

PARLIAMENT OF VICTORIA

Integrity and Oversight Committee



Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19

Parliament of Victoria
Integrity and Oversight Committee

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Committee membership



Steve McGhie
Melton



Brad Rowsell
Sandringham



Stuart Grimley
Western Victoria



Dustin Halse
Ringwood



Harriet Shing
Eastern Victoria



Jackson Taylor
Bayswater



Hon Kim Wells
Rowville

About the Committee

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

Functions

7 Integrity and Oversight Committee

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

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

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

Secretariat

Sean Coley, Committee Manager

Dr Stephen James, Senior Research Officer

Tracey Chung, Research Officer

Katherine Murtagh, Research Assistant

Sarah Catherall, Committee Administrative Officer (until 2 October 2020)

Maria Marasco, Committee Administrative Officer (from 5 October 2020)

Bernadette Pendergast, Committee Administrative Officer (from 5 October 2020)

Contact details

Address Integrity and Oversight Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Phone 61 3 8682 2815

Email ioc@parliament.vic.gov.au

Web <https://www.parliament.vic.gov.au/ioc>

This report is available on the Committee's website.

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Chair's foreword

I am pleased to present to the Parliament of Victoria the Integrity and Oversight Committee's (IOC) report on its Inquiry into the Performance of Victorian Integrity Agencies 2017/18–2018/19.

This report reviews the performance of the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC), the Victorian Inspectorate (VI) and the Victorian Ombudsman (VO), mainly through close examination of their annual reports for 2017/18 and 2018/19. The IOC has responsibility for monitoring and reviewing the performance of the duties and functions of these four integrity agencies, which are at the centre of Victoria's continually evolving integrity system.

This has been a challenging year as a result of COVID-19 and its many and varied impacts.

In early December 2019, the Committee submitted a series of questions on notice addressed to the integrity agencies, held public hearings for OVIC on 2 March 2020, and IBAC, the VO and the VI on 17 August 2020, as part of the Committee's oversight of the agencies' performance during 2017/18 and 2018/19. While the Committee had originally scheduled its final hearings for 16 March 2020, the public health emergency meant they were held virtually in August.

The Committee is grateful for the agencies' participation in the hearings, for their open communication with the IOC throughout the inquiry and for their dedicated work on behalf of Victorians—especially when the agencies are undertaking large-scale and complex investigations, as well as educative, preventive and oversight activities, in the midst of a challenging public health and economic environment.

As a result of the 2018 Victorian State Election and the establishment and staffing of the new IOC in mid-2019, the Committee determined to inquire into and report on the period 2017/18–2018/19, with a report on the agencies' performance in 2019/20 to be tabled during the 2020/21 financial year.

This report begins with an overview of Victoria's integrity system and the agencies' performance in 2017/18 and 2018/19, and is followed by close examination of each agency's performance, including outputs and outcomes. The examination focuses on the agencies' performance with respect to complaint handling, investigations and oversight, public information and education, governance and workplace, and accountability.

The Committee has sought to enhance the work of the integrity agencies by recommending that:

- IBAC improve the navigability and usability of the 'Publications and resources' section of its website
- IBAC consolidate and regularly update public sector body and Victoria Police responses to its recommendations on a dedicated web page
- IBAC publish in its annual report the number of complaints and notifications it has received in relation to OVIC and the VO
- OVIC use consistent and clear terminology in its annual reports in relation to key performance data comparisons across reporting periods
- OVIC provide greater transparency in its annual reporting of its oversight of Victoria Police's information security processes and practices
- the VI make use of online videos to complement its existing public information about its role regarding complaints and public interest disclosures
- the Victorian Government fund an ongoing communications and publishing officer position at the VI
- the Victorian Government support and resource the Victorian Ombudsman as Victoria's National Preventive Mechanism in relation to correctional facilities.

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

I also wish to acknowledge the work of the Committee Secretariat during this inquiry: Sean Coley, Committee Manager; Dr Stephen James, Senior Research Officer; Tracey Chung, Research Officer; Katherine Murtagh, Research Assistant; and Sarah Catherall, Maria Marasco and Bernadette Pendergast (Committee Administrative Officers).

I commend this report to the Parliament.



Steve McGhie MP
Chair

Recommendations

2 Independent Broad-based Anti-corruption Commission

RECOMMENDATION 1: That the Independent Broad-based Anti-corruption Commission add a prominent drop-down menu on the 'Publications and resources' section of its website to enable users to search for publications by year of publication. 14

RECOMMENDATION 2: That the Independent Broad-based Anti-corruption Commission consolidate public sector body and Victoria Police responses to its recommendations on a dedicated web page that is organised by public sector body type, easily searchable and regularly updated. 15

3 Office of the Victorian Information Commissioner

RECOMMENDATION 3: That the Office of the Victorian Information Commissioner use consistent and clear terminology in its annual reports to avoid ambiguity and to facilitate like-for-like comparisons of key performance data across different reporting periods. 61

RECOMMENDATION 4: That the Office of the Victorian Information Commissioner provide greater transparency in its annual reporting of its oversight of Victoria Police's information security processes and practices by publishing the number of information security incidents reported by Victoria Police each year. 67

4 Victorian Inspectorate

RECOMMENDATION 5: That the Victorian Inspectorate (VI) produce and host on its website targeted and accessible videos explaining the role of the VI, the kinds of complaints and public interest disclosures the VI is authorised to handle, how to make complaints or disclosures to the VI and how the VI handles them. 89

RECOMMENDATION 6: That the Victorian Government fund an ongoing communications and publishing officer position at the Victorian Inspectorate. 91

5 Victorian Ombudsman

RECOMMENDATION 7: That the Victorian Government support the designation of, and adequately resource, the Victorian Ombudsman as Victoria’s National Preventive Mechanism.

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

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Abbreviations and acronyms

AOC	Accountability and Oversight Committee, Parliament of Victoria
ARMC	Audit and Risk Management Committee, Independent Broad-based Anti-corruption Commission
AustLII	Australasian Legal Information Institute
BP3	State Budget Paper No. 3, Government of Victoria
CMS	case management system
CPDP	Commissioner for Privacy and Data Protection
DPC	Department of Premier and Cabinet, Victoria
DTF	Department of Treasury and Finance, Victoria
ERP	Escalated Reporting Protocol
ERT	Early Resolution Team
FSV	Family Safety Victoria
FOI	freedom of information
FTE	full-time equivalent
HCC	Health Complaints Commissioner
HPP	Health Privacy Principle
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Committee	Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria
ICT	information and communications technology
IO	Information Officer
IOC	Integrity and Oversight Committee, Parliament of Victoria
IOMC	Integrity Operations Management Committee, Victorian Inspectorate
IPAA	Institute of Public Administration Australia
IPP	Information Privacy Principle
IT	information technology
JCV	Judicial Commission of Victoria
LGI	Local Government Inspectorate
LIV	Law Institute of Victoria
LMR	Local Management Resolution matter, Victoria Police
MIM	Management Intervention Model matter, Victoria Police
MP	Member of Parliament
NPM	National Preventive Mechanism
OECD	Organisation for Economic Co-operation and Development
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Abbreviations and acronyms

OVIC	Office of the Victorian Information Commissioner
PAEC	Public Accounts and Estimates Committee, Parliament of Victoria
PDSP	Protective Data Security Plan
PID	public interest disclosure
PSC	Professional Standards Command, Victoria Police
PTV	Public Transport Victoria
SDP	Single Digital Presence
SEO	search engine optimisation
SIO	Senior Investigation Officer
VAGO	Victorian Auditor-General's Office
VCAT	Victorian Civil and Administrative Tribunal
VI	Victorian Inspectorate
VO	Victorian Ombudsman
VPDSF	Victorian Protective Data Security Framework
VPDSS	Victorian Protective Data Security Standards
VPN	Victorian Privacy Network
VPS	Victorian Public Sector
VPSC	Victorian Public Sector Commission

1.1 Overview of Victoria's integrity system

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

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

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

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

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

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

1.2 The Integrity and Oversight Committee

The IOC is a joint investigatory committee of the 59th Parliament of Victoria established under the *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)'), following the enactment of the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) ('*IALA Act 2019* (Vic)') on 3 May 2019.¹ The Committee was formed when the former Accountability and Oversight

¹ The commencement date was the day on which the Act received Royal Assent.

Committee merged with the Independent Broad-based Anti-corruption Committee. Members were appointed to the Committee on 21 March 2019.²

The IOC is responsible for monitoring and reviewing the performance of the duties and functions of some of Victoria's leading integrity agencies. It performs this oversight role through, among other actions,

- monitoring and reviewing the performance of the duties and functions of IBAC, OVIC, the VI and the VO
- examining the agencies' reports, including annual reports
- reporting to both Houses of Parliament on any matter requiring the attention of Parliament.³

The Committee may, in the circumstances prescribed in the *PC Act 2003* (Vic), investigate complaints about the Information Commissioner and the operation of OVIC.⁴ However, it cannot investigate complaints about IBAC, the VI or the VO. The Act expressly prohibits the Committee from reconsidering and reviewing the decisions, findings or recommendations made by IBAC, OVIC, the VI and the VO.⁵

1.2.1 The Committee's new statutory functions

Victoria has undergone significant legislative change in the integrity environment during the last two years, much of which has been the result of the enactment of the *IALA Act 2019* (Vic).

Budget independence

The budget independence reforms contained in pt 5 of the *IALA Act 2019* (Vic) 'aim to strengthen the independence of [IBAC, the VI and the VO] in a manner that accords with their status as "independent officers of Parliament"'.⁶ Previously, the annual appropriations of IBAC, the VI and the VO appeared under the Department of Premier and Cabinet's annual appropriation. However, from 1 July 2020, the annual appropriations of these bodies formed part of the parliamentary appropriation.

The legislation requires IBAC, the VI and the VO to determine their respective budgets and annual plans in consultation with the IOC.⁷ Before the beginning of each financial year, each of these agencies must prepare a draft annual plan describing their proposed work program for that financial year and submit it for the IOC's consideration.⁸

² Parliament of Victoria, *Integrity and Oversight*, Melbourne, 2019, <<https://www.parliament.vic.gov.au/ioc>> accessed 4 October 2020.

³ *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)') s 7(1).

⁴ *PC Act 2003* (Vic) s 7(1)(b).

⁵ *PC Act 2003* (Vic) s 7(2).

⁶ Victoria, Legislative Council, 2019, *Parliamentary debates*, 6 February 2019, p. 133.

⁷ *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') s 167; *Victorian Inspectorate Act 2011* (Vic) ('*VI Act 2011* (Vic)') s 90A; *Ombudsman Act 1973* (Vic) s 24A.

⁸ *IBAC Act 2011* (Vic) s 168(1); *VI Act 2011* (Vic) s 90B(1); *Ombudsman Act 1973* (Vic) s 24B(1).

The Committee must consider the content of the draft annual plans and make suggestions and recommendations it considers appropriate. The drafts (with or without comments) are returned to the agencies, who must indicate in their annual plans the nature of any changes suggested by the Committee they decide not to adopt.⁹

As soon as practicable after the passage of the annual appropriation Acts, and after considering any comments received from the IOC, the agencies must finalise their annual plans and cause them to be transmitted to Parliament before the beginning of the financial year to which the annual plans relate—that is, before 1 July.¹⁰

This year, the agencies submitted their draft annual plans to the Committee on 2 March 2020 and were due to meet in person with the Committee on 16 March 2020. Due to the onset of COVID-19, however, these meetings were cancelled and an amended consultation process, to be carried out entirely ‘on the papers’, was put in place. The draft annual plans with the Committee’s comments were returned to the agencies on 6 May 2020.

Interruptions to this year’s Budget process caused by COVID-19 meant that no annual appropriation Bill was passed prior to 1 July 2020. Nevertheless, the VI presented its finalised annual plan during a Committee meeting held on 15 June 2020 and tabled its plan before both Houses of Parliament the following day. The Inspector advised the Committee on 25 November 2020 that his agency’s annual plan would be reviewed and updated in line with the VI’s budget outcome. Both IBAC and the VO have elected to present their finalised annual plans after the passage of the parliamentary appropriation Act.

As part of their submissions to the Committee, IBAC, the VO and the VI articulated their positions with respect to funding and the potential impact of financial pressures on their performance. This issue is explored in greater detail in the individual agency chapters.

Performance audits

As part of the suite of integrity reforms, the IOC is required to recommend to Parliament the appointment of an independent person to conduct a performance audit of IBAC, the VI and VO.¹¹ The independent performance auditor is to determine whether these agencies are achieving their objectives effectively, economically and efficiently and in compliance with their enabling legislation.¹² Each agency must be audited at least once before 1 July 2024.¹³

The Committee has commenced planning for the appointment process for the first performance auditor. The appointment will be finalised during the 2020/21 financial year, with the first performance audit to commence during the latter half of 2021.

⁹ *IBAC Act 2011* (Vic) s 168(4); *VI Act 2011* (Vic) s 90B(4); *Ombudsman Act 1973* (Vic) s 24B(4).

¹⁰ *IBAC Act 2011* (Vic) s 168(5); *VI Act 2011* (Vic) s 90B(5); *Ombudsman Act 1973* (Vic) s 24B(5).

¹¹ *IBAC Act 2011* (Vic) s 170; *VI Act 2011* (Vic) s 90D; *Ombudsman Act 1973* (Vic) s 24D.

¹² *IBAC Act 2011* (Vic) s 170(4); *VI Act 2011* (Vic) s 90D(4); *Ombudsman Act 1973* (Vic) s 24D(4).

¹³ *IBAC Act 2011* (Vic) s 170(4); *VI Act 2011* (Vic) s 90D(4); *Ombudsman Act 1973* (Vic) s 24D(4).

Public interest disclosures

The *Public Interest Disclosures Act 2012* (Vic) ('*PID Act 2012* (Vic)') (formerly known as the *Protected Disclosure Act 2012* (Vic)) provides protections for people who make disclosures about improper conduct in the Victorian public sector.

Fundamental changes to Victoria's whistleblower legislation were introduced pursuant to the *IALA Act 2019* (Vic), resulting in the whistleblower protection scheme being made more accessible, affording greater protections for disclosers and broadening the ways in which a disclosure can be dealt with.¹⁴

From 1 January 2020, the *PID Act 2012* (Vic) vested new functions and powers in the IOC to

- receive assessable disclosures that relate to the VI or a VI officer;
- assess those disclosures;
- determine whether those disclosures are public interest complaints;
- engage an independent investigator to investigate any disclosure determined by the Committee to be a public interest complaint; and
- promote the purposes of the Act.¹⁵

The Committee did not receive any public interest disclosures about the VI or a VI officer during 2019/20.

1.3 Overview of integrity agencies' performance

In drafting this report, the IOC has analysed the annual reports of IBAC, OVIC, the VI and the VO for 2017/18 and 2018/19¹⁶ and considered reports and recommendations relevant to the integrity agencies and oversight committees from previous parliaments.

As part of this inquiry, the Committee prepared a series of questions which were submitted to the agencies on 10 December 2019. Public hearings were held for OVIC on 2 March 2020, and IBAC, the VO and the VI on 17 August 2020, examining matters relevant to the Committee's oversight functions and the agencies' performance during 2017/18 and 2018/19. Following their appearance before the Committee, the agencies provided answers to questions taken on notice during the public hearings and supplementary questions.

¹⁴ IBAC, *Changes to the Public Interest Disclosures Act: your questions answered*, Melbourne, 2019, <<https://www.ibac.vic.gov.au/publications-and-resources/ibac-insights/issue-22/changes-to-the-public-interest-disclosures-act-your-questions-answered>> accessed 6 October 2020.

¹⁵ *PID Act 2012* (Vic) s 56A.

¹⁶ Note that while this report examines some matters relevant to the agencies' performance in 2019/20, it focuses on the performance and annual reports of IBAC, OVIC, the VI and the VO during 2017/18–2018/19. The IOC did not table a report reviewing performance in 2017/18 as Members of Parliament were only appointed to the Committee on 21 March 2019. Publication has been further delayed due to COVID-19.

1.3.1 IBAC

IBAC reported a period of sustained investigative activity during 2017/18 and 2018/19. This was despite having to manage the greater workload brought about by legislative change and inquiries such as the Royal Commission into the Management of Police Informants.¹⁷

IBAC made a concerted effort to improve its corruption-prevention materials, developing a range of education resources to explain the nature and effect of changes to Victoria's whistleblowing protection regime and its increased capability to protect public interest disclosers from reprisal. In 2019, IBAC undertook a large-scale public awareness campaign, 'Yes, it's corruption. Yes, I can do something about it', and focused on increasing the public sector's understanding of, and ways to combat, 'obscuring behaviours' that rationalise, normalise, minimise and cover up wrongdoing in the public sector. IBAC has noted, however, that more time is required to systematically assess the effectiveness of its education and prevention programs.

IBAC's new case management system, Condor, helped to improve its handling of complaints and investigations. Nevertheless, IBAC experienced challenges in completing large-scale and complex investigations in a timely manner. It is noted that Budget Paper No. 3 (BP3) timeliness measures will be adjusted to take into account the practical realities of undertaking such investigations.

IBAC has indicated a desire to the Committee and publicly to increase its capacity to investigate serious police misconduct and public sector corruption. However, it has stated to the public and the Committee that this cannot happen without additional funding. IBAC expects its budget for 2019/20 to be fully exhausted and has flagged a reduction in operational activity if budgetary pressures continue to rise.

1.3.2 OVIC

The creation of OVIC through the merging of the offices of the FOI Commissioner and the Commissioner for Privacy and Data Protection on 1 September 2017 was a significant development designed to make government more transparent and accountable and increase the accessibility of government information.

OVIC's five-year analysis of the operation of the *Freedom of Information Act 1982* (Vic) revealed an increase in the number of FOI requests. This indicates a strong public awareness of the FOI scheme. However, OVIC's data also showed an increase in the number of FOI requests being denied and a decrease in the number of access applications granted in full. Given that one of the main objectives of the Act is to encourage greater transparency and accountability in government decision making, this trend is disconcerting.

¹⁷ Royal Commission into the Management of Police Informants, *About us*, Melbourne, 2020, <<https://www.rcmpi.vic.gov.au/about-us>> accessed 6 October 2020.

OVIC is also undertaking significant work to effect cultural change across the Victorian public sector through its efforts to facilitate the informal and proactive release of government information outside the FOI scheme.

In 2018/19, OVIC experienced a significant spike in privacy complaints and data breach notifications under the *Privacy and Data Protection Act 2014* (Vic).

OVIC completed the first reporting cycle for agencies under the Victorian Protective Data Security Framework (VPDSF). It intends to use feedback from agency submissions and the findings from its review of the VPDSF and the Victorian Protective Data Security Standards to inform future versions of the framework and, ultimately, improve data security practices across government.

1.3.3 VI

The VI reformed its governance structures and operational processes during 2017/18 and 2018/19 to enable it to continue and improve on its work as the key oversight body of the Victorian integrity system.

The VI successfully navigated the transition towards a more proactive, multidisciplinary operational model. Its shift to a more efficient and much-improved complaints assessment process was assisted by the recruitment of staff with extensive complaint-handling experience and the implementation of a new case management system. Despite having no legislated function to do so, the VI has worked diligently to increase public awareness and understanding of its role.

The empirical data indicates that the VI has a healthy and positive workplace culture. However, its funding restricts the ability to grow its staff to an optimal level. The VI continues to monitor the risks associated with excessive staff workloads and staff burnout.

The Committee recognises that a degree of tension is healthy and necessary for the integrity system to operate effectively and notes that the VI generally experiences a constructive working relationship with the agencies it oversees.

The VI's budget allocation has proven to be an ongoing challenge, affecting the agency's ability to perform its core oversight functions such as reviewing agency notifications of coercive powers. Without additional resources, the Inspector has advised that it will not be able to perform its oversight role to the fullest extent.

1.3.4 VO

The VO's commitment to social justice continues to be a major theme of its investigations during 2017/18 and 2018/19, as demonstrated through its three public reports on human rights issues. Its recommendation to be designated Victoria's National Preventive Mechanism, in compliance with the United Nations's Optional Protocol to

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is, in the Committee's view, particularly apt, given the Ombudsman's role in investigating incompatibility with the Victorian Human Rights Charter.

Timely and efficient complaints resolution is critical for the VO. Recent changes to Victoria's public interest disclosure system and the growth of the VO's profile in the Victorian community will likely increase the number of complaints and disclosures it receives. The IOC remains confident that the VO's effective approach to complaints resolution holds it in good stead to meet this increasing demand.

Educating the public sector, which has always been a key part of the VO's functions, is now fittingly enshrined in legislation. The IOC is encouraged by the level of collaboration between the VO and its counterpart agencies, which ensures that training messages are consistently and effectively delivered in areas with common jurisdiction.

In other legislative developments, the Committee notes the clarification and modernisation of the VO's functions and powers, in particular the conferral of jurisdiction over publicly funded services and the ability to refer matters to other public sector bodies for investigation or other appropriate action.

The VO continues to effectively monitor the implementation of its past recommendations and leads the way in providing a safe and healthy workplace for its staff.

However, the Ombudsman has highlighted concerns with respect to its funding and advocated for additional resources so it can sustain its current levels of performance.

1.4 Report structure

This report is organised into six chapters. The first chapter gives an overview of Victoria's integrity system and the agencies' performance in 2017/18 and 2018/19.

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

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

Chapter 2 examines the performance of IBAC.

Chapter 3 examines the performance of OVIC.

Chapter 4 examines the performance of the VI.

Chapter 5 examines the performance of the VO.

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

2.1 Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) is the principal anti-corruption body in Victoria. IBAC's jurisdiction encompasses the Victorian public sector, including public service departments and government agencies, local councils, Victoria Police, the Parliament of Victoria and the judiciary. Its functions include identifying, exposing, investigating and preventing corruption and other misconduct, and educating the public sector and public about them.¹⁸ Specifically, IBAC's functions include:

- receiving, handling, assessing and potentially investigating public complaints and agency notifications about alleged corruption and other misconduct
- referring matters back to appropriate bodies for investigation (for example, a public service department, Victoria Police or an integrity agency)
- reviewing external investigations—for example, by a public sector body or Victoria Police
- undertaking own motion investigations into possible corruption and other misconduct
- exercising wide-ranging oversight with respect to the public sector, including Victoria Police
- performing a range of functions under the *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)'), which includes assessing and potentially investigating public interest disclosures ('whistleblower complaints'), producing guidelines and reviewing public sector procedures
- producing reports and making recommendations as part of its investigative, audit, research and intelligence activities
- educating public sector bodies and members of the public about the harm corruption and misconduct cause—and how to prevent (or address) corruption and misconduct.¹⁹

¹⁸ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('IBAC Act 2011 (Vic)'); IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 5–20, 25–70.

¹⁹ *IBAC Act 2011* (Vic); *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)').

In exercising these functions, IBAC is authorised to use a range of investigative powers, including coercive and covert powers such as physical and electronic surveillance and the summoning and questioning of witnesses in public and private examinations ('hearings').²⁰

Among other accountabilities, IBAC is oversighted by the Victorian Inspectorate (VI) and the Integrity and Oversight Committee (IOC). The VI focuses on IBAC's compliance with applicable legislation, in particular the lawful use of its coercive powers, while the IOC monitors and reviews its overall performance.²¹

In this chapter the Committee reviews the performance of IBAC across its educative, preventive, complaint-handling, investigative, review and audit functions, with particular reference to the agency's 2017/18 and 2018/19 annual reports. The Committee also examines IBAC's performance with respect to its governance and workplace systems, and the discharge of its internal and external accountabilities.

2.2 Public information, education and prevention

Under the *Independent Broad-based Anti-corruption Act 2011 (Vic)* ('*IBAC Act 2011 (Vic)*'), IBAC has a range of specific educative and preventive functions.²² These functions include:

- assisting in the prevention of corrupt conduct
- facilitating the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and ways to prevent corrupt conduct
- helping to improve the capacity of the public sector to prevent corrupt conduct.²³

IBAC recognises that the provision of well-designed, carefully targeted and accessible print and digital information is necessary if members of the public and the public sector are to develop an understanding of, and have confidence in, IBAC's functions within the Victorian integrity system.²⁴ Effective public information, education and prevention activities on the part of IBAC can inform the public and public sector about corruption and misconduct risks, vulnerabilities and harms; how and where to safely report corruption and misconduct; and how corruption and misconduct can be prevented or addressed.²⁵

²⁰ *IBAC Act 2011 (Vic)*; IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 5–20, 25–70.

²¹ *Victorian Inspectorate Act 2011 (Vic)* ('*VI Act 2011 (Vic)*'); *Parliamentary Committees Act 2003 (Vic)* ('*PC Act 2003 (Vic)*'); IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 6–7, 78–79. See, further, Section 2.5 in this chapter and Chapter 4 in this report.

²² *IBAC Act 2011 (Vic)* ss 8, 15; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 8.

²³ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 8. See also *IBAC Act 2011 (Vic)* ss 8, 15.

²⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 8, 11–12, 13–15, 19; IBAC, *Annual report 2017/18*, Melbourne, 2018, especially pp. 4–7, 11, 34–46; IBAC, *Annual report 2018/19*, Melbourne, 2019, especially pp. 1, 5–7, 12–20, 23, 37, 47–57.

²⁵ *Ibid.*

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

2.2.1 Public information

The IOC notes that IBAC produces a wide range of high-quality, plain-language and accessible information about Victoria's integrity system; IBAC's role, functions and jurisdiction; the risks, incidence, nature, identification, reporting, addressing and prevention of public sector corruption and misconduct; public interest disclosure (PID) processes and protections; and the outcomes of IBAC's research projects, investigations, reviews and audits (including recommendations to the public sector).²⁶

IBAC has informed the Committee that during 2017/18 and 2018/19 it produced the following key public content:

- Thirty-two videos (including versions translated into Victoria's most commonly spoken languages other than English) explaining IBAC's role and encouraging Victorians to report public sector corruption and police misconduct (available via IBAC's website with transcripts) including:
 - an introductory video on IBAC's role in English and 20 community languages
 - eight videos describing common public sector corruption scenarios and how to report corruption disseminated online as part of IBAC's community awareness advertising campaign
 - two videos explaining Victoria's integrity system and IBAC's part in it co-produced with the Victorian Ombudsman and the Victorian Auditor-General's Office and jointly disseminated.
- Twenty-two posters, digital banners and presentations to help the Victorian public sector raise awareness online and in workplaces about public sector corruption and how to report it
- Nineteen information sheets, infographics, research and report summaries on IBAC's work, common and emerging corruption risks, as well as corruption prevention measures
- Twenty case studies and investigation summaries highlighting examples of IBAC investigations, the outcomes of IBAC investigations and corruption vulnerabilities and prevention measures

²⁶ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020; IBAC, *Annual report 2017/18*, Melbourne, 2018; IBAC, *Annual report 2018/19*, Melbourne, 2019; IBAC, *Guidelines for handling public interest disclosures*, Melbourne, January 2020, <<https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf>> accessed 21 February 2020; IBAC, *Guidelines for public interest disclosure management*, Melbourne, January 2020, <<https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf>> accessed 21 February 2020; IBAC, *Publications and resources*, <<https://www.ibac.vic.gov.au/publications-and-resources>> accessed 21 February 2020. See also *IBAC Act 2011* (Vic) ss 8, 15; *PID Act 2012* (Vic) ss 55(2), 57–61, 66–67.

- Three podcasts about corruption risks and prevention measures (a review in early 2017/18 found this format was reaching a limited audience and production was discontinued)
- A flow chart to assist Victorians to determine which agency to complain to about a local government matter co-produced with the Victorian Ombudsman and the Local Government Inspectorate.²⁷

In June 2019, IBAC launched its four-week ‘Yes, it’s corruption. Yes, I can do something about it’ campaign to raise public awareness.²⁸ The campaign built on the foundation of earlier work, such as the ‘When something’s not right. Report it’ initiative, which had an extended run from 30 July to 24 September 2017.²⁹

The ‘Yes, it’s corruption’ campaign promoted better understanding, recognition and internal and external reporting of public sector corruption in Victoria.³⁰ The wide-ranging campaign extended across mainstream metropolitan and regional newspapers, radio and digital media, including social media and YouTube.³¹ Selected content was translated into community languages and tailored for culturally and linguistically diverse communities.³² A range of digital resources, such as web tiles, were also produced for government bodies to share with their staff and external stakeholders.³³

The campaign surpassed the key benchmarks set for it, which were developed to meet best practice industry standards and reviewed by the Department of Premier and Cabinet:

- 21 per cent above benchmark in the daily calls to the #1300 number (an average of around 23 additional phone calls a week)
- 56 per cent above benchmark in complaints received per month via the online form
- 27 per cent above benchmark in information reports received per month via the online form
- 170 per cent above benchmark of average for average weekly website visits
- 91 per cent above benchmark for weekly visits to the online complaints form
- 134 per cent above benchmark for weekly visits to the information report page.³⁴

IBAC has also reported that it planned to reuse selected advertising content and other resources from the campaign to support a range of public information, educative and preventive activities during 2019/20.³⁵

²⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 11–12.

²⁸ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 17, 47.

²⁹ IBAC, *Annual report 2017/18*, Melbourne, 2018, pp. 9, 42.

³⁰ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 17, 47.

³¹ Ibid.

³² Ibid., p. 47.

³³ Ibid.

³⁴ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019.

³⁵ Ibid.

Website and other digital content: usability and accessibility

During 2017/18, IBAC's website underwent accessibility and usability testing and search engine optimisation (SEO) enhancements.³⁶ This included the refinement of keywords and descriptions to increase discoverability of content through search engines like Google.³⁷ In that year, there was a 20% 'increase in visits to IBAC's website via organic (non-paid) search results' and a 9% increase in 'unique' visits, from 84,062 (2016/17) to 91,886 (2017/18).³⁸ Further SEO work was undertaken in 2018/19, which was complemented by improvements in the display of IBAC content on social media platforms.³⁹ IBAC reported an 11% increase in unique visits (102,505) to IBAC's website during 2018/19.⁴⁰

To improve the accessibility and suitability of its digital resources, in 2018/19 IBAC undertook a number of measures, including:

- improving navigation options on the IBAC website for users who rely on assistive technology
- converting 12 of the most popular publications into accessible HTML format, including translating materials on how to make complaints in relation to local councils
- adding closed captions and transcripts to 30 videos, including those from an awareness-raising campaign ...
- translating a video explaining IBAC's role into 20 community languages.⁴¹

IBAC also reports that since 2018 it has been consulting with Vision Australia and its suppliers to ensure that its publications and other resources meet the requirements of Level AA of the World Wide Web Consortium's Web Content Accessibility Guidelines.⁴²

Regarding navigation, the 'Publications and resources' section of IBAC's website presently has fields for the user to search by category or keyword. However, it does not have a drop-down menu to facilitate searches for publications by year of publication, including a search for resources published during a specified span of years.⁴³ The addition of such a menu would enhance the user experience of members of the public and external stakeholders.

³⁶ IBAC, *Annual report 2017/18*, Melbourne, 2018, p. 44.

³⁷ Ibid.

³⁸ Ibid. 'A "unique" visit is a person/IP address who visited the IBAC website at least once during the reporting period. If the same IP address accessed the website many times, it still counts as only one visitor.'— IBAC, *Annual report 2017/18*, Melbourne, 2018, p. 44.

³⁹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 38.

⁴⁰ Ibid.

⁴¹ Ibid., p. 51.

⁴² IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 11.

⁴³ IBAC, *Publications and resources*, <<https://www.ibac.vic.gov.au/publications-and-resources>> accessed 21 February 2020.

RECOMMENDATION 1: That the Independent Broad-based Anti-corruption Commission add a prominent drop-down menu on the ‘Publications and resources’ section of its website to enable users to search for publications by year of publication.

Publication of responses to IBAC recommendations

Under the *IBAC Act 2011* (Vic) and the *PID Act 2012* (Vic), IBAC can make recommendations to public sector bodies, including Victoria Police, for improvements—arising, for example, out of its investigations and audits (see Table 2.1).⁴⁴

Table 2.1 IBAC recommendations under s 159 of the IBAC Act

Recommendations	2014/15	2015/16	2016/17	2017/18	2018/19
Recommendations made by IBAC	24	20	47	14	50
Recommendations implemented	10	18	20	33	27
Recommendations being monitored	14	16	38	27	48

Source: Reproduced with only minor modification from IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 35 (Table 10).

An important part of IBAC’s oversight work is to monitor the timeliness and effectiveness of public sector bodies’ responses to its recommendations.⁴⁵ The publication of responses to recommendations and reporting on the progress of their implementation are useful and transparent ways of informing members of the public and public sector bodies, sharing insights and lessons that can build public sector capacity, informing and educating members of the public and holding bodies subject to recommendations to ongoing account.⁴⁶

In recognition of these goals, IBAC presently publishes on its website a selection of public sector bodies’ responses to recommendations.⁴⁷ However, the content is fragmented and hard to find.⁴⁸ While the Committee recognises that not all responses may be able to be published on IBAC’s website (for legal or operational reasons, for

⁴⁴ *IBAC Act 2011* (Vic) ss 15(6)(b), 15(7)(b), 159, 165; *PID Act 2012* (Vic) ss 55(2)(g), 60–61, 67(1)(c); IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 18, 25, 35. Under s 159 of the *IBAC Act 2011* (Vic), IBAC may make recommendations to a relevant principal officer, responsible minister or the Premier, regarding matters ‘arising out of an investigation’, for particular actions to be taken.

⁴⁵ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 35 (‘IBAC generally requires agencies to respond to recommendations within a specified period.’).

⁴⁶ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 12, 15.

⁴⁷ Ibid. See also IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 35.

⁴⁸ See, for example, IBAC, *Victorian agencies respond to IBAC recommendations*, <<https://www.ibac.vic.gov.au/publications-and-resources/ibac-insights/issue-14/victorian-agencies-respond-to-ibac-recommendations>> accessed 21 February 2020 (covering selected Victoria Police responses in 2017); IBAC, *PTV [Public Transport Victoria] reports to IBAC on recommendations to prevent corruption*, <<https://www.ibac.vic.gov.au/media-releases/article/ptv-reports-to-ibac-on-recommendations-to-prevent-corruption>> accessed 21 February 2020 (media release dated 12 April 2016); IBAC, *Department of Education and Training responds to IBAC investigations*, <<https://www.ibac.vic.gov.au/media-releases/article/department-of-education-and-training-responds-to-ibac-investigations>> accessed 21 February 2020 (media release dated 6 October 2017).

example),⁴⁹ those that can should be consolidated on a dedicated web page that is organised by public sector body type, easily searchable and regularly updated. Such a measure would ensure greater transparency and accountability in monitoring the implementation of IBAC recommendations.

