ *Ibid*.

²¹² *Ibid*.

²¹³ *Ibid*.

ensures that we fulfil our mandate to expose serious and systemic corruption and police misconduct, while affording affected parties the opportunity to comment and respond, as required, in the spirit of procedural fairness.²¹⁴

Second, IBAC recognises the tension between the desirability of transparency in relation to IBAC's investigations and exposure of corruption and the necessary limitations of it due to legal and operational requirements.²¹⁵ IBAC notes that

[for] legal and operational reasons, we cannot always publicly report on our activities. Some of our work is long term with results occurring months or years after our initial involvement. This includes potential criminal prosecutions, and changes in public sector and community practices, which impact on our ability to report, or the timing of our report.²¹⁶

In this regard, IBAC recognises the importance of external oversight and reporting, such as its accountability to the Parliament of Victoria and the VI.²¹⁷

The IBAC Commissioner has recognised that legislative provisions that exempt IBAC from the standard Freedom of Information (FOI) regime in certain circumstances are relevant to the balance between transparency and legal and operational requirements.²¹⁸ Section 194 of the *IBAC Act 2011* (Vic) sets out when 'the operation of the *Freedom of Information Act 1982* (Vic) (FOI Act) is excluded in relation to documents applying to IBAC investigations, reports, complaints and notifications'.²¹⁹

Section 194 has recently been amended in response to Recommendation 4.5 of the IBAC Committee's 2016 *Strengthening Victoria's key anti-corruption agencies?* report²²⁰ to take account of 'stakeholder concerns about the ability of complainants to access documents relating to police complaints in some circumstances'.²²¹ IBAC has itself been concerned that, before its amendment, section 194 led some lawyers to advise their clients not to lodge police complaints with IBAC.²²² The IBAC Commissioner notes

that the purpose of the new provisions is to ensure that only documents whose disclosure could prejudice IBAC operations remain exempt from the operation of the FOI Act. IBAC has engaged with stakeholders on this issue and will monitor the operation of the new section 194 to ensure that its policy objectives are met.²²³

The Committee will examine the issue of complainant access to documentation as part of its current inquiry into the external oversight of police corruption and misconduct.

214 Ibid.

215 Ibid.

216 Ibid.

217 Ibid.

218 Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

219 Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

220 *Strengthening Victoria's key anti-corruption agencies?* 78.

221 Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

222 Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

223 Mr Stephen O'Bryan, Commissioner, IBAC, Correspondence, 21 November 2017.

When it is not constrained by legal and operational factors, however, IBAC states that it is committed to being open and transparent, reporting publicly on its activities, including investigations and investigation outcomes.²²⁴ During the year, IBAC's public communications included 6 public investigation reports and 19 media releases.²²⁵

2.4.3 Looking ahead

IBAC monitors the compliance of the Victorian Police Sex Offender Registry with the relevant legislation. In the next financial year, IBAC will give its inspection report in relation to the Registry to the Minister of Police. The Minister is now required to table the report in Parliament—the first time such a report has been made public.²²⁶

IBAC is also monitoring possible legislative developments in relation to Victoria's whistleblower protection regime, following the IBAC Committee's review of the *PD Act 2012* (Vic) and its consequent recommendations to Government. The annual report notes that

[the IBAC Committee's report] recommends amendments to the PD Act, some of which assist to clarify and simplify the current PD Act, and others that seek to substantively alter or expand the scope of the legislation, with a particular focus on enhanced protections against retributive actions. The report also recommends a number of non-legislative actions to better facilitate education and awareness of the PD scheme ...²²⁷

2.5 Financial Report

The Auditor-General for Victoria, Mr Andrew Greaves, carried out an audit of IBAC's Financial Report for 2016/17. On 6 September 2017, he reported that in his opinion the

financial report presents fairly, in all material respects, the financial position of the Commission as at 30 June 2017 and its financial performance and cash flows for the year then ended in accordance with the financial reporting requirements of the *Financial Management Act 1994* and applicable Australian Accounting Standards.²²⁸

²²⁴ IBAC, *Annual report 2016/17* 65.

²²⁵ *Ibid.*

²²⁶ *Ibid* 66.

²²⁷ *Ibid* 68 (see also 5).

²²⁸ *Ibid* 70 (for a summary of the Financial Report, see 8–9).

2.6 Concluding remarks

The Committee recognises the significant achievements of IBAC during 2016/17. The achievements range across IBAC's legislated functions of identifying, exposing, investigating and preventing corruption in the Victorian public sector and addressing police misconduct. Under Commissioner O'Bryan's leadership, IBAC has become a mature anti-corruption agency with a reputation for exposing corruption in ways that have led to significant reforms in the Victorian public sector. IBAC has also begun to play a leading role in informing and educating the public about corruption prevention, notably with its first large-scale community anti-corruption campaign.

The Commissioner has identified a number of highlights for IBAC at the end of 2016/17, including the maturity of the organisation and the success of its investigations in revealing 'significant corrupt conduct in the Victorian public sector', revelations that have led to important departmental and whole-of-government reforms.²²⁹ IBAC's support for, and embedding of, a range of valuable reforms to integrity laws, which drew on the IBAC Committee's *Strengthening Victoria's key anti-corruption agencies?* report, are also notable achievements.²³⁰ These include the addition of a preliminary inquiries power, the new misconduct in public office offence and the mandatory reporting of suspected corruption in the public sector.²³¹

However, the Commissioner has also noted a range of challenges that IBAC has faced during the year:

- implementing changes to our powers and processes following the legislative amendments
- responding to advances in computer encryption technology
- ensuring protected disclosure coordinators are informed to effectively implement the protected disclosure regime
- growing IBAC's data holdings and access to support our expository and prevention functions, and
- recruiting highly skilled and experienced staff.²³²

The Commissioner has also noted two other ways that the legislation governing IBAC could be enhanced:

- providing IBAC with [an] explicit 'follow-the-dollar' power to enhance our ability to more thoroughly investigate public sector corruption, which often involves complex and well-disguised financial arrangements between public and private entities

²²⁹ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

²³⁰ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

²³¹ Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017; IBAC, *Annual report 2016/17* 4.