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

2.2.2 Education and prevention

Corruption-prevention strategy

IBAC's corruption-prevention strategy has been developed through drawing on its own experience and research, the approaches of interstate and international anti-corruption agencies and international and regional standards developed by bodies such as the United Nations and the Organisation for Economic Co-operation and Development (OECD).⁵⁰ IBAC's strategy has four main dimensions: increasing public and public sector knowledge of corruption and misconduct and the harm they cause; encouraging effective reporting of public sector wrongdoing; enhancing the capacity of the public sector to identify and address wrongdoing and become corruption-resistant; and informing organisations of the latest applied research and intelligence so their knowledge is up to date and they can anticipate and respond to emerging corruption risks.⁵¹

As IBAC has matured as an organisation, as its profile has risen and as the Victorian community and public sector have become more familiar with its role, the agency has moved towards 'more nuanced messaging tailored to specific sectors, agencies and types of corruption risk'.⁵² During 2017/18–2018/19, for example, IBAC has concentrated on a range of areas, including:

- corruption risks in public regulatory authorities and public sector employment practices
- state and local government frameworks to establish and maintain integrity standards, systems, processes and practices

⁴⁹ See, for example, *IBAC Act 2011* (Vic) s 159(2)–(3). See also IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 1.

⁵⁰ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 10; United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption*, New York, 2004, <https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf> accessed 22 February 2020; OECD, *Anti-corruption and integrity in the public sector*, <<https://www.oecd.org/governance/ethics>> accessed 22 February 2020.

⁵¹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 10; IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 15; IBAC, *Annual report 2017/18*, Melbourne 2018, pp. 4–6; IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, December 2017, pp. 5, 18 and passim.

⁵² IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 8.

- the role of Victoria's legal and business sectors in addressing corruption and misconduct
- the damaging role of behaviour that rationalises, minimises, normalises and covers up public sector wrongdoing, thereby facilitating corruption
- the role of the whistleblower protection regime in encouraging the reporting of improper conduct and protection of disclosers
- the public sector's capacity to address corruption, especially through mandatory notification of suspected corrupt conduct to IBAC
- corruption-prevention education in rural and regional Victoria
- anti-corruption education and training at Victoria Police, so officers report wrongdoing and maintain a lawful and ethical environment from the police recruit to the Chief Commissioner.⁵³

Understanding and combating 'obscuring behaviours'⁵⁴

Since 2018/19, IBAC has had a focus on 'obscuring behaviours', behaviours which rationalise, normalise, minimise and cover up wrongdoing in the public sector.⁵⁵ IBAC recognises that staff tolerance of a range of misconduct creates an environment in which even graver corruption can flourish.⁵⁶ As the IBAC Commissioner, the Hon Robert Redlich AM QC, has observed:

Corruption is often misunderstood. Frequently we think of corruption as only the most serious and extreme misconduct or criminal behaviour. Often we fail to recognise that more minor transgressions are lesser forms of corruption ...

Public sector leaders must recognise that wherever such conduct is allowed to occur with impunity, more serious corruption can develop and flourish. Ignoring perceived minor misconduct puts an organisation on a path towards the normalisation and acceptance of corruption.⁵⁷

⁵³ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 8–9, 13–17, 30; IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 7, 16–19, 23, 37–38, 50–51, 69.

⁵⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 9; IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15–16.

⁵⁵ Ibid.

⁵⁶ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 15–16, 69; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 9. See also Josephine Nelson, 'The normalization of corruption' (preprint for *Journal of Management Inquiry*), 18 November 2016, <<https://ssrn.com/abstract=2873939>> accessed 23 February 2020; Vikas Anand, Blake E Ashforth and Mahendra Joshi, 'Business as usual: the acceptance and perpetuation of corruption in organizations', *Academy of Management Executive*, vol. 18, no. 2, 2004, pp. 39–53; Alison Taylor, 'What do corrupt firms have in common? Red flags of corruption in organizational culture', *Columbia Law School Integrity in Brief Series*, April 2016, pp. 1–4; Parliament of Victoria, IBAC Committee, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)*, Melbourne, June 2017, p. 44.

⁵⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 15. See also *Unmasking corruption in public institutions: joint communiqué from Australia's anti-corruption commissioners*, 29 October 2019, <[https://www.ibac.vic.gov.au/docs/default-source/events-documents/joint-communique-from-aust-anti-corruption-commissioners---apsacc---29-october-2019-\(a4\).pdf](https://www.ibac.vic.gov.au/docs/default-source/events-documents/joint-communique-from-aust-anti-corruption-commissioners---apsacc---29-october-2019-(a4).pdf)> accessed 23 February 2020.

In this spirit, IBAC has encouraged public sector bodies and Victoria Police to identify, challenge and address obscuring behaviours, carrying out a number of measures to that end:

- developing a joint communiqué on the subject from Australia’s anti-corruption commissioners
- making presentations to the Institute of Public Administration Australia (IPAA) Senior Leaders Integrity and Ethical Leadership Program, and delivering a keynote address during IPAA Public Sector Week and at the 2019 Australian Public Sector Anti-corruption Conference
- developing obscuring behaviours frameworks for Victoria Police and the public sector
- developing resources on obscuring behaviours (such as checklists and case studies) that can be used in the public sector.⁵⁸

Supporting the whistleblower protection regime

The IOC notes that IBAC has now developed an extensive suite of high-quality publications explaining the changes to the nature and operation of the PID (whistleblower protection) regime following amendments that came into operation from 1 January 2020. Research, consultation, writing and testing in relation to these materials took place during 2018/19.⁵⁹

IBAC chairs a protected disclosure (now, PID) consultative group, which includes participation from integrity agencies who receive, assess and potentially investigate PIDs. In addition, given its new role in handling disclosures about the VI, the IOC participated alongside Victorian integrity agencies in a PID workshop organised under the then Protected Disclosure Community of Practice.⁶⁰

IBAC also provides guidance and education to Protected Disclosure (now, PID) Coordinators about their obligations in facilitating and handling disclosures in their organisations and their notification of potential public interest complaints to IBAC.⁶¹ In 2018/19, IBAC held its annual Protected Disclosure Coordinator forum on the theme of the management of the welfare of protected disclosers.⁶²

⁵⁸ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 9.

⁵⁹ IBAC, *Changes to protected disclosure legislation*, <<https://www.ibac.vic.gov.au/reporting-corruption/public-interest-disclosures/changes-to-protected-disclosure-legislation>> accessed 23 February 2020; IBAC, *Guidelines for handling public interest disclosures*, Melbourne, January 2020; IBAC, *Guidelines for public interest disclosure welfare management*, Melbourne, January 2020.

⁶⁰ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 18–19.

⁶¹ Ibid.

⁶² Ibid.

IBAC has also established a Protected Disclosure (now, PID) Community of Practice, which contributes to the professional development of PID Coordinators through the exchange of information, expertise and experience and their application to a range of case studies and other simulation exercises.⁶³

Mandatory notification of suspected corrupt conduct

Since December 2016, public sector heads ('principal officers') have been required to notify any suspected corruption within their bodies to IBAC.⁶⁴ IBAC considers that public sector understanding of the legal requirements of mandatory notifications, the level of mandatory notifications and their timeliness still need improvement.⁶⁵ In order to enhance public sector compliance with mandatory notification requirements, in 2018 IBAC published a progress report that included statistics, 'reporting trends' and case studies.⁶⁶ The report was sent to public sector heads, and IBAC continues to engage with local and state government bodies with respect to mandatory notifications.⁶⁷

Engagement with Victoria's legal sector

IBAC has engaged with Victoria's legal sector to increase its understanding of IBAC's role within the integrity system and how lawyers can lend support to their clients who may want to report corruption and police misconduct ('or who may be involved in an IBAC inquiry').⁶⁸ IBAC has further emphasised how government lawyers can contribute to the maintenance of ethical cultures within the public sector by giving 'honest and fearless advice'.⁶⁹

IBAC's activities in furtherance of these aims have included round tables with community legal centres; Continuing Professional Development programs and meetings with Victoria Legal Aid, the Law Institute of Victoria (LIV) and Corrs Chambers Westgarth; and the IBAC Commissioner giving the keynote address at the 2019 LIV Government Lawyers Conference.⁷⁰

⁶³ Ibid., p. 19.

⁶⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 13; *IBAC Act 2011* (Vic) ss 57(1) ('any matter which the person suspects on reasonable grounds involves corrupt conduct occurring or having occurred'), 57A-57B.

⁶⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 13; IBAC, *Annual report 2017/18*, Melbourne, 2018, pp. 6-7.

⁶⁶ Ibid. See also IBAC, *Mandatory notifications progress report: 1 December 2016-30 November 2017*, Melbourne, February 2018, <[https://www.ibac.vic.gov.au/docs/default-source/reports/mandatory-notifications-progress-report-\(1-december-2016-30-november-2017\).pdf](https://www.ibac.vic.gov.au/docs/default-source/reports/mandatory-notifications-progress-report-(1-december-2016-30-november-2017).pdf)> accessed 23 February 2020.

⁶⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 13.

⁶⁸ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 50. See also IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 16.

⁶⁹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 50.

⁷⁰ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 15-16; IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 50.

Education and prevention initiatives in rural and regional Victoria

IBAC holds Corruption Prevention and Integrity Insights Forums biannually, in locations including Ballarat, Traralgon, Warrnambool, Geelong, Horsham and Wangaratta.⁷¹ These forums are directed at, and involve participation from, rural and regional local councils and agencies and public sector employees.⁷² One of the areas of focus in these forums has been the avoidance of improper conflicts of interest, which can be a particular risk in small, close-knit communities.⁷³ This risk has been recognised by IBAC with respect to the provision of goods and services to the public sector and local police investigation of complaints about Victoria Police.⁷⁴

Education programs in conjunction with Victoria Police

Under s 15 of the *IBAC Act 2011* (Vic), in relation to police conduct IBAC has the function 'to ensure that the highest ethical and professional standards are maintained by police officers and protective services officers'.⁷⁵ In support of this function, IBAC can

provide information and education services to members of police personnel and the community about police personnel conduct, including the detrimental effects of police personnel misconduct and ways in which to assist in preventing police personnel misconduct ...

[and] publish information on ways to prevent corrupt conduct and police personnel misconduct.⁷⁶

During 2018/19, IBAC launched an education program in conjunction with Victoria Police that incorporates anti-corruption content, including material on the requirements for reporting misconduct and how to make reports internally or to IBAC, as well as on 'the importance of building a strong, ethical culture in Victoria Police that actively resists corruption and misconduct'.⁷⁷

Further, IBAC contributed to Victoria Police's Foundation Program for recruits, and also engaged with Victoria Police Command, the Police Managers' Qualifying Program and Professional Standards Command, on anti-corruption and related governance and cultural issues.⁷⁸ In doing so, IBAC has emphasised the need for Victoria Police, like other public sector bodies, to call out and eradicate obscuring behaviours that hide and rationalise misconduct.⁷⁹

⁷¹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 16.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ IBAC, *Managing corruption risks associated with conflicts of interest in the public sector*, Melbourne, October 2019, pp. 36, 43–44; IBAC, *Special report on corruption risks associated with procurement in local government: operations Dorset, Royston and others*, Melbourne, September 2019, p. 9; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 302–307; Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019.

⁷⁵ *IBAC Act 2011* (Vic) s 15(3)(b)(ii).

⁷⁶ *IBAC Act 2011* (Vic) s 15(6)(e)–(f) (see also s 15(5)).

⁷⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 17.

⁷⁸ Ibid., p. 37.

⁷⁹ Ibid., p. 69 (especially Figure 25).

Since February 2019, IBAC's engagement and education with respect to Victoria Police have included the following highlights:

- fortnightly presentations delivered at Foundation Development recruit training
- two whole-of-command presentations delivered to Professional Standards Command ...
- IBAC presentation included in the Police Managers' Qualifying Program for Senior Sergeants and Inspectors
- IBAC presentation at Victoria Police Quarterly Command Forum
- IBAC content included in the induction manual of unsworn Victoria Police employees
- development and communication about the obscuring behaviours framework
- biannual meetings between senior staff from IBAC and Victoria Police Professional Standards Command and People Command.⁸⁰

IBAC has reported a satisfaction rating greater than 95% for its tailored presentation to Victoria Police recruits, and received feedback that they feel better informed about their obligations to report misconduct 'and ... would report misconduct without fear of reprisal'.⁸¹ However, it should be noted that, in contrast to this satisfaction rating, IBAC and Victoria Police research continues to demonstrate that a significant proportion of Victoria Police officers are wary of reporting misconduct to their managers, fearing they could be victimised and inadequately protected from reprisals.⁸²

Impact and effectiveness of IBAC's education and prevention initiatives

In 2017/18, IBAC exceeded its State Budget Paper No. 3 (BP3) targets for the delivery of 90 corruption-prevention initiatives with a satisfaction rating of 90%. It delivered 92 initiatives with a satisfaction rating of 99%.⁸³ In 2018/19, the BP3 targets were the delivery of 90 initiatives with a satisfaction rating of 95%. IBAC delivered 99 initiatives with a satisfaction rating of 99%.⁸⁴ While these results are commendable, IBAC has rightly emphasised the complexity of identifying and measuring diverse positive impacts from corruption-prevention efforts, impacts which may indeed only be apparent in the long run and in retrospect:

⁸⁰ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 30.

⁸¹ Ibid.

⁸² See IBAC, *Perceptions of corruption: survey of Victoria Police employees*, Melbourne, December 2017, p. 12 ('only 20 per cent of [Victoria Police] respondents felt they would be *protected from victimisation* if they reported corruption'); Neil Comrie, *Taskforce Deliver 2018: investigation into the falsification of Preliminary Breath Tests within Victoria Police*, Melbourne, November 2018, available at <<https://www.police.vic.gov.au/official-publications>> accessed 24 February 2020—see pp. 7 ('[Victoria Police] members perceive that structural and cultural barriers limit their ability to raise concerns about organisational practices that impact on integrity') and 108 (on members' concern 'that should they raise [integrity] concerns they may be then targeted for doing so').

⁸³ IBAC, *Annual report 2017/18*, Melbourne, 2018, p. 10.

⁸⁴ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23.

It often takes years for the impact of corruption prevention measures to be known or assessed, and there may be (and often are) consequences and impacts that are not able to be measured, documented, communicated or publicised in any way.⁸⁵

Therefore, IBAC does not merely rely on reported satisfaction ratings in assessing the effectiveness of its education and prevention initiatives.⁸⁶ Instead, it uses a wide variety of indicators,

including outputs, activities, actions, and more sophisticated metrics such as awareness levels, propensity to report corruption, attitudes towards corruption as well as metrics of trust in public institutions and delivery of services.⁸⁷

Specifically, IBAC has informed the Committee that key indicators include:

- internal benchmarks for performance and Budget Paper 3 outcomes (for example, recommendations made as a result of investigations, number of special reports, number of media mentions, uptake of resources, website visits, publication requests, engagement requests)
- ... perceptions of corruption across different sectors including the broader public ... [including] respondents' understanding of corruption and willingness to report ...
- evidence of significant reforms in the public sector in response to IBAC operations, recommendations, research findings or other work
- utilisation of IBAC resources by public sector agencies (and others) for internal training, communication or other purpose
- inclusion of key IBAC content by peak agencies and others in development of corruption capacity building activities such as IPAA's Senior Leaders' Integrity and Ethical Leadership Program
- information gained as part of our research activities. For example as part of our current consultation and research for IBAC's Strategic Assessment, a significant number of agencies have reported they have changed their integrity and corruption focus since IBAC's establishment, and in response to corruption risks and prevention strategies identified by IBAC.⁸⁸

2.3 Complaint handling, investigations, reviews and audits

Under the *IBAC Act 2011* (Vic), IBAC exercises a range of complaint-handling, investigative, review and auditing functions in overseeing Victoria's public sector.⁸⁹ It receives complaints about public sector bodies, including Victoria Police, directly from

⁸⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 17.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ See also *PID Act 2012* (Vic).

members of the public as well as notifications of possible corruption, improper conduct under the *PID Act 2012* (Vic) and police misconduct.⁹⁰ Further, through a ‘Provide information’ option on its website IBAC can receive anonymous reports of alleged wrongdoing without a complaint being made.⁹¹

In addition to investigating complaints itself, IBAC can also refer complaints back to a public sector body (including Victoria Police) and, under certain conditions, an integrity agency (such as the Victorian Ombudsman).⁹² It can also dismiss complaints ‘if there are grounds to do so’.⁹³ Subject to the operation of a range of other provisions in the *IBAC Act 2011* (Vic), s 67(1) provides that ‘the IBAC, in its absolute discretion, may determine that a complaint or a notification’ to it ‘does not warrant investigation’. IBAC may determine, for instance, that a complaint does not warrant investigation because it is ‘trivial’, or ‘unrelated to the functions of the IBAC’, or ‘frivolous or vexatious’, or lacking in ‘substance or credibility’, or ‘mischievous’ or because, ‘in all of the circumstances, the conduct does not warrant investigation’.⁹⁴

While, under s 15(1A) of the *IBAC Act 2011* (Vic), IBAC is required to ‘prioritise’ the exposure and investigation of conduct that it considers may amount to ‘serious’ or ‘systemic’ corruption, this requirement is expressly qualified—the requirement ‘does not restrict the IBAC’s discretion to investigate *any matter* that the IBAC considers may constitute corrupt conduct’.⁹⁵ IBAC also has jurisdiction to identify, expose and investigate police misconduct.⁹⁶

In particular circumstances, IBAC can undertake coordinated investigations with other agencies.⁹⁷ IBAC also has the power to conduct investigations on its own motion.⁹⁸ As an exercise of its oversight functions, IBAC can undertake reviews of public sector-body and Victoria Police investigations, to ensure they are fair, thorough and timely, and audit selected public sector and police policies, procedures and practices.⁹⁹

⁹⁰ *IBAC Act 2011* (Vic) ss 51–52, 57; *Victoria Police Act 2013* (Vic) ss 167–170; *PID Act 2012* (Vic) ss 4–5, pt 2.

⁹¹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 18; IBAC, *Provide information*, <<https://www.ibac.vic.gov.au/reporting-corruption/report/provide-information>> accessed 5 February 2020; *IBAC Act 2011* (Vic) s 56.

⁹² *IBAC Act 2011* (Vic) ss 58, 73, 73A.

⁹³ *IBAC Act 2011* (Vic) s 58.

⁹⁴ *IBAC Act 2011* (Vic) s 67(2) (note that this subsection provides an inclusive not an exhaustive list of possible grounds). See also *IBAC Act 2011* (Vic) s 67(3).

⁹⁵ *IBAC Act 2011* (Vic) s 15(1B) (emphasis added).

⁹⁶ *IBAC Act 2011* (Vic) s 15(2)(b) (see also s 15(3)–(4)).

⁹⁷ *IBAC Act 2011* (Vic) s 72.

⁹⁸ *IBAC Act 2011* (Vic) ss 60(1)(c), 64(1)(c).

⁹⁹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36 (citing *IBAC Act 2011* (Vic) ss 15–16). See also *IBAC Act 2011* (Vic) ss 78 (information provided to IBAC about a referred complaint or notification) and 79 (IBAC’s withdrawal of a referral made by it to another body).

2.3.1 Complaint handling

Key data: a snapshot

During 2018/19, IBAC ‘received 2347 complaints and notifications, and assessed 5812 allegations’.¹⁰⁰ A complaint or notification can include a number of allegations, and IBAC assesses each individual allegation to determine whether it should investigate, refer or dismiss.¹⁰¹

Compared with 2017/18, in 2018/19 more complaints and notifications were received (2347, up from 2315) although not as many allegations were assessed (5812, down from 6293).¹⁰² However, there was an increased number of allegations assessed as protected disclosures, which are more complex and demanding to assess and necessitate distinctive protective measures.¹⁰³ See Table 2.2 for the outcomes of IBAC’s assessment of allegations since 2014/15.

Table 2.2 Outcomes of complaints and notifications assessed by IBAC

Classification	2014/15	2015/16	2016/17	2017/18	2018/19
Complaints and notifications received	2196	2041	2098	2315	2347
Allegations assessed	4443	4576	4990	6293	5812
Allegations assessed as protected disclosures ^a	210	653	579	742	875
Allegations investigated by IBAC	38	47	45	81	102
Allegations referred to another entity	1206	1523	1264	1460	1765
Allegations dismissed ^b	1818	2408	2730	3758	2544
Allegations resulting in other ^c outcomes	n/a	n/a	n/a	n/a	1401
Enquiries received	1415	903	808	988	688
Percentage of complaints/notifications assessed within 45 days ^d	n/a	94%	94%	94%	n/a
Percentage of complaints or notifications about public sector corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) assessed by IBAC within 45 days	n/a	n/a	n/a	n/a	85%
Percentage of complaints or notifications about police personnel conduct and police personnel corrupt conduct assessed by IBAC within 45 days	n/a	n/a	n/a	n/a	77%

- This was referred to as ‘matters assessed for protected disclosure’ in previous reports.
- Last year ‘dismissed’ included withdrawn allegations. ‘Withdrawn’ allegations have been included in ‘other’ for 2018/19.
- ‘Other’ is the sum of no further action, noted, returned and withdrawn. The numbers of ‘noted’ and ‘returned’ allegations were not included in previous year reports.
- The percentage of complaints/notifications assessed within 45 days was split into two measures in 2018/19 to reflect the breakdown of Public Sector and Victoria Police complaints and notifications.

Source: IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 28 (Table 5—reproduced with only slight modification).

The main subjects of allegation by sector in 2018/19 were Victoria Police (62%), public sector (24%) and local council (9%) (see Figure 2.1).¹⁰⁴ The kinds of wrongdoing alleged included ‘inaction’; ‘breach of professional boundaries’; ‘criminal behaviour, drugs and

¹⁰⁰ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 18.

¹⁰¹ *Ibid.*, pp. 18, 26.

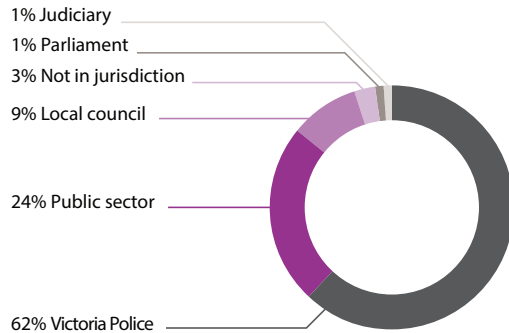
¹⁰² *Ibid.*, p. 28.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, p. 29.

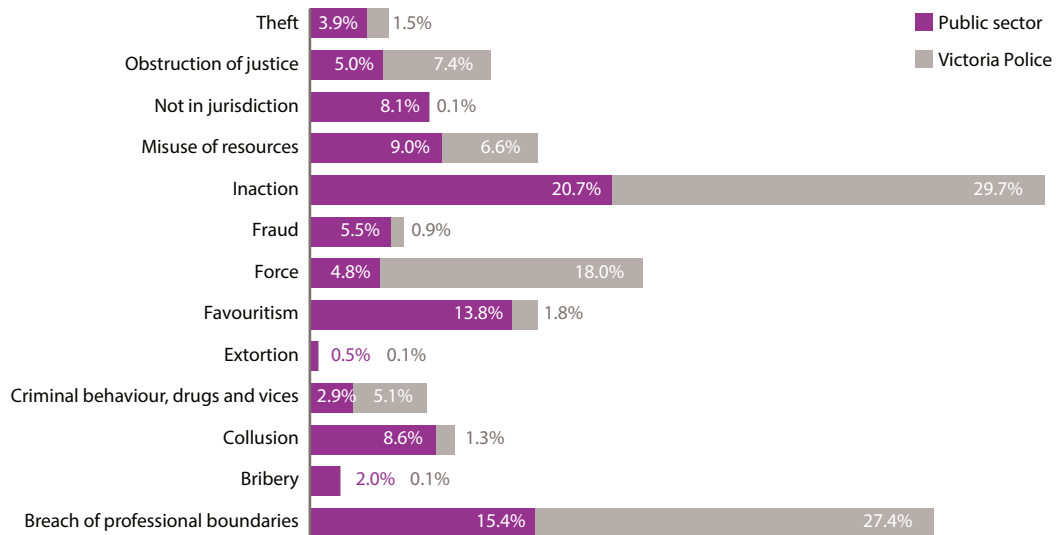
vices', 'force', 'fraud', 'favouritism', 'misuse of resources' and 'obstruction of justice' (see Figure 2.2).¹⁰⁵

Figure 2.1 Allegations by sector



Source: IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 29 (Figure 7).

Figure 2.2 Allegations by type



Source: IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 29 (Figure 8).

During 2018/19, IBAC assessed 2205 allegations about the Victorian public sector—dismissing 1120, referring 675 to another body and investigating 86.¹⁰⁶ IBAC assessed 421 allegations as protected disclosures.¹⁰⁷

In 2018/19, IBAC assessed 3607 allegations about Victoria Police—dismissing 1424, referring 1090 (with 45 reviews) and investigating 16.¹⁰⁸ IBAC assessed 454 allegations

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., p. 41.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., p. 59.

as protected disclosures.¹⁰⁹ A further 1077 allegations were ‘noted’, ‘returned’, ‘withdrawn’ or assessed as requiring ‘no further action’.¹¹⁰

Compared with 2017/18, in 2018/19 there were 11% fewer complaints about Victoria Police ‘made by individuals directly to IBAC’: 2231 complaints in 2018/19, down from 2520 in 2017/18.¹¹¹ There was, however, a 16% increase in notifications from Victoria Police: 1343 in 2018/19, up from 1154 in 2017/18¹¹² (see Table 2.3 for a breakdown of allegations by source since 2014/15).

Table 2.3 Allegations about Victoria Police

Total number of allegations received through:	2014/15	2015/16	2016/17	2017/18	2018/19
Complaints made by individuals directly to IBAC	1635	1697	2005	2520	2231
Notifications and protected disclosure notifications from Victoria Police	1083	1093	1083	1154	1343
Notifications from other sources (e.g. Victorian Ombudsman, Victorian Auditor-General's Office)	261	168	76	35	45

Source: IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 60 (Table 14).

Notifications of lower-level police conduct matters (Local Management Resolution and Management Intervention Model matters—LMRs and MIMs) to IBAC are discussed in Section 2.3.4 of this chapter.

Complaints and notifications: timeliness of assessment

IBAC has BP3 timeliness targets with respect to its assessment of complaints and notifications about public sector (excluding police) corrupt conduct and ‘police personnel conduct and police personnel corrupt conduct’.¹¹³ The targets for 2018/19 were for IBAC to assess 85% of public sector complaints and notifications and 90% of police complaints and disclosures within 45 days.¹¹⁴ IBAC met the public sector target, with an outcome of 85%, but not the police target, assessing 77% of police complaints and notifications within 45 days¹¹⁵ (see Table 2.4).¹¹⁶

¹⁰⁹ Ibid.

¹¹⁰ Ibid. ‘... *Noted* outcomes are mandatory notifications under s 169 of the Victoria Police Act [2013 (Vic)], about a complaint against a police officer that IBAC “notes” and monitors ... *Returned* outcomes are protected disclosure notifications from public sector agencies that are determined by IBAC not to be protected disclosures and therefore do not engage the IBAC Act [2011 (Vic)] for assessment. These are ‘returned’ to the relevant agency for their consideration or action ... [*Withdrawn*’ allegations are where the] complainant has withdrawn their complaint ... [Matters requiring ‘no further action’ are those] that fall outside IBAC’s jurisdiction and no further action can be taken.’—IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 59 (emphasis added).

¹¹¹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 60.

¹¹² Ibid.

¹¹³ Ibid., p. 23.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Reproducing, with only slight modifications, content from Table 4 in IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23.

Table 2.4 Budget Paper Number 3 performance measures: timeliness of IBAC complaint and notification assessments

Performance measure	2018/19 target (%)	2018/19 actual (%)
Complaints or notifications about <i>public sector</i> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) assessed by IBAC within 45 days	85	85
Complaints or notifications about <i>police</i> personnel conduct and police personnel corrupt conduct assessed by IBAC within 45 days	90	77

Source: Adapted from IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23 (Table 4).

IBAC explained its performance in relation to the assessment of complaints and notifications about Victoria Police as follows:

The 2018/19 actual performance was lower than the 2018/19 target because IBAC was transitioning to a new case management system, which impacted on response times. An increase in the volume of calls from the public, as well as complex Victoria Police cases, also contributed to the result.¹¹⁷

In particular, IBAC experienced a higher number of calls from complainants displaying ‘complex behaviours’ that placed more management demands on staff in terms of time and resources.¹¹⁸ The challenge of effectively managing complainant expectations while safeguarding staff wellbeing has long been recognised by Australian integrity and complaint-handling agencies.¹¹⁹ The Committee is pleased that IBAC’s frontline complaint-handling staff receive debriefings to help with their wellbeing.¹²⁰

IBAC has reported that the full implementation of its case management system (CMS) will make its work more efficient and result in ‘more timely’ complaint and notification assessments.¹²¹ The Committee notes this factor and will monitor and report on any progress in this area as part of its review of IBAC’s 2019/20 annual report.

Communicating better with complainants

The need for IBAC to move towards a more complainant-centred approach, and to enhance both the level and quality of its communication with complainants, was recognised by the Parliament of Victoria’s IBAC Committee in its inquiry into police oversight.¹²²

¹¹⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23.

¹¹⁸ *Ibid.*, p. 28.

¹¹⁹ See, for example, Victorian Ombudsman, *Dealing with challenging behaviour*, <<https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/dealing-with-challenging-behaviours/#full-report>> accessed 28 February 2020.

¹²⁰ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 28.

¹²¹ *Ibid.*, p. 23.

¹²² Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 170–179.

IBAC has made progress in response to some of these challenges. For example, it is currently preparing a fact sheet for complainants, which will explain expected time frames for the various stages of the complaints process, as well as ‘options for complainants to take further action if they are unhappy with IBAC’s response including by making a complaint to the Victorian Inspectorate’.¹²³ The fact sheet will accompany the acknowledgment letters sent out to complainants.¹²⁴ IBAC is also revising other letters used throughout the complaint-handling process so that they ‘are focused on addressing complainants’ needs, use accessible language, and build complainants’ understanding of the complaints process’.¹²⁵

IBAC’s new case management system

Condor, IBAC’s new case management system (CMS), is in the final phase of its implementation.¹²⁶ The CMS encompasses ‘complaints, assessments, information reports, investigations, surveillance, property management, digital forensics and collections, briefs of evidence, and legal matters’.¹²⁷ The remaining stage of implementation, which will encompass warrants, is expected to be completed by the end of the 2019/20 financial year.¹²⁸

IBAC reports that Condor has enhanced how it handles, assesses and tracks the complaints it receives.¹²⁹ Specifically, it has:

- improved recording of cases and allegations in a database tailored to IBAC’s jurisdiction, compared to the previous case management system which was designed around police complaints
- improved transparency of matters, giving relevant areas of IBAC visibility of cases and allegations
- [introduced] ... a workflow that runs across IBAC’s different areas, allowing complaints to be managed in the one database from receipt, assessment, investigation to outcome
- improved data capture and reporting capabilities to inform IBAC’s reporting obligations and intelligence work.¹³⁰

Finally, the ‘integration of investigations with complaint handling in the one database has also streamlined the management of complaints, the approvals processes associated with allegations, reporting around cases and allegations, and the identification of strategic issues across the assessment and investigation functions’.¹³¹

¹²³ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 18.

¹²⁴ Ibid.

¹²⁵ Ibid., p. 19.

¹²⁶ Ibid., p. 20.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid., pp. 20–21.

Safeguarding the welfare of protected disclosers

IBAC emphasises that the primary responsibility for safeguarding the welfare of protected disclosers (now called ‘public interest disclosers’) lies with the public sector bodies it oversees, including Victoria Police.¹³²

Nevertheless, under the law, IBAC exercises express guidance and review functions in relation to public sector procedures for handling disclosures and managing the welfare of public interest disclosers.¹³³ In addition to being required to issue guidelines on these subjects, IBAC also has the function and power of reviewing whether public sector disclosure procedures are compliant—both with the guidelines themselves and other relevant laws.¹³⁴ Under s 61(1) of the *PID Act 2012* (Vic), IBAC may make ‘any recommendation it thinks fit’, arising out of such a review, regarding a public sector body’s procedures and their implementation. Further, under s 61(2) of that Act,

[i]f it appears to the IBAC that insufficient steps have been taken by an entity within a reasonable time after making a recommendation under subsection (1), the IBAC may, after considering any comments of the entity, send a copy of the recommendation to the relevant Minister.

Measures taken by IBAC to strengthen the whistleblowing protection regime, and to guide and support public sector bodies in discharging their protective responsibilities, include:

- Convening a Community of Practice to support public interest disclosure coordinators across the Victorian public sector including Victoria Police. Seminars and events have focussed on witness welfare and best practice techniques for welfare risk assessment and management.
- The provision of guidelines on welfare management, which are available on IBAC’s website.
- Maintaining an appropriate level of contact and support for disclosers involved in IBAC investigations. This includes facilitating referrals to appropriate support services and networks.
- Ensuring that any allegations of detrimental action against public interest disclosers are considered in accordance with IBAC’s statutory duties and functions.
- Specific engagement with Victoria Police to explore and develop discloser welfare management objectives while maintaining oversight of inadequate practices and providing guidance.¹³⁵

The IOC stresses the importance of IBAC’s function of reviewing the effectiveness of public sector bodies’ public interest disclosure procedures. This review function is especially important given the increased risk of reprisals against a discloser when

¹³² Ibid., p. 25.

¹³³ *PID Act 2012* (Vic) ss 55(2)–(3), 57, 60, 61.

¹³⁴ *PID Act 2012* (Vic) ss 55, 57, 58–61.

¹³⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 24–25.

a disclosure is referred back for investigation by a body that is the subject of the allegations of improper conduct (for example, when a police officer's disclosure about another officer is referred back to police for investigation).¹³⁶

2.3.2 Investigations

Key data: a snapshot

During 2018/19, IBAC finalised 27 investigations (19 'standard' and 8 'complex').¹³⁷ IBAC classifies investigations as standard or complex based on a number of criteria, including how many persons of interest are likely to be involved, the duration of the alleged offending, the 'number of corruption or misconduct behaviours identified', the number of suspected criminal offences and the amount of evidence to be processed.¹³⁸

While, overall, there was a 26% increase in the number of allegations that IBAC investigated, there was no increase in the number of police-complaint investigations carried out by IBAC.¹³⁹

With respect to public sector bodies, in 2018/19 IBAC finalised 12 investigations (8 standard and 4 complex).¹⁴⁰ The alleged wrongdoing investigated included fraud, collusion, bribery, favouritism and misuse of resources.¹⁴¹ The wrongdoing took place in a range of sectors, including corrections and public transport.¹⁴² Four persons were charged with Victorian or Commonwealth offences during 2018/19 and orders for proceeds of crime were made (recovering \$110,091).¹⁴³

IBAC may publish a special report under s 162 of the *IBAC Act 2011* (Vic) as one possible outcome of an investigation.¹⁴⁴ During 2017/18, IBAC tabled special reports on Operation Tone and Operation Lansdowne, as well as a special report summarising its key activities and achievements during its first five years.¹⁴⁵ IBAC 'does not ordinarily

¹³⁶ See Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 227–236, 301–307; Parliament of Victoria, IBAC Committee, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012* (Vic), Melbourne, June 2017, pp. 10–15, 115–123, 132–136.

¹³⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 32.

¹³⁸ Ibid.

¹³⁹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 18; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 27.

¹⁴⁰ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 43.

¹⁴¹ Ibid.

¹⁴² Ibid., pp. 43–45. See, for example, IBAC, *Operation Fitzroy: an investigation into the conduct of former employees of the Department of Transport/Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and others*, Melbourne, October 2014; Operation Molar (corruption in Dhurringile Prison), <<https://www.ibac.vic.gov.au/media-releases/article/former-corrections-victoria-officer-sentenced-following-ibac-investigation-march-2019>> accessed 1 March 2020; Operation Nisidia (misconduct in Loddon Prison), <<https://www.ibac.vic.gov.au/media-releases/article/former-corrections-victoria-officer-sentenced-following-ibac-investigation>> accessed 26 March 2020.

¹⁴³ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 45.

¹⁴⁴ *IBAC Act 2011* (Vic) s 164(1)(c); IBAC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 28 September 2020, p. 7.

¹⁴⁵ IBAC, *Operation Tone: special report concerning drug use and associated corrupt conduct involving Ambulance Victoria paramedics*, Melbourne, September 2017; IBAC, *Operation Lansdowne: an investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors*, Melbourne, December 2017; IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, December 2017.

publish special reports' for an investigation where no adverse finding is made.¹⁴⁶ However, IBAC acknowledges that 'there are special cases' where it would be in the public interest to table a special report.¹⁴⁷

IBAC investigated 16 allegations about Victoria Police in 2018/19 and finalised 15 investigations (11 standard and 4 complex).¹⁴⁸ IBAC reported that a 'large proportion' of its investigations concerned allegations that police officers had used excessive force, especially against vulnerable people, and the issue of whether officers had given sufficient regard to rights identified in the Victorian Charter of Human Rights was also examined.¹⁴⁹ The investigations included matters such as disreputable social media use by an Assistant Commissioner, the unauthorised use of police information and the excessive use of force.¹⁵⁰ Twelve Victoria Police officers were charged with offences.¹⁵¹

Timely completion of IBAC investigations

The relevant 2018/19 BP3 performance measure sets a target of the completion of 75% of IBAC's public sector investigations within 12 months; IBAC completed only 42% of public sector investigations within 12 months¹⁵² (see Table 2.5¹⁵³). In its response to the Committee, IBAC has explained that

[i]nvestigations into public sector corrupt conduct are frequently 'complex' in nature which can impact on timeliness. This is due to factors including the number of persons of interest, offending period, number of corruption or misconduct behaviours identified, number of criminal offences suspected and volume of evidence.

The average duration for completing an IBAC investigation into non-police public sector corrupt conduct is 347 days.¹⁵⁴

During 2018/19, IBAC did not meet the BP3 target of the completion of 75% of its investigations into police personnel conduct and police personnel corrupt conduct within 12 months; it completed only 33% of investigations within that period (see Table 2.5).¹⁵⁵ IBAC has explained that it did not meet the target due to an increased number of 'ongoing investigations' and demands associated with charges and disciplinary hearings.¹⁵⁶ Further, it reported that a crucial factor during 2018/19 was the number of investigations into police personnel conduct [that] led to prosecutions

¹⁴⁶ IBAC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 28 September 2020, p. 7.

¹⁴⁷ Ibid.

¹⁴⁸ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 59–60.

¹⁴⁹ Ibid., p. 62. See also *Charter of Human Rights and Responsibilities Act 2006* (Vic); *IBAC Act 2011* (Vic) s 15(3)(b)(iii).

¹⁵⁰ Ibid., pp. 63–64 (Operation Turon, Operation Genoa, Operation Ross and Operation Poros).

¹⁵¹ Ibid., p. 64.

¹⁵² Ibid., p. 23.

¹⁵³ Reproducing, with only slight modifications, content from Table 4 in IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23.

¹⁵⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 33.

¹⁵⁵ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23.

¹⁵⁶ Ibid.

with charges involving statute of limitations time limits. In such cases, the preparation of prosecution briefs was prioritised over the internal reporting required to close investigations on IBAC's systems.¹⁵⁷

While the IOC appreciates the importance of ensuring that prosecutions are not thwarted by the operation of statute of limitations requirements, IBAC should keep its internal reporting requirements and CMS records for all investigations up to date. This will help prevent any inconsistencies or inaccuracies in IBAC's reporting on the number of investigations it has completed within the periods mandated under the BP3 timeliness targets.

Table 2.5 Budget Paper Number 3 performance measures: timely completion of IBAC investigations

Performance measure	2018/19 target	2018/19 actual
	(%)	(%)
Proportion of IBAC investigations into <i>public sector</i> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) completed within 12 months	75	42
Proportion of IBAC investigations into <i>police</i> personnel conduct and police personnel corrupt conduct completed within 12 months	75	33

Source: Adapted from IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 23 (Table 4).

IBAC has advised the IOC that these explanatory factors have been recognised in changes made to the BP3 timeliness measures to be used from 2019/20, which accommodate the different demands and time frames of standard and complex investigations:

The new performance measures, commencing in 2019/20, include the proportion of 'standard' investigations completed within nine months, and 'complex' investigations completed within 18 months. These measures take into account the complexity of an investigation, including factors such as period of offending, volume of material, number of allegations and number of persons of interest and/or witnesses, and provide a more realistic target timeframe for completion of cases.¹⁵⁸

The Committee will monitor the timeliness of IBAC's completion of its investigations into public sector and police matters against these new performance targets.

¹⁵⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 33.

¹⁵⁸ Ibid., p. 34. See Department of Treasury and Finance (Victoria), *Victorian Budget 19/20: service delivery* (Budget Paper No. 3), Melbourne, May 2019, p. 317 (60% of *standard* IBAC investigations into public sector and police matters must be completed within 9 months, while 60% of *complex* investigations must be completed within 18 months).

Response to the parliamentary IBAC Committee's police oversight report

IBAC has informed the IOC that, in advance of the Government's response to the IBAC Committee's September 2018 police oversight report, it has begun to take measures to enhance the exercise of its police oversight function through the establishment of an internal working group.¹⁵⁹

As part of its Strategic Workforce Plan, for example, IBAC is assessing the 'technical capabilities' it needs so that it can recruit more staff, including investigative staff, with diverse disciplinary (and other) backgrounds.¹⁶⁰

IBAC is also making progress towards a more complainant-centred approach by ensuring the explanatory material it provides complainants is clearer and more accessible.¹⁶¹ IBAC is, further, endeavouring to deepen its awareness of, and sensitivity and responsiveness to, culturally diverse, and sometimes vulnerable, complainants.¹⁶² For example, as part of IBAC's preparations for its first Reconciliation Action Plan, the agency will ensure that staff undergo cultural awareness training, planned to take place during 2019/20.¹⁶³

In addition, IBAC has been engaging with Victoria Police to encourage them to use the full range of disciplinary sanctions available to it under the *Victoria Police Act 2013* (Vic)—so that wrongdoing is appropriately addressed and an overreliance on lower-order responses, such as admonishment, can be avoided.¹⁶⁴

IBAC has also been emphasising the importance of Victoria Police identifying, scrutinising and effectively managing conflicts of interest, including those affecting the impartiality (or perceived impartiality) of police-complaint investigations.¹⁶⁵

¹⁵⁹ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 25. See also Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018.

¹⁶⁰ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 25. See also Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 52 (Recommendation 3).

¹⁶¹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 25; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 170–179.

¹⁶² IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 25; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 178–179.

¹⁶³ Ibid. See also Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 148–159. See also Reconciliation Australia, *Reconciliation Action Plans*, <<https://www.reconciliation.org.au/reconciliation-action-plans>> accessed 1 March 2020.

¹⁶⁴ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 29; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 308–310.

¹⁶⁵ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 292, 296–298, 301–307; IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016; IBAC, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, Melbourne, June 2018; IBAC, *Audit of Victoria Police oversight of serious incidents*, Melbourne, March 2018; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 26–27.

In addition, IBAC's efforts have been directed at improving how it collects, analyses, reports and publishes complaints data so that it can move towards meeting best practice standards.¹⁶⁶

Finally, IBAC is exploring how it might, with complainants' consent, make use of its power to conciliate complaints about police misconduct, and publicise conciliation as a realistic dispute resolution option.¹⁶⁷

The IOC notes that one of the priorities in IBAC's 2018–2021 Corporate Plan is to '[i]ncrease ... [its] investigative and review capacity of police misconduct'.¹⁶⁸ The IOC is concerned, however, that, during 2018/19, IBAC has neither increased the number of investigations it undertakes into allegations about police misconduct nor the number of its reviews of Victoria Police's investigations of them.¹⁶⁹

There is a clear need for IBAC to at least increase the number of reviews it undertakes of complaints about alleged Victoria Police misconduct and other governance and performance concerns. This need was recognised by the IBAC Committee with regard to the very small proportion of complaints about police investigated by IBAC (and, indeed, by Victoria Police's Professional Standards Command, PSC).¹⁷⁰ It has also been recognised by the current IBAC Commissioner and is corroborated by IBAC's own evaluations, which have identified significant shortcomings in Victoria Police systems for handling complaints at the PSC and regional levels as well as in its oversight of critical incidents.¹⁷¹

More recently, IBAC investigations and reviews have identified concerns over aspects of Victoria Police leadership (for example, Operation Turon regarding former Assistant Commissioner of PSC, Mr Brett Guerin)¹⁷² and compliance with the Victorian Human

¹⁶⁶ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 133–138.

¹⁶⁷ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 325–328; *IBAC Act 2011* (Vic) s 64(2).

¹⁶⁸ IBAC, *2018–21 Corporate Plan*, Melbourne, July 2018, p. 7. See also IBAC, *Annual report 2017/18*, Melbourne, 2018, p. 66 (IBAC 'will investigate a larger number of police matters in the future').

¹⁶⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 27.

¹⁷⁰ Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018.

¹⁷¹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 15 (Hon Robert Redlich AM QC: 'IBAC is committed to conducting more reviews but without additional funding our capacity to increase our review function is constrained.');

IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016; IBAC, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, Melbourne, June 2018; IBAC, *Audit of Victoria Police oversight of serious incidents*, Melbourne, March 2018.

¹⁷² IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 63 (the former Assistant Commissioner's 'behaviour risked damaging the integrity of, and confidence in, Victoria Police investigations').

Rights Charter (for example, in relation to the Hares & Hyenas bookshop incident).¹⁷³ Within this context, IBAC is presently undertaking a review of leadership issues within Victoria Police, and expects to report its findings during 2020.¹⁷⁴

Safeguarding witness welfare

In its October 2018 special report, the VI identified areas for improvement in relation to IBAC's policies, procedures and practices with respect to the welfare of witnesses involved in IBAC investigations, especially those subject to coercive questioning.¹⁷⁵ While IBAC did not accept the findings or recommendations of the report, considering it 'fatally flawed',¹⁷⁶ the agency has reiterated, that like the VI and the IOC, it is committed to ensuring that its approach to witness welfare meets best practice standards:

IBAC takes seriously ... our obligation to protect the welfare of all witnesses who are summonsed to attend examinations which are an important investigative tool. Their safety is at the forefront of IBAC considerations, actions, policies and procedures.¹⁷⁷

Following publication of the VI's report, in December 2018 IBAC carried out an internal review of its witness welfare policies, procedures and practices to ensure that they met 'industry best-practice and community expectations'.¹⁷⁸ One of the main outcomes of the internal review was IBAC's development of a consolidated witness welfare policy that recognised that

the elements of witness welfare already provided for across a range of IBAC procedures warrant[ed] a single overarching statement of definitions, legal and other obligations, and specific accountabilities and responsibilities.¹⁷⁹

¹⁷³ While IBAC found that Victoria Police had reasonable grounds to enter and search the bookshop premises, and that they used reasonable force in arresting a person who suffered serious injury as a result, it identified possible human rights violations during the arrest (for example, regarding advising the arrestee of the reason for his arrest) and expressed concerns, more broadly, over the operation of Victoria Police's Critical Incident Response Team—see IBAC, *Outcome of IBAC's investigation into the conduct of Victoria Police officers at the Hares & Hyenas bookstore in Fitzroy in May 2019*, <<https://www.ibac.vic.gov.au/media-releases/article/outcome-of-ibac-s-investigation-into-the-conduct-of-victoria-police-officers-at-the-hares-hyenas-bookstore-in-fitzroy-in-may-2019>> accessed 29 April 2020. See also Neil Comrie, *Taskforce Deliver 2018: investigation into the falsification of Preliminary Breath Tests within Victoria Police*, Melbourne, November 2018, available at <<https://www.police.vic.gov.au/official-publications>> accessed 24 February 2020; IBAC, *Perceptions of corruption: survey of Victoria Police employees*, Melbourne, December 2017; Royal Commission into the Management of Police Informants ('Lawyer X Royal Commission'), <<https://www.rcmpi.vic.gov.au>> accessed 8 February 2020; Victorian Equal Opportunity and Human Rights Commission, *Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police: Phase 3 audit and review*, Melbourne, August 2019, <<https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1832-independent-review-into-sex-discrimination-and-sexual-harassment-including-predatory-behaviour-in-victoria-police-phase-3-audit-and-review-aug-2019>> accessed 29 April 2020; Victorian Equal Opportunity and Human Rights Commission, *Proud, visible, safe: responding to workplace harm experienced by LGBTI employees in Victoria Police*, Melbourne, May 2019, <<https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1814-proud-visible-safe-may-2019>> accessed 29 April 2020.

¹⁷⁴ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 63; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 30–31.

¹⁷⁵ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018.

¹⁷⁶ 'IBAC's statement about the Special Report', extracted in VI, *Annual report 2018–19*, Melbourne, 2019, p. 71.

¹⁷⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 24.

¹⁷⁸ 'IBAC's statement about the Special Report', extracted in VI, *Annual report 2018–19*, Melbourne, 2019, p. 71. See also Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019.

¹⁷⁹ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019.

This policy was approved by IBAC's Executive on 11 June 2019 and a subsequently revised version is now available on the agency's website alongside useful explanatory content for witnesses.¹⁸⁰

Following IBAC's internal review, it has advised¹⁸¹ that it has enhanced

- identification and assessment of 'welfare risk factors'¹⁸²
- welfare monitoring
- escalation and management of 'welfare incidents'¹⁸³
- mental health first aid training for staff
- counselling and support information and referrals (and on-site counselling at examinations where appropriate).¹⁸⁴

In addition, witnesses summoned to give evidence at an IBAC examination are now provided with a 'Welfare Support Services' information sheet, which lists a range of support services.¹⁸⁵

While the VI has acknowledged that IBAC has since October 2018 made 'significant improvements' to its approach to witness welfare,¹⁸⁶ it nevertheless considers that there is further work to be done.¹⁸⁷

The Committee will continue to monitor IBAC's progress in relation to the safeguarding of witness welfare.¹⁸⁸

2.3.3 Reviews

IBAC regards its selected reviews of other agencies' internal investigations of complaints and other matters as an important complement to its investigative work.¹⁸⁹ First, IBAC reviews compensate to a degree for the limited number of investigations,

¹⁸⁰ IBAC, *Welfare management for IBAC investigations* (authorised 23 October 2019, with a review date of 11 June 2021), <<https://www.ibac.vic.gov.au/docs/default-source/policies/welfare-management-for-ibac-investigations-policy.pdf>> accessed 3 March 2020; IBAC, *Information for witnesses*, <<https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/if-you-are-called-as-a-witness>> accessed 3 March 2020; IBAC, *IBAC examinations*, <<https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations>> accessed 3 March 2020.

¹⁸¹ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 24; VI, *Annual report 2018-19*, Melbourne, pp. 59-60.

¹⁸² Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019.

¹⁸³ Ibid.

¹⁸⁴ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 24; VI, *Annual report 2018-19*, Melbourne, pp. 59-60.

¹⁸⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 24 (witnesses can also 'discuss their emotional state and details of ... restricted matters set out in ... [an] IBAC confidentiality notice with a counsellor, who is a registered health practitioner').

¹⁸⁶ VI, *Annual report 2018-19*, Melbourne, 2019, p. 59.

¹⁸⁷ Ibid., pp. 59, 60-72.

¹⁸⁸ See *ibid.*, pp. 58-59, 71-72; *VI Act 2011* (Vic) ss 12A, 78-79, 90, 91(1)(f).

¹⁸⁹ IBAC, *Annual report 2018-19*, Melbourne, 2019, p. 15.

particularly with respect to Victoria Police, that it presently undertakes.¹⁹⁰ Second, IBAC considers reviews an efficient way to exercise its oversight functions, relying on agencies' familiarity with, and expertise in relation to, their own systems and personnel, while making efforts to ensure that internal investigations are thorough, timely, fair and impartial.¹⁹¹ Third, reviews help build the capacity of public sector bodies and Victoria Police to conduct better investigations and develop professional cultures that comply fully with the law; maintain ethical standards and human rights; and be responsible and accountable for preventing, resisting and addressing corruption.¹⁹² Fourth, reviews contribute to IBAC's intelligence and strategic understandings, allowing it to better identify systems, trends and risks related to the emergence, prevention and addressing of corruption and misconduct in Victoria's public sector.¹⁹³

In 2018/19, IBAC completed 45 reviews of police investigations compared with 72 in 2017/18 and 11 reviews of public sector investigations compared with 8 in 2017/18.¹⁹⁴ Overall, IBAC completed 56 reviews in 2018/19 compared with 80 in 2017/18.¹⁹⁵ See Table 2.6 for details. Reviews completed during 2018/19 included examinations of issues related to the transport of arrestees in police divisional vans and Victoria Police's investigation of systemic falsification of preliminary breath tests by police officers.¹⁹⁶

Table 2.6 Outcomes of IBAC reviews of management or investigations conducted by other agencies

Reviews by IBAC	2014/15	2015/16	2016/17	2017/18	2018/19
Reviews of police investigations completed	114	96	73	72	45
Returned as deficient ^a	19	35	20	48	29
Reviews of public sector investigations completed	5	8	8	8	11
Returned as deficient	3	5	2	8	4

a. The main reason files are returned as deficient is a lack of detail provided.

Source: Adapted from IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36 (Table 11).

IBAC has explained that the reduced number of reviews in 2018/19 was due to heavier demands in terms of the number of assessments required, their complexity

¹⁹⁰ See, for example, Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 126 ('When the number of dismissed allegations are taken into consideration, IBAC investigated 1.8% of all allegations [relating to Victoria Police] that it determined warranted investigation.').

¹⁹¹ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15, 36; IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, December 2017, pp. 6, 18; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 249–250.

¹⁹² Ibid.

¹⁹³ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 7, 13, 15, 36–37, 47, 52–57, 61, 65–67, 69; IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, December 2017, pp. 9, 16, 18, 21.

¹⁹⁴ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid., pp. 65–67.

and an increase in calls from members of the public (especially from challenging complainants).¹⁹⁷ IBAC also emphasised that, while it completed fewer reviews during 2018/19, the reviews it did finalise involved particularly complex systemic issues ranging over a longer period.¹⁹⁸

IBAC has advised that while it would like to do more reviews, particularly in the police oversight area, it cannot do so without more funding:¹⁹⁹

While IBAC is committed to conducting more reviews, without additional investment IBAC's current capacity to undertake more reviews is constrained and falls far short of the number of reviews undertaken by interstate anti-corruption agencies.²⁰⁰

Deficiencies in agency internal investigations

Of the agency investigations IBAC reviewed in 2017/18 and 2018/19, a significant proportion of them were found to be 'deficient' (see Table 2.6, above, and Table 2.7, below).²⁰¹

Table 2.7 Proportion of agency investigations returned by IBAC as deficient

Proportion of investigations returned as deficient	2017/18 (%)	2018/19 (%)
Police investigations	67	64
Public sector investigations	100	36

Source: Adapted from IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 22.

IBAC explained in its 2018/19 annual report that the 'main reason' it returns police investigation files to Victoria Police is deficiency due to the failure to provide sufficient detail.²⁰² However, in its response to the IOC's questions on notice, IBAC has advised that 'many of the deficiencies' it finds in reviewing other public sector bodies' investigations are 'serious in nature', and include issues such as:

- conflicts of interest
- a failure to consider all relevant evidence

¹⁹⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15, 28, 36; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 23, 27.

¹⁹⁸ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15, 36; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 23, 27.

¹⁹⁹ Ibid.

²⁰⁰ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36. See also IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 23, 27.

²⁰¹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 22.

²⁰² IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36. However, IBAC's more serious criticisms of police-complaint investigations by both Victoria Police regions and Professional Standards Command should also be noted: IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016; IBAC, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, Melbourne, June 2018.

- determinations that are not all appropriately explained, documented or supported by evidence
- recommendations that do not appear suitable based on the information provided or the determinations reached.²⁰³

When IBAC identifies deficiencies in an agency's internal investigation, it can ask for more information from the agency or return the investigation to the agency to undertake further work in accordance with IBAC's feedback and recommendations.²⁰⁴

2.3.4 Audits

While the purpose and nature of IBAC audits overlap with reviews, they are less tied to individual agency investigations and instead explore more broadly the efficacy and lawfulness of public sector body and Victoria Police policies, procedures and practices. During 2018/19, IBAC commenced an audit into Victoria Police's handling of complaints from Aboriginal and Torres Strait Islander complainants and finalised an audit of low-level notifications from Victoria Police (LMRs and MIMs).²⁰⁵

Audit of Victoria Police complaint handling: Aboriginal and Torres Strait Islander complainants

The 2018 IBAC Committee's inquiry into police oversight received evidence that many Aboriginal and Torres Strait Islander Victorians were disenchanted with the police complaints system and reluctant to make a complaint about police, fearing a lack of impartiality (especially when a complaint to IBAC was referred back to a police station at which the subject officer worked), discrimination and retaliation.²⁰⁶ In a partial response to these issues, and to other longstanding concerns expressed by Aboriginal and Torres Strait Islander community and legal organisations, during 2018/19 IBAC commenced an audit into Victoria Police's handling of complaints and 'serious incidents' involving Aboriginal and Torres Strait Islanders, which will examine files finalised during 2018.²⁰⁷

In determining the scope and orientation of the audit, IBAC consulted a range of Aboriginal and Torres Strait Islander stakeholders and will continue to do so throughout the audit.²⁰⁸ According to IBAC, the audit

aims to help Victoria Police build its capacity to prevent corrupt conduct and misconduct among its officers, by identifying issues and potential areas of improvement in the handling of complaints made by Aboriginal people. The audit will also seek to

²⁰³ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 22.

²⁰⁴ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 22.

²⁰⁵ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 67–68.

²⁰⁶ Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 152–154.

²⁰⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 67.

²⁰⁸ Ibid.

identify good practice that can be considered more broadly by Victoria Police and raise awareness of IBAC's police oversight role among Aboriginal people and the broader Victorian community ... [It will also explore] why Aboriginal people may be reluctant to make complaints to Victoria Police.²⁰⁹

IBAC plans to publish the audit results during 2020.²¹⁰

Audit of low-level notifications from Victoria Police (LMRs and MIMs)

Local Management Resolution and Management Intervention Model matters (LMRs and MIMs) are Victoria Police's classifications of the lowest types of police wrongdoing or conduct concerns, which are therefore allocated for less formal resolution.²¹¹ As IBAC has explained:

Complaints received by Victoria Police are triaged centrally by Professional Standards Command and assigned a classification that determines how each matter is handled. The lowest classifications are Local Management Resolution (LMR) and Management Intervention Model (MIM) matters. Only minor complaint and conduct matters (e.g. customer service complaints) should be classified [as] LMR or MIM because the focus is on developmental rather than punitive action for the officer who is the subject of the complaint. Victoria Police does not consider LMR or MIM matters to be complaints about misconduct as defined in the *Victoria Police Act 2013* [(Vic)] ... ; therefore, it is not *required* to notify these matters to IBAC.²¹²

However, in 2018, the IBAC Committee expressed concern that IBAC was not receiving notification of all LMRs and MIMs from Victoria Police. Accordingly, IBAC may not have been in the best position to review them and ensure that police misconduct was not being wrongly classified as a minor issue and then inappropriately resolved informally (instead of through the formal complaints system).²¹³ Further, IBAC itself had found in its review of Victoria Police's regional complaint-handling system that police misconduct was sometimes wrongly classified as an LMR.²¹⁴ The IBAC Committee therefore made a number of recommendations to improve the law on, and Victoria Police and IBAC processes in relation to, the identification, notification, review, handling and reporting of LMRs and MIMs.²¹⁵

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid., p. 68. See also Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 64–68.

²¹² IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 68 (emphasis added).

²¹³ Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 180–184.

²¹⁴ IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016, especially pp. 3, 7, 11–13, 20; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 198.

²¹⁵ Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 180–184, 357–360.

While the Government has not yet responded to these recommendations, upon request from IBAC, and in response to the IBAC Committee's concerns, since January 2018 Victoria Police has been providing notification of all LMRs and MIMs to IBAC.²¹⁶

From 24 January 2018–30 June 2018, IBAC received 250 LMR and 148 MIM notifications from Victoria Police, and, in 2018/19, 633 LMR and 451 MIM notifications.²¹⁷ While IBAC does not 'formally assess' LMRs and MIMs, it does audit *samples* of them.²¹⁸ Of the samples of LMRs and MIMs IBAC audited in 2017/18 and 2018/19, it found that 8% and 13%, respectively, had been misclassified by Victoria Police since they contained allegations of possible misconduct.²¹⁹ Victoria Police should, therefore, have formally notified these matters to IBAC.²²⁰

IBAC has given feedback to Victoria Police so that the accuracy of its classification and notification of allegations can be improved.²²¹ Victoria Police has accepted IBAC's recommendation that it develop and apply clear classification and assessment criteria so that only lower-level conduct issues are classified as LMRs.²²²

2.4 Governance and workplace

2.4.1 Overview

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

1. Exposing and preventing corruption and police misconduct.
2. A highly-capable and forward-looking organisation.
3. A respected, trusted independent statutory agency.
4. Investing in our people.²²³

Within these areas of focus, commitments to make enhancements in the following domains are especially relevant to the present discussion: data collection, storage, management, sharing and analysis; applied research; investigative and review

²¹⁶ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 26.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 26; IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 68.

²²⁰ Ibid.

²²¹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 26.

²²² IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 26; IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016. See also Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 357–360.

²²³ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 12; IBAC, *2018–21 Corporate Plan*, Melbourne, 2018, <<https://www.ibac.vic.gov.au/publications-and-resources/HTML/ibac-corporate-plan-2018-21>> accessed 8 February 2020.

capability and capacity; the effectiveness, efficiency and security of information and communications technology (ICT) systems; workforce planning and human resources capacity and management; and workplace environment and culture.²²⁴

During 2018/19, a number of significant appointments were made to IBAC's Executive: a new Deputy Commissioner (with a focus on police oversight), Ms Katie Miller, and a new Director Legal, Ms Helen Fatouros. These appointments reflect and positively contribute to IBAC's focus on enhancing the performance of its complaint-handling, assessment, investigative and oversight functions, particularly in relation to Victoria Police.²²⁵

In his review of 2018/19, Commissioner Redlich emphasised a range of increased demands and expectations placed on IBAC, including those related to the 'Lawyer X Royal Commission', obligations under the new PID scheme and calls for an increased number of police-complaint investigations and reviews.²²⁶ In the Commissioner's view, however, without additional funding IBAC will be unable to increase the number of investigations and reviews it carries out with respect to Victoria Police.²²⁷

The Commissioner and then Chief Executive Officer, Mr Alistair Maclean, drew further attention to a number of longstanding challenges—the sufficiency of IBAC's investigative powers, the recruitment and retention of suitably skilled investigators and the increasing breadth of its operations to expose, investigate and prevent public sector corruption and misconduct in all their diverse and sophisticated guises.²²⁸

2.4.2 Resourcing

IBAC's workload has increased as it has matured as an organisation, successfully exposed cases of serious public sector corruption, responded to growing public trust and expectations and extended the reach of its educative and preventive activities.²²⁹ IBAC has indicated that its workload will increase further in coming months, depending on any recommendations arising out of the Lawyer X Royal Commission and the nature of the Government's forthcoming response to the parliamentary IBAC Committee's 2018 police oversight report.²³⁰

²²⁴ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 13.

²²⁵ Ibid., pp. 10–11, 13, 16.

²²⁶ Ibid., pp. 15–17, 36. See also Lawyer X Royal Commission, <<https://www.rcmpi.vic.gov.au>> accessed 8 February 2020; IBAC, *IBAC supports Royal Commission into the Management of Police Informants*, 3 December 2018, <<https://www.ibac.vic.gov.au/media-releases/article/ibac-supports-royal-commission-into-management-of-police-informants>> accessed 8 February 2020; IBAC, *2018–21 Corporate Plan*, Melbourne, 2018, <<https://www.ibac.vic.gov.au/publications-and-resources/HTML/ibac-corporate-plan-2018-21>> accessed 8 February 2020.

²²⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15–17, 36.

²²⁸ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 15–22; IBAC, *Annual report 2017/18*, Melbourne, 2018, pp. 4–7; IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, December 2017; Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 239–263; IBAC, *2018–21 Corporate Plan*, Melbourne, 2018, <<https://www.ibac.vic.gov.au/publications-and-resources/HTML/ibac-corporate-plan-2018-21>> accessed 8 February 2020.

²²⁹ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 17–21.

²³⁰ See Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018.

IBAC has outlined for the Committee the history of the resourcing of the agency since its establishment.²³¹ Specifically, IBAC has emphasised that since 2013—when the agency became ‘fully operational’ with a budget of \$38.95 m, excluding depreciation—it has not had an increase to its budget, and ‘has had to absorb all usual annual CPI and employment-related increases’.²³² In contrast, IBAC has noted that the Victorian Auditor-General’s Office has an ‘automatic 2.5 per cent increase to its recurring budget’ to prevent its diminution in real terms.²³³

In 2018/19, IBAC reported a deficit of \$99,000 compared with a surplus of \$75,000 in 2017/18.²³⁴ Expenditure was up by 10%, with 62% spent on staffing.²³⁵ Additional key costs during that year included investments in ICT systems and the ‘Yes, it’s corruption’ public awareness campaign.²³⁶

IBAC stated that its financial position at the end of 2018/19 was ‘strong’ in terms of assets (\$30.15 m), liabilities (\$9.9 m) and equity (\$20.248 m), and that it was therefore well placed to meet short-term challenges.²³⁷ However, IBAC has advised the IOC, and stated publicly, that it expects its budget for 2019/20 to be fully spent, and that, unless it receives additional funding, it will have to cut costs and therefore its operational activities.²³⁸ Specifically, it advised the Committee that

[c]urrent revenue growth is funded by finite funding sources which will be fully exhausted by 2022. It will require an increase in recurrent funding or a reduction in our cost base (and associated operations) to stay within the recurring budget envelope in 2022.²³⁹

IBAC developed a business case for the supplementation of its recurring budget, which it anticipated would be examined in 2020 by the Victorian Government’s Expenditure Review Committee.²⁴⁰ IBAC has advised that if it were unsuccessful in this process, it would have to find savings of \$6 m (23% of its total budget).²⁴¹

231 IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 34.

232 Ibid.

233 Ibid.

234 IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 21.

235 Ibid.

236 Ibid.

237 Ibid., pp. 19, 21–22.

238 Ibid.

239 Ibid., p. 21.

240 IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 34. See also Department of Treasury and Finance (Victoria), *Budget process in Victoria*, <<https://www.dtf.vic.gov.au/state-budget/budget-process-victoria>> accessed 18 February 2020; Victorian Public Sector Commission (VPSC), *Victoria’s finances*, <<https://vpsc.vic.gov.au/html-resources/welcome-to-government/9-victorias-finances>> accessed 18 February 2020.

241 IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 34.

2.4.3 Workforce planning

IBAC's current Corporate Plan includes commitments to enhancing the skill, capability and proactive capacity of the agency, and to investing in its staff to meet them.²⁴²

Consequently, IBAC has developed a new Strategic Workforce Plan for 2019–21, drawing on insights from interviews with senior leaders and managers, 'comprehensive data analysis and competitive market comparisons'.²⁴³ As noted, one of the challenges for IBAC is recruiting and retaining highly skilled staff who align with its values.²⁴⁴ The workforce plan aims to improve IBAC's ability to identify gaps in capability, draw on potential talent pools and recruit and retain suitable staff.²⁴⁵

In this regard, IBAC has highlighted the limited pool from which to recruit highly skilled and experienced investigators and intelligence analysts.²⁴⁶ However, in 2018/19 IBAC established an extra multidisciplinary investigative team, which contributed to a 26% increase in the number of allegations investigated during the year.²⁴⁷

2.4.4 Workplace environment and culture

One of the keys to staff retention is the assurance of an ethical, flexible, healthy and stimulating work environment and culture, particularly given the distinctive demands and pressures of working within a high-profile anti-corruption body.²⁴⁸

In 2017/18 the retention rate at IBAC was 84%, falling to 75% in 2018/19 within the context of employment growth rates at the agency of 6% and 12% within those respective years.²⁴⁹ Turnover is highest within the first 18 months of employment, with departure reasons including 'limited career paths, restricted professional growth opportunities and work not meeting expectations'.²⁵⁰ In response, IBAC has reviewed its approach to recruitment, and is committed to a practice of transparent and realistic discussions between hiring managers and potential employees about role requirements, respective expectations about the role and the candidate's suitability and capability to perform it effectively.²⁵¹

²⁴² IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 12–14, 19–20. See also IBAC, *2018–21 Corporate Plan*, Melbourne, 2018, <<https://www.ibac.vic.gov.au/publications-and-resources/HTML/ibac-corporate-plan-2018-21>> accessed 10 February 2020.

²⁴³ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 91.

²⁴⁴ *Ibid.*, pp. 14, 19, 20, 85.

²⁴⁵ *Ibid.*, p. 91.