²³² Mr Stephen O'Bryan QC, Commissioner, IBAC, Correspondence, 21 November 2017.

- enhancing IBAC’s ability to recover the proceeds of public sector corruption. While IBAC has the power to commence prosecutions, we are unable to make confiscation or even tainted asset restraining order applications.²³³

In its past work the Committee concluded that provision of a follow-the-dollar power to IBAC required further consideration and investigation. It also recommended that the Victorian Government, as part of its ongoing review of the integrity system, investigate this issue further. Given the IBAC Commissioner’s regular requests for a follow-the-dollar power, the Committee reiterates the importance of the Government examining this power as part of its review. The Committee looks forward to examining the outcomes of the review.²³⁴

In addition to the challenges identified by the Commissioner, the Committee notes continuing challenges in ensuring that IBAC is able to fulfil its functions in relation to the investigation and oversight of complaints about police as effectively as possible. This is the subject of the Committee’s current inquiry into the external oversight of police corruption and misconduct.

The Committee also recognises the challenge of assisting both the public sector and police to play their part in identifying and preventing corruption and misconduct. A critical dimension of this challenge is the provision of accurate and accessible information about IBAC’s role, including its role within Victoria’s whistleblowing protection regime, for the public sector and public alike. The Committee is pleased that IBAC will continue in 2017/18 to seek to enhance the information it provides, including through its website, as well as social and traditional media.

Finally, the Committee will keenly follow IBAC’s development of a new corporate plan for 2018–2021, as well as its participation in the Committee’s Foundation Review as part of the implementation of an enhanced and systematic monitoring of IBAC’s performance, which is one of the Committee’s key oversight functions.

²³³ Mr Stephen O’Byrne QC, Commissioner, IBAC, Correspondence, 21 November 2017.

²³⁴ *Strengthening Victoria’s key anti-corruption agencies?* 81; Victoria, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2017) 23–4.

As noted at the start of this report, under section 12A of the *Parliamentary Committees Act 2003* (Vic), the Committee's functions include:

- monitoring and reviewing the performance of the duties and functions of the VI, other than those in respect of officers of the Victorian Auditor-General's Office (VAGO) or Victorian Ombudsman
- reporting to both Houses of Parliament on any matter connected with the performance of the duties and functions of the VI, other than those in respect of the officers of VAGO or the Victorian Ombudsman
- examining any reports made by the VI, other than reports in respect of officers of VAGO or the Victorian Ombudsman.²³⁵

In the following sections, the Committee examines the VI's annual report, reviewing the VI's performance of its duties and functions in relation to IBAC.

According to the VI's *Annual report 2016–2017*, the VI's vision is to:

provide independent assurance to Parliament that the integrity, accountability and investigatory bodies of the State act legally and with propriety in carrying out their duties and functions and in particular in exercising coercive powers.²³⁶

The VI's particular role in monitoring and overseeing IBAC is set out in the *Victorian Inspectorate Act 2011* (Vic) ('*VI Act 2011* (Vic)'). Under this Act, the VI is authorised to:

- monitor IBAC's compliance with the *IBAC Act 2011* (Vic) and other laws—including laws on telecommunication interceptions, surveillance devices and controlled operations (such as 'undercover' operations)
- oversee IBAC's performance of its functions under the *Protected Disclosure Act 2012* (Vic)
- assess the effectiveness and appropriateness of the policies and procedures of IBAC which relate to the legality and propriety of IBAC's activities
- monitor IBAC's interactions with other integrity bodies
- receive and investigate complaints about IBAC or IBAC personnel
- undertake own motion investigations of IBAC activities
- make recommendations to IBAC
- make reports to Parliament.²³⁷

²³⁵ Section 12A(1)(f)(g)(h).

²³⁶ VI, *Annual report 2016–2017* 6.

²³⁷ See, in particular, *VI Act 2011* (Vic) ss 11, 12, 12A, 43–48, 78–79, 87, 91 and the VI *Annual report 2016–2017* (especially 5–16, 19–20). See also, VI, *Annual report 2015/16* 8–10.

The VI considers that in carrying out this oversight role as ‘the eyes and ears of the Parliament’ it can help achieve the right balance between effective investigatory powers for IBAC and the protection of Victorians’ rights.²³⁸ One of the practical ways to pursue this ideal is by complementing the oversight work of the IBAC Committee.²³⁹

Drawing on the VI’s annual report, the Committee examines the activities of the VI, its achievements, and any challenges it has faced, in the following areas:

- complaints and investigations
- monitoring and oversight
- governance and finances.

3.1 Complaints and investigations

3.1.1 Activities

During 2016/17, the VI reported that it received 72 complaints and 88 enquiries.²⁴⁰ This represents a 7% increase in the number of complaints and a 4% decrease in the number of enquiries compared with 2015/16.²⁴¹ The VI defines an enquiry as ‘a contact from a member of the public seeking information about the VI’s complaint processes or other information’.²⁴² It defines a complaint as ‘a matter where the VI has received a completed complaint form or other substantive information from a person who has made it clear that his or her intention is to make a complaint to the VI’.²⁴³ The breakdown of these complaints and enquiries is as follows:

- 36 complaints about IBAC or IBAC personnel
- 43 enquiries about IBAC or IBAC personnel
- 32 complaints about Victorian Ombudsman officers
- 27 enquiries about Victorian Ombudsman officers
- 1 complaint about the Victorian Auditor-General’s Office (VAGO)
- 3 complaints about the Office of Police Integrity (OPI)
- 18 non-jurisdictional enquiries.²⁴⁴

As can be seen in Figure 3.1, the number of complaints about IBAC have increased since 2014/15.

²³⁸ VI, *Annual report 2016–2017* 7.

²³⁹ *Ibid* 7. See also VI, *Annual report 2015/16* 9.

²⁴⁰ VI, *Annual report 2016–2017* 9–10.