²⁴⁶ *Ibid.*, p. 19.

²⁴⁷ *Ibid.*, p. 18.

²⁴⁸ *Ibid.*, pp. 13, 16, 19, 85, 90–94. See also Chief Justice Anne Ferguson, 'Opening address', Australian Public Sector Anti-corruption Conference, Melbourne, 30 October 2019, <https://www.supremecourt.vic.gov.au/sites/default/files/2019-10/chief_justice_ferguson_opening_remarks_-_anti_corruption_conference_2019_-_web.pdf> accessed 10 February 2020; Thomas E Coghlan, 'Fostering positive outcomes by addressing burnout and compassion fatigue', *Police Chief*, May 2019, pp. 30–37, <https://www.policechiefmagazine.org/wp-content/uploads/PoliceChief_May-2019_WEB.pdf> accessed 10 February 2020.

²⁴⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 4.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

Initiatives undertaken by IBAC in 2018/19 in pursuit of these ends include the delivery of an OH&S program focused on physical and mental health and work/life balance; updating its Flexible Work Arrangements Policy; and learning from the results of the Victorian Public Sector Commission's (VPSC) 2019 People Matter Survey.²⁵²

Eighty-five per cent of IBAC staff completed the 2019 People Matter Survey, and IBAC received an employee engagement score of 62% (compared with a 69% result for employees across the Victorian public sector in 2018) and a relatively low staff-satisfaction score of 59%.²⁵³ According to the VPSC, employee engagement

is a measure of an employee's emotional response to working for their organisation. Engagement transcends the mere physical aspects of work and involves the 'psychological presence' of employees when performing work tasks. It unleashes not only the productive but also the creative capabilities of employees, their intensity and enthusiasm at work. Evidence shows that high employee engagement is strongly associated with high organisational productivity and performance across industries.²⁵⁴

The components of engagement the survey seeks to measure include employee 'pride', 'advocacy', 'attachment', 'inspiration' and 'motivation' in relation to the organisation they work for.²⁵⁵ Further, from a practical point of view, high employee engagement is associated with enhanced employee wellbeing and reduced absenteeism.²⁵⁶

In response to the 2019 survey results, and in recognition of the identified need for a range of improvements, IBAC is now prioritising 'leadership', 'diversity and inclusion', and 'psychosocial safety' within the agency.²⁵⁷ To ensure these priorities are attended to and executed, in May 2020 IBAC's Culture Plan was launched.²⁵⁸

In addition, IBAC has emphasised its commitment to ensuring the health, safety and welfare of those involved in complaint handling, operations, investigations and examinations—including its own staff.²⁵⁹ As the Commissioner observed, 'IBAC takes its responsibility to support witnesses and other people involved in our investigations—the complainants, those under investigation and our staff—very seriously.'²⁶⁰ To support this position, during 2018/19 IBAC provided debriefing programs for its complaint-handling staff who engage with an increasing number of callers with 'complex behaviours' that can present challenges to staff resilience and wellbeing.²⁶¹

²⁵² IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 90–92.

²⁵³ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 4; Victorian Public Sector Commission, *The state of the public sector in Victoria 2017–2018*, Melbourne, March 2019, pp. 28, 29 (which discusses the relationship between 'low', 'moderate' and 'high' levels of public sector employee engagement and 'overall job satisfaction').

²⁵⁴ Victorian Public Sector Commission, *The state of the public sector in Victoria 2017–2018*, Melbourne, March 2019, p. 27.

²⁵⁵ *Ibid.*, p. 28.

²⁵⁶ *Ibid.*, p. 27.

²⁵⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 4.

²⁵⁸ IBAC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 28 September 2020, p. 5; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 4.

²⁵⁹ IBAC, *Annual plan 2018/19*, Melbourne, 2019, pp. 16, 94.

²⁶⁰ *Ibid.*, p. 16.

²⁶¹ *Ibid.*, p. 28. See also IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 20.

2.4.5 Information and communications technology

IBAC has identified a number of challenges in relation to its ICT systems. These include the impact of encryption technologies and ‘big data’ on investigative and analytical work, the ongoing maintenance of best practice IT security and the efficient digitising of diverse workflows.²⁶²

In response, during 2018/19 IBAC spent \$7.5 m on improving its ICT systems, a 6% increase on 2017/18, and implemented a number of initiatives, including:

- a new Information Management Strategy and updated IT policies and standards
- a new electronic CMS for operational, assessment and investigative workflows
- digitised systems for the Legal and Facilities teams
- a comprehensive digital procurement system
- enhanced IT security, such as improved identification of, and responses to, breaches
- increased capability with respect to data analytics and strategic intelligence
- improvements to digital forensics
- a new electronic Human Resources system, known as i-people.²⁶³

Since 2017/18, IBAC has implemented a number of measures to ensure that its IT security meets the requirements of the Victorian Protective Data Security Standards (VPDSS) under the auspices of the Office of the Victorian Information Commissioner (OVIC).²⁶⁴ OVIC has commended IBAC’s ‘mature approach to information security’.²⁶⁵ The steps taken by IBAC in this regard include:

- Updating ... [their] Security Management Framework to align with the VPDSS including developing an Information Security Policy and security standards.
- Establishing an information assets register including determining information value and protective marking requirements.

²⁶² IBAC, *Annual report 2018/19*, Melbourne, 2019, especially pp. 19, 39, 71, 73, 75–76, 83, 91. See also IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, pp. 5–6. ‘Big data has one or more of the following characteristics: high volume, high velocity or high variety. Artificial intelligence (AI), mobile, social and the Internet of Things (IoT) are driving data complexity through new forms and sources of data. For example, big data comes from sensors, devices, video/audio, networks, log files, transactional applications, web, and social media—much of it generated in real time and at a very large scale.’ (IBM, *What is big data analytics?*, <<https://www.ibm.com/au-en/analytics/hadoop/big-data-analytics>> accessed 8 February 2020). See also IBAC, *Corporate Plan 2018–21*, Melbourne, 2018, <<https://www.ibac.vic.gov.au/publications-and-resources/HTML/ibac-corporate-plan-2018-21>> accessed 8 February 2020.

²⁶³ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 19, 72–73, 75–76, 83, 91.

²⁶⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 6; Office of the Victorian Information Commissioner (OVIC), *Victorian Protective Data Security Standards, Version 2.0*, Melbourne, October 2019, <<https://ovic.vic.gov.au/data-protection/standards>> accessed 18 February 2020. In OVIC’s description, the standards ‘establish 12 high level mandatory requirements to protect public sector information across all security areas including governance, information, personnel, Information Communications Technology (ICT) and physical security’—*Victorian Protective Data Security Standards V2.0 (VPDSS 2.0)*, <<https://ovic.vic.gov.au/data-protection/standards>> accessed 18 February 2020.

²⁶⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 6.

- Undertaking a security risk profile assessment, including identify[ing] potential IT security risk events, causes, consequences, controls, risk ratings and future IT security risk treatments with this assessment to be reviewed annually.
- Developing and communicating an information security event logging standard and ... [implementing] an online incident reporting system.²⁶⁶

2.5 Accountability

IBAC is accountable to a number of parliamentary, integrity and judicial bodies and also conducts its own risk-management and auditing activities.²⁶⁷

2.5.1 Accountability to oversight bodies

Overview

The VI oversees IBAC's compliance with the *IBAC Act 2011* (Vic) and other relevant legislation—as well as the performance of functions under the *Protected Disclosure Act 2012* (Vic) (now named the *PID Act 2012* (Vic))—and handles and potentially investigates complaints about the agency.²⁶⁸

During 2018/19, the VI conducted two inspections of IBAC's records in relation to telecommunications interceptions, surveillance devices and controlled operations, finding that it was compliant with the relevant law.²⁶⁹ The VI also oversaw IBAC's handling of complaints about police misconduct, concluding that it had met its legislated obligations.²⁷⁰ Further, the VI assessed IBAC's performance of its protected disclosure functions under the *Protected Disclosure Act 2012* (Vic) as satisfactory.²⁷¹

However, as discussed above, the VI found that IBAC did not have policies and practices in place to adequately safeguard the welfare of witnesses involved in IBAC investigations (particularly when coercive powers had been exercised in relation to them) and made ten recommendations for improvements. While IBAC disagreed with the findings and recommendations, it has formally reiterated on several occasions its commitment to witness welfare and has made significant improvements to its policies, procedures, practices and resources since the VI's October 2018 report.²⁷²

²⁶⁶ Ibid., p. 6.

²⁶⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 19, 78–79, 81, 83.

²⁶⁸ Ibid., p. 78.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 24; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 6, 8, 58–72 and passim; VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, pp. 3–4, 10, 16–20 and passim. See the discussion in Section 2.3.2 in this chapter and Section 4.2.3 in Chapter 4 of this report.

During 2018/19, IBAC was subject to oversight from both the parliamentary IBAC Committee and its successor, the IOC.²⁷³

The IBAC Committee tabled a significant report from its police oversight inquiry, which contained 69 recommendations for improvements to, among other matters, the handling, assessment, referral and investigation of complaints and disclosures about corruption, misconduct and related forms of wrongdoing.²⁷⁴ IBAC gave invaluable assistance to the IBAC Committee throughout the Inquiry, especially by providing answers to a wide range of Committee questions and giving evidence at a closed hearing.²⁷⁵ As discussed above, while it awaits the Government's response to the Inquiry's recommendations, IBAC has commenced work to respond to a number of the IBAC Committee's concerns, including the management and reporting of lower-order misconduct (LMR matters), the parameters of 'serious police misconduct', the management of police conflicts of interest, the treatment of vulnerable complainants and the operation of Victoria Police's disciplinary system.²⁷⁶

Since the IOC's establishment in 2019, IBAC has responded to Committee requests for information and clarification in relation to a number of matters and briefed it on the agency's functions, operations, achievements and concerns.²⁷⁷ For instance, IBAC has discussed with the Committee potential changes to its police oversight work and workload, challenges in terms of its investigative powers and overall resources, and the implications of the 2019 integrity reforms.

In addition to being overseen by the VI and the IOC, IBAC is required to make a number of reports on specified matters (for example, regarding telecommunications interceptions) to the Victorian Special Minister of State, Attorney-General of Victoria and Commonwealth Minister for Home Affairs, as well as the Magistrates' Court and Supreme Court of Victoria.²⁷⁸ Further, the Public Interest Monitor reviews and makes submissions on IBAC's applications for surveillance device and telecommunications interception warrants.²⁷⁹

Review of annual plan and budget

In accordance with the *IBAC Act 2011* (Vic), the IOC reviews IBAC's draft annual plan and budget, which are determined in consultation with the Committee. IBAC must submit its draft annual plan to the IOC and cause the final plan to be transmitted to the

²⁷³ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 78.

²⁷⁴ Ibid. See also Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018.

²⁷⁵ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 78.

²⁷⁶ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 78; Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 20 September 2019; IBAC, Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 25.

²⁷⁷ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 16, 78.

²⁷⁸ Ibid., pp. 78–79. Note: The position of Special Minister of State was not re-allocated following the retirement of the Hon Gavin Jennings MLC in March 2020. The Attorney-General, presently the Hon Jill Hennessy MP, is now the responsible minister for Victoria's integrity system.

²⁷⁹ IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 79.

Parliament before the start of the relevant financial year—for this year’s review, before 1 July 2020.²⁸⁰

IBAC has reported that its Corporate Services division is well-equipped and prepared for budgetary independence.²⁸¹ IBAC liaised with the Committee’s Secretariat, who consulted with IBAC under the direction of the Committee. It also had discussions with the Committee’s Chair in relation to processes and time lines with respect to the discharge of the agency’s obligations under the *IBAC Act 2011* (Vic). IBAC submitted its draft annual plan to the Committee on 2 March 2020, received feedback from the Committee on 6 May and plans to table its final plan in Parliament after the passing of the annual appropriation Act later this year. At the time of publication, IBAC had yet to table its annual plan.

IBAC’s continuing concerns over funding provision

At both a public hearing on 17 August 2020, and in answers to questions on notice that it provided to the IOC on 28 September, IBAC has reiterated that it needs additional funding if it is to maintain its current functioning in accordance with legislated requirements.²⁸² On 28 September, IBAC outlined its position on funding as follows:

In light of the current fiscal constraints resulting from the COVID-19 environment, IBAC has abandoned seeking an increase in funding that would enable us to develop a greater capacity to investigate and review. However, in order for IBAC to maintain its current services in line with its legislated obligations and to continue meeting community and Parliament expectations, IBAC recently made a submission as part of Government’s current budget process. That budget submission was confined to obtaining indexation so that we can maintain our existing capacity. Failing that, we will have to significantly curtail our resources before the end of the year.²⁸³

The Committee asked IBAC for information about the amount of funding it was seeking in the 2020/21 State Budget but it was not supplied at the time the report was published.

The Victorian State Budget was handed down on 24 November 2020, with IBAC receiving \$42.2 million in funding.²⁸⁴

²⁸⁰ *IBAC Act 2011* (Vic) ss 167–169; *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) (No. 2 of 2019), s 2(4); pt 5 div 2.

²⁸¹ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 21, 75.

²⁸² Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, pp. 2, 3–4; IBAC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 28 September 2020, p. 2.

²⁸³ IBAC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 28 September 2020, p. 2.

²⁸⁴ Department of Treasury and Finance (Victoria), *Victorian Budget 20/21: service delivery* (Budget Paper No. 3), Melbourne, 2020, p. 393.

Performance audit

Under the *IBAC Act 2011* (Vic), IBAC is subject to a performance audit under the auspices of the Committee at least once every four years (that is, in practice, before 1 July 2024).²⁸⁵ The time line for the IOC's preparations for the performance audit, required consultation with IBAC, appointment of the auditor and conduct of the audit itself are due to be considered by the Committee during the first half of the 2020/21 financial year.

2.5.2 Risk management and internal audits

Risk within IBAC is managed within its Internal Risk Management Framework, oversighted by an Audit and Risk Management Committee (ARMC) that has one internal and three external members.²⁸⁶ The ARMC provides 'independent advice on financial and risk management matters'.²⁸⁷ In rendering this advice and guidance, the ARMC helps to ensure IBAC's compliance with the relevant international risk-management standard and the Victorian Government Risk Management Framework.²⁸⁸

During 2018/19, IBAC developed, updated and enhanced its 'risk appetite statement' and guidelines; 'risk management policy', plan and procedure; and 'strategic risk profile'.²⁸⁹ The ARMC found that IBAC's Risk Management Framework was 'effective'.²⁹⁰ IBAC also conducted a range of internal audits covering subjects such as financial and stakeholder management, contract management, digital forensics and exhibits management.²⁹¹

2.6 Conclusion

IBAC has exercised its wide-ranging educative, preventive and investigative functions to strengthen the integrity of the Victorian public sector.

The Committee recognises that IBAC has produced high-quality print and digital publications for members of the public and external stakeholders, such as other integrity agencies, Victoria Police and public sector bodies. IBAC has complemented this material with valuable engagement and education programs, particularly with respect to the whistleblower protection regime and Victoria Police recruits. It is also focused on improving public sector compliance with the mandatory notification of suspected wrongdoing scheme.

²⁸⁵ *IBAC Act 2011* (Vic) ss 170–170A; *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) (No. 2 of 2019), s 2(4); pt 5 div 2.

²⁸⁶ IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 19, 81.

²⁸⁷ *Ibid.*, p. 19.

²⁸⁸ *Ibid.*, pp. 19, 81.

²⁸⁹ *Ibid.*, p. 81.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.* p. 83.

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IBAC has, further, undertaken important applied research, investigative, review and audit work with respect to the public sector and Victoria Police, and monitored the implementation of recommendations it has made. However, the IOC recommends that IBAC consolidate agency responses to its recommendations on a dedicated, easily searchable and regularly updated web page. This will enhance the transparency and accountability of both agency implementation of recommendations and IBAC's oversight of this process.

The IOC is concerned that IBAC has neither been able to increase the number of investigations it undertakes into police-complaint matters nor reviews of complaint investigations carried out by Victoria Police. This reduces the efficacy of IBAC's police oversight role. The IOC notes, however, IBAC's view that it requires more funding in order to increase the number of investigations and reviews it carries out.

3

Office of the Victorian Information Commissioner

3.1 Introduction

The Office of the Victorian Information Commissioner (OVIC) was established on 1 September 2017, following structural changes which saw the amalgamation of the former Office of the Freedom of Information Commissioner (Office of the FOI Commissioner) and the Office of the Commissioner for Privacy and Data Protection (CPDP).²⁹²

Mr Sven Bluemmel is the inaugural and current Information Commissioner, having been appointed on 25 September 2017.²⁹³ Ms Sally Winton was appointed as the Public Access Deputy Commissioner²⁹⁴ and Ms Rachel Dixon as the Privacy and Data Protection Deputy Commissioner on 28 November 2017.²⁹⁵ Ms Joanna Kummrow has been the Public Access Deputy Commissioner since 14 May 2019.²⁹⁶ All three positions were newly created as a result of amendments to the *Freedom of Information Act 1982* (Vic) ('*FOI Act 1982* (Vic)') and *Privacy and Data Protection Act 2014* (Vic) ('*PDP Act 2014* (Vic)').

The Office of the FOI Commissioner previously came under the remit of the Victorian Parliament's former Accountability and Oversight Committee (AOC). The Integrity and Oversight Committee's (IOC) review of OVIC's performance in this report marks the first occasion that the privacy and data protection functions have been the subject of sustained and specific oversight by a Victorian joint investigatory parliamentary committee.

OVIC's functions, as set out in the *FOI Act 1982* (Vic) and *PDP Act 2014* (Vic), are summarised in the table below. The agency's stated goal is to 'embed a culture that promotes fair public access to information while ensuring its proper use and protection'.²⁹⁷

²⁹² Office of the Information Commissioner (OVIC), *Commissioners*, Melbourne, 2019, <<https://ovic.vic.gov.au/about-us/who-we-are/commissioners>> accessed 20 February 2020.

²⁹³ Ibid.

²⁹⁴ OVIC, *Annual report 2017-2018*, Melbourne, 2018, p. 7.

²⁹⁵ OVIC, *Commissioners*, Melbourne, 2019, <<https://ovic.vic.gov.au/about-us/who-we-are/commissioners>> accessed 20 February 2020.

²⁹⁶ Ibid.

²⁹⁷ OVIC, *Annual report 2017-2018*, Melbourne, 2018, p. 4.

Table 3.1 OVIC's functions

Information Commissioner		
Public Access Deputy Commissioner	Privacy and Data Protection Deputy Commissioner	
Freedom of information functions	Privacy functions	Data protection functions
<ul style="list-style-type: none"> Promote understanding and acceptance by agencies and the public of the <i>FOI Act 1982</i> (Vic) and its object[s] Conduct reviews of decisions made by agencies and Ministers under the <i>FOI Act 1982</i> (Vic) Receive and handle complaints made under the <i>FOI Act 1982</i> (Vic) Provide advice, education and guidance to agencies and the public in relation to the Information Commissioner's functions Develop and monitor compliance with professional standards Provide advice, education and guidance to agencies and the public in relation to compliance with the professional standards 	<ul style="list-style-type: none"> Promote awareness and understanding of the Information Privacy Principles (IPPs) Receive complaints about possible breaches of the IPPs by the Victorian public sector Conduct audits to assess compliance with the IPPs Undertake research, issue reports, guidelines and other materials with regard to information privacy 	<ul style="list-style-type: none"> Develop the Victorian Protective Data Security Framework Issue protective data security standards and promote their uptake by the public sector Conduct monitoring and assurance activities to assess compliance with those standards Undertake research, issue reports, guidelines and other materials with regard to protective data security

Source: OVIC, *What we do*, Melbourne, (n.d.), <<https://ovic.vic.gov.au/about-us/what-we-do>> accessed 20 February 2020.

This chapter reviews the work undertaken, progress in meeting objectives and challenges faced by OVIC in 2017/18 and 2018/19 in the performance of its statutory functions, under the headings of complaint handling, investigations and oversight; public information and education; governance and workplace; and accountability.

3.2 Complaint handling, investigations and oversight

3.2.1 Freedom of information trends

In its first year of operation, the Information Commissioner noted 'an enormous amount of change in the information landscape, both locally and internationally'²⁹⁸—a sentiment that was echoed in its 2018/19 annual report.

In 2017/18, OVIC reported that Victoria received the largest number of FOI requests in Australia,²⁹⁹ with Victorian government agencies experiencing an increase of 13.98% in the number of FOI applications received from 2015/16 to 2017/18.³⁰⁰ OVIC attributed this to 'greater media coverage and interest in FOI, and an increase in public awareness of the right to request access to government information'.³⁰¹ Further, OVIC notes that

²⁹⁸ OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 5.

²⁹⁹ Ibid.

³⁰⁰ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 2.

³⁰¹ Ibid.

another contributing factor for this increase could be due to the Victorian FOI Act being a ‘pull’ model of access legislation, which is driven by formal requests for information.³⁰²

OVIC informed the Committee that a study it had conducted in 2019 revealed that a large majority of Victorians are aware of and value their right to access information.³⁰³ Further, 90% of those persons considered the right to access information was either ‘very important’ or ‘quite important’.³⁰⁴

Victoria’s ‘very healthy FOI request culture’,³⁰⁵ coupled with the consistent rise in FOI requests, may indicate that government agencies are not implementing, as well they could be, OVIC’s philosophy of encouraging informal and proactive release of information outside of the FOI scheme.

OVIC endeavours to reinforce this philosophy through the publication of its decisions, the professional standards it issues (which have the force of law) and its contributions at public speaking events attended by the Information Commissioner and the Public Access Deputy Commissioner.³⁰⁶ As put by Ms Kummrow, OVIC’s continued efforts to engage the agencies in this area are ‘very much a cultural piece, which should lead ... to a reduction in the number of FOI requests made in Victoria. That will be evidence of the work [OVIC] are doing’.³⁰⁷

In March 2020, OVIC released a discussion paper titled *Proactive and informal release of information in the Victorian public sector*, with public submissions due on 1 May 2020.³⁰⁸ OVIC intends to draw on these submissions to consider how best agencies can proactively and informally disclose information to the public.³⁰⁹

OVIC’s 2017/18 annual report also noted an increase of 45% over the last three years in ‘the number of applications³¹⁰ to OVIC for review of, and complaints about, agency decisions and actions under the FOI Act’.³¹¹ Several possible reasons for this increase were proffered by OVIC, including:

- the rise in FOI applications made to agencies, which inevitably meant more complaints being made to, or reviews of FOI decisions being sought at, OVIC

³⁰² As opposed to the ‘push’ model in the Commonwealth, New South Wales and Queensland jurisdictions, which require proactive and informal release of information—see OVIC, *Proactive and informal release of information in the Victorian public sector discussion paper*, Melbourne, March 2020, <<https://ovic.vic.gov.au/proactive-and-informal-release-of-information-in-the-victorian-public-sector-discussion-paper>> accessed 29 September 2020.

³⁰³ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 2.

³⁰⁴ Ibid.

³⁰⁵ Ms Joanna Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 12.

³⁰⁶ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, pp. 11–12.

³⁰⁷ Ms Joanna Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 12.

³⁰⁸ OVIC, *Proactive and informal release of information in the Victorian public sector discussion paper*, Melbourne, March 2020, <<https://ovic.vic.gov.au/proactive-and-informal-release-of-information-in-the-victorian-public-sector-discussion-paper>> accessed 4 May 2020.

³⁰⁹ Ibid.

³¹⁰ Includes requests made to the FOI Commissioner.

³¹¹ OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 5.

- people being more aware of the mechanisms for accessing information
- a minor decrease in agency decisions granting access to documents in full, from 70.25% in 2014/15 to 65.76% in 2017/18
- a growing number of individuals who regularly and repeatedly exercise their rights to access, appeal and make a complaint more frequently than the average member of the public.³¹²

OVIC's data analysis revealed that over the past five years, the percentage of applications granted in full declined by almost 5.5%, while the percentage of applications denied has steadily increased to 4.01%.³¹³

While not providing a definitive reason for these figures (due to the small number of agency reviews conducted), OVIC noted that the number of applications granted in part over the past five years had increased by 3.8% and the number of non-personal requests for information had increased by 7.21%.³¹⁴

Non-personal requests generally relate to 'information about the operations of an agency, and include a wide array of documents, for example: commercial contracts, financial information, and documents outlining reasons for policy decisions of government'.³¹⁵ OVIC suggested that as more people become aware of the FOI scheme, they request access to information that, by its very nature, is exempt from release.³¹⁶ Exempt documents are set out in pt V of the *FOI Act 1982* (Vic) and include Cabinet documents;³¹⁷ documents affecting national security, defence or international relations;³¹⁸ law enforcement documents;³¹⁹ documents affecting legal proceedings;³²⁰ and documents relating to trade secrets.³²¹

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

In its 2018/19 annual report, OVIC highlighted that 38,876³²² FOI requests were made to agencies and ministers, a slight decrease from the previous year's total of 39,040.³²³

The *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017* (Vic) ('*FOI Amendment Act 2017* (Vic)') introduced a raft of legislative changes on 1 September 2017, including a reduction of the time frame for

³¹² OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 2.

³¹³ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 87.

³¹⁴ *Ibid.*, p. 7.

³¹⁵ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 7.

³¹⁶ *Ibid.*

³¹⁷ *FOI Act 1982* (Vic) s 28.

³¹⁸ *FOI Act 1982* (Vic) s 29A.

³¹⁹ *FOI Act 1982* (Vic) s 31.

³²⁰ *FOI Act 1982* (Vic) s 32.

³²¹ *FOI Act 1982* (Vic) s 34.

³²² OVIC, *Annual report 2018-19*, Melbourne, 2019, pp. 83-84. OVIC reported two figures—38,873 on pp. 49, 82 and 38,876 on pp. 83-84—as the result of a typographical error. OVIC has informed the Committee that the correct total is 38,876.

³²³ *Ibid.*, p. 84.

an agency to notify an applicant of its decision in relation to the applicant's request from 45 to 30 days³²⁴ and mandating third party consultation for specific classes of documents.³²⁵

Following these changes, some agencies reported that they experienced difficulties in meeting the reduced time frame of 30 days for processing a FOI request.³²⁶ Agencies also found that the new mandatory third party consultation requirements increased their administrative workload significantly and led to delays in finalising decisions.³²⁷ It is a requirement for agencies, where practicable, to consult with all individuals whose 'personal affairs' information³²⁸ is contained in a document,³²⁹ or where information relates to the commercial information of a business.³³⁰

Since the introduction of these legislative amendments, OVIC has provided guidance and education to the public sector in the following ways:

- As part of its Information Access Series, OVIC has presented a seminar which specifically covered 'Consultation and Notification under the FOI Act'.
- Issued Professional Standards under Part IB of the FOI Act that, amongst a number of other matters, provide guidance to interpreting 'practicability'. This is contained in Professional Standard 7.1.
- Published *Practice Note 12—Practicability and third party-consultation and notification* which provides comprehensive guidance on when consultation should be undertaken, interpreting practicability, and how consultation should be undertaken.
- Published *Template 16—Third party consultation letter* that provides agencies with a customisable template letter that can be utilised to assist them when conducting consultation.
- Continued to run face-to-face on-site training that contains a topic on third party consultation and provides participants with an opportunity to ask questions and seek clarification.³³¹

OVIC also engages with agencies and other key stakeholders, including through the Public Access Agency Reference Group that meets quarterly. These meetings provide OVIC with an opportunity to assist agencies by hearing firsthand from FOI managers and officers about the issues they face.³³²

³²⁴ *FOI Amendment Act 2017* (Vic) s 8.

³²⁵ See, for example, *FOI Amendment Act 2017* (Vic) ss 12 (documents containing matter communicated by any other State), 13 (documents affecting national security, defence or international relations), 14 (law enforcement documents).

³²⁶ OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 62; OVIC, *Annual report 2018–19*, Melbourne, 2019, p. 93.

³²⁷ *Ibid.*

³²⁸ '[I]nformation relating to the personal affairs of any person' includes information that identifies any person or discloses their address or location; or from which any person's identity, address or location can be reasonably determined: *FOI Act 1982* (Vic) s 33(9). This is broader than the definition of 'personal information' in the *PDP Act 2014* (Vic) s 3.

³²⁹ *FOI Act 1982* (Vic) s 33(2B).

³³⁰ *FOI Act 1982* (Vic) s 34(3).

³³¹ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 8.

³³² *Ibid.*, p. 9.

Timeliness of FOI reviews

Under the *FOI Act 1982 (Vic)*, a person may apply to the Information Commissioner for review of an FOI decision made by an agency or minister.³³³ The review is to be completed within 30 days of the application being received by OVIC or within the period of extension agreed to by an applicant.³³⁴

A review may be finalised by a formal decision being made by a Commissioner,³³⁵ through informal resolution facilitated by OVIC,³³⁶ by a decision not to accept or to dismiss the application³³⁷ or the applicant exercising their right to seek review by the Victorian Civil and Administrative Tribunal (VCAT).³³⁸

In 2018/19, OVIC finalised 735 FOI review applications, compared with 606 applications in 2017/18.³³⁹ This was the largest number of applications finalised in any given year during the past five years.³⁴⁰

Since OVIC was established in September 2017, its Budget Paper No. 3 (BP3) performance target for the completion of reviews within the time line agreed by FOI applicants has been set at 90%.³⁴¹ In 2018/19, only 24% of reviews complied with the statutory time frame.³⁴² In 2017/18, this figure was 62.4%. Accordingly, OVIC did not meet its timeliness target of 90% in either year.³⁴³

OVIC stated that its performance in this area can be explained by, among other reasons, its prioritisation of the completion of older reviews.³⁴⁴ At a public hearing before the Committee on 2 March 2020, the Public Access Deputy Commissioner was frank about the backlog of older matters, explaining that it was a ‘situation that was inherited’³⁴⁵ from its predecessor agency. While the Deputy Commissioner recognised that timeliness is a priority for the agency, it ‘had to get through those aged matters. There was no other approach ... [but it has reduced the backlog] fairly conscientiously and continuously throughout that period’.³⁴⁶ OVIC has acknowledged, however, that this

³³³ *FOI Act 1982 (Vic)* s 49A(1).

³³⁴ *FOI Act 1982 (Vic)* s 49J(3).

³³⁵ *FOI Act 1982 (Vic)* s 49P.

³³⁶ *FOI Act 1982 (Vic)* s 49N.

³³⁷ *FOI Act 1982 (Vic)* s 49G.

³³⁸ *FOI Act 1982 (Vic)* s 50.

³³⁹ OVIC, *Annual report 2018–19*, Melbourne, 2019, p. 56.

³⁴⁰ *Ibid.*

³⁴¹ Department of Treasury and Finance (Victoria), *Victorian Budget 18/19: service delivery* (Budget Paper No. 3), Melbourne, May 2018, p. 317; Department of Treasury and Finance (Victoria), *Victorian Budget 19/20: service delivery* (Budget Paper No. 3), Melbourne, May 2019, p. 319.

³⁴² OVIC, *Annual report 2018–19*, Melbourne, 2019, p. 65.

³⁴³ OVIC has a revised target of 60% for the 2019/20 reporting period: Department of Treasury and Finance (Victoria), *Victorian Budget 19/20: service delivery* (Budget Paper No. 3), Melbourne, May 2019, p. 319.

³⁴⁴ OVIC, *Annual report 2018–19*, Melbourne, 2019, pp. 14, 65.

³⁴⁵ Ms Joanna Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 2.

³⁴⁶ *Ibid.*

approach is ‘still a work in progress’,³⁴⁷ and that it continues to explore different ways of improving its performance with respect to timeliness.³⁴⁸

The factors impacting on the timeliness of FOI reviews in 2018/19 were:

- prioritising the completion of aged review applications
- applicants not responding to requests for extensions in time
- applicants refusing to agree to requested extensions of time
- the total volume of review applications and complaints received
- the complexity of documents subject to review
- delays in receiving assistance from agencies in the conduct of reviews, including the provision of documents subject to review, in a timely manner
- the requirement for staff to attend agencies to inspect documents subject to review where the *FOI Act 1982 (Vic)* does not allow for provision of these documents
- delays in the provision of submissions by agencies and/or applicants, and where multiple submissions are provided
- time required to conduct a thorough review of an agency’s decision to make a fresh decision in circumstances where OVIC determines to release further documents.³⁴⁹

OVIC has advised that as a result of the older matters having a ‘significantly higher age profile’, being ‘large and complex’ and requiring more time and resources to complete, the figure for 2018/19 was consequently ‘skewed’.³⁵⁰ OVIC also advised that resourcing and efficiency were further impacted by staff departures and leave.³⁵¹

Despite these challenges, OVIC is finalising reviews more quickly and has worked diligently to improve its review completion rates.³⁵²

In May 2018, OVIC reported that it had:

- 111 reviews which were 91 to 180 days old
- 129 reviews which were 181 to 360 days old
- 72 reviews which were 361 or more days old.³⁵³

The total number of reviews which were 91 days or older was significantly reduced from 312 in May 2018 to 86 by 31 December 2019.³⁵⁴

The age profile of these 86 reviews as at 31 December 2019 is shown in the graph below.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ OVIC, *Annual report 2018–19*, Melbourne, 2019, p. 65.

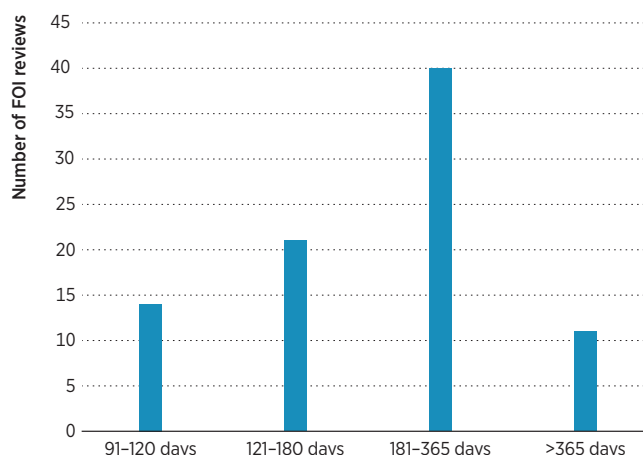
³⁵⁰ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 9.

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ Ibid.

Figure 3.1 Age profile of OVIC FOI reviews as at 31 December 2019

Source: OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 9.