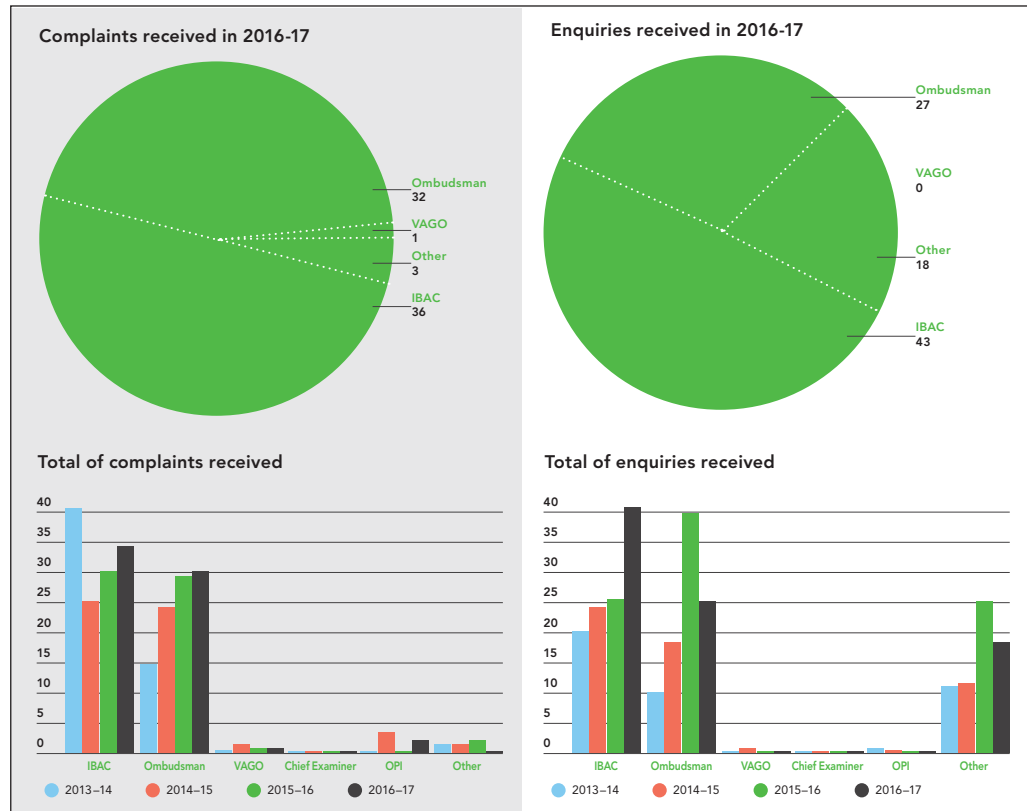
²⁴¹ *Ibid*.

²⁴² *Ibid* 10.

²⁴³ *Ibid*.

²⁴⁴ *Ibid*.

Figure 3.1 Victorian Inspectorate: complaints and enquiries received in 2016-17



Source: VI, Annual report 2016-2017 10.

Complaints and investigations relating to IBAC

Under section 43(1) of the *VI Act 2011* (Vic), a person may make a complaint to the VI

about the conduct of the IBAC or IBAC personnel in respect of the—

- (a) performance or exercise; or
- (b) failure to perform or exercise; or
- (c) purported performance or purported exercise—

by the IBAC or IBAC personnel of the duties, functions or powers conferred on the IBAC or IBAC personnel in relation to any matter.

Without limiting this general provision, section 43(2) provides that a person can complain that ‘specified conduct’ of IBAC or IBAC personnel was:

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or
- (d) an abuse of power; or
- (e) otherwise improper.

Thus, the VI can receive a very broad range of complaints about IBAC or IBAC personnel.²⁴⁵

As noted above, the VI received 36 complaints about IBAC or IBAC personnel. The VI has reported the following with respect to the ‘outcomes’ of these complaints:

- one is being investigated as part of an own motion investigation
- three were deemed closed as requested information was not provided by the complainant
- 17 were closed as there was insufficient evidence to support the allegations, or there was no evidence to suggest that the IBAC had improperly exercised its discretion whether or not to investigate a complaint that had been made to it
- one complaint is on hold, as per the complainant’s request
- two complaints were resolved, with IBAC providing a remedy
- six complaints were considered to be outside of the VI’s jurisdiction
- six complaints were still being considered by the VI as at 30 June 2017.²⁴⁶

The annual report also describes the VI’s powers of investigation, and possible outcomes of investigations, under the relevant legislation before providing some data on its investigation activities during 2016/17.²⁴⁷ The VI reports that

[i]n 2015–16 the VI commenced two own motion investigations about IBAC’s conduct. One investigation was completed in 2016–17 to the stage of a draft report (which was finalised after consideration of submissions made by the IBAC) and the other is continuing.²⁴⁸

The report does not give any detail about these investigations.

In conducting investigations, the VI makes use of various powers, including the power to:

- summon and examine a person and ‘to direct a person summoned not to engage a particular legal representative’
- compel the production of ‘specified documents or things, or both’
- interview a person at its office
- issue confidentiality notices
- request ‘reasonable assistance’ from IBAC regarding a VI investigation.²⁴⁹

In pursuit of its ‘investigative processes’ the VI issued summonses to examine witnesses and to require the production of documents. It also conducted several interviews and issued a small number of confidentiality notices.²⁵⁰

245 Ibid 9.

246 Ibid 12.

247 Ibid 13.

248 Ibid.

249 Ibid 14. See also VI, *Annual report 2015/16* 16.

250 Ibid.

The Committee notes an error in the annual report in relation to the description of the '[p]ossible outcomes of an investigation'.²⁵¹ The report refers to one possible outcome as 'Recommendation not to report must be in writing'.²⁵² The Inspector has explained that

The statement in the annual report is erroneous and appears to have been included as the result of one or more clerical errors. It should have reflected section 78(3) of the VI Act, which provides that a recommendation that is not contained in a report must be made in private.²⁵³

The VI will consult with Parliament in order to take appropriate steps to correct the error.

3.1.2 Achievements

The VI considers its completion of an own motion investigation into IBAC that arose out of complaints about it to be '[a] major highlight and achievement'.²⁵⁴ While the complaints were not upheld, the VI's report of the investigation 'criticised a number of aspects of IBAC's handling of the matter' and made a number of recommendations to IBAC.²⁵⁵ The Committee considers the completion of this investigation an expected part of the VI's performance of its legislated functions. The Committee also notes with disappointment the unacceptable delays in completing this investigation and the VI's failure to keep the complainant adequately informed throughout the process.

Communication and complaint-handling

During the year the VI closely engaged with IBAC 'in relation to its police complaint jurisdiction'.²⁵⁶ The VI considers that IBAC's communication of its determinations to complainants could be improved, especially when a complaint is dismissed or referred to another body.²⁵⁷ The Inspector noted that

there are opportunities for improvement in IBAC's communication of its determination to complainants. Where IBAC dismisses a complaint or refers it to another agency (e.g. Victoria Police or the Ombudsman) for investigation, its practice is not to give reasons to the complainant for its decision. Complaints to the VI frequently refer to the absence of reasons as a source of grievance, and the VI, if it gets to the stage of reviewing the IBAC file, usually attempts in its outcome letter to the complainant to identify the reasons IBAC had for the action it took. This is a matter that has been raised with IBAC on a number of occasions, but there is no obligation for IBAC to provide reasons and it resists doing so.²⁵⁸

251 Ibid 13.

252 Ibid.

253 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

254 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

255 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

256 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

257 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

258 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

The Inspector has stated that, while some of the VI's communications with complainants were 'inadequate' during 2016/17,

[g]enerally ... the VI communicates well with complainants. All complaints are acknowledged immediately on receipt, and within 14 days the complainant is again communicated with about how his or her complaint will be dealt with. Most complaints are finalised within a month, many much sooner. If the VI decides to review the agency file, it may take longer, in which case the complainant is kept advised of progress.²⁵⁹

The Committee recognises the importance, subject to legal and operational requirements, of regular, clear and appropriate communication with complainants to inform them of the progress of their matter. It notes that IBAC has made, and continues to make, significant efforts to enhance the quality of its public information and of its particular communications with complainants from first contact to outcome. However, the Committee considers that the concerns that the VI has identified in relation to IBAC's informing and communicating with complainants apply equally to the VI—for example, in relation to the need for regular and comprehensible communications with complainants that are expressed in an appropriate tone.

With regard to protected disclosures, which provide important protections for complainants, the VI annual report highlights as an achievement that '[t]he VI has developed a new monitoring system to oversee the performance by IBAC of its functions under the PD Act'.²⁶⁰ The annual report did not give any details of the new monitoring system, instead stating that 'updates about ... [it] will be provided' during 2017/18.²⁶¹ The Committee asked the Inspector what the rationale for the new system was, what its main characteristics were, and how it improved the previous system. The Inspector provided the following response:

The words of the annual report do not intend to convey a message that all the developmental steps of the PD program have been finalised. The VI has developed a framework described as an 'IBAC protected disclosure monitoring plan (Overview)' which has been shared with IBAC, and discussions have been held that touched on some of the challenges in developing an appropriate methodology. The main characteristics are a more systematic approach to checking IBAC's performance in relation to each of its functions under the under the PD Act than has previously been the case, and a cooperative approach (with IBAC) to carrying out that checking.²⁶²

The Committee considers that the VI's annual report should have included these, and other details, so that the rationale and nature of the new approach to monitoring IBAC's protected disclosure functions could be better understood and assessed by readers of the report.

259 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

260 VI, *Annual report 2016–2017* 16. See also the discussion in Section 3.2.1 of this report, below.

261 Ibid.

262 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

The VI also noted that during 2016/17 it participated in the Protected Disclosure Liaison Group (PDLG).²⁶³ The PDLG brings together representatives from IBAC, the VI, Victorian Ombudsman, Victoria Police and the Presiding Officers (Speaker and President) of the Parliament of Victoria.²⁶⁴ The PDLG meets quarterly to share experience and to discuss how the protected disclosure ('whistleblowing') regime might be improved.²⁶⁵ The VI reports that the PDLG 'facilitates greater stakeholder engagement within the protected disclosure regime and enables the VI to be more pro-active in its oversight functions of the IBAC and other integrity bodies'.²⁶⁶

3.1.3 Challenges

The Inspector has called attention to the common challenges of handling complaints and engaging with complainants:

Some [complaints] are lengthy and detailed and require considerable work, and thus considerable staff time, to consider and assess. Others are vague and poorly expressed, and considerable work is required to obtain from the complainant a proper understanding of the nature and basis of his or her complaint. Managing complainant expectations is always a challenge, as every complainant believes himself or herself to have been a victim of an injustice. These challenges are, however, an inherent part of receiving and considering complaints.²⁶⁷

The Committee recognises these challenges, but notes that one way of addressing them is to provide clear, readily accessible information to members of the public so they better understand the role of the VI, its jurisdiction, the complaints process and what they can expect in terms of progress reports. These measures, combined with appropriate, regular communication with complainants, while not a panacea, are likely to reduce the demands on VI staff as well as complainants' frustrations.

In its 2016 report on the performance of the VI, the Committee expressed the view that the VI should consider undertaking usability and focus testing on its website²⁶⁸ to make it easier for Victorians to use and understand.²⁶⁹ The Committee also emphasised that any information about the law intended for a public audience, whether in printed or digital form, should be in plain language.²⁷⁰ These concerns remain relevant given the current limitations of the VI's website and the other information it provides for members of the public.

²⁶³ VI, *Annual report 2016–2017* 16.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

²⁶⁸ VI website, viewed 10 November 2017, <vicinspectorate.vic.gov.au>.

²⁶⁹ Victoria, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 30–31.