OVIC relies on a couple of measures to assist with the timeliness of its FOI reviews, the first being the Professional Standards issued by OVIC under pt IB of the *FOI Act 1982* (Vic), which came into force on 2 December 2019.³⁵⁵ ‘Professional Standards 10.1 through to 10.4 relate to agencies working with OVIC cooperatively and in a timely manner.’³⁵⁶

OVIC can also request an extension of time to conduct a review, which applicants can either consent to or decline.³⁵⁷ A review by OVIC of its case management system from 1 July 2019 to 31 December 2019 indicated that in 32% of review applications, applicants declined OVIC’s first request for an extension of time or did not respond to the initial request.³⁵⁸

When applicants refuse an extension of time, OVIC does not request reasons,³⁵⁹ and the *FOI Act 1982* (Vic) is silent on the requirement for applicants to provide reasons. However, reasons provided to OVIC have included applicants having an upcoming court or tribunal hearing for which documents are urgently required, or applicants wishing to exercise their right to apply for review of an agency’s decision directly to VCAT.³⁶⁰ Where applicants urgently require documents for their upcoming legal proceedings, OVIC will suggest the applicant use another method to access information, such as a subpoena.³⁶¹

OVIC advised that its timeliness has improved significantly and, at 20 January 2020, it was tracking at 44% timeliness as it continued to finalise the older reviews. It is aiming to finalise 60% of formal review decisions within 30 days of an application being

³⁵⁵ Ibid., p. 10.

³⁵⁶ Ibid.

³⁵⁷ *FOI Act 1982* (Vic) s 49J(4).

³⁵⁸ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 10.

³⁵⁹ OVIC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 6 April 2020, p. 2.

³⁶⁰ Ibid.

³⁶¹ Ibid.

received or within the extension of time agreed to by the applicant.³⁶² Accordingly, OVIC expects to see further improvement in the age profile of its matters.³⁶³

OVIC's independence

During the Committee's public hearing on 2 March 2020, the Information Commissioner was pressed on the issue of OVIC's independence in reviewing FOI decisions made by an agency or Minister.³⁶⁴ Mr Bluemmel explained that in 50% of the cases that came before OVIC for review, the original FOI decision was overturned or substantially varied.³⁶⁵

In 2017/18, 117 of the 240 review decisions made by OVIC differed from the agency or Minister's FOI decision, representing a 16% increase from the previous year.³⁶⁶ In 2018/19, 211 of the 424 review decisions differed from the original FOI decision.³⁶⁷

Mr Bluemmel advised the Committee that the review process remained the same for everyone, regardless of an applicant's political views.³⁶⁸

We look at the merits of it, we seek and consider submissions from the party that is applying, we may seek further submissions from the agency or the Minister who made the original decision if there is not enough information in the decision itself to allow us to do our review, but ultimately all of us have basically taken a role where we are independent merits reviewers. So we not only look at whether the agency has done a proper or thorough job, we look at the merits of the decision.³⁶⁹

Enforceability of FOI decisions

The Committee also questioned the Information Commissioner on the process that occurs when OVIC overturns an agency's original decision, which consequently requires the documents the subject of the FOI application to be disclosed to the applicant.³⁷⁰ Mr Bluemmel noted that although 'there is no formal process ... in place', OVIC's 'decision is legally binding'.³⁷¹ Agencies either act in accordance with that legal understanding or apply to VCAT for a review of OVIC's decision.³⁷²

³⁶² OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 10.

³⁶³ The Committee notes that OVIC has commenced an own motion investigation into the timeliness of FOI in Victoria. The investigation report and recommendations are due to be completed in mid-2021. See OVIC, *Information Commissioner launches investigation into the timeliness of Freedom of Information in Victoria*, Melbourne, 15 September 2020, <<https://ovic.vic.gov.au/mediarelease/information-commissioner-launches-investigation-into-the-timeliness-of-freedom-of-information-in-victoria>> accessed 12 October 2020.

³⁶⁴ Hon Kim Wells MP, Integrity and Oversight Committee, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 2.

³⁶⁵ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 3.

³⁶⁶ OVIC, *Annual report 2017-2018*, Melbourne, 2018, p. 40.

³⁶⁷ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 57.

³⁶⁸ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, pp. 3-4.

³⁶⁹ Ibid.

³⁷⁰ Hon Kim Wells MP, Integrity and Oversight Committee, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 3.

³⁷¹ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 3.

³⁷² Ibid.

The Committee noted that the legally binding nature of OVIC's review decision did not necessarily mean that the decision would be acted on by the agency.³⁷³ OVIC does not have a power to direct an agency to release the documents nor does the *FOI Act 1982* (Vic) stipulate a time frame within which the documents must be disclosed. While OVIC has issued a practice note advising that 'the documents should be released as soon as possible after the 14 day period' of receiving the review decision,³⁷⁴ that advice 'does not have the force of law'.³⁷⁵

Nevertheless, the Information Commissioner does not consider that legislative amendments are presently required as OVIC is 'not aware of [non-compliance or excessive delay by agencies] being a systemic problem'.³⁷⁶

OVIC's capacity to identify the existence of any systemic problems is reliant on complainants conveying their dissatisfaction with timeliness or the release of documents.³⁷⁷ In this regard, OVIC is carrying out 'a lot more engagement and outreach activities' to provide additional opportunities for persons to report any issues they have experienced with the review process.³⁷⁸

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

OVIC received 1,886 privacy enquiries in 2017/18.³⁷⁹

OVIC advised the Committee that it has not held complete figures for the number of privacy enquiries received by the agency since it merged its FOI and privacy telephone lines in 2018.³⁸⁰ For this reason, it cannot compare figures reported in previous years on a 'like-for-like basis'.³⁸¹

Only complete figures for more complex privacy enquiries that are escalated to OVIC's privacy guidance team are maintained. In 2018/19, the privacy guidance team received 671 privacy enquiries.³⁸²

OVIC responded to 98% of privacy-related enquiries within 15 days in 2017/18 and 2018/19, exceeding the target set out in its BP3 measures.³⁸³

³⁷³ Hon Kim Wells MP, Integrity and Oversight Committee, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 3.

³⁷⁴ OVIC, *Practice note 17—How to assist the freedom of information review process*, Melbourne, December 2019, <<https://ovic.vic.gov.au/resource/how-to-assist-the-freedom-of-information-review-process>> accessed 24 May 2020.

³⁷⁵ Ms Joanna Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 6.

³⁷⁶ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 6.

³⁷⁷ Ms Joanna Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 7.

³⁷⁸ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 7.

³⁷⁹ OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 20.

³⁸⁰ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 10.

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Ibid.*, p. 4. See also: Department of Treasury and Finance (Victoria), *Victorian Budget 19/20: service delivery* (Budget Paper No. 3), Melbourne, May 2019, p. 319; OVIC, *Annual report 2018–19*, Melbourne, 2019, p. 14.

Table 3.2 OVIC's privacy function outputs

Privacy indicator	2017/18	2018/19
Number of privacy enquiries received	1,886	-
Percentage of written enquiries responded to within 15 days relating to the legislated responsibilities of OVIC	98	98
Number of privacy complaints received	54	86
Number of privacy complaints finalised	36	76
Percentage of privacy complaints finalised without the need to refer to VCAT	53	75
Average number of days to finalise complaints	189	185

Source: OVIC, *Annual report 2017-2018*, Melbourne, 2018; OVIC, *Annual report 2018-19*, Melbourne, 2019.

One of the Information Commissioner's main functions under the *PDP Act 2014* (Vic) is to receive privacy complaints about organisations covered by the Act.³⁸⁴

OVIC observed a 59% increase in privacy complaints from 54 in 2017/18 to 86 in 2018/19.³⁸⁵

OVIC reported that it 'finalised' 36 privacy complaints in 2017/18³⁸⁶ and 'processed' 76 privacy complaints in 2018/19.³⁸⁷ OVIC has confirmed that both terms refer to the same measure.³⁸⁸ Accordingly, the percentage of privacy complaints finalised in 2018/19 more than doubled from the previous financial year.

The primary purpose of an annual report is that of accountability, in particular to Parliament. OVIC should ensure its annual reports present identifiable measures of its performance, facilitated through the use of clear and consistent language. In order to avoid potential confusion about the meaning of terms, and to enable like-for-like comparisons to be more easily made across different years, the Committee recommends that OVIC use consistent terminology in its annual reports.

RECOMMENDATION 3: That the Office of the Victorian Information Commissioner use consistent and clear terminology in its annual reports to avoid ambiguity and to facilitate like-for-like comparisons of key performance data across different reporting periods.

³⁸⁴ *PDP Act 2014* (Vic) s 57.

³⁸⁵ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 26.

³⁸⁶ OVIC, *Annual report 2017-2018*, Melbourne, 2018, p. 21.

³⁸⁷ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 26.

³⁸⁸ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 11.

Information sharing

The *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic) created a new information sharing scheme in Victoria that enables the sharing of family violence information to assist in preventing and reducing family violence.³⁸⁹

OVIC worked with Family Safety Victoria (FSV) and the Office of the Health Complaints Commissioner (HCC) to develop guidance for information-sharing entities in relation to their obligations under the family violence information-sharing scheme and privacy law in Victoria.³⁹⁰ The guidance explains how the new scheme modifies the Information Privacy Principles (IPPs) and Health Privacy Principles (HPPs), how information can be shared under the scheme and the factors practitioners must consider when deciding to share that information.³⁹¹

OVIC co-published with the HCC specific guidance on the amendment of IPP 2.1(d)(i) and HPP 2.2(h)(i)—privacy principles relating to the use and disclosure of personal and health information.³⁹² The amendment lowered the threshold for an organisation to disclose an individual's personal or health information in order to 'lessen or prevent a serious threat to an individual's life, health, safety or welfare'.³⁹³ The threshold thus now extends beyond the family violence context, applying 'more broadly across government',³⁹⁴ meaning public sector agencies only have to establish that a threat is serious before they can rely on the privacy principles to use and disclose personal and health information.³⁹⁵

OVIC also consulted FSV on a number of other matters, including the Ministerial Family Violence Information Sharing Guidelines, the training program for information-sharing entities and practitioners on their information-sharing obligations and responsibilities, and the independent review of the family violence information-sharing scheme.³⁹⁶

Engagement efforts

The Interagency Privacy Officers Forum was established in 2015 to facilitate regular meetings between privacy officers and officers from the Office of the CPDP.³⁹⁷ The forum

³⁸⁹ OVIC, *Family violence information sharing scheme and privacy law in Victoria—frequently asked questions*, Melbourne, January 2019, <<https://ovic.vic.gov.au/wp-content/uploads/2019/01/20181217-FVISS-Information-sharing-FAQs-1.pdf>> accessed 4 May 2020.

³⁹⁰ OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 24.

³⁹¹ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 2.

³⁹² OVIC, *Removal of 'imminent' from the IPPs and HPPs*, Melbourne, July 2018, <<https://ovic.vic.gov.au/wp-content/uploads/2018/07/Removal-of-Imminent-fact-sheet.pdf>> accessed 4 May 2020.

³⁹³ *PDP Act 2014* (Vic), sch 1—IPP 2.1(d)(i); *Health Records Act 2001* (Vic), sch 1—HPP 2.2(h)(i).

³⁹⁴ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, pp. 2–3.

³⁹⁵ OVIC, *Removal of 'imminent' from the IPPs and HPPs*, Melbourne, July 2018, <<https://ovic.vic.gov.au/wp-content/uploads/2018/07/Removal-of-Imminent-fact-sheet.pdf>> accessed 4 May 2020.

³⁹⁶ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 3.

³⁹⁷ *Ibid.*

opened up a constructive dialogue between the CPDP and agency privacy officers, resulting in greater work effectiveness and efficiencies being achieved.³⁹⁸

The Interagency Privacy Officers Forum was eventually replaced by the Victorian Privacy Network (open to all interested stakeholders) and the Privacy Roundtable (limited to key agencies), following growth in membership numbers.³⁹⁹

The Victorian Privacy Network (VPN) enables interested stakeholders from the public and private sectors to participate in the discussion of current and emerging privacy issues and affords privacy and information management professionals opportunities 'to share and learn from each other's experiences'.⁴⁰⁰ Since its establishment in 2018, membership has steadily increased to in excess of 400 members as at March 2020.⁴⁰¹ The growth in VPN membership indicates that members find their participation in this network useful.

Similarly, the Privacy Roundtable is an opportunity for OVIC and key agencies to participate in discourse relating to privacy and operational matters, with the key long-term objective being to 'improve privacy practice across the Victorian State and local government sectors'.⁴⁰² Its value can be demonstrated by the level of open engagement by agencies in discussing privacy trends and issues at meetings.⁴⁰³

3.2.4 Data security

Victorian Protective Data Security Framework

OVIC reported on the successful completion of the first reporting cycle for agencies under the Victorian Protective Data Security Framework (VPDSF) in its 2018/19 annual report.⁴⁰⁴ Every agency subject to pt 4 of the *PDP Act 2014 (Vic)* is required to submit a Protective Data Security Plan (PDSP) to OVIC every two years.⁴⁰⁵

Ninety-six per cent of the approximately 2,500 agencies required to comply with this obligation submitted a PDSP by the 31 August 2018 deadline.⁴⁰⁶ In total, OVIC received 386 active PDSPs covering around 2,500 agencies.⁴⁰⁷ Fifteen per cent of the PDSPs had to be resubmitted, mainly due to administrative reasons such as missing signatures or dates.⁴⁰⁸

³⁹⁸ Ibid.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

⁴⁰¹ OVIC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 6 April 2020, p. 4.

⁴⁰² OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 3.

⁴⁰³ OVIC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 6 April 2020, p. 4.

⁴⁰⁴ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 42.

⁴⁰⁵ *PDP Act 2014 (Vic)* s 89.

⁴⁰⁶ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 11.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

OVIC commissioned an independent review to assess the effectiveness of the VPDSF.⁴⁰⁹ The purpose of the review was to enable OVIC to understand the experience of Victorian Public Sector (VPS) organisations in their implementation of the VPDSF and in submitting their PDSPs.⁴¹⁰

The review made the following findings:

- Feedback from VPS organisations indicate an overwhelmingly positive impact of the VPDSF, especially for state government as a whole;
- Attestation at Secretary/CEO level was crucial to ensure senior executive buy-in;
- The identification of assets through the Information Asset Register (as required under the VPDSF) received consistently positive feedback and is cited as something that could be used for other internal agency initiatives;
- Further enhancements could be made to the VPDSF to cater for the different size, complexity and risk environments of VPS organisations; and
- There is an opportunity for simplification of VPDSF products and more concise instructions.⁴¹¹

Since the review, OVIC has issued a second version of the Victorian Protective Data Security Standards, incorporating agency feedback, and commenced further work to enhance its understanding of VPS staff and organisational behaviour in the data security context.⁴¹²

OVIC completed five law enforcement, data security and privacy reviews in 2017/18 and 2018/19.⁴¹³

There has been an upward trend in relation to the number of data breaches reported by Victorian agencies since 2014/15, including a 28% jump from 65 in 2017/18 to 83 in 2018/19.⁴¹⁴ OVIC has advised the Committee that it has not examined in detail the reasons for these increased numbers, and that, in any event, it is difficult to ascertain the exact cause 'due to the low number of reported data breaches in absolute terms and the voluntary nature of reporting'.⁴¹⁵ Nevertheless, OVIC considers that the increase may be due to:

- increased awareness of data breach notification generally, due to the implementation of a mandatory data breach notification scheme by the Australian Government in 2018
- increased awareness of OVIC's voluntary data breach notification scheme, due to OVIC's outreach activities and new guidance on data breach notification

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ Ibid., pp. 11-12.

⁴¹² Ibid., p. 12.

⁴¹³ Ibid, p. 4.

⁴¹⁴ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 30.

⁴¹⁵ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 11.

- an increase in the number of privacy-related data breaches being identified by Victorian Government agencies.⁴¹⁶

Changing Victoria's data security culture

The 'biggest cultural change' that OVIC believes the VPDSF needs to bring about is for agencies to view protective data security as valuable for reasons beyond mere compliance with the *PDP Act 2014* (Vic).⁴¹⁷ According to the Information Commissioner, there needs to be greater appreciation that data security encompasses more than just IT or cybersecurity—it is also about physical and personnel security.⁴¹⁸ In particular, organisations and their employees need to understand that protective data security obligations extend to any persons with access to official information, such as contractors and volunteers.⁴¹⁹

OVIC recently commenced a program of site visits to audit several agencies' processes and assess their level of data security risk.⁴²⁰ While OVIC has advised the Committee that it would like to increase the number of audits it undertakes, it is cognisant of the need for people to avoid falling into a compliance check-box mentality, seeking only to satisfy process requirements rather than achieve substantive change.⁴²¹ Through its education function, therefore, OVIC is endeavouring to effect more significant and sustained cultural change in support of data security.⁴²²

3.2.5 Law enforcement data security

The number of security incidents reported by Victoria Police to OVIC has steadily increased between 2014/15 and 2018/19. In 2018/19, the number of security incidents was 665 (see Figure 3.2).

⁴¹⁶ Ibid.

⁴¹⁷ Ibid., p. 12.

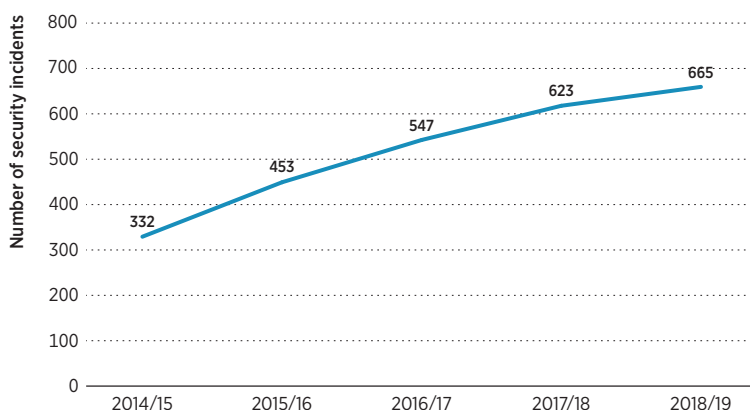
⁴¹⁸ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 9.

⁴¹⁹ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 12.

⁴²⁰ Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 9.

⁴²¹ Ibid.

⁴²² Ibid.

Figure 3.2 Number of security incidents reported by Victoria Police to OVIC

Source: Office of the CPDP, *Annual report 2014–15*, Melbourne, 2015, p. 23; Office of the CPDP, *Annual report 2015–16*, Melbourne, 2016, p. 30; Office of the CPDP, *Annual report 2016–17*, Melbourne, 2017, p. 24; OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 13.

OVIC did not publish the number of security incidents reported by Victoria Police in its 2017/18 and 2018/19 annual reports. The IOC noted that the Office of the CPDP had previously reported this information in its annual reports.

OVIC has advised that its

remit is broader than that of the former Commissioner for Privacy and Data Protection, OVIC’s annual reporting focuses on the effective implementation of recommendations from OVIC, and other systemic information security issues, rather than raw security incident data for all incidents across all agencies subject to OVIC oversight.⁴²³

At the Committee’s public hearing on 2 March 2020, the Privacy and Data Protection Deputy Commissioner, Ms Rachel Dixon, further explained that OVIC’s predecessor experienced issues with maintaining consistency in methodology when reporting the raw numbers on Victoria Police security incidents.⁴²⁴

OVIC’s current approach favours proactive engagement with Victoria Police by ‘reviewing systems and processes to improve data handling before incidents occur’⁴²⁵ and ‘trying to get ahead of [Victoria Police] on some things’.⁴²⁶ Ms Dixon explained that OVIC’s ‘efforts in the last year have been directed more to that than the raw numbers ... It is a much better thing than looking backwards’.⁴²⁷

Audits conducted by OVIC and its predecessors scrutinising Victoria Police’s information security processes and practices have resulted in 266 recommendations being made

⁴²³ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 14.

⁴²⁴ Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 10.

⁴²⁵ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 14.

⁴²⁶ Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p. 11.

⁴²⁷ *Ibid.*

since 2007.⁴²⁸ Of these 266 recommendations, 36 are awaiting implementation, with partial implementation occurring in only a number of these 36 recommendations.⁴²⁹

OVIC has advised the Committee that its primary concerns relate to Victoria Police delays in implementing these recommendations.⁴³⁰ OVIC and Victoria Police have convened an officer-level working group to focus on this issue, a strategy which has proven to be quite effective, with the closure of five recommendations during one recent quarterly reporting period.⁴³¹ OVIC and Victoria Police officers also engage at the executive level.⁴³² Further, regular site visits are carried out by OVIC to evaluate local information security measures at Victoria Police premises.⁴³³ Any issues to be addressed and suggestions for improvement are relayed to Victoria Police in the form of a report following the site visit.⁴³⁴

The Committee supports OVIC's extensive engagement approach, and accepts there are limitations to an exclusive reliance on raw figures. Such data can be potentially misleading when no attempt is made to look behind the numbers or at the context in which those figures have been reported. However, the Committee considers that the raw data, together with the information gained from its proactive engagement with Victoria Police, are useful indicators for assessing information security risks, and their public reporting enhances accountability and transparency.

OVIC has advised that future annual reports will be based on the new Information Security Notification scheme, which will include in the summary figures the number of Victoria Police incidents.⁴³⁵ Further, OVIC has advised that it will 'continue to report on Victoria Police's implementation of outstanding recommendations'.⁴³⁶

RECOMMENDATION 4: That the Office of the Victorian Information Commissioner provide greater transparency in its annual reporting of its oversight of Victoria Police's information security processes and practices by publishing the number of information security incidents reported by Victoria Police each year.

Escalated Reporting Protocol

The Escalated Reporting Protocol (ERP), which was developed in consultation with Victoria Police, establishes operational requirements and processes relating to the Commissioner's and Deputy Commissioner's access to security incident information

⁴²⁸ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 13.

⁴²⁹ Ibid.

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ Ibid.

⁴³⁴ Ibid.

⁴³⁵ OVIC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 6 April 2020, p. 9.

⁴³⁶ Ibid.

held by Victoria Police.⁴³⁷ Its purpose is to determine security incident assessment levels against potential or actual consequences, support time frames and provide a mechanism for reporting security incidents to OVIC.⁴³⁸

In 2018/19, the main types of security incidents reported by Victoria Police to OVIC under the ERP were:

- abuse of privilege
- configuration error
- denial of service
- failure of process
- fraudulent activity
- password confidentiality
- data spill
- information handling
- unauthorised access
- other event.⁴³⁹

The three most common categories of incidents were unauthorised information disclosure, asset theft or loss, and lost or stolen police identification.⁴⁴⁰

While OVIC is yet to undertake a formal review of the ERP, it is confident that the protocol remains an effective mechanism to keep it informed of security incidents affecting Victoria Police.⁴⁴¹

3.3 Public information and education

One of OVIC's main functions is to provide advice, education and guidance to agencies and the public in relation to their rights and responsibilities under the *FOI Act 1982* (Vic)⁴⁴² and *PDP Act 2014* (Vic).⁴⁴³

OVIC began publishing de-identified FOI review decisions made under s 49P of the *FOI Act 1982* (Vic) as part of the Information Commissioner's function to 'promote understanding and acceptance by agencies and the public of the FOI Act and its

⁴³⁷ OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 48.

⁴³⁸ Ibid.

⁴³⁹ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, pp. 12-13.

⁴⁴⁰ Ibid., p. 13.

⁴⁴¹ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 13.

⁴⁴² *FOI Act 1982* (Vic) ss 6I(2)(b), (f).

⁴⁴³ *PDP Act 2014* (Vic) ss 8C(2)(a), 8D(2)(a).

objects'.⁴⁴⁴ The decisions, which date back to February 2019, are published on AustLII (Australasian Legal Information Institute)⁴⁴⁵ and are also linked on OVIC's website.⁴⁴⁶

In addition to the specific guidance and education on the recent amendments to the *FOI Act 1982 (Vic)* (see Section 3.2.2 in this chapter) and information-sharing provisions (see Section 3.2.3 in this chapter), OVIC has also published several guides and policies to provide the sector with greater clarity with respect to its functions. These materials have included:

- the Regulatory Action Policy, which outlines how OVIC uses statutory powers to investigate serious or concerning practices under the *FOI Act 1982 (Vic)* and *PDP Act 2014 (Vic)*⁴⁴⁷
- an updated version of the Privacy Impact Assessment template, which assists government agencies to 'assess the privacy impacts of a program or project and identify potential privacy risks and risk mitigation strategies'⁴⁴⁸
- a guide to completing Privacy Impact Assessments⁴⁴⁹
- a guide to assist government agencies in developing effective privacy policies.⁴⁵⁰

According to its annual report, OVIC delivered 109 education and training activities in 2018/19.⁴⁵¹ However, these 109 activities only relate to FOI since the scope of OVIC's quantitative performance measure on education and training is limited to FOI.⁴⁵² OVIC has advised the Committee that it is seeking to amend this performance measure so it reflects education and training activities related to its privacy and data protection functions.⁴⁵³

OVIC's face-to-face training sessions are 'commonly booking out months in advance',⁴⁵⁴ with participation satisfaction rates of 98% in 2017/18⁴⁵⁵ and 99% in 2018/19⁴⁵⁶ being achieved for its data security and privacy training.

444 OVIC, *Review decisions*, Melbourne, 2019, <<https://ovic.vic.gov.au/freedom-of-information/review-decisions>> accessed 20 May 2020.

445 Australasian Legal Information Institute, *Victorian Information Commissioner*, 2020, <<http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/vic/VICmr>> accessed 20 May 2020.

446 OVIC, *Review decisions*, Melbourne, 2019, <<https://ovic.vic.gov.au/freedom-of-information/review-decisions>> accessed 20 May 2020.

447 OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 19.

448 OVIC, *Privacy Impact Assessment: Template v1.1*, Melbourne, 2019, <<https://ovic.vic.gov.au/resource/privacy-impact-assessment-template>> accessed 20 May 2020.

449 OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 31.

450 OVIC, *Drafting a privacy policy*, Melbourne, 2019, <<https://ovic.vic.gov.au/resource/drafting-a-privacy-policy>> accessed 20 May 2020.

451 OVIC, *Annual report 2018-19*, Melbourne, 2019, pp. 13, 22.

452 OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 10.

453 Ibid.

454 OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 22.

455 OVIC, Response to the Integrity and Oversight Committee questions on notice, 20 January 2020, p. 5.

456 OVIC, *Annual report 2018-19*, Melbourne, 2019, p. 13.

OVIC's face-to-face training was complemented by e-learning which, in 2018/19, included new modules on privacy awareness and commonly applied exemptions.⁴⁵⁷

In September 2018, OVIC launched its new accessible website, which has been 'designed to support agencies and the community to better understand their rights and obligations by providing tools, guidance and resources in an easily navigable way'.⁴⁵⁸ The website is more user-friendly and conforms to the Web Content Accessibility Guidelines 2.0 and AAA Whole of Government Web Accessibility Guidelines.⁴⁵⁹ The site has three main content streams (FOI, privacy and data protection), and was developed with three main audiences in mind—the public sector, relevant industry participants and the general public.⁴⁶⁰

Among the new functionalities are a training and events calendar with registration management capability, a moderated blog, a newsletter subscription, an FOI access fee calculator, a range of electronic forms and a learning management system offering e-learning courses.⁴⁶¹

3.4 Governance and workplace

3.4.1 Establishing OVIC

OVIC officially commenced operations on 1 September 2017, following the abolition of the Office of the FOI Commissioner and Office of the CPDP.

The major activities completed in the lead-up to OVIC's establishment included:

- developing and implementing a suitable organisational structure
- relocating staff from two separate tenancies into one
- establishing Information and Communications Technology (ICT) infrastructure, such as OVIC's protected network and website
- communicating to agencies and the community about OVIC's establishment and functions, and
- integrating business processes.⁴⁶²

The Committee was informed that, while planning and executing these activities required considerable effort, OVIC was able to complete them without any major issues.⁴⁶³

⁴⁵⁷ Ibid., p. 22.

⁴⁵⁸ Ibid., p. 21.

⁴⁵⁹ OVIC, Response to the Integrity and Oversight Committee questions on notice, 20 January 2020, p. 14.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

⁴⁶² Ibid., p. 1.

⁴⁶³ Ibid.

The Information Commissioner has also advised that his agency received a ‘substantial uplift of resources’ in its first full year of operation through absorbing the budgets of its two predecessor organisations.⁴⁶⁴ Additional substantial resources were requested and granted in the 2018 budget, which OVIC has ‘been putting ... to good use’.⁴⁶⁵

3.4.2 Business process improvements

Improvements to OVIC’s business processes in 2018/19 resulted in an increase in productivity in the number of FOI reviews and complaints completed by the agency.⁴⁶⁶ In particular, following a significant review of its processes, OVIC ‘identified opportunities to address delays, document and formalise internal procedures, and better utilise internal resources to drive performance and deliver on business unit targets’.⁴⁶⁷ These included:

- restructuring OVIC into business areas, for instance—establishing three teams in the Public Access business unit, which comprises a Registry and Case Support Team responsible for handling enquiries and file triage, a Public Access Reviews Team that conducts reviews and an Early Resolution and Complaints Team responsible for informal resolution
- significantly upgrading the case management system to incorporate new and revised templates, and automating certain processes
- developing and maintaining a database of current review decisions with functionality to search across review attributes
- classifying review applications according to type and complexity of document and exemption
- reviewing the Registry and Case Support team, Early Resolution and Complaints team and the Public Access Reviews team to document procedures and identify efficiencies
- developing staff agility across the organisation
- implementing weekly and quarterly targets, and producing a weekly operational report
- strengthening its oversight and management culture
- focusing on staff training and professional development.⁴⁶⁸

⁴⁶⁴ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 2 March 2020, *Transcript of evidence*, p.7.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ OVIC, *Annual report 2018–19*, Melbourne, 2019, pp. 13, 65.

⁴⁶⁷ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 7.

⁴⁶⁸ *Ibid.*

3.4.3 Organisational health

OVIC advised that its organisation is ‘healthy and effective ... with a clear sense of purpose and high levels of staff engagement’.⁴⁶⁹ Further, it is ‘performing well and is meeting or exceeding the targets set in the Budget Papers’.⁴⁷⁰ Additional work is being done by OVIC to ensure this level of performance can be sustained.⁴⁷¹

OVIC staff participated in the Victorian Public Sector Commission’s People Matter survey in 2018 and 2019.

In 2018, survey results indicated staff:

- felt empowered to prioritise service delivery
- were encouraged to act in accordance with human rights
- valued earning and maintaining high levels of public trust
- valued the provision of ‘frank, impartial and timely advice to government’.⁴⁷²

In 2019, the survey results were ‘encouraging’, with staff expressing ‘very positive views on organisational climate, workgroup climate, senior leadership, and job and role factors’.⁴⁷³ The survey results identified room for improvement on job-related stress, innovation and proactive elimination of bullying, harassment and discrimination.⁴⁷⁴

The survey results were presented at an all-staff meeting and subsequently emailed to all staff. An action plan focusing on the areas requiring improvement has been developed and is currently being implemented by OVIC.⁴⁷⁵

3.5 Accountability

3.5.1 External oversight

Integrity and Oversight Committee

The IOC monitors, reviews⁴⁷⁶ and reports on the performance of the Information Commissioner’s functions and exercise of powers,⁴⁷⁷ including examining the annual report of the Information Commissioner.⁴⁷⁸ It also has limited jurisdiction⁴⁷⁹ under

⁴⁶⁹ Ibid., p. 6.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 11.

⁴⁷³ OVIC, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 6.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ *Parliamentary Committees Act 2003* (Vic) (‘PC Act 2003 (Vic)’) s 7(1)(a).

⁴⁷⁷ *PC Act 2003* (Vic) s 7(1)(c)(i).

⁴⁷⁸ *PC Act 2003* (Vic) s 7(1)(d).

⁴⁷⁹ *PC Act 2003* (Vic) s 7(2)(a)–(f) sets out the limitations to the IOC’s jurisdiction.

the *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)') to consider, investigate and report on complaints about the Information Commissioner and the operation of OVIC.⁴⁸⁰

Prior to the amendments to the *PC Act 2003* (Vic), OVIC and its officers were oversighted by the IOC's predecessor committee with respect to OVIC, the AOC, which had similar functions and powers.

The one complaint received by the IOC in respect of OVIC during 2018/19 was previously considered by the AOC. As no new issues were raised in this complaint, the IOC resolved not to take any further action.

The Victorian Inspectorate (VI) monitors OVIC's exercise of coercive powers⁴⁸¹ and compliance with procedural fairness requirements under the *FOI Act 1982* (Vic) and *PDP Act 2014* (Vic).⁴⁸² It can also receive⁴⁸³ and investigate complaints about the conduct of OVIC officers,⁴⁸⁴ and report on and make recommendations about the performance of OVIC's functions.⁴⁸⁵

OVIC did not exercise any coercive powers in 2017/2018 or 2018/2019.⁴⁸⁶

Of the four complaints about OVIC received by the VI in 2017/18, one fell outside of the Inspectorate's jurisdiction and two were closed due to lack of evidence of a breach of procedural fairness.⁴⁸⁷ The fourth complaint was still being considered as at 30 June 2018.⁴⁸⁸

Of the three complaints about OVIC received by the VI in 2018/19, one was dismissed as unsubstantiated and two remained open as at 30 June 2018.⁴⁸⁹ Of the two matters that remained open, one was reviewed by the VI and the other was unsubstantiated, with feedback provided to OVIC.⁴⁹⁰

⁴⁸⁰ *PC Act 2003* (Vic) ss 7(1)(b), (c)(ii).

⁴⁸¹ *Victorian Inspectorate Act 2011* (Vic) ('*VI Act 2011* (Vic)') s 11(5)(a)(i).

⁴⁸² *VI Act 2011* (Vic) s 11(5)(a)(ii).

⁴⁸³ *VI Act 2011* (Vic) s 11(5)(b).

⁴⁸⁴ *VI Act 2011* (Vic) s 11(5)(c).

⁴⁸⁵ *VI Act 2011* (Vic) s 11(5)(d).

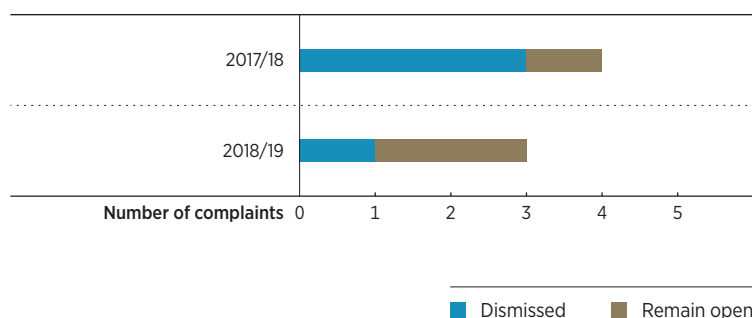
⁴⁸⁶ VI, *Annual report, 2018-19*, Melbourne, 2019, p. 42.

⁴⁸⁷ VI, *Annual report 2017-2018*, Melbourne, 2018, p. 14.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ VI, *Annual report, 2018-19*, Melbourne, 2019, p. 36.

⁴⁹⁰ *Ibid.*

Figure 3.3 VI outcomes for complaints received about OVIC

Source: VI, *Annual report 2017–2018*, Melbourne, 2018, p. 14; VI, *Annual report, 2018–19*, Melbourne, 2019, p. 36.

3.5.2 Internal oversight

OVIC has reported that '[n]o breaches of the Code of Conduct by staff occurred [in 2018/19]'.⁴⁹¹

Breaches of the Code are reported by OVIC staff to their managers or directly to Human Resources.⁴⁹² Responsibility and accountability in this area resides with the Chief Operating Officer, supported by the Office Manager.⁴⁹³ During this period, no breaches were reported to the Chief Operating Officer and Office Manager and, therefore, no disciplinary sanctions were imposed.⁴⁹⁴

As the complaints coordinator, the Chief Operating Officer is also responsible for receiving external complaints about staff.⁴⁹⁵ During this period, no complaints about OVIC staff concerning breaches of the Code of Conduct were substantiated.⁴⁹⁶

OVIC noted in its 2017/18 annual report that it has 'adopted, or [is] currently in the process of adopting policies in respect of conflict of interest, confidentiality obligations, document management, financial management, workplace standards and risk management'.⁴⁹⁷

OVIC advised that it has developed over twenty policies on these kinds of issues.⁴⁹⁸ They cover 'internal and external complaints, study assistance, gifts, benefits and hospitality, fraud, flexible work and risk management'.⁴⁹⁹ The Enterprise Agreement and policies provided by the Department of Premier and Cabinet (DPC) supplement OVIC's

⁴⁹¹ VI, *Annual report, 2018–19*, Melbourne, 2019, p. 15.

⁴⁹² OVIC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 6 April 2020, p. 10.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ibid.

⁴⁹⁷ OVIC, *Annual report 2017–2018*, Melbourne, 2018, p. 15.

⁴⁹⁸ OVIC, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 6 April 2020, p. 10.

⁴⁹⁹ Ibid.

policies where necessary.⁵⁰⁰ OVIC will consider whether any of these DPC policies should be ‘customised’ to suit OVIC.⁵⁰¹

3.6 Conclusion

OVIC has had to grapple with a number of significant challenges in recent times—setting up a new agency, managing the legacy of a predecessor agency in relation to the backlog of existing work and overseeing the first cycle of agencies’ Protective Data Security Plan submissions in accordance with the Victorian Protective Data Security Framework.

The number of FOI review applications finalised during the year increased by over 21.3% from 2017/18. However, the number of review decisions made within 30 days of the review application or extension agreed to by the applicant, as required under the *FOI Act 1982 (Vic)*, decreased by 38.4% from the previous year. Further, during 2017/18 and 2018/19, OVIC fell far short of its budgetary performance target, which requires 90% of all reviews to be completed within the time line agreed by FOI applicants.⁵⁰²

The Committee understands that a specific focus on prioritising the completion of outstanding FOI review applications was one of several reasons that contributed to this performance measure not being met. OVIC has a revised target of 60% for 2019/20, which it has stated is a ‘more attainable target’.⁵⁰³ The Committee expects that efficiencies achieved as a result of improvements to OVIC’s business processes will be reflected in an improved rate of timeliness in the completion of its FOI reviews, and it will continue to monitor the agency’s performance in this area through OVIC’s annual reports and through any complaints the Committee may receive in relation to timeliness.

In this increasingly data-driven environment, all agencies must address significant cultural barriers in striking the right balance between facilitating access to information, protecting the privacy rights of individuals and implementing appropriate information security protocols. The Committee acknowledges OVIC’s efforts and progress in trying to effect cultural change in the VPS by ensuring agencies understand that the breadth of protective data security extends beyond cybersecurity and that the FOI scheme is merely one approach to releasing information. In this regard, the Committee looks forward to the outcome of OVIC’s consultation on its *Proactive and informal release of information in the Victorian public sector* discussion paper.⁵⁰⁴

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Department of Treasury and Finance (Victoria), *Victorian Budget 18/19: service delivery* (Budget Paper No. 3), Melbourne, May 2018, p. 317; Department of Treasury and Finance (Victoria), *Victorian Budget 19/20: service delivery* (Budget Paper No. 3), Melbourne, May 2019, p. 319.

⁵⁰³ Department of Treasury and Finance (Victoria), *Victorian Budget 19/20: service delivery* (Budget Paper No. 3), Melbourne, May 2019, p. 319.

⁵⁰⁴ OVIC, *Proactive and informal release of information in the Victorian public sector discussion paper*, Melbourne, March 2020, <<https://ovic.vic.gov.au/proactive-and-informal-release-of-information-in-the-victorian-public-sector-discussion-paper>> accessed 4 May 2020.

Measuring, monitoring and reporting on the effectiveness of the Victorian FOI scheme and the distinctive challenges presented by Victoria Police's data security environment are areas which will continue to be a focus for the Committee.

4 Victorian Inspectorate

4.1 Introduction

The Victorian Inspectorate (VI) has extensive oversight jurisdiction, functions and powers in relation to Victorian integrity bodies, including the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC) and the Victorian Ombudsman (VO).⁵⁰⁵ This includes specific jurisdiction to receive, assess and investigate complaints and public interest disclosures (PIDs) about the conduct of these bodies and their officers; to monitor compliance with legislative and record-keeping requirements; and to review certain policies and procedures.⁵⁰⁶ The VI can also initiate investigations and inquiries into these bodies on its own motion, make public and private recommendations and table reports in the Parliament of Victoria.⁵⁰⁷

In exercising its oversight functions, the VI gives particular attention to integrity bodies' use of coercive and covert powers, the summoning and questioning of persons during investigations, the conduct of undercover ('controlled') operations, the interception of telecommunications and the deployment of surveillance devices.⁵⁰⁸

The VI's main oversight functions are set out briefly, and in general terms, in Table 4.1.⁵⁰⁹ As noted earlier in this report, the Integrity and Oversight Committee (IOC) monitors and reviews the performance of the VI, except with respect to officers of the Victorian Auditor-General's Office (VAGO).⁵¹⁰

⁵⁰⁵ *Victorian Inspectorate Act 2011* (Vic) ('VI Act 2011 (Vic)'), especially ss 1, 5, 11–14.

⁵⁰⁶ *VI Act 2011* (Vic); *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)'); VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–10, 14–27; *Public Interest Monitor Act 2011* (Vic); VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020.

⁵⁰⁷ *VI Act 2011* (Vic); VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–27.

⁵⁰⁸ VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–10, 14–27; *VI Act 2011* (Vic).

⁵⁰⁹ The information in this table reproduces, with only minor modifications, information contained in VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–27 (especially pp. 14–18, 22–25), 51, 86.

⁵¹⁰ *Parliamentary Committees Act 2003* (Vic) ('PC Act 2003 (Vic)') s 7(1)(f)–(h). The Victorian Parliament's Public Accounts and Estimates Committee (PAEC) reviews the performance of the VI with respect to VAGO officers: *PC Act 2003* (Vic) s 14(1)(ab)–(ad); VI, *Annual report 2018–19*, Melbourne, 2019, p. 14.

Table 4.1 Oversight functions of the VI

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

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

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

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

4.2 Complaint handling, investigations and oversight

The VI receives, handles, assesses and investigates complaints and PIDs; reviews agency notifications regarding the use of coercive powers; and conducts own motion investigations and inquiries. Before discussing some of the achievements of the VI and the challenges it faces in these areas, it is useful to have a snapshot of the key data.

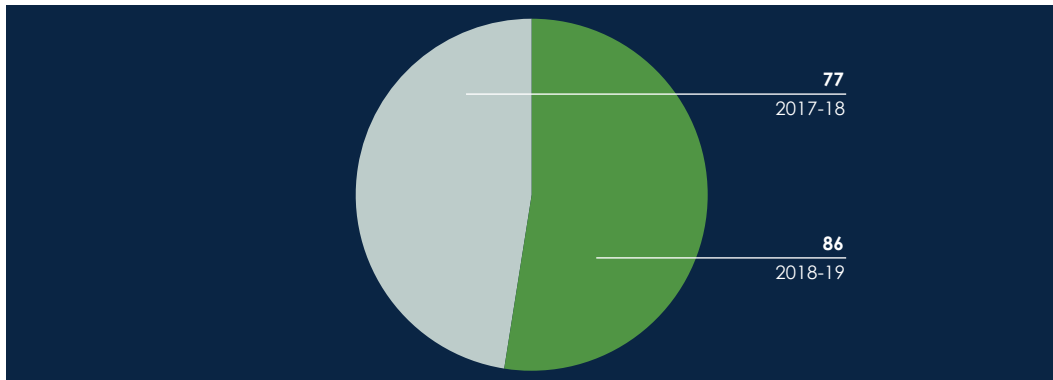
4.2.1 Key data: a snapshot

Complaints

In 2018/19, the VI received 86 complaints, which was an increase of 11.6% from 2017/18 (see Figure 4.1). The majority of the complaints were about IBAC and the VO (see Figure 4.2). From 2014/15 to 2018/19 there was a 79% increase in the number of complaints received by the VI—from 48 complaints in 2014/15 to 86 in 2018/19 (see Figure 4.3).⁵¹¹

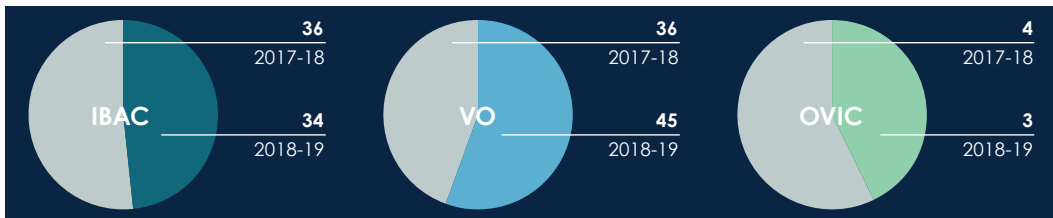
⁵¹¹ VI, *Annual report 2018–19*, Melbourne, 2019, pp. 30–33.

Figure 4.1 Complaints received by the VI in 2017/18 and 2018/19



Source: VI, *Annual report 2018-19*, Melbourne, p. 31.

Figure 4.2 Year on year comparison of complaints per body



Source: VI, *Annual report 2018-19*, Melbourne, p. 33 (Figure C).

Figure 4.3 Complaints received by the VI, 2014/15–2018/19



Source: VI, *Annual report 2018-19*, Melbourne, p. 33 (Graph B).

Investigations and inquiries

In 2018/19, two investigations were completed by the VI that had been ongoing at 30 June 2018. The VI also continued work on one own motion inquiry, as well as a preliminary inquiry, from 2017–2018. In addition, it began one investigation into a public interest disclosure complaint, which gave rise to an inquiry.⁵¹² See Box 4.1 for more detail.

⁵¹² Ibid., p. 38.

BOX 4.1: VI investigation and inquiry activities, 2018/19

This year the VI:

- Completed two investigations that were ongoing at 30 June 2018. One of these investigations was into a complaint, the other was initiated on the VI's own motion.
- Continued one inquiry commenced on the VI's own motion in 2017–18. This year the VI issued one summons and one confidentiality notice to a person for this investigation, which remains ongoing at 30 June 2019.
- Continued one preliminary inquiry that was ongoing at 30 June 2018. This matter has not proceeded to a full investigation, but remains ongoing at 30 June 2019.
- Commenced one investigation into a protected disclosure complaint, which has resulted in a new inquiry. The VI has issued two summonses and one confidentiality notice to persons in this inquiry, which remains ongoing at 30 June 2019.

Source: VI, *Annual report 2018–19*, Melbourne, 2019, p. 38.

Coercive power notifications

As the VI has noted, one of the core functions of the VI is the oversight of the use by a range of integrity, investigatory and accountability bodies of coercive powers that restrict individuals' rights and freedoms (see Table 4.1, above, for details).⁵¹³

During 2018/19, there were 1091 coercive power notifications received by the VI, which was a small decrease from 2017/18 (1,175).⁵¹⁴ Ten of the notifications of the use of coercive powers were from the Judicial Commission of Victoria (JCV).⁵¹⁵ However, since the JCV is not obliged to provide instruments and recordings of examinations to the VI, the VI does not review them.⁵¹⁶ Consequently, the VI had 1,081 notifications before it, reviewing 466 (43%).⁵¹⁷

4.2.2 Complaint handling and investigations

The VI has reported that during 2018/19 it made 'transformative' improvements to its policies, processes and systems for the assessment, handling and investigation of complaints and disclosures.⁵¹⁸ It has also strengthened its staff profile in relation to complaint handling.⁵¹⁹

⁵¹³ Ibid., p. 39.

⁵¹⁴ Ibid., pp. 39–40.

⁵¹⁵ Ibid., p. 42.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid., p. 43.

⁵¹⁸ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 11.

⁵¹⁹ Ibid., pp. 11–12.

Internal governance and processes

The VI has informed the IOC that it has improved its assessment and handling of complaints and disclosures through three main developments during 2018/19.⁵²⁰ First, it has enhanced its engagement with the agencies it oversees in relation to complaints. This has involved better liaison by VI officers with their agency counterparts in order to obtain a deeper understanding of the applicable agency functions, the history of the complaint and the relevant factual context.⁵²¹ These kinds of direct communications with other complaint-handling agencies have, in the VI's view, made its own complaint-handling practices more efficient while at the same time achieving, where possible, better tailored complaint outcomes.⁵²² Such an approach also means that in appropriate cases complaints can be resolved earlier and with less formality:

The VI seeks to resolve straightforward complaints (those that are misdirected, or out of jurisdiction, for example) quickly, however a longer timeframe will be necessary to assess complex or credible complaints with a proportionate thoroughness. The VI is also committed to providing complainants with reasons for its decisions, and our outcome letters demonstrate the highest level of detail and comprehensiveness.⁵²³

Second, the VI now takes a 'functional team model' approach to assessing complaints and disclosures.⁵²⁴ This involves an assessment team, headed by Senior Investigators, acting in conjunction with an Integrity Operations Management Committee (IOMC) comprised of the Inspector, Executive Director and General Manager.⁵²⁵ This structure is designed to ensure that each complaint receives detailed consideration by a VI officer, with decisions (for example, to undertake or decline an investigation) approved by the IOMC.⁵²⁶

Third, in 2019 the VI strengthened the capability of its Integrity Operations and Policy team by recruiting a second Senior Investigator (VPS 5) and a Complaints Assessment Officer (VPS 4) with expertise and experience in complaint handling and investigation.⁵²⁷ This team has concentrated on enhancing 'the consistency, quality and timeliness of its assessments'.⁵²⁸

Additionally, the VI has recognised the importance of not only high levels of staff expertise and experience but also staff wellbeing. As in all complaint-handling bodies,

⁵²⁰ Ibid., p. 11.

⁵²¹ Ibid.

⁵²² Ibid.

⁵²³ Ibid. Compare the objectives and experience of the VO in resolving complaints early: VO, *Complaints to the Ombudsman: resolving them early*, Melbourne, July 2018, <<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/complaints-to-the-ombudsman-resolving-them-early/#full-report>> accessed 1 April 2020.

⁵²⁴ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 11.

⁵²⁵ Ibid.

⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ Ibid.

VI staff sometimes face challenging behaviour from complainants.⁵²⁹ In response, the VI has ensured that complaint-handling staff receive ‘specialised training and guidance’ so they can engage with complainants effectively and professionally while maintaining their own wellbeing and thereby reducing the risk of burnout.⁵³⁰

Case management system

The VI has project funding to upgrade the case management system (CMS) it has used since 2016 for complaint workflow management.⁵³¹ The upgrade is expected to be finalised by 30 June 2020.⁵³² The VI has advised that, in the interim, it has made a range of improvements to the CMS to facilitate more detailed, discriminating and sophisticated analysis and reports.⁵³³ With appropriate additional funding, the VI considers that it would be able to use complaints data from the upgraded CMS as the basis for ‘strategic intelligence’ analysis and reporting.⁵³⁴

In September 2020, the VI reiterated in the following terms the expected benefits from an enhanced CMS:

By way of example, the VI will use the CMS to manage the registration, review and performance reporting for over 1000 coercive power notifications per annum that are currently tracked on spreadsheets. Public interest disclosure functionality will be enhanced and the investigations functionality will include simple records management. Performance reporting will also be enhanced as the CMS will record monitoring activity, education and integrity responses.⁵³⁵

4.2.3 Broader oversight activities

One of the positive oversight developments in 2018/19, according to the VI, was its implementation of a multidisciplinary Operations Model.⁵³⁶ The model includes the VI’s ‘regular integrity programs’ and inspections; ‘monitoring projects’; complaint handling; monitoring of agency use of coercive powers; investigations; inquiries; and ‘integrity

⁵²⁹ Ibid. See also VO, *Dealing with challenging behaviour*, <<https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/dealing-with-challenging-behaviours/#full-report>> accessed 1 April 2020; VO, *Managing unreasonable complainant conduct: a manual for frontline staff, supervisors and senior managers*, 2nd edn, Melbourne, 2012, <<https://www.ombudsman.vic.gov.au/getattachment/182414fb-472c-4efd-9835-e1521ce62d66>> accessed 27 January 2020.

⁵³⁰ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 11. See also World Health Organization, *Burn-out an ‘occupational phenomenon’: International Classification of Diseases*, 29 May 2019, <https://www.who.int/mental_health/evidence/burn-out/en> accessed 28 January 2020; VO, *Managing unreasonable complainant conduct: a manual for frontline staff, supervisors and senior managers*, 2nd edn, Melbourne, 2012, p. 11 (Figure 1: Negative impacts of unreasonable complainant conduct), <<https://www.ombudsman.vic.gov.au/getattachment/182414fb-472c-4efd-9835-e1521ce62d66>>.

⁵³¹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 11–12.

⁵³² Ibid., p. 12.

⁵³³ Ibid.

⁵³⁴ Ibid.

⁵³⁵ VI, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 7.

⁵³⁶ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 3–4; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5, 7, 13, 19, 20–21.

responses' to address agency shortcomings.⁵³⁷ In accordance with this model, the VI has carried out a range of investigations and inquiries, reviews and monitoring projects, including:

- an investigation, inquiry and special report on the safeguarding of the welfare of witnesses involved in IBAC investigations, and especially examinations ('hearings')
- a monitoring project on IBAC's assessment and determination policies, systems, procedures and practices with respect to its handling of complaints about Victoria Police
- a monitoring project on IBAC's performance of its functions under the *Protected Disclosure Act 2012* (Vic)
- a monitoring project on the quality of information provided to witnesses involved in VO investigations and interviews.⁵³⁸

Challenges

The VI has identified two main challenges it faces in its oversight work: agency 'pushback' and delays in providing requested information, and a lack of resources.⁵³⁹

In its 2018/19 annual report, the VI provided a detailed analysis of its special report on the welfare of witnesses in IBAC investigations and IBAC's response to that report.⁵⁴⁰ The special report found that 'IBAC did not have in place policies and procedures that adequately prioritised the welfare of witnesses', including their physical and mental health and wellbeing.⁵⁴¹ The report included ten recommendations for IBAC to develop appropriate witness welfare policies and procedures, as well as templates and practices; present these revised resources to the VI for review; and to deliver mandatory training to staff on the revised resources.⁵⁴²

IBAC, however, rejected the basis for the special report, its findings and recommendations.⁵⁴³ In IBAC's view, the 'VI's investigation was fatally flawed leading to a Special Report which contains unsound findings'.⁵⁴⁴

While IBAC rejected the findings and recommendations in the VI's special report, it subsequently carried out its own internal review of witness welfare that resulted in important improvements, including the development of a new, consolidated Witness

⁵³⁷ VI, *Annual report 2018-19*, Melbourne, 2019, pp. 19-21; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 4.

⁵³⁸ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020; VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-8, 37-38, 56-72, 74-75; VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018.

⁵³⁹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 14.

⁵⁴⁰ VI, *Annual report 2018-19*, Melbourne, 2019, pp. 58-72.

⁵⁴¹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 19. See also VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018.

⁵⁴² VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 19. See also VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, especially pp. 3-4, 10, 16-20, 30.

⁵⁴³ 'IBAC's statement about the Special Report', extracted in VI, *Annual report 2018-19*, Melbourne, 2019, p. 71.

⁵⁴⁴ Ibid.

Welfare Policy and Interim Guidelines.⁵⁴⁵ The Guidelines, for instance, provided for ‘welfare risk assessment’, counselling services for witnesses and their freedom of movement during hearing breaks.⁵⁴⁶

In response to these disagreements over witness welfare, the IOC has, since its establishment in May 2019, engaged regularly with IBAC and the VI. The IOC has, for example, sought information and received briefings from IBAC and the VI to enhance its understanding of their respective positions and to help ensure the effective performance of their vital investigative and oversight functions.

In this regard, the IOC has emphasised that the Committee, IBAC and the VI share the view that the safeguarding of witnesses’ welfare must meet best practice while respecting lawful and proper operational and investigative considerations.⁵⁴⁷ In its statement in response to the VI’s special report, for instance, IBAC emphasised that it

is committed to witness welfare and continues to enhance the procedures and work practices that ensure appropriate support is provided to persons involved in IBAC investigations. ...

[It] is also aware of its obligation to protect the welfare of all witnesses, and their safety is at the forefront of IBAC considerations, actions, policies and procedures.

As part of a regular review of those policies and procedures, IBAC has strengthened welfare processes to ensure the organisation and staff continue to align with industry best-practice and community expectations with regard to welfare practices.⁵⁴⁸

It should also be noted that the VI considers that the challenge of any agency pushback must be understood within the generally positive context of cooperative day-to-day relationships between the VI and other integrity agencies.⁵⁴⁹

A second challenge, which is a theme of both the VI’s 2018/19 annual report and its responses to questions on notice from the IOC, is the issue of the appropriate level of the funding of the VI.⁵⁵⁰

In the VI’s view, the agency’s limited resources reduce its ability to undertake ‘a broader range of strategic, preventative and educative monitoring and review activities and completing investigations within a timeframe that is more compatible with the interests

⁵⁴⁵ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 19; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 58–72; IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 16, 74, 78, 94.

⁵⁴⁶ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 19.

⁵⁴⁷ VI, *Annual report 2018–19*, Melbourne, 2019, p. 71; VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 3; IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 16, 74, 78, 94. See also IBAC, *IBAC statement on the welfare of people involved in anti-corruption investigations*, 17 October 2018, <<https://www.ibac.vic.gov.au/media-releases/article/ibac-statement-on-the-welfare-of-people-involved-in-anti-corruption-investigations>> accessed 28 January 2020; IBAC, *Information for witnesses*, <<https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/if-you-are-called-as-a-witness>> accessed 28 January 2020; IBAC, *Policy: welfare management for IBAC investigations*, 23 October 2019 (with a review date of 11 June 2021), <<https://www.ibac.vic.gov.au/docs/default-source/policies/welfare-management-for-ibac-investigations-policy.pdf>> accessed 28 January 2020.

⁵⁴⁸ ‘IBAC’s statement about the Special Report’, extracted in VI, *Annual report 2018–19*, Melbourne, 2019, p. 71.

⁵⁴⁹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 14.

⁵⁵⁰ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020; VI, *Annual report 2018–19*, Melbourne, 2019.

of justice'.⁵⁵¹ The VI considers that 'protracted' investigations can undermine the effective gathering of evidence, prevent timely remediation responses to improper conduct and jeopardise appropriate protection of the reputations of those subject to allegations.⁵⁵² The VI has stated further that

[w]ithout increased funding, the VI's more complex investigation(s) will be protracted. Furthermore, the VI is unlikely to have resources to commence own motion investigations as its investigative resources will be investigating public interest complaints [which it is legislatively required to investigate].⁵⁵³

Finally, the VI has advised that a lack of resources has meant an adjustment to the level of attention it can give in reviewing the lawfulness and propriety of agency exercises of coercive powers.⁵⁵⁴ Annually, the VI commonly receives more than one thousand coercive power notifications.⁵⁵⁵ While the VI's review of coercive power notifications is discretionary (it is not required to review every notification), in practice it has had, in any event, to approach reviews strategically to identify those warranting in-depth analysis.⁵⁵⁶ Further, the VI is moving away from a 'primarily manual and inefficient system' of reviewing notifications to a database—but the costs of this transition will, in the VI's view, have a resourcing impact on other operations.⁵⁵⁷

At a public hearing held on 17 August 2020, the Inspector reiterated to the Committee that, while the VI was able to fulfil its statutory obligations regarding the review of coercive power notifications, it was unable, given its funding, to undertake as many reviews as it would like, or in as much depth as it would like:

[W]ith staffing of 16 we could not possibly review everything that comes in. So we do have to apply a risk-based approach, which we accept is not a risk-free approach. With increased funding we would obviously increase the number of reviews that we would do.

...

[W]e cannot do the deep dive we would like to do across the system because of our limited resourcing. I mean, as I say, with only such a micro team of nine ongoing and six fixed-term positions, naturally that is all we can do.

...

We cannot say that operating the way we do everything that really should be looked at in a deep way is looked into.⁵⁵⁸

⁵⁵¹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 14.

⁵⁵² *Ibid.*, p. 21.

⁵⁵³ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 21; *VI Act 2011* (Vic) s 44(2).

⁵⁵⁴ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 15–16. See also VI, *Annual report 2018–19*, Melbourne, 2019, pp. 41–43.

⁵⁵⁵ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 15.

⁵⁵⁶ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 15–16; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 41–43.

⁵⁵⁷ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 16. See also VI, *Annual report 2018–19*, Melbourne, 2019, p. 43.

⁵⁵⁸ Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, pp. 19–21.

The VI's concerns over resourcing were considered by the IOC in its review of the VI's annual plan and draft budget for the 2020/21 financial year (see the discussion in Chapter 1 and Section 4.5.3 of this chapter).

4.3 Public information and education

While, unlike IBAC and the VO, the VI does not have a legislated education function, it rightly recognises the importance of high-quality public information so members of the public and public sector staff are aware of its role within the Victorian integrity system. As the VI has explained,

a measure of its success, as the key oversight body in Victoria, is the level of public trust in the Victorian integrity system. By increasing public awareness of its existence through better communication channels and education, the VI hopes to increase that level of trust as more members of the public become aware that there is an oversight body with which they may raise concerns about the bodies within that system.⁵⁵⁹

In addition to providing information about the VI's role, functions and powers, the VI also recognises the need to provide clear, accessible and accurate information about the kinds of complaints and PIDs it can receive and how they are assessed and investigated.⁵⁶⁰ Indeed, the VI is required 'to promote the purposes' of the *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)'), which includes the encouragement and facilitation of disclosures of improper conduct and detrimental action ('reprisals') in the public sector.⁵⁶¹ Such disclosures can only be encouraged and facilitated if people know how to make them, and to whom.

A further reason why it is vital that members of the public and public sector staff know how to make lawful and effective complaints and disclosures is that they can help integrity agencies identify ways to improve their performance. This is only possible if integrity and oversight bodies provide accessible, relevant and accurate information in plain language.

4.3.1 Implementation of the Accountability and Oversight Committee's recommendations on public information, education and training

In November 2017, the Accountability and Oversight Committee (AOC) of the Victorian Parliament tabled its report titled *Inquiry into education, training and communications initiatives of Victorian oversight agencies*.⁵⁶² The report contained four

⁵⁵⁹ VI, *Annual report 2017–2018*, Melbourne, 2018, p. 11. See also VI, *Annual report 2018–19*, Melbourne, 2019, p. 28.

⁵⁶⁰ VI, *Annual report 2017–2018*, Melbourne, 2018, p. 11; VI, *Annual report 2018–19*, Melbourne, 2019, p. 28; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 5, 8–10.

⁵⁶¹ *PID Act 2012 (Vic)* ss 1 (purposes), 56(1)(ea) (promotion of purposes).

⁵⁶² Parliament of Victoria, Accountability and Oversight Committee (AOC), *Inquiry into education, training and communications initiatives of Victorian oversight agencies*, Melbourne, November 2017.

recommendations for the VI that are relevant to this review. These recommendations concerned suggested improvements to the VI's provision of digital information, presentations, and training for members of the public and public sector staff.⁵⁶³

Website and related digital content

In its 2017 report, the AOC made the following recommendations relevant to the VI's website and its content:

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

Recommendation 14: That the Victorian Inspectorate publish 'plain English' information on its website that clarifies its functions in relation to complaints, including guidance on compliance with procedural fairness and the exercise of coercive powers.⁵⁶⁴

The VI has made substantial progress in improving its website since the Victorian Parliament's IBAC Committee reported on its shortcomings in November 2016.⁵⁶⁵ The design, information architecture, accessibility, navigability, usability and quality of the information provided have all been improved significantly. In its 2017/18 annual report, the VI explained that, after working with the Department of Premier and Cabinet (DPC) as it rolls out the Government's Single Digital Presence (SDP) project, it had launched in March 2018 a better looking and more accessible 'interim website'.⁵⁶⁶

The content on the website has also been improved. For example, the VI has produced new digital plain-language information on the VI's vision, purpose, functions, powers and oversight responsibilities; on what complaints it can (and cannot) investigate; and on what PIDs are and how the VI handles them.⁵⁶⁷ In January 2020, the content on the website was further revised to reflect recent integrity system reforms, including to the PID regime, which were the result, principally, of the passage of the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019 (Vic)* ('IALA Act 2019 (Vic)').⁵⁶⁸

The VI has informed the IOC that in 2019/20 it will address the AOC's recommendation that the VI include case notes on its website to give public sector and agency staff general guidance on matters of frequent complaint (such as alleged breaches of

⁵⁶³ Ibid., pp. 62, 65.

⁵⁶⁴ Ibid., p. 62.

⁵⁶⁵ Parliament of Victoria, IBAC Committee, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*, Melbourne, November 2016, pp. 30–31, 37. See also Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 168–169.

⁵⁶⁶ VI, *Annual report 2017–2018*, Melbourne, 2018, p. 11.

⁵⁶⁷ VI, *Annual report 2017–2018*, Melbourne, 2018, p. 11; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 5–6, 8–10.

⁵⁶⁸ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 5–6, 8–10.

procedural fairness or misuse of coercive powers).⁵⁶⁹ After consulting with the agencies it oversees, the VI intends to publish these notes during the 2019/20 financial year.⁵⁷⁰

The VI reports that since December 2018 it has been working towards making its website compliant with the requirements of the SDP project, regularly attending DPC meetings to that end in 2019.⁵⁷¹ The redevelopment of the website has focused on further enhancing accessibility through attention to design (including colour, font character and style), navigability, information architecture (including the use of links) and comprehensibility.⁵⁷² The VI expects the latest version of its website to be launched in January–February 2020, with a fully SDP-compliant and independent website live by the middle of that year.⁵⁷³ It hopes that the website will be ‘a comprehensive and informative one-stop shop for the public and bodies to seek and understand information relating to the VI’.⁵⁷⁴

In 2018, the IBAC Committee found that, while the VI’s website had been enhanced since it was examined in 2016, the agency was not making the most of the opportunity to communicate via short online videos.⁵⁷⁵ This remains the case at the time of writing. These kinds of videos can be effective ways of explaining the essentials of complex institutions and processes, such as the oversight role of the VI within Victoria’s integrity system, what complaints and disclosures the VI is authorised to receive and handle, how the VI handles complaints and disclosures, and how to make a complaint or PID. Short online videos that meet best practice can make the VI more accessible, help people better understand other content on the website and improve its comprehensibility for members of the public who find textual content difficult (such as those with literacy challenges).⁵⁷⁶

RECOMMENDATION 5: That the Victorian Inspectorate (VI) produce and host on its website targeted and accessible videos explaining the role of the VI, the kinds of complaints and public interest disclosures the VI is authorised to handle, how to make complaints or disclosures to the VI and how the VI handles them.

⁵⁶⁹ Ibid., pp. 9–10.

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid., p. 8.

⁵⁷² Ibid.

⁵⁷³ Ibid.

⁵⁷⁴ VI, *Annual report 2018–19*, Melbourne, 2019, p. 28.

⁵⁷⁵ Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, p. 169.

⁵⁷⁶ See Department of Justice and Regulation (Victoria), *Access to Justice Review: volume 1—report and recommendations*, Melbourne, August 2016, especially Ch 2, <<https://engage.vic.gov.au/accesstojustice>> accessed 22 January 2020; World Wide Web Consortium (W3C)–Web Accessibility Initiative (WAI), *Making audio and video media accessible*, 18 November 2018, <<https://www.w3.org/WAI/media/av>> accessed 22 January 2020; Victorian Government, *Making content accessible—digital standards*, 2 August 2019, <<https://www.vic.gov.au/make-content-accessible>> accessed 22 January 2020.

Presentations and training

In 2017, the AOC made the following recommendations regarding VI presentations and training:

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

...

Recommendation 16: That the Victorian Ombudsman, the Office of the Victorian Information Commissioner and the Victorian Inspectorate further invests in the provision of e-learning training and free or cost-recovery workshops that provide targeted training to the wider public service, including local government, education and health bodies.⁵⁷⁷

In 2017/18, the VI participated in the Victorian Parliament House Open Day program as well as Victoria's Law Week program coordinated by Victoria Law Foundation. In addition, the Inspector gave talks to the Institute of Public Administration Australia and the Victorian Government Solicitor's Office.⁵⁷⁸

In 2018/19, the VI again participated in Law Week, with both the Inspector and the Executive Director, Legal and Integrity, giving presentations.⁵⁷⁹ The VI informed the IOC that due to a lack of resources it was unable to deliver any other presentations during 2018/19.⁵⁸⁰ In this context, the VI noted that it does not have any communications or education staff, and that its request for funding to employ a communications and publishing officer was not approved.⁵⁸¹

The VI has also advised the IOC that it lacks the resources to deliver e-training to the public service and/or to provide face-to-face training workshops to public sector staff.⁵⁸² Depending on the available resources, it will, however, deliver presentations to relevant stakeholders on any new 'guidance notes' it produces.⁵⁸³

The IOC considers that the funding of an ongoing communications and publishing officer position would be a valuable addition to the VI's staff resources. It would enable the VI to enhance the quality of its print and digital information, especially accessible and innovative plain-language digital content (including video and e-training modules). Ideally, the officer would have expertise and experience not only in print and digital communications and publishing but also plain-language legal writing. The creation

⁵⁷⁷ Parliament of Victoria, AOC, *Inquiry into education, training and communications initiatives of Victorian oversight agencies*, Melbourne, November 2017, pp. 62, 65.