²⁷⁰ Ibid. See also Victoria, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)*: IBAC Committee, Parl Paper No 288 (2017) 168–9.

The Committee welcomes the VI's production of a more accessible fact sheet entitled *Making a complaint to the Victorian Inspectorate*.²⁷¹ However, the Committee notes that the VI is still using its *Notes for complainants* PDF publication,²⁷² which the Committee considered in its 2016 report to be excessively formal in tone, technical and likely to challenge the average lay reader.²⁷³ Further, the *Notes* publication does not explain how a member of the public can make a protected disclosure;²⁷⁴ nor is this information available anywhere on the VI website.

The Inspector has stated that the VI 'has recently reviewed its Notes for Complainants and Complaints Form, and substantially-revised and more user-friendly versions of both documents are now available on the VI's website'.²⁷⁵ However, the Committee continues to regard the *Notes* publication as unsatisfactory due to its undue formality, technicality and its failure to explain the protected disclosure regime.

The VI has reviewed its website and added sections on 'Making a complaint to the Victorian Inspectorate', 'Complaints that can and cannot be investigated' and 'How the VI assesses complaints'.²⁷⁶ These are welcome improvements to the information architecture and content of the website. However, the Committee considers that a more systematic review of the design and content of the website in relation to usability (including thorough focus testing among stakeholders and members of the public) is warranted.

With respect to the lack of information on protected disclosures on the VI's website, the Inspector has responded as follows:

The VI has had Protected Disclosure Procedures since 2013, although they have not been available on the website. A revised set of Protected Disclosure Procedures designed specifically to be made available on-line is very close to completion and should be on the website by the end of the month [November 2017].²⁷⁷

Given the importance of complainants and disclosers understanding the legal protections that might be available to them as 'whistleblowers', the Committee believes that the VI should develop accessible, plain-language information about Victoria's whistleblowing regime and how it applies to complaints and disclosures received by the VI.

271 VI, *Making a complaint to the Victorian Inspectorate*, viewed 10 November 2017, <vicinspectorate.vic.gov.au/wp-content/uploads/2017/07/Fact-sheet-Making-a-complaint-to-the-VI.pdf>.

272 *Notes for complainants*, viewed 10 November 2017, <vicinspectorate.vic.gov.au/wp-content/uploads/2017/07/VI-Notes-for-Complainants.pdf>.

273 Victoria, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 31.

274 *Notes for complainants*, viewed 10 November 2017, <vicinspectorate.vic.gov.au/wp-content/uploads/2017/07/VI-Notes-for-Complainants.pdf> 1 ('Please note that this document does NOT apply to a person who wishes to make a protected disclosure (previously called a "whistleblower complaint")').

275 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

276 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

277 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

Improvements to the comprehensibility of website and other public information will go some way towards reducing the risk of a complaint ‘roundabout’, with complainants struggling to find the right channel for their complaint.²⁷⁸

RECOMMENDATION 3: That the Victorian Inspectorate undertake a systematic review of the design and content of its website.

The Committee also notes the importance of effective collaboration between integrity agencies, such as the VI and IBAC, in producing easily accessible, accurate and consistent plain-language information about how to make complaints and disclosures about improper conduct in Victoria. The Committee acknowledges that a number of useful publications have been produced as a result of collaboration between Victoria’s integrity agencies.²⁷⁹ The Committee believes, however, that further opportunities exist for valuable collaboration in this area.

RECOMMENDATION 4: That the Victorian Inspectorate and the Independent Broad-based Anti-corruption Commission collaborate, where appropriate, to produce easily accessible, accurate and consistent plain-language information about how to make complaints and disclosures about improper conduct in Victoria.

3.1.4 Looking ahead

In 2017/18, the VI plans to complete its current own motion investigation into the ‘general subject of ... IBAC’s practices in relation to the welfare of examinees’, that is, people who are subject to IBAC examinations.²⁸⁰

In addition, the VI will need to finalise and implement its new approach to monitoring IBAC’s exercise of its functions in relation to Victoria’s whistleblower protection regime.

3.2 Monitoring and oversight

In this section of the report, the Committee examines the VI’s monitoring and oversight of IBAC in relation to:

- notifications regarding coercive powers and other matters
- reporting to the VI regarding coercive powers
- compliance with the *IBAC Act 2011* (Vic) and other laws
- compliance with the *Protected Disclosure Act 2012* (Vic)
- the use of telecommunications interceptions, surveillance devices and controlled operations.

²⁷⁸ Victoria, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*: IBAC Committee, Parl Paper No 234 (2016) 31.

²⁷⁹ See, for example, IBAC, *Safeguarding integrity: a guide to the integrity system in Victoria* (December 2016).

²⁸⁰ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

3.2.1 Activities and achievements

Notifications regarding coercive powers and other matters

IBAC must notify the VI every time it uses a coercive power, issues or cancels a confidentiality notice or directs anyone ‘not to engage a specified legal practitioner’.²⁸¹ During 2016/17, the VI received, from all relevant agencies, a total of 709 notifications, which was a 34.6% decrease from the preceding financial year. Of this total, 511 notifications came from IBAC, down from 932 the previous year.²⁸² The VI explained the overall reduction in notifications as follows:

The primary reason for the reduction in the number of notifications received was a substantial reduction in the number of summonses issued by IBAC compared with the previous year. However although the number of summonses and thus the number of coercive examinations conducted by IBAC decreased, VI staff observed that the length and complexity of the coercive examinations conducted was somewhat greater than in previous years.²⁸³

Reporting to the VI regarding coercive powers and related matters

IBAC is also required to report to the VI in relation to a number of matters.²⁸⁴ IBAC’s reporting to the VI during the year under review is summarised in the table below.

Table 3.1 IBAC reporting to the VI, 2016/17

Requirement	IBAC Act 2011 (Vic) provision	Number of matters reported
Give reasons for any IBAC determination to hold a public examination	Section 117	1 notification
Report any witness summons issued, including why it was issued	Section 122	288 notifications
Provide copies of the video recordings and transcripts of any coercive examinations	Section 134	35 notifications
Report the issue of ‘certain arrest warrants’	Sections 142 and 154	No such arrest warrants issued
Provide copies of confidentiality notices and related documents	Section 43	184 notifications

Source: Based on data in the VI’s *Annual report 2016–2017* 15.

Compliance with the *IBAC Act 2011 (Vic)* and other laws

Under the *VI Act 2011 (Vic)*, the VI has the function of monitoring ‘the compliance of IBAC with its legislative responsibilities under the *IBAC Act* and other laws’.²⁸⁵ The VI describes this function as follows:

²⁸¹ VI, *Annual report 2016–2017* 14.

²⁸² VI, *Annual report 2016–2017* 14; VI, *Annual report 2015–2016* 16.

²⁸³ VI, *Annual report 2016–2017* 15.

²⁸⁴ Ibid.

²⁸⁵ VI, *Annual report 2016–2017* 15.

Such monitoring involves checking that the business IBAC has created and developed to perform its statutory functions enables the IBAC and its personnel to perform those statutory functions in accordance with the IBAC Act and other applicable laws.²⁸⁶

The VI reported that in 2016/17 it undertook a project examining IBAC's handling of complaints about police.²⁸⁷ The project has involved reviewing IBAC policies and procedures on complaints handling and a number of police complaint files.²⁸⁸ The VI has also met with the Chief Executive Officer of IBAC and its Manager of Assessment and Review.²⁸⁹ The project was 'ongoing at the conclusion of the financial year [2016/17]'.²⁹⁰ The VI notes that the project will mean that it is better informed about IBAC's handling of complaints about police, which the VI considers is particularly important given the IBAC Committee's current inquiry into the external oversight of police corruption and misconduct.²⁹¹

Compliance with the *Protected Disclosure Act 2012* (Vic)

The VI oversees IBAC's performance of a range of functions under the *PD Act 2012* (Vic) and its compliance with the Act.²⁹² The VI also reviews the policies and procedures that IBAC has set up under the *PD Act 2012* (Vic) and their implementation.²⁹³ The annual report does not provide any information about the outcomes of any of these reviews.

Use of telecommunications interceptions, surveillance devices and controlled operations

Under the *Telecommunications (Interception) (State Provisions) Act 1988* (Vic) (*TISP Act 1988* (Vic)), the VI must inspect IBAC and Victoria Police records at least twice a year and report the results after 1 July to the Police Minister and the minister responsible for IBAC (presently the Special Minister of State).²⁹⁴ The VI 'may include a report on any matter where, as a result of the inspection of agency records, the VI is of the opinion that a member of staff has contravened' the applicable legislation.²⁹⁵ These reports are not available publicly.²⁹⁶

Under the *Surveillance Devices Act 1999* (Vic), the VI is responsible for inspecting, 'from time to time', IBAC's records relating to the use of surveillance devices, reporting the results to each House of Parliament 'as soon as

286 Ibid.

287 Ibid.

288 Ibid.

289 Ibid.

290 Ibid.

291 Ibid.

292 Ibid.

293 Ibid.

294 Ibid 19.

295 Ibid.

296 Ibid.

practicable after 1 January and 1 July of each year', and providing copies to the Attorney-General.²⁹⁷ During 2016/17, the VI inspected IBAC and Victoria Police records and reported to Parliament.²⁹⁸

Controlled operations are typically 'undercover' operations. They commonly involve a law enforcement officer going under cover to obtain evidence when investigating suspected criminal activity. To do so, the officer may have to associate with suspected criminals and engage in unlawful activity.²⁹⁹ Controlled operations undertaken by IBAC and Victoria Police are authorised and regulated by the *Crimes (Controlled Operations) Act 2004* (Vic) ('CO Act 2004 (Vic)'). Under this Act, authorised personnel participating in a controlled operation may be indemnified against liability for certain unlawful conduct.³⁰⁰ In accordance with the *CO Act 2004* (Vic), the VI inspected the records of IBAC and Victoria Police with respect to controlled operations, and received the required reports on these activities from both agencies.³⁰¹

3.2.2 Challenges

The VI found that generally IBAC reports to the VI regarding the use of coercive powers and related matters were 'comprehensive and adequate'.³⁰² It did note some concerns, however, regarding the adequacy of reasons that IBAC has provided, on occasion, for their issuing of a witness summons. Whenever these concerns arise, the VI 'requests a supplementary report'.³⁰³

In more general terms, the Inspector has noted the following challenges for the VI in exercising its oversight functions:

- addressing a backlog in relation to its reviews of coercive examinations, and improving its 'processing and tracking system ... to prevent future backlogs developing'
- keeping its processes for its compliance-monitoring functions 'streamlined', especially in relation to the inspections it carries out (for example, of Victoria Police)
- managing the breadth of its responsibilities in relation to a range of bodies, including IBAC, the Victorian Ombudsman and the Chief Examiner
- effectively considering complaints about IBAC, monitoring and overseeing IBAC's use of coercive and related powers, and assessing IBAC's policies, procedures and practices (for example, in monitoring public examinations for Operation Lansdowne, and IBAC's handling of complaints about police).³⁰⁴

297 Ibid.

298 Ibid; VI, *Victorian Inspectorate report to the Parliament of Victoria pursuant to section 30Q of the Surveillance Devices Act 1999*, Report No 1 for 2016–2017 (February 2017).

299 VI, *Annual report 2016–2017* 19.

300 Ibid.

301 Ibid 19–20.

302 Ibid 15.

303 Ibid.

304 Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

3.2.3 Looking ahead

In 2017/18, the VI will be further embedding its functions in relation to a wider range of bodies, with the relatively recent addition of the Judicial Commission of Victoria and the Office of the Victorian Information Commissioner to its oversight jurisdiction.³⁰⁵ The Inspector has explained that one of the major challenges is

maintaining oversight of multiple integrity agencies whilst their business changes and expands, particularly in the case of IBAC. The VI is different from its interstate counterparts who oversee only one agency. The VI continues to address this challenge through recruitment of skilled staff and setting priorities. The VI's priorities are overseeing the exercise of coercive powers by agencies and managing complaints about them as well as engaging in targeted general monitoring projects.³⁰⁶

As noted earlier, the VI will also be improving its oversight of IBAC's performance of its functions in relation to whistleblowing under the *PD Act 2012* (Vic) regime.