⁵⁷⁸ VI, *Annual report 2017–2018*, Melbourne, 2018, p. 11.

⁵⁷⁹ VI, *Annual report 2018–19*, Melbourne, 2019, p. 28.

⁵⁸⁰ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 10.

⁵⁸¹ Ibid.

⁵⁸² Ibid.

⁵⁸³ Ibid.

and appropriate funding of such a position would increase public and public sector awareness of the VI's role, help improve legal compliance by integrity agencies and public sector bodies and reduce the risk of misdirected complaints and disclosures.

RECOMMENDATION 6: That the Victorian Government fund an ongoing communications and publishing officer position at the Victorian Inspectorate.

4.4 Governance and workplace

Given the functions and purposes of oversight and integrity bodies—to reduce the risk of corruption, misconduct and other wrongdoing, and effectively and lawfully identify and address them when they exist—it is essential that they exemplify for the public sector best practice in governance and workplace culture. The following section reviews the VI's performance in relation to its organisational structure and governance, its response to Victoria's integrity system reforms and its commitment to a healthy workplace culture.

4.4.1 Organisational structure and governance

Reviews and restructures: an overview

In the first phase of the VI's existence, both the IBAC Committee and the VI itself recognised the need for improvements in the VI's governance, operational performance and workplace culture.⁵⁸⁴ For example, improvements were needed to ensure the efficient and timely handling and investigation of complaints and disclosures and a more harmonious workplace.⁵⁸⁵ The VI's recognition of these concerns led in 2017 to two external reviews under Inspector Robin Brett QC, which 'identified cultural and structural issues impacting upon the VI's capacity to deliver its legislative remit' and made a number of recommendations to address them.⁵⁸⁶

Upon beginning his term as Inspector in January 2018, Mr Eamonn Moran PSM QC undertook an internal review of the legislated functions, structure, resources and 'operational priorities' of the VI.⁵⁸⁷ This review also took account of the recommendations and lessons from the 2017 external reviews.⁵⁸⁸

⁵⁸⁴ See Parliament of Victoria, IBAC Committee, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate—2016/17*, Melbourne, December 2017, p. 62; Parliament of Victoria, IBAC Committee, *The work of the IBAC Committee of the 58th Parliament: a reflection*, Melbourne, September 2018, p. 7.

⁵⁸⁵ Ibid.

⁵⁸⁶ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 1. See also VI, *Annual report 2017–2018*, Melbourne, 2018, p. 36 ('Consultancy expenditure details of consultancies valued at \$10,000 or greater').

⁵⁸⁷ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 1. See also VI, *Annual report 2017–2018*, Melbourne, 2018, p. 5.

⁵⁸⁸ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 1.

In June 2018, Inspector Moran determined to reorient the VI structurally, strategically and operationally:

The new structure was designed to shift the VI from a traditional reactive legal practice approach led by Principal Solicitors to a multi-disciplinary approach with functionally aligned teams facilitating a proactive oversight presence. It was also designed to ensure the VI had adequate operational staff to deliver a legislative remit that had expanded considerably since the VI's establishment.⁵⁸⁹

The VI began its transition to the new structure and approach in September 2018, using the services of an organisational development consultant to assist it.⁵⁹⁰ The VI has informed the IOC that the transition was successful, as evidenced by positive results in the Victorian Public Sector Commission's June 2019 People Matter Survey with respect to the quality of its senior leaders, change management and ethical climate (including reporting and addressing any improper conduct).⁵⁹¹

The VI has also reported that during 2018/19 it successfully addressed the structural and cultural issues identified in the 2017 external reviews, including improvements in the reach, productivity and timeliness of its oversight and investigative activities—for example, the completion of a complex legacy investigation and new monitoring projects in relation to IBAC and the VO.⁵⁹²

However, while the June 2018 restructure envisaged an increase in the number of staff, from the then current 17 positions (including the Inspector) to a minimum 26 positions, the VI has so far been unsuccessful in seeking what it regards as the necessary funding for the desired increase.⁵⁹³

The VI considers that its 'most significant and ongoing challenge' is securing the funding necessary to cover the expansion of its legislated role, its proactive operational approach and its increased output.⁵⁹⁴ It has explained this fiscal challenge in the following way:

The new staffing profile and 2018–19 output incurred increased costs, which contributed to its first operational deficit. To help address budgetary pressures during 2019, the VI reduced its staffing to an FTE [full-time equivalent] of 14 (plus two fixed term separately funded project positions). Nonetheless, the VI's operational budget is absorbed by salaries, accommodation and departmental service fees.

This staffing reduction (achieved through attrition and carrying vacancies) is impacting the operational gains achieved through the new structure. While recognising the impact on operational delivery, the VI is prioritising seeking to avoid a further deficit ahead of seeking to fully implement the expanded FTE profile provided for in the 2018 restructure.

⁵⁸⁹ Ibid. See also VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–8, 11–15, 18–21.

⁵⁹⁰ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 1.

⁵⁹¹ Ibid.

⁵⁹² Ibid.

⁵⁹³ Ibid.

⁵⁹⁴ Ibid.

Further submissions continue to be made by the VI that reflect revised operational requirements and resourcing as at 2020. At the time of drafting the VI had not secured increased operational funding.⁵⁹⁵

The IOC notes that, under new budgetary provisions that come into operation on 1 July 2020, the VI's budget is determined in consultation with the Committee, which also reviews the VI's draft annual plan.⁵⁹⁶ Through these processes, the Committee has authority to consider the restructuring, workload and resourcing challenges identified by the VI.

Operation of the new VI structure since December 2018

The new organisational structure discussed above came into effect on 3 December 2018, although the VI has informed the IOC that due to a lack of resources the planned 'baseline' of 26 staff members has not been achieved; in fact, the number of staff has been reduced.⁵⁹⁷

In carrying out its restructure, the VI identified that a dedicated records-management officer was needed, especially given the transition to a new CMS.⁵⁹⁸ However, there is no funding for such a position; instead, the VI will engage a fixed-term project officer to undertake this transitional work.⁵⁹⁹ Nevertheless, the VI reports some improvements to its record keeping have resulted from 'stronger operational governance' and complying with the Victorian Protective Data Security Standards.⁶⁰⁰

The VI has advised that there are a number of challenges and additional costs in installing, operating and maintaining the new CMS, which, for example, depends on necessary upgrades to the VI's information and communications technology network.⁶⁰¹ The VI therefore expects the CMS project to be completed by 30 June 2020.⁶⁰² The VI has informed the IOC that its budget

is insufficient to meet external licence fees and maintenance costs associated with the upgraded network and CMS. The VI is seeking ongoing funding for this purpose. Until the new CMS is developed and implemented, internal operational requirements to manage the VI's records and quality assure its operational data and classified information are not known. Once the new systems are in place, the VI will be seeking additional funding to support the system and manage the quality of its information.⁶⁰³

⁵⁹⁵ Ibid., pp. 1–2.

⁵⁹⁶ *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) ('IALA Act 2019 (Vic)') s 2(4); *VI Act 2011* (Vic) ss 90A–90C.

⁵⁹⁷ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 3.

⁵⁹⁸ Ibid.

⁵⁹⁹ Ibid.

⁶⁰⁰ Ibid. See also OVIC, *Victorian Protective Data Security Standards V2.0*, <<https://ovic.vic.gov.au/data-protection/standards>> accessed 24 January 2020.

⁶⁰¹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 3–4.

⁶⁰² Ibid., p. 3.

⁶⁰³ Ibid., pp. 3–4.

As noted earlier, these resourcing and funding concerns can be considered by the IOC as part of its review of the VI's budget and annual plan.

In addition to creating a new organisational structure that includes Corporate Services, Integrity, Operations and Policy, and Legal Services,⁶⁰⁴ the VI has also introduced a new Operations Model, which it describes as 'a conceptual framework for the entirety of the VI's operational effort across its variegated jurisdiction'.⁶⁰⁵

The Operations Model emphasises:

- the range of escalating integrity measures the VI can use to respond to issues identified within Victoria's integrity system—including liaising and engaging with stakeholders, undertaking education initiatives, producing formal reports, making recommendations and taking follow-up oversight actions
- the intelligence value of information contained in complaints and disclosures it receives, which it can use to fashion appropriate reactive and/or proactive responses
- that the VI's investigative and inquiry activities need to contribute to effective and measured, not disproportionate, responses
- that any monitoring projects must be well targeted, properly delimited, cost-effective and complementary to the VI's regular oversight activities (such as record inspections and monitoring the exercise of coercive powers).⁶⁰⁶

4.4.2 Response to Victoria's integrity system reforms

As a small agency, the VI has found it challenging to prepare for the integrity system reforms brought about by the passage of the *IALA Act 2019* (Vic).⁶⁰⁷ Significantly, the VI has informed the IOC that until 'late July 2019, the VI only had one corporate resource to manage all corporate functions ranging from finance, procurement and HR through to facilities, security and IT management, running highly specialised infrastructure'.⁶⁰⁸ These pressures were eased somewhat with additional project funding in the 2018/19 Budget for the VI's transition to budget independence under the *IALA Act 2019* (Vic) and preparation for related accountability responsibilities (see Section 4.5.3 of this chapter).⁶⁰⁹

⁶⁰⁴ VI, *Annual report 2018-19*, Melbourne, 2019, pp. 13, 19-21.

⁶⁰⁵ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 4.

⁶⁰⁶ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 4. See also VI, *Annual report 2018-19*, Melbourne, 2019, pp. 19-21.

⁶⁰⁷ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 5-6; VI, *Annual report 2018-19*, Melbourne, 2019, pp. 26-27.

⁶⁰⁸ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 5. See also VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-8, 26-27.

⁶⁰⁹ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 5. See also Section 4.5.2 in this chapter.

The VI has also needed to prepare for the revised public interest disclosure (PID) scheme, which is now in operation. The revised scheme has increased the VI's responsibilities because:

- there are now broader conceptions of 'improper conduct' and 'detrimental action' under the *PID Act 2012* (Vic), which might mean that the VI receives more PIDs
- the VI is now authorised to receive PIDs about the majority of public sector bodies
- the VI now handles and investigates PIDs with respect to a Public Interest Monitor (who has an oversight role regarding applications for warrants or orders that could affect citizens' privacy and other civil liberties)
- the VI now handles misdirected disclosures.⁶¹⁰

In addition, the VI itself is now subject to the scheme, and PIDs can be made to a Presiding Officer of the Victorian Parliament or the IOC.⁶¹¹

Further, the VI has noted that unlike

IBAC and the Ombudsman, whose investigatory power allows some discretion, the VI must investigate any public interest complaints referred to it or determined by the VI. To date the VI has not received any funding to support its expanded function.⁶¹²

The increased responsibilities of the VI with respect to budgetary independence and the handling of PIDs are factors that can be considered by the IOC, both in its review of the VI's draft annual plan and budget and as part of its regular oversight of the performance of the agency.⁶¹³

4.4.3 Workplace culture

The VI has reported that its new senior leadership team has been able to help maintain 'a positive culture', which underlies 'an ethical, efficient, healthy and safe workplace'.⁶¹⁴ The VI has also noted that there is a positive gender balance within the agency, with, excluding the Inspector, 13 female and 3 male FTE staff, and 'all ... executive and senior management positions' held by women.⁶¹⁵

The VI has sought to reinforce its 'positive' workplace culture not only by developing new organisational values (see Box 4.2) but also by embedding complementary policies

⁶¹⁰ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, pp. 5–6; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 23, 26–27, 51, 86; *PID Act 2012* (Vic) s 14(b)(iii); *Public Interest Monitor Act 2011* (Vic) ss 3, 4 (definition of 'relevant application'), 14.

⁶¹¹ *PID Act 2012* (Vic) s 14(a).

⁶¹² VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 6; *VI Act 2011* (Vic) ss 3(1) (definition of 'public interest complaint'), 44(2).

⁶¹³ *VI Act 2011* (Vic) ss 90A–90C; *PC Act 2003* (Vic) s 7(1)(f)–(h).

⁶¹⁴ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 7.

⁶¹⁵ VI, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 2.

and practices.⁶¹⁶ Importantly, the VI has informed the IOC that its staff feel confident ‘to report any suspected improper conduct’.⁶¹⁷ This is supported by the 2019 People Matter Survey, in which the VI ‘rated very highly’ in relation to:

- senior leadership
- psychological safety climate
- confidence in being protected from reprisal for reporting improper conduct
- not tolerating improper conduct
- ability to challenge inappropriate behaviour at work.⁶¹⁸

The VI has expressed some concern, however, in meeting the challenge of maintaining a healthy work environment given the pressures of funding shortfalls and increased workloads.⁶¹⁹ In this regard, the VI notes that the People Matter Survey results showed ‘that staff were already very concerned about their current workloads, and resourcing has diminished further since the survey was conducted’.⁶²⁰ The VI has advised that it will need to reassess its outputs and manage staff workloads to prevent stress creating an unhealthy workplace.⁶²¹

616 VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 7. See also VI, *Annual report 2017–2018*, Melbourne, p. 5; VI, *Annual report 2018–19*, Melbourne, pp. 5–8.

617 VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 7.

618 Ibid.

619 Ibid.

620 Ibid.

621 Ibid.

BOX 4.2: VI's Vision, Aspirations and Values**Vision**

An integrity system that is robust and trusted.

Aspirations**Public confidence and trust in Victoria's integrity system**

- The right checks and balances are in place
- The community knows to come to the VI to protect their rights
- Intrusive and coercive powers are exercised lawfully

A robust Victorian integrity system

- Parliament has confidence in the VI
- The VI is positively influencing the conduct of integrity bodies
- The public sector is being held to account

Values

- We act with integrity in everything we do
- We demonstrate professional courage, leadership and persistence
- We are dedicated to delivering work to the highest possible standard
- We work collaboratively and respectfully with each other and with integrity bodies
- We promote and uphold the Charter of Human Rights

Source: VI, *Annual report 2018–19*, 2019, Melbourne, p. 11.

4.5 Accountability

The VI is accountable to two Victorian parliamentary committees: the IOC and the Public Accounts and Estimates Committee (PAEC).⁶²² PAEC monitors and reviews the VI's performance of its duties and functions, and examines its reports, in respect of VAGO officers.⁶²³ The IOC monitors and reviews the performance of the VI.⁶²⁴ Since

⁶²² VI, *Annual report 2018–19*, Melbourne, 2019, p. 14; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020; *PC Act 2003* (Vic).

⁶²³ VI, *Annual report 2018–19*, Melbourne, p. 14; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020; *PC Act 2003* (Vic) s 14(1)(ab)–(ad).

⁶²⁴ *PC Act 2003* (Vic) s 7(1)(f).

PAEC, rather than the IOC, is authorised to monitor and review the performance of VAGO,⁶²⁵ the following discussion only addresses the VI's accountability to the IOC.

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

- monitoring and reviewing 'the performance of the duties and functions' of the VI (other than those with respect to VAGO officers)⁶²⁶
- reporting to both Houses of Parliament 'on any matter connected with the performance' of those duties and functions (other than those with respect to VAGO officers)⁶²⁷
- examining any reports made by the VI to the IOC or the Parliament (other than reports with respect to VAGO officers)⁶²⁸
- considering any appointment of an Inspector under s 18 of the *VI Act 2011* (Vic) (including possible exercise of a veto power)⁶²⁹
- receiving, assessing and determining PIDs 'about conduct by or in the Victorian Inspectorate', and engaging an independent person to investigate public interest complaints⁶³⁰
- (from 1 July 2020) annually reviewing the VI's draft budget and annual plan, including the function to give feedback in relation to a draft annual plan⁶³¹
- (from 1 July 2020) engaging an independent auditor to carry out a performance audit of the VI at least once every four years.⁶³²

4.5.1 Regular, ongoing monitoring and review of the VI

The IOC engages in regular, ongoing monitoring and review of the VI. This includes engagement of the Chair and Committee with the Inspector and senior staff, site visits, reviews of VI annual and other reports, formal and informal attendance of the Inspector and senior staff at selected Committee meetings (for example, to provide briefings and answer questions), the conduct of hearings and undertaking of inquiries, requests for information and the consideration of any concerns over the VI's performance.

In order to maintain the independence of the VI, the IOC is prohibited from investigating, reviewing or challenging VI investigative decisions, complaint determinations, findings and recommendations.⁶³³ However, from time to time the

⁶²⁵ *PC Act 2003* (Vic) s 7(1)(f)–(h).

⁶²⁶ *PC Act 2003* (Vic) s 7(1)(f).

⁶²⁷ *PC Act 2003* (Vic) s 7(1)(g).

⁶²⁸ *PC Act 2003* (Vic) s 7(1)(h). The *VI Act 2011* (Vic) s 91 and the *PID Act 2012* (Vic) s 68 also specify what must be included in VI annual reports.

⁶²⁹ *PC Act 2003* (Vic) s 7(1)(i); *VI Act 2011* (Vic) s 19.

⁶³⁰ *PC Act 2003* (Vic) s 7(1)(ia); *PID Act 2012* (Vic) s 56A.

⁶³¹ *VI Act 2011* (Vic) ss 90A–90C.

⁶³² *VI Act 2011* (Vic) ss 90D–90E.

⁶³³ VI, *Annual report 2018–19*, Melbourne, p. 14; *PC Act 2003* (Vic) s 7(2).

IOC receives complaints about the VI. The IOC's approach is to consider whether a complaint raises any systemic issues that bear on the VI's performance (for example, the professional and timely handling of complaints) and therefore comes within the IOC's broad monitoring and review function.⁶³⁴ The IOC can then raise any concerns with the VI and, if necessary, seek further information, explanations or assurances. It can also make informal and formal recommendations to the VI. During 2018/19, the IOC received one complaint about the VI, which was closed due to insufficient information being provided by the complainant.

4.5.2 Receipt, handling, assessment and investigation of public interest disclosures about the VI

From 1 January 2020, the IOC has had the function of receiving, handling and assessing public interest disclosures (PIDs) about the VI and its officers, including the Inspector.⁶³⁵ If the IOC determines that a disclosure is a public interest complaint, it must (unless a relevant exception applies) engage an independent person to investigate it.⁶³⁶ The conferral of this jurisdiction and functions on the IOC has remedied a previous legislative gap concerning the accountability of the VI.

The IOC has procedures in place for handling PIDs about the VI.⁶³⁷ They are compliant with the applicable legislation and regulations and consistent with the Parliament of Victoria's PID procedures and, as appropriate, with IBAC's guidelines for handling PIDs.⁶³⁸

4.5.3 Review of VI budget and annual plan

As explained in Chapter 1, the VI must determine its budget and annual plan in consultation with the IOC and cause its finalised annual plan to be transmitted to Parliament before the beginning of the financial year to which the annual plan relates—that is, before 1 July 2020.⁶³⁹ The VI consulted with the Manager of the IOC, on behalf of the Committee, regarding the requirements, expectations, format and time lines with respect to the draft annual plan and budget.⁶⁴⁰ The VI also undertook preparatory and 'high level work' with the DPC and the Department of Treasury and Finance regarding the VI's transition to budgetary independence.⁶⁴¹ At the time of publication, the Committee had received the VI's finalised annual plan, which was tabled in Parliament

⁶³⁴ *PC Act 2003* (Vic) s 7(1)(f).

⁶³⁵ *PC Act 2003* (Vic) s 7(1)(ia); *PID Act 2012* (Vic) ss 12, 14(a), 21, 31B, 56A and pt 4A.

⁶³⁶ *PID Act 2003* (Vic) ss 33A, 33E (exceptions).

⁶³⁷ IOC, *Public interest disclosure procedures*, 2020.

⁶³⁸ *PC Act 2003* (Vic); *PID Act 2012* (Vic); *Public Interest Disclosures Regulations 2019* (Vic); Parliament of Victoria, *Public Interest Disclosures Act 2012 (Vic): Procedures for making a disclosure about a Member of Parliament*, Melbourne, January 2020, <https://www.parliament.vic.gov.au/images/stories/Public_Interest_Disclosure_Procedures_January_2020.pdf> accessed 3 April 2020; IBAC, *Guidelines for handling public interest disclosures*, Melbourne, 2020, <<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>> accessed 26 January 2020.

⁶³⁹ *VI Act 2011* (Vic) s 90B(5).

⁶⁴⁰ VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 5.

⁶⁴¹ *Ibid.*

on 16 June 2020.⁶⁴² Following the handing down of the 2020/21 State Budget, on 25 November 2020 the Inspector advised the Committee that his agency's annual plan would be reviewed and updated in line with the VI's budget outcome.

The VI's continuing concerns over funding

At a public hearing on 17 August 2020, Inspector Moran stated:

I think the Committee and Government are aware of our critical needs if we are to effectively perform our functions. With the staffing that we have and with the funding we have basically all we can do is the work we have to do—our mandatory work ...⁶⁴³

This position is reflected in the final annual plan for 2020/21 that the VI tabled in Parliament:

Within our current budget allocation, we will give priority to mandatory functions and complaints, and apply a risk based model to our monitoring and other legislative functions in accordance with available resources.⁶⁴⁴

The annual plan reiterates that the VI will prioritise mandatory functions such as public interest complaint investigations and agency site inspections,⁶⁴⁵ and only pursue preliminary inquiries and own motion investigations 'where it is appropriate and it has sufficient resources'.⁶⁴⁶ Further, the VI will only be able to monitor IBAC's compliance with its governing legislation, the agency's exercise of its PID functions and the quality of its procedures and policies, by attending to any issues identified through assessing complaints and notifications, rather than through more systematic 'monitoring projects'.⁶⁴⁷ The VI has also stated that, given funding constraints, it will take a similar, limited, approach to its oversight of the VO's and OVIC's procedural fairness compliance.⁶⁴⁸ Finally, the VI advises that its funding does not allow it to 'deliver education programs',⁶⁴⁹ programs it recognises as an important part of efforts to prevent corruption and other misconduct in Victoria.⁶⁵⁰

To address the VI's budget deficit position, the VI sought additional ongoing funding for 7.6 FTE (\$1.141 m annually) and for general operating expenses (up to \$1.018 m annually). The total budget requested is \$7.864 m over four years and \$2.082 m ongoing. In addition to this output funding, the VI also sought asset funding of \$0.15 m to fund a minor capital works allowance as part of the move to budget independence.⁶⁵¹

⁶⁴² VI, *Annual plan 2020–21*, Melbourne, June 2020.

⁶⁴³ Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, p. 18.

⁶⁴⁴ VI, *Annual plan 2020–21*, Melbourne, 2020, p. 6.

⁶⁴⁵ *Ibid.*, passim.

⁶⁴⁶ *Ibid.*, p. 7.

⁶⁴⁷ *Ibid.*, p. 8.

⁶⁴⁸ *Ibid.*

⁶⁴⁹ *Ibid.*, p. 9.

⁶⁵⁰ *Ibid.*, p. 14.

⁶⁵¹ Mr Eamonn Moran PSM QC, Inspector, VI, correspondence, 22 October 2020.

The VI will receive \$6.6 m in funding from the 2020/21 Victorian State Budget.⁶⁵²

4.5.4 Performance audits of the VI

The IOC must recommend to Parliament the appointment of an independent performance auditor to conduct a performance audit of the VI at least once every four years.⁶⁵³

The timeline for the IOC's preparations for the performance audit, required consultation with the VI, appointment of the auditor and conduct of the audit itself are all matters due to be considered by the Committee during the 2020/21 financial year.

4.6 Conclusion

The VI exercises a wide range of vital complaint-handling, investigative and oversight functions in relation to several Victorian public sector agencies and related bodies.

The Committee notes improvements to the VI's internal governance structures and processes, including the adoption of a systematic, agency-wide 'Operations Model'. It also recognises enhancements to its staff capability with the recruitment of additional complaint assessment and investigative staff. Further, it acknowledges the benefits expected to result from the upgrading of its CMS and the introduction of a database to make the review of coercive power notifications more efficient. It is also pleased the VI is well-prepared to fulfil the additional obligations resulting from Victoria's 2019 integrity system reforms.

With regard to the VI's public information and education capacity and activities, the Committee recognises the significant improvements made to the agency's website and related digital content. However, the Committee has recommended that the VI produce a number of targeted online videos explaining, for example, the role of the VI in the integrity system and the processes for making complaints or public interest disclosures. It also recommends that, subject to the receipt of necessary funding, the VI create a dedicated communications and publishing officer position to enhance its communications performance.

A common thread running through the VI's evidence to the Committee is the agency's concern that, without additional funding, it will not be able to perform its wide-ranging oversight functions at an optimal level. The Committee considered these concerns when it reviewed the VI's draft annual plan and budget for the financial year 2020/21.

⁶⁵² Department of Treasury and Finance (Victoria), *Victorian Budget 20/21: service delivery* (Budget Paper No. 3), Melbourne, May 2020, p. 395

⁶⁵³ *VI Act 2011* (Vic) s 90D.

5 Victorian Ombudsman

5.1 Introduction

The Victorian Ombudsman (VO) is an independent officer of the Parliament of Victoria responsible for investigating and resolving complaints about the administrative actions of Victorian government agencies. It plays a key role in Victoria's integrity system by:

- providing a timely, efficient, effective, flexible and independent means of resolving complaints about the administrative actions of authorities
- identifying, investigating, exposing and preventing maladministration
- assisting in the identification, investigation, exposure and prevention of improper conduct and corrupt conduct
- assisting in improving the quality of administration and complaint-handling practices and procedures of authorities
- facilitating the education of the Victorian community and the public sector about matters relating to the functions of the VO.⁶⁵⁴

Its jurisdiction includes state government departments, statutory authorities and local councils.

The VO can investigate in response to a single complaint⁶⁵⁵ or use its 'own motion' powers to initiate an investigation.⁶⁵⁶ It *must* investigate a public interest complaint,⁶⁵⁷ and *may* investigate a complaint or notification, within the meaning of the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* ('*IBAC Act 2011 (Vic)*'),⁶⁵⁸ that has been referred by the Independent Broad-based Anti-corruption Commission (IBAC). Parliament may also refer certain matters to the VO for investigation.⁶⁵⁹

Ms Deborah Glass OBE is the current VO, having been appointed for a 10-year term in March 2014. She is supported by a Deputy Ombudsman, Ms Megan Philpot, and approximately 106 full-time equivalent (FTE) staff members.⁶⁶⁰

⁶⁵⁴ *Ombudsman Act 1973 (Vic)* s 2A.

⁶⁵⁵ *Ombudsman Act 1973 (Vic)* s 15B.

⁶⁵⁶ *Ombudsman Act 1973 (Vic)* s 16A.

⁶⁵⁷ *Ombudsman Act 1973 (Vic)* s 15C, subject to the exceptions in ss 15D and 15E.

⁶⁵⁸ *Ombudsman Act 1973 (Vic)* ss 15B, 16C–16D; *IBAC Act 2011 (Vic)* s 73.

⁶⁵⁹ *Ombudsman Act 1973 (Vic)* s 16.

⁶⁶⁰ Victorian Ombudsman (VO), *Annual report 2019*, Melbourne, 2019, p. 68.

2018/19 was a significant year for the VO in terms of legislative change, with the *Ombudsman Act 1973* (Vic) undergoing its first substantive review since 1973. The amendments clarified and modernised the operation of the Act by:

- conferring education and prevention⁶⁶¹ and alternative dispute resolution functions⁶⁶² on the VO
- giving the VO the ability to review complaint-handling practices and procedures across the public sector⁶⁶³
- providing the VO with jurisdiction over publicly funded services⁶⁶⁴
- giving the VO greater flexibility to refer complaints, share information and collaborate with the public sector.⁶⁶⁵

Since 1 January 2020, the VO has had an expanded role to receive public interest disclosures (PIDs) about public sector bodies, following amendments to the *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)').⁶⁶⁶

The *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) ('IALA Act 2019 (Vic)') also consolidated the VO's status as an independent officer of Parliament, with its annual appropriation included as part of the Parliamentary Appropriation Bill from 2019/20.⁶⁶⁷

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

5.2 Complaint handling, investigations and oversight

5.2.1 Overview

The Integrity and Oversight Committee (IOC) notes the steady rise in the number of contacts and complaints received by the VO over the past five years (see Figure 5.1).

⁶⁶¹ *Ombudsman Act 1973* (Vic) ss 2A(b)–(c), 2A(e), 13AA(1)(b).

⁶⁶² *Ombudsman Act 1973* (Vic) pt IIIAC.

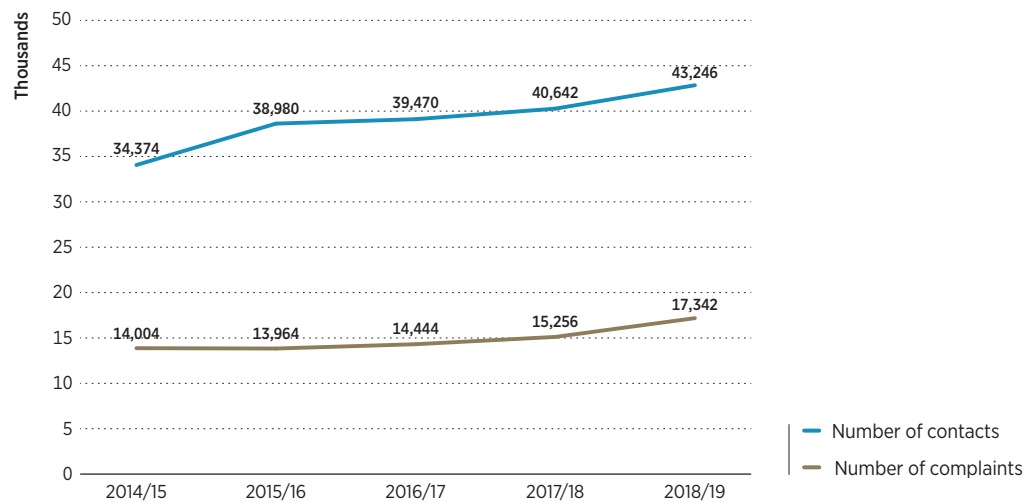
⁶⁶³ *Ombudsman Act 1973* (Vic) pt IIIAB.

⁶⁶⁴ *Ombudsman Act 1973* (Vic) ss 2(1)(bb) amended the definition of 'authority' to include 'public body' and inserted a new definition of 'public body'; s 2(2A) expanded the definition of 'public body'.

⁶⁶⁵ *Ombudsman Act 1973* (Vic) pt VAB.

⁶⁶⁶ *Public Interest Disclosures Act 2012* (Vic) s 13(2)(b).

⁶⁶⁷ *Ombudsman Act 1973* (Vic), ss 24A–24C.

Figure 5.1 Number of contacts and complaints received by the VO

Source: VO, *Annual report 2019*, Melbourne, 2019, p. 14; VO, *Annual report 2018*, Melbourne, 2018, p. 16.

In 2018/19, the VO:

- received 43,246 contacts⁶⁶⁸
- received 17,342 complaints that fell within its jurisdiction, an increase of 14% from the previous year⁶⁶⁹
- finalised 23,643 matters,⁶⁷⁰ approximately 5% more than last year
- finalised 5,048 enquiries and 31 investigations⁶⁷¹
- made 43 recommendations to public organisations.⁶⁷²

Complaints about Corrections, Justice and Regulation⁶⁷³ increased by 17% from 5,389 in 2017/18 to 6,293 in 2018/19.⁶⁷⁴ In 2017/18 and 2018/19, the VO received, respectively, 306 and 474 more complaints about the Registry of Births, Deaths and Marriages and Fines Victoria, respectively.⁶⁷⁵

⁶⁶⁸ VO, *Annual report 2019*, Melbourne, 2019, p. 14.

⁶⁶⁹ Ibid., pp. 14, 20.

⁶⁷⁰ A 'matter' is any contact dealt with by an Ombudsman officer other than a redirected contact: VO, *Annual report 2019*, Melbourne, 2019, p. 15.

⁶⁷¹ VO, *Annual report 2019*, Melbourne, 2019, p. 16.

⁶⁷² Ibid., p. 17.

⁶⁷³ Corrections, Justice and Regulation includes Corrections Victoria, the Department of Justice and Community Safety, Justice Health (which provides health services to public prisons), Fines Victoria, the Sheriff's Office and the Victorian Commission for Gambling and Liquor Regulation: VO, *Annual report 2019*, Melbourne, 2019, p. 28.

⁶⁷⁴ VO, *Annual report 2019*, Melbourne, 2019, pp. 28–29. The Ombudsman advised that as Fines Victoria commenced on 31 December 2017, the complaints received about Civic Compliance Victoria (Fines Victoria's predecessor) have been added to those received by Fines Victoria in the 2017/18 financial year: Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 7.

⁶⁷⁵ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 7.

The VO's 2019 annual report noted that 'prisons continue to account for a majority of these complaints',⁶⁷⁶ with one possible explanation being an increase in the Victorian prison population.⁶⁷⁷ The surge in complaints in this sector could also be attributed to Fines Victoria and the Registry of Births, Deaths and Marriages experiencing 'operational challenges' and the public becoming increasingly aware of the VO's role via greater media exposure to its tabled reports.⁶⁷⁸

During 2017/18 and 2018/19, the VO conducted a number of significant investigations. They included investigations into historic sex abuse at Puffing Billy,⁶⁷⁹ and into State Trustees,⁶⁸⁰ completed 'at a fraction of the cost of a royal commission'.⁶⁸¹

5.2.2 Protected disclosures and the new public interest disclosures regime

In 2018/19, the VO was referred 89 protected disclosure complaints (involving 195 allegations) for investigation, almost triple the number referred in 2015/16.⁶⁸² Of the 89 complaints, 21 were investigated, with two resulting in public reports and six resulting in private reports to the relevant organisation and minister.⁶⁸³ Thirteen were discontinued following further investigation.⁶⁸⁴

The VO also notified 48 assessable disclosures to IBAC for assessment.⁶⁸⁵

The Ombudsman has informed the IOC that she expects her office's public interest disclosure work to significantly increase after 1 January 2020 due to its 'new status as a general receiving entity, the introduction of misdirected disclosure provisions, the expansion of the definition of "improper conduct" and [its new authority] to investigate private and non-government organisations performing a public function'.⁶⁸⁶

The 2019 annual report noted that the number of complaints the VO must notify to IBAC is likely to increase, as is the number of complaints referred by IBAC to the VO for investigation.⁶⁸⁷ As a consequence, the VO has undertaken significant preparatory work over the past year, including training its staff and revising its public interest disclosures

⁶⁷⁶ VO, *Annual report 2019*, Melbourne, 2019, p. 29.

⁶⁷⁷ Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 7.

⁶⁷⁸ Ibid.

⁶⁷⁹ VO, *Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies*, Melbourne, June 2018.

⁶⁸⁰ VO, *Investigation into State Trustees*, Melbourne, June 2019.