3.3 Governance and finances

3.3.1 Governance

The annual report describes the role and responsibilities of the VI's Audit Committee. The Audit Committee meets at least quarterly and reviews the VI's financial performance and procedures as well as its risk management.³⁰⁷ The annual report states that the key responsibilities of the Audit Committee are to:

- review and report independently to the Inspector on the annual report and all other financial information published by the VI;
- assist the Inspector in reviewing the effectiveness of the VI's internal control environment covering:
 - effectiveness and efficiency of operations;
 - reliability of financial reporting; and
 - compliance with applicable laws and regulations;
- ensure that its resources are adequate and used effectively, including coordination with the external auditors; and
- oversee the effective operation of the risk management framework.³⁰⁸

The annual report does not, however, provide any information on the outcomes of any reviews by the Audit Committee.

The annual report notes that the VI has complied with its occupational health and safety (OH&S) obligations during 2016/17.³⁰⁹

³⁰⁵ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³⁰⁶ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³⁰⁷ VI, *Annual report 2016–2017* 22.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

3.3.2 Finances

The Auditor-General for Victoria, Mr Andrew Greaves, carried out an audit of the VI's Financial Report for 2016/17. On 19 September 2017, he reported that in his opinion the

financial report presents fairly, in all material respects, the financial position of the Inspectorate as at 30 June 2017 and its financial performance and cash flows for the year then ended in accordance with the financial reporting requirements of the *Financial Management Act 1994* and applicable Australian Accounting Standards.³¹⁰

3.4 Concluding remarks

The Committee recognises the work of the Inspector in establishing the VI, which is a vital part of Victoria's integrity system.

During 2016/17, however, the VI faced a number of challenges. The Inspector has noted that the VI has had to manage its oversight functions with respect to a range of different bodies.³¹¹ The Inspector has explained that the number of organisations that his office oversees has been steadily increasing since its establishment.³¹² Currently, the VI has oversight functions in respect of IBAC, the Ombudsman, the Chief Examiner, the Auditor-General, the Judicial Commission of Victoria (since 1 July 2017) and the Office of the Victorian Information Commissioner (since 1 September 2017), 'with potentially a quite wide range of functions for the VI.'³¹³ In addition, '[the] possibility has been raised of the VI also being given oversight functions in respect of the Local Government Inspector'.³¹⁴

The VI has also explained that the proposed 'substantial amendments' to the legislation with which the VI operates, if passed, will also present challenges and opportunities for 'reviewing the VI's priorities and operational procedures to ensure consistency with the new provisions.'³¹⁵

During the year, the Committee became aware of a number of problems with respect to the VI's systems, processes and practices, especially its handling of complaints and investigations as well as its communication with complainants. As part of its oversight work, the Committee met with the Inspector on a number of occasions to discuss necessary improvements to the operation of his office. In this regard, the Committee welcomes the efforts of the VI to improve its internal governance, operational and workplace systems, practices and culture,³¹⁶ and looks forward to further improvements in the coming year.

³¹⁰ Ibid 33.

³¹¹ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³¹² Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³¹³ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³¹⁴ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³¹⁵ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

³¹⁶ Mr Robin Brett QC, Inspector, VI, Correspondence, 23 November 2017.

4 The IBAC Committee's monitoring and review of IBAC and the VI

As discussed at the outset of this report, the Committee has a statutory function to monitor and review the performance of IBAC and the VI pursuant to section 12A of the *Parliamentary Committees Act 2003* (Vic). To date, the Committee has reviewed the Victorian anti-corruption agencies' annual reports and IBAC's special reports tabled in the Parliament, conducted hearings on their performance using reported outcomes and undertaken supplementary research.

In February 2016, the Committee tabled its first report, *Strengthening Victoria's key anti-corruption agencies?*³¹⁷ This report followed the introduction of the Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015 (Vic) into Parliament by the Victorian Government in December 2015. The Bill proposed a number of reforms to anti-corruption and integrity agencies within Victoria, including IBAC and the VI. The Committee's report considered whether the proposed legislation addressed issues about the Victorian integrity system raised by stakeholders in closed hearings, submissions and reports. The Committee identified some unresolved issues and made 13 recommendations to the Victorian Government to consider, or further investigate, as part of its ongoing review of Victoria's integrity system.

4.1 Improving Victoria's whistleblowing regime: a review of the *Protected Disclosure Act 2012* (Vic)

As part of the Committee's review of the legislation introduced in December 2015 to strengthen Victoria's integrity system, the Committee received evidence regarding the nature and operation of the state's protected disclosure regime, and in particular the *PD Act 2012* (Vic).³¹⁸ This evidence raised a number of issues concerning the effective operation of the protected disclosure scheme.³¹⁹

In response to these issues, the Committee determined to review the protected disclosure ('whistleblowing') regime, and, in particular, the *PD Act 2012* (Vic). The Act governs disclosures about improper conduct in the Victorian public sector. The Committee also determined to review the roles of IBAC and the VI in relation to protected disclosures.

³¹⁷ *Strengthening Victoria's key anti-corruption agencies?*

³¹⁸ Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015 (Vic); *Strengthening Victoria's key anti-corruption agencies?*

³¹⁹ *Strengthening Victoria's key anti-corruption agencies?* xiii, 66–75, 78–9, 96.

In addressing the key issues in this Review, the Committee sought to apply best practice principles regarding the nature and operation of whistleblower laws, drawing on interstate and international experience. While the Victorian regime, and the *PD Act 2012* (Vic) in particular, meets many of the best practice principles, the Committee has identified a number of ways it might be improved.

While the Committee did not believe the Act should be repealed, it considered that it should be fine-tuned through selected amendments. To this end, the Committee made 22 recommendations covering the law and processes on making, assessing and investigating disclosures about improper conduct in the public sector; the protection of whistleblowers from reprisals; and the provision of compensation and other assistance to whistleblowers.

However, the Committee recognised that legal improvements are only part of the answer to improving Victoria's whistleblowing regime. Many Victorians depend more on information and education explaining the legislation than on the Act itself. While some excellent resources for the public and the public sector already exist, there is scope for further improvements, especially with respect to online information about whistleblowing.

4.2 Review of the annual reports of IBAC and the VI

In November 2016, as part of the Committee's ongoing monitoring and oversight functions, the Committee tabled its report entitled *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*. The report gives an overview of IBAC and the Victorian Inspectorate's activities and the challenges of identifying, investigating, exposing and preventing corruption and other misconduct. The report also reviewed their compliance with relevant laws and identified a number of ways that their overall performance might be improved.

4.3 Review of special reports tabled in Parliament

During 2016/2017 the Committee also considered six IBAC special reports tabled before Parliament in relation to the Commission's activities:

- Operation Exmouth
- Operation Ross
- Operations Apsley, Hotham and Yarrowitch
- Operation Dunham
- Operation Liverpool
- Operation Nepean.

4.4 A framework for reviewing the performance of IBAC and the VI

Under the *Parliamentary Committees Act 2003* (Vic), the IBAC Committee has the functions of monitoring and reviewing the performance of IBAC. Until now, the Committee has carried out these functions by reviewing relevant reports, conducting hearings on IBAC's performance and undertaking relevant reviews and inquiries.

For over a decade there have been calls for oversight bodies to develop formal frameworks to monitor the performance of Anti-Corruption Agencies (ACAs). Transparency International, for example, together with associated research bodies, has been developing guidelines for monitoring the compliance of ACAs with best practice. Similarly, the United Nations Office on Drugs and Crime and the OECD have also been involved in developing guidelines and assisting countries in this process.

In late 2016, after four years in operation, the Committee thought it timely to enhance its oversight work by developing a framework for the more systematic monitoring of IBAC based on best practice principles.

The framework was presented in the IBAC Committee's report entitled *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*, which was tabled in Parliament on 13 November 2017. The framework draws on international best practice to develop a range of measures of IBAC's performance across its legislative functions. It also draws on IBAC's own measurement of its performance set out in its Corporate Plan 2015–18, recognising that the framework needs to support rather than hinder IBAC's fulfilment of its responsibilities.

The proposed framework provides rigorous criteria for assessing IBAC's performance in the following main areas:

- Investigating, exposing and addressing corrupt conduct and police misconduct
- Preventing corruption and informing the public sector and Victorians about corruption
- Impacting positively on levels of integrity and public trust in the public sector
- Ensuring IBAC's accountability and integrity
- Ensuring that IBAC has effective governance
- Monitoring IBAC's legal and financial capacity.

It is proposed that a comprehensive review will take place every four years in the third year of a parliamentary term. A foundation review in the coming year will allow the Committee to gain insights into the workability of the framework and fine-tune it as necessary.

4.5 The external oversight and investigation of police misconduct and corruption

The effective and impartial investigation of complaints against police has been identified in academic research, reviews, inquiries and decisions of courts to be of vital importance to the effective functioning of a modern democracy. Therefore, the external oversight role of bodies such as IBAC in relation to the handling and investigation of complaints about police in Victoria is an essential one.

In its *Strengthening Victoria's key anti-corruption agencies?* report the Committee highlighted the concerns raised by key stakeholders regarding the investigation of complaints about police in Victoria. The Committee determined in the Report that, given the experience of other jurisdictions and the concerns raised by Victorian stakeholders, it would investigate this issue further. Commissioner O'Bryan in IBAC's *Annual Report 2015/2016* also raised the issue of the challenges facing IBAC and the police in identifying, investigating and preventing misconduct. In July 2017, the Committee decided that it would commence, in accordance with section 33(3) of the *Parliamentary Committees Act 2003* (Vic), a self-referenced inquiry. A report will be tabled in June 2018.

4.6 The year ahead

In 2017/18, the Committee will finalise the framework for monitoring the performance of IBAC and complete the foundation review. It will also complete its current inquiry into the external oversight of police corruption and misconduct. As part of its regular functions the Committee will review special reports from IBAC. The Committee looks forward to working with the new IBAC Commissioner and the Victorian Inspector in the coming year.

Adopted by the Independent Broad-based Anti-corruption Commission
Committee

55 St Andrews Place
East Melbourne 3002

11 December 2017

Appendix 1

Further queries to IBAC regarding Police

1. Please provide a table for each of the last four financial years showing the number and percentage of
 - a. Complaints received from Victoria Police
 - b. Notifications received from Victoria Police
 - c. Allegations received from Victoria Police
 - d. Complaints received directly from the public about police
 - e. Allegations received from the public about police
 - f. Complaints received directly by IBAC from police officers about other police officers
 - g. Allegations received directly by IBAC from police officers about other police officers

2. What is the total number of complaints and allegations made by police officers about other police officers
 - via Victoria Police and
 - IBAC directly?

3. Are local resolution complaints included in the numbers of complaints and allegations received by IBAC from Victoria Police?

4. Please provide a table for each of the last four financial years showing the number and percentage of
 - a. Complaints about police that were dismissed
 - b. Complaints about police referred to Victoria Police
 - c. Allegations about police dismissed
 - d. Allegations about police referred to Victoria Police
 - e. Complaints about police investigated by IBAC
 - f. Allegations about police investigated by IBAC

5. Does IBAC assess all complaints, notifications and allegations about police that it receives?

6. Table 5, p.20, of the 2016/2017 Annual Report shows that, for 2016/2017, 1264 of **all** allegations that IBAC received were returned ‘to another entity’. However, your response to question 5 in the letter from the Commissioner states that 1707 allegations were returned to Victoria Police **alone**. Can you explain this discrepancy?