⁶⁸¹ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, p. 9.

⁶⁸² VO, *Annual report 2019*, Melbourne, 2019, p. 53.

⁶⁸³ Ibid., p. 56.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid.

⁶⁸⁶ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 15.

⁶⁸⁷ VO, *Annual report 2019*, Melbourne, 2019, p. 59.

policy, procedure, templates, checklists, information sheets, case management system and workflows.⁶⁸⁸

The VO has engaged extensively with IBAC, the Victorian Inspectorate (VI) and the Department of Premier and Cabinet (DPC) to ensure a consistent understanding of the legislative changes by, for example, helping to inform the development of IBAC's forums relevant to PID Coordinators.⁶⁸⁹ It continues to engage with DPC to 'resolve errors and complicated amendments within the legislation'.⁶⁹⁰

5.2.3 The role of the Early Resolution Team

The Early Resolution Team (ERT) was introduced in October 2016 to resolve complaints more efficiently and effectively.⁶⁹¹ The ERT focuses on 'straightforward jurisdictional complaints that are likely to be informally resolved (with a practical outcome) within 30 days'.⁶⁹² The team has grown from ten Investigation Officers (IOs), three Senior Investigation Officers (SIOs) and 2.5 Assistant Ombudsmen in 2016 to 16.75 IOs, three SIOs, two managers and two Assistant Ombudsmen at present.⁶⁹³

In 2019, the ERT revised its management structure and introduced several measures 'to drive quality, decision making and efficient case management'.⁶⁹⁴ These included the development and implementation of case management system workflows and an upgrade in the VO's case management system, Resolve.⁶⁹⁵

Currently, the team deals with approximately 90% of all approaches and complaints to the office.⁶⁹⁶ The VO advised that, in 2017, the ERT dealt with an average of 2,400 incoming calls per month, with the average wait time being over two minutes and 19.3% of calls being abandoned by the caller prior to that point.⁶⁹⁷ In 2019, the ERT dealt with an average of 2,850 calls per month with a reduction in wait time to 50 seconds and a 9% call abandonment rate.⁶⁹⁸

While noting the increasing workload of the office, the IOC is encouraged by the VO's strategic approach to the deployment of its resources to resolve complaints in a timely manner.

⁶⁸⁸ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 15.

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid.

⁶⁹¹ VO, *Annual report 2018*, Melbourne, 2018, p. 24.

⁶⁹² VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 2.

⁶⁹³ Ibid.

⁶⁹⁴ Ibid., p. 6.

⁶⁹⁵ Ibid.

⁶⁹⁶ VO, *Annual report 2018*, Melbourne, 2018, p. 24.

⁶⁹⁷ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 1.

⁶⁹⁸ Ibid.

5.2.4 Output performance measures

For the 2017/18 and 2018/19 financial years, the VO had five output performance measures.

Table 5.1 VO output performance measures for 2017/18 and 2018/19

Performance measure	2017/18 target	2017/18 actual	2018/19 target	2018/19 actual
Jurisdictional complaints finalised	14,000	15,240	14,000	17,025
Proportion of jurisdictional complaints independently investigated by the VO	25%	26%	25%	30%
Proportion of jurisdictional complaints where the original outcome is set aside by a review undertaken in accordance with the VO's internal review policy	<1.5%	0.09%	<1.5%	0.07%
Recommendations accepted by agencies upon completion of investigations	95%	98%	95%	98%
Complaints resolved within 30 calendar days of receipt	95%	89%	95%	89%

Source: VO, *Annual report 2018*, Melbourne, 2018, p. 83; VO, *Annual report 2019*, Melbourne, 2019, p. 77.

The VO met all but one of its performance measures in both years.

The VO did not meet its 95% target for the percentage of complaints resolved within 30 calendar days of receipt, from 2014/15 to 2018/19, despite the introduction of the ERT.⁶⁹⁹ In its *Report into Victorian oversight agencies 2016/17*, the Accountability and Oversight Committee (AOC) recommended that the Victorian Government review the appropriateness of this target measure.⁷⁰⁰

The VO does not consider this measure to be appropriate, since, in its view, it is based on the flawed assumption that all complaints and all complainants are identical.⁷⁰¹ In other words, the VO considers that the measure does not reflect how it tailors its service on a case-by-case basis, including the accommodation of the 'complex needs of vulnerable members of the community'.⁷⁰² The IOC appreciates that specific measures are unable to provide a one-size-fits-all approach and concurs with the VO's view that not all complaints and complainants are the same.

The VO has advised that its service delivery approach also sometimes means that, rather than dismissing a complaint as 'premature' because the complainant has not

⁶⁹⁹ VO, *Annual report 2015*, Melbourne, 2015, p. 57; VO, *Annual report 2016*, Melbourne, 2016, p. 51; VO, *Annual report 2017*, Melbourne, 2017, p. 73; VO, *Annual report 2018*, Melbourne, 2018, p. 83; VO, *Annual report 2019*, Melbourne, 2019, p. 77.

⁷⁰⁰ Parliament of Victoria, Accountability and Oversight Committee (AOC), *Report into Victorian oversight agencies 2016/17*, Melbourne, 2018, p. 31.

⁷⁰¹ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 2.

⁷⁰² Ibid.

yet approached the relevant agency concerned, it may work with both them and the agency to resolve the complaint.⁷⁰³

The IOC commends this approach, and notes that it is consistent with the VO's *Service delivery charter* to provide 'an accessible and responsive service that is ... focused on practical and meaningful outcomes'.⁷⁰⁴

The VO has advised the IOC that it is working with the Victorian Department of Treasury and Finance (DTF) to recast its 'Budget Paper 3' (BP3) measures to 'better reflect the complex and varied nature' of the VO's work.⁷⁰⁵ These new performance measures will come into effect for the 2020/21 financial year.⁷⁰⁶ The IOC agrees that more nuanced and realistic measures would better reflect the VO's efficiency. The IOC notes that changes have been made to IBAC's BP3 investigation performance measures for similar reasons.⁷⁰⁷

5.2.5 VO recommendations

As part of its accountability framework, the VO 'actively monitors the implementation of recommendations'.⁷⁰⁸ The Ombudsman notes that the 'level and nature of continuing complaints' can be one way of assessing satisfactory implementation.⁷⁰⁹ The VO can request progress reports from agencies⁷¹⁰ and, where no progress has been made, will ask agencies to provide reasons.⁷¹¹ It may also report to Parliament where it considers no progress has been made within a reasonable time frame.⁷¹²

The VO tabled a public report⁷¹³ in July 2018 examining the progress of 123 recommendations made by the VO between 1 April 2016 and 31 March 2018. The report highlighted instances where there has been progress, or a lack of progress, in implementing these recommendations. The IOC is pleased that the VO continues to actively review the effectiveness of its recommendations and seeks to hold public authorities to account regarding their implementation.

⁷⁰³ Ibid.

⁷⁰⁴ VO, *Service delivery charter*, Melbourne, n.d., p. 1.

⁷⁰⁵ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 3.

⁷⁰⁶ Department of Treasury and Finance (Victoria), *Victorian Budget 20/21: service delivery* (Budget Paper No. 3), Melbourne, May 2020, p. 397.

⁷⁰⁷ Independent Broad-based Anti-corruption Commission (IBAC), Response to Integrity and Oversight Committee questions on notice, 17 February 2020, p. 34; IBAC, *Annual report 2019*, Melbourne, 2019, p. 32.

⁷⁰⁸ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 2.

⁷⁰⁹ Ibid.

⁷¹⁰ *Ombudsman Act 1973* (Vic) s 23(4).

⁷¹¹ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 2.

⁷¹² *Ombudsman Act 1973* (Vic) s 23(4)–(5).

⁷¹³ VO, *Ombudsman's recommendations—second report*, Melbourne, 2018.

In 2017/18 and 2018/19, 98% of the VO's recommendations were accepted by agencies.⁷¹⁴

The IOC sought clarification from the VO on the 2% of recommendations that were not accepted in each year and the reasons they were not accepted, as described below.

In its November 2017 report titled *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, the VO made the following recommendation:

The General Manager at DPFC [Dame Phyllis Frost Centre]:

- immediately cease the practice (by whatever name) of strip searching all women before and after contact visits and following external appointments
- replace it with a Charter-compliant practice of strip searching based on intelligence and risk assessment.⁷¹⁵

The Secretary of the Department of Justice and Regulation rejected this recommendation, stating that the Department 'does not consider current practice with respect to observation and supervision of women changing into overalls before contact visits amounts to "strip searching"' and that 'current supervision, observation and strip searching is Charter compliant'.⁷¹⁶

The VO has advised that the recommendation has, in effect, been implemented by the Department, with new technology being used as an alternative, thereby lessening the practice of strip searching in the women's prison system.⁷¹⁷

In its April 2018 report titled *Investigation into Maribyrnong City Council's internal review practices for disability parking infringements*, the Council accepted two of the three VO recommendations. However, the Council did not fully accept the third recommendation that it should:

[p]rovide an ex gratia payment to the individuals in case studies 1-5 for the cost of the infringements and, where applicable, court costs paid.⁷¹⁸

The Council paid a refund to the subject of case study 3 but did not accept the VO's third recommendation on the basis that

the infringements relevant to each of the Case Studies have been finalised, either by payment of the original infringement or by enforcement through the Magistrates' Court. ... [T]here is no legal basis to refund any amounts or to otherwise compensate the individuals concerned.⁷¹⁹

⁷¹⁴ VO, *Annual report 2018*, Melbourne, 2018, p. 83; VO, *Annual report 2019*, Melbourne, 2019, p. 77.

⁷¹⁵ VO, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, Melbourne, 2017, p. 103.

⁷¹⁶ Ibid.

⁷¹⁷ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 11.

⁷¹⁸ VO, *Investigation into Maribyrnong City Council's internal review practices for disability parking infringements*, Melbourne, 2018, p. 34.

⁷¹⁹ Ibid.

A single recommendation comprised the 2% not accepted during 2018/19. This recommendation was directed to the Minister for Housing, Disability and Ageing and the Minister for Mental Health to

[i]nvest in secure therapeutic alternatives to prison for people found unfit to stand trial and/or not guilty because of mental impairment under the CMIA [*Crimes Mental Impairment and Unfitness to be Tried Act 1997* (Vic)]. Priority should be given to the service gaps identified in this report and the Victorian Law Reform Commission's 2014 report.⁷²⁰

In its June 2020 report on recommendations, the VO reported that the Government had accepted this recommendation.⁷²¹

5.2.6 Implementing OPCAT in Victoria

The VO tabled a report titled *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people* on 5 September 2019,⁷²² its second report on OPCAT in recent years. 'OPCAT', which refers to the United Nations (UN) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, aims to prevent the mistreatment of people in detention.⁷²³

Under OPCAT, State parties agree to establish an independent National Preventive Mechanism⁷²⁴ (NPM) to conduct inspections of all places of detention and closed environments and to allow international inspections by the UN Subcommittee on the Prevention of Torture.⁷²⁵ The Commonwealth Government ratified OPCAT on 21 December 2017 and made a declaration to postpone the implementation of its obligation to establish an NPM for three years.⁷²⁶ In order to comply with OPCAT, Victoria must open places of detention to the UN Subcommittee for inspection and appoint one or more NPMs by December 2020. To date, only the Commonwealth and Western Australia have nominated NPMs for their respective jurisdictions.⁷²⁷

The VO's report recommended that the Ombudsman's office be designated as the NPM for Victoria under the 'centralised model'.⁷²⁸ The VO advised the IOC that the Victorian Government is yet to provide an indication of which agency or agencies will

⁷²⁰ VO, *Investigation into the imprisonment of a woman found unfit to stand trial*, Melbourne, 2018, p. 66.

⁷²¹ VO, *Ombudsman's recommendations—third report*, Melbourne, 2020, p. 18.

⁷²² VO, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people*, Melbourne, 2019.

⁷²³ UN General Assembly, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT), A/RES/57/199, 18 December 2002.

⁷²⁴ OPCAT, art 3.

⁷²⁵ OPCAT, art 12.

⁷²⁶ VO, *Annual report 2019*, Melbourne, 2019, p. 24.

⁷²⁷ Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), Canberra, 2019, p. 3.

⁷²⁸ VO, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people*, Melbourne, 2019, p. 17.

be designated as such.⁷²⁹ According to the Commonwealth Ombudsman's baseline assessment of Australia's OPCAT readiness, released in September 2019,

Victoria has also advised it is working towards nominating its NPM, including considering the suitability of new bodies or the adaptation of existing bodies with a new legislative mandate to give effect to its OPCAT obligations.⁷³⁰

If the Victorian Government accepts and resources the VO's recommendation, the VO has informed the Committee that it would require an additional 12 FTE staff and an operating budget of approximately \$2.5 million.⁷³¹ The NPM would be organised in a separate team within the VO's office.⁷³² As in many other ombudsman jurisdictions, including New Zealand's, the proposed NPM within the VO would complement, not replace, its existing complaints and investigation functions.⁷³³

However, the VO emphasised that if her office is not given additional funding, 'this would have a detrimental impact both on the implementation of OPCAT (and Victoria's international human rights reputation) and the Ombudsman's other statutory responsibilities'.⁷³⁴

The IOC notes that the VO has already conducted several OPCAT-style inspections, with the agency already having many of the powers that are necessary to effectively acquit the responsibilities of an NPM.⁷³⁵ According to the Commonwealth Ombudsman's snapshot assessment of OPCAT readiness, of all the potential oversight and inspection bodies that exist in Victoria, the VO appears to be the most suitable.⁷³⁶ For these reasons, the IOC supports the designation of the VO as Victoria's NPM.

RECOMMENDATION 7: That the Victorian Government support the designation of, and adequately resource, the Victorian Ombudsman as Victoria's National Preventive Mechanism.

⁷²⁹ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 14.

⁷³⁰ Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, Canberra, 2019, p. 3.

⁷³¹ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 14.

⁷³² Ibid.

⁷³³ Ibid.

⁷³⁴ Ibid.

⁷³⁵ The VO has the powers to fulfil an NPM mandate in all places of detention except police cells as the VO does not have jurisdiction over Victoria Police. However, it does have jurisdiction over the Melbourne Custody Centre as Victoria Police has contracted out its operation and the contractor falls within the scope of the *Ombudsman Act 1973* (Vic): Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, Canberra, 2019, p. 39.

⁷³⁶ Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, Canberra, 2019, Appendix 3.8.

5.3 Public information and education

5.3.1 Public sector training

On 1 January 2020, the VO received the legislated function of providing education and training to the Victorian community and the public sector about matters relating to the functions of the Ombudsman.⁷³⁷ This was a recommendation of the AOC's 2017 *Inquiry into education, training and communications initiatives of Victorian oversight agencies* report.⁷³⁸

The VO offers training on 'Good complaint handling', 'Dealing with challenging behaviour' and 'Dealing with conflicts of interest', commencing respectively in late 2016, May 2017 and August 2018.⁷³⁹ Participants could either register for these sessions or request a workshop tailored specifically for their requirements.⁷⁴⁰ While the latter results in a more effective learning experience, it is also proving to be a resourcing challenge for the VO due to the level of customisation required.⁷⁴¹

As these three programs are still 'relatively new', the VO has advised that it is not yet in a position to measure their 'longer-term systemic impact'.⁷⁴² However, the VO does collect feedback from agencies which indicates that the programs are beneficial and effective.⁷⁴³

Further, the VO has found that some agencies have consistently encouraged their staff to attend its workshops, suggesting that the training programs have been received positively.⁷⁴⁴ This is corroborated by the current participant satisfaction rate of 91%.⁷⁴⁵

The VO is proposing to include a minimum satisfaction rate of 85% as the target in its revised BP3 measures, which takes into account any changes to its training programs.⁷⁴⁶ Although it currently achieves a satisfaction rate of 91%, the programs have only been in operation for two years.⁷⁴⁷ Accordingly, the current sample size is insufficient for the VO to be confident that this higher satisfaction rate is 'sustainable over an extended period'.⁷⁴⁸

⁷³⁷ *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) ('IALA Act 2019 (Vic)') s 151; *Ombudsman Act 1973* (Vic) s 13AA(1)(b)).

⁷³⁸ Parliament of Victoria, Accountability and Oversight Committee (AOC), *Inquiry into education, training and communications initiatives of Victorian oversight agencies*, Melbourne, 2017, pp. 46, 54.

⁷³⁹ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 10.

⁷⁴⁰ *Ibid.*, p. 9.

⁷⁴¹ *Ibid.*

⁷⁴² *Ibid.*, p. 10.

⁷⁴³ *Ibid.*

⁷⁴⁴ *Ibid.*

⁷⁴⁵ *Ibid.*

⁷⁴⁶ *Ibid.*; VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 2.

⁷⁴⁷ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 2.

⁷⁴⁸ *Ibid.*

It is notable that education and training to support improvements to public sector administration and their complaint-handling processes are not mandatory in Victoria. In Queensland, all public officials must undertake education and training about public sector ethics (of which conflicts of interest form one component) under the *Public Sector Ethics Act 1994* (Qld).⁷⁴⁹ In Western Australia, ‘accountable and ethical decision making’ training is mandatory for all public sector employees via an administrative instruction of the Public Sector Commissioner.⁷⁵⁰

The proportion of Victorian Government departments and agencies that have participated in one or more of the VO’s education programs is 18%.⁷⁵¹ The IOC considers there is a considerable opportunity for education to support improvements in public sector administration and complaints handling. Some of the initiatives the VO is considering include developing further training programs, guides and materials on best practices (for example, administrative decision-making), engaging in more outreach work with ‘Aboriginal communities and other hard-to-reach groups’,⁷⁵² and utilising its existing relationships with community legal centres to assist disadvantaged clients.⁷⁵³ However, the VO has informed the Committee that her office is insufficiently resourced to be more proactive in this area.⁷⁵⁴

5.3.2 Engagement efforts

The Ombudsman has reported that a lack of adequate funding has limited the VO’s outreach ability.⁷⁵⁵ In the absence of dedicated outreach staff, the VO has had to rely on staff undertaking engagement work in addition to their core duties.⁷⁵⁶

The VO trialled a regional hub program in Geelong during the first half of 2019 with approximately 50 people attending 18 drop-in sessions to discuss their complaints with VO staff.⁷⁵⁷ While the initiative was described by the VO as ‘moderately successful’,⁷⁵⁸ a stronger turnout had been hoped for given that the sessions were promoted across local radio, newspapers and social media.⁷⁵⁹ However, ‘it was also apparent that those people who attended tended to come with more complex complaints and were grateful for the face-to-face interaction’.⁷⁶⁰

⁷⁴⁹ *Public Sector Ethics Act 1994* (Qld) s 12K.

⁷⁵⁰ WA Public Sector Commission, *Commissioner’s Instruction No. 8—Codes of conduct and integrity training*, Perth, 3 July 2012.

⁷⁵¹ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 9.

⁷⁵² VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 3.

⁷⁵³ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, p. 12.

⁷⁵⁴ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 9.

⁷⁵⁵ VO, *Annual report 2018*, Melbourne, 2018, p. 5.

⁷⁵⁶ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 4.

⁷⁵⁷ VO, *Annual report 2019*, Melbourne, 2019, p. 60.

⁷⁵⁸ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 11.

⁷⁵⁹ *Ibid.*

⁷⁶⁰ *Ibid.*

Given the resource-intensive nature of the Geelong Hub, the VO is still attempting to strike the right balance between in-person engagement and facilitating the complaint-handling process via telephone, email or its website.⁷⁶¹

Other outreach initiatives by the VO in 2019 included:

- visiting Ballarat eight times to participate in talk-back radio on ABC Statewide Drive
- an Ombudsman stall at the Midsumma Carnival
- sponsoring and participating in Law Week activities and the Financial and Consumer Rights Council's annual conference
- publishing short videos on YouTube
- the Ombudsman and her staff participating in more than 50 presentations to, or discussions with, community groups, students, community legal centres and government and non-government organisations.⁷⁶²

5.3.3 Public awareness and understanding

In evidence given before the AOC in August 2017, the Ombudsman expressed her view that public understanding of her role and office was limited.⁷⁶³ A community survey commissioned in June 2018 confirmed this lack of public understanding.⁷⁶⁴

Similarly, earlier in 2020, the VO informed the IOC:

One of our main challenges is that there are numerous Ombudsman-type bodies that use the Ombudsman title, and it is difficult to get 'cut through' that our office takes complaints about local and state government-related organisations. It is not enough to simply raise 'awareness' of the office, as we also need to increase 'understanding' of our role. Otherwise, we will receive an increase in complaints that we are not able to deal with (non-jurisdictional complaints), whereas our aim is to increase the number of complaints that we are able to assist with (jurisdictional complaints).⁷⁶⁵

Nevertheless, the VO has observed an increase in the proportion of jurisdictional complaints it receives, compared with the number of non-jurisdictional complaints, as a result of its efforts to increase public understanding.⁷⁶⁶

⁷⁶¹ Ibid.

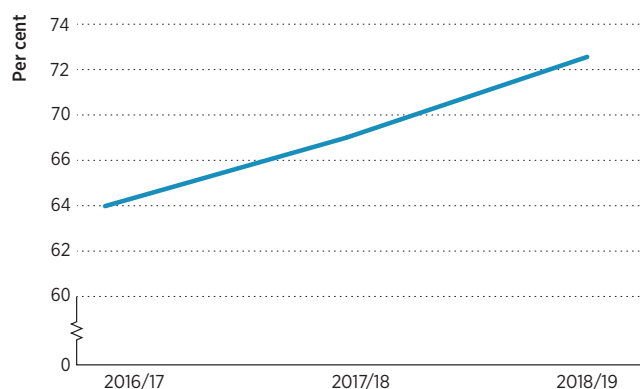
⁷⁶² Ibid., pp. 4–5.

⁷⁶³ Parliament of Victoria, AOC, *Inquiry into education, training and communication initiatives of Victorian oversight agencies*, Melbourne, 2017, p. 47.

⁷⁶⁴ VO, *Community survey*, Melbourne, 19 September 2018, <<https://www.ombudsman.vic.gov.au/News/Media-Releases/Community-survey>> accessed 30 January 2020.

⁷⁶⁵ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, pp. 3–4.

⁷⁶⁶ Ibid., p. 4.

Figure 5.2 Percentage of complaints received within the VO's jurisdiction—2016/17–2018/19

Source: Victorian Ombudsman, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 4.

The VO's experience is that people's awareness and understanding of the office is likely to increase the more regularly it publishes reports 'which highlight in more immediate ways the issues the Ombudsman can deal with'.⁷⁶⁷ Complaints are generated by media coverage, in particular the Ombudsman's appearances on major radio networks in which she discusses these reports.⁷⁶⁸ In 2017/18, the VO tabled 12 reports in Parliament. In 2018/19, that number was ten (see Table 5.2 and Table 5.3).

Table 5.2 VO reports tabled in Parliament in 2017/18

Title	Instigated by	Date tabled
<i>Investigation into Victorian government school expulsions</i>	Own motion	14 August 2017
<i>Enquiry into the provision of alcohol and drug services following contact with the criminal justice system</i>	Own motion	7 September 2017
<i>Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus</i>	Protected disclosure complaint	25 September 2017
<i>Investigation into the management of maintenance claims against public housing tenants</i>	Own motion	30 October 2017
<i>Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre</i>	Own motion	30 November 2017
<i>Investigation into the financial support provided to kinship carers</i>	Own motion	13 December 2017
<i>Investigation of a matter referred from the Legislative Council on 25 November 2015</i>	Parliament of Victoria	21 March 2018
<i>Investigation into Wodonga City Council's overcharging of a waste management levy</i>	Complaint	24 April 2018
<i>Investigation into Maribyrnong City council's internal review practices for disability parking infringements</i>	Complaint	30 April 2018
<i>Good practice guide to dealing with challenging behaviour: report and guide</i>	–	23 May 2018

⁷⁶⁷ Ibid.

⁷⁶⁸ Ibid.

Title	Instigated by	Date tabled
<i>Investigation into the administration of the Fairness Fund for taxi and hire car licence holders</i>	Own motion	14 June 2018
<i>Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies</i>	Own motion	25 June 2018

Source: Victorian Ombudsman, *Annual report 2018*, Melbourne, 2018, p. 78.

Table 5.3 VO reports tabled in Parliament in 2018/19

Title	Instigated by	Date tabled
<i>Ombudsman's recommendations—second report</i>	-	4 July 2018
<i>Complaints to the Ombudsman: resolving them early</i>	-	25 July 2018
<i>Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria</i>	Legal and Social Issues Committee, Parliament of Victoria	6 September 2018
<i>Investigation of three protected disclosure complaints regarding Bendigo South East College</i>	Protected disclosure complaint	12 September 2018
<i>Investigation into allegations of improper conduct by officers at Goulburn Murray Water</i>	Protected disclosure complaint	3 October 2018
<i>Investigation into the imprisonment of a woman found unfit to stand trial</i>	Public Advocate	16 October 2018
<i>VicRoads complaints</i>	Complaints	20 February 2019
<i>Fines Victoria complaints</i>	Complaints	17 April 2019
<i>Investigation of a complaint about Ambulance Victoria</i>	Complaint	29 May 2019
<i>Investigation into State Trustees</i>	Own motion	27 June 2019

Source: Victorian Ombudsman, *Annual report 2019*, Melbourne, 2019, p. 72.

The VO is also seeking to improve people's awareness and understanding of its role through its new website.⁷⁶⁹ The website redevelopment involved a total re-design and re-write, with the content now simplified, jargon-free and mobile-friendly; search engine optimisation (to make it easier for people to be directed to the VO); and the simplification of its complaints form.⁷⁷⁰ The Committee notes that the VO won gold in the Digital Design Category of the 2020 Good Design Awards for its revamped digital web design and development.⁷⁷¹

Where the VO cannot deal with a complaint, the complaints form ensures a 'warm handover' to an appropriate organisation.⁷⁷² A 'warm handover' is when a complaint is referred to a body that may be in a position to assist with the complaint.⁷⁷³ The VO

⁷⁶⁹ Ibid.

⁷⁷⁰ Ibid.

⁷⁷¹ Good Design Australia, *Victorian Ombudsman*, 2020, <<https://good-design.org/projects/victorian-ombudsman>> accessed 22 September 2020.

⁷⁷² VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 4.

⁷⁷³ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 4.

will only proceed in this manner where the complainant's permission is given.⁷⁷⁴ This is another way in which the Ombudsman is able to informally and efficiently resolve (or assist in the resolution of) a complaint.

5.3.4 Cooperative action

The VO considers its relationships with Victoria's other integrity agencies to be 'productive'.⁷⁷⁵

While it has not previously conducted joint investigations due to variances in investigatory powers and processes with other agencies, the VO recently commenced its first joint investigation with IBAC in relation to allegations of branch stacking, misconduct and other matters within Victoria.⁷⁷⁶

The Ombudsman has advised that she continues to 'look for opportunities' for the VO 'to partner with the other integrity agencies in joint investigations'.⁷⁷⁷ The VO had an investigator seconded from the Local Government Inspectorate (LGI), provided an investigator to work with IBAC on a protected disclosure investigation that originated in the VO's office and used the forensic analysis resources of IBAC in two matters.⁷⁷⁸

The VO engages regularly with IBAC to assist with the Ombudsman's corruption investigations and to clarify public interest complaints.⁷⁷⁹ The Deputy Ombudsman also meets with the IBAC Chief Executive Officer and LGI to share information and discuss cases, which helps to reduce the risk of duplication of investigations and inconsistent understandings of the respective agencies' investigative obligations.⁷⁸⁰

In addition, an Assistant Ombudsman is a member of an IBAC committee that informs the development of practitioner forums for Public Interest Disclosure Coordinators.⁷⁸¹ VO staff also present at these forums.⁷⁸²

The VO has contributed to IBAC's reports and guides on conducting investigations and conflicts of interest in local government, and worked with IBAC and the LGI to publish a resource to clarify the complaints process concerning local councils.⁷⁸³ The Ombudsman's office regularly collaborates with IBAC, the LGI and the Auditor-General to present anti-corruption and maladministration public sector talks and conferences

⁷⁷⁴ Ibid.

⁷⁷⁵ Ibid., p. 1.

⁷⁷⁶ Ibid. See also VO, *IBAC and Ombudsman to collaborate on investigation into allegations of branch stacking, misconduct and other matters*, 19 June 2020, <<https://www.ombudsman.vic.gov.au/our-impact/news/ibac-and-ombudsman-to-collaborate-on-investigation>> accessed 18 September 2020.

⁷⁷⁷ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 4.

⁷⁷⁸ Ibid., pp. 5–6.

⁷⁷⁹ Ibid., p. 5.

⁷⁸⁰ Ibid., pp. 5–6.

⁷⁸¹ Ibid., p. 3.

⁷⁸² Ibid.

⁷⁸³ Ibid., p. 5.

and has also contributed to an ‘information sheet’ explaining the differences in their respective roles.⁷⁸⁴

Where appropriate, the Ombudsman’s educational and public awareness training programs are developed in consultation with relevant agencies.⁷⁸⁵ For example, input was sought from IBAC, the Public Advocate, the Mental Health Complaints Commissioner, the Commissioner for Children and Young People, and Scope,⁷⁸⁶ on matters of accessibility, mental illness and best practice in order to produce the VO’s ‘Dealing with challenging behaviour’ workshop.⁷⁸⁷ The Victorian Public Sector Commission’s (VPSC) tools also form part of the VO’s conflict of interest training materials.⁷⁸⁸

5.4 Governance and workplace

5.4.1 Organisational health

The Ombudsman has described the organisational health of her agency as ‘very good’.⁷⁸⁹ In support, the VO provided the IOC with a selection of results from the 2019 People Matter Survey, conducted by the VPSC each year to anonymously gauge feedback from public sector employees about their work environment. The results indicate that the VO performed well in the areas of ‘engagement’,⁷⁹⁰ ‘psychological conditions’,⁷⁹¹ ‘organisational climate’⁷⁹² and ‘workgroup climate’,⁷⁹³ having higher overall results than its comparator agencies and the Victorian public sector (see Figure 5.3).⁷⁹⁴

⁷⁸⁴ Ibid.

⁷⁸⁵ Ibid., p. 3.

⁷⁸⁶ Scope is one of Australia’s largest not-for-profit disability service providers: Scope, *The Scope approach to services*, (n.d.), <<https://www.scopeaust.org.au/about-scope/the-scope-approach>> accessed 22 September 2020.

⁷⁸⁷ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 3.

⁷⁸⁸ Ibid.

⁷⁸⁹ Ibid., p. 16.

⁷⁹⁰ Average of all scores for each ‘engagement’ question.

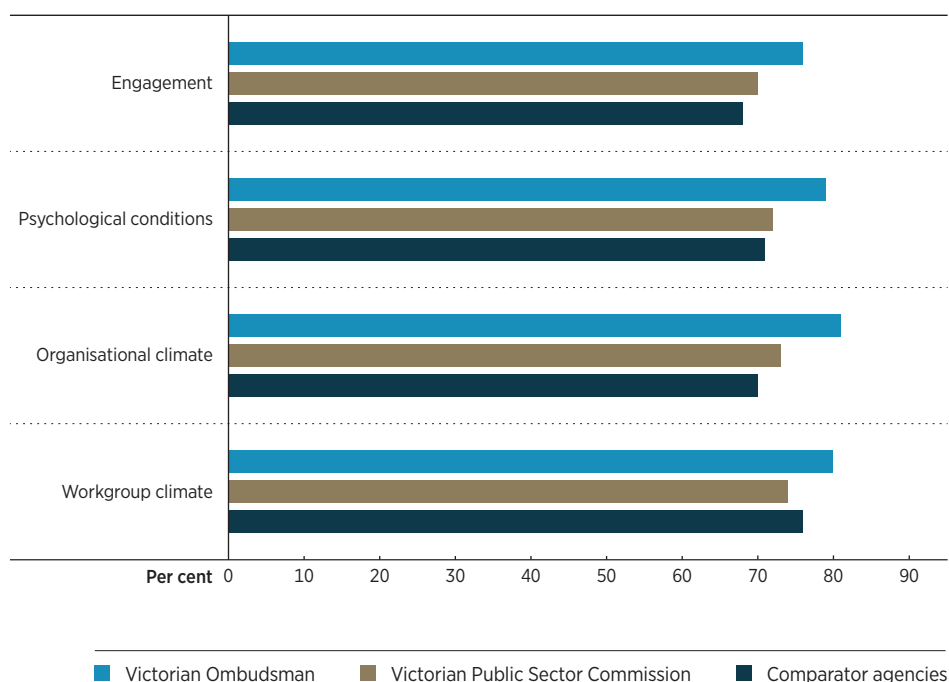
⁷⁹¹ Comprises: ‘meaningful work’ and ‘safe to speak up’: Simon Albrecht, *The People Matter Survey theoretical framework*, VPSC and Deakin University, Melbourne, 2019, <<https://vpsc.vic.gov.au/wp-content/uploads/2019/07/White-Paper-People-Matter-Survey-Framework-September-2019.docx>> accessed 18 September 2019, p. 4.

⁷⁹² Comprises: ‘integrity’, ‘respect’, ‘human rights’, ‘diversity and inclusion’, ‘equal employment opportunity’, ‘learning and development’, ‘safety’, ‘psychosocial safety climate’ and ‘patient safety climate’: Simon Albrecht, *The People Matter Survey theoretical framework*, VPSC and Deakin University, Melbourne, 2019, <<https://vpsc.vic.gov.au/wp-content/uploads/2019/07/White-Paper-People-Matter-Survey-Framework-September-2019.docx>> accessed 18 September 2019, p. 4.

⁷⁹³ Comprises: ‘responsiveness’, ‘impartiality’, ‘accountability’, ‘collaboration’, ‘innovation’, ‘change management’ and ‘team support’: Simon Albrecht, *The People Matter Survey theoretical framework*, VPSC and Deakin University, Melbourne, 2019, <<https://vpsc.vic.gov.au/wp-content/uploads/2019/07/White-Paper-People-Matter-Survey-Framework-September-2019.docx>> accessed 18 September 2019, p. 4.

⁷⁹⁴ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 17.

Figure 5.3 2019 VPSC People Matter survey—overall score comparison



Source: VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 17.

The VO was also rated highly by staff—more than two-thirds of whom are female, including within its leadership and executive teams⁷⁹⁵—on ‘workplace safety and support’ and ‘psychological safety’ (see Table 5.4).

The Ombudsman has expressed a ‘deep commitment’ to ‘responsiveness, integrity, impartiality, accountability, respect, leadership, and commitment to human rights’—all values which underlie its recruitment decisions and positively impact on staff.⁷⁹⁶

Table 5.4 VPSC 2019 People Matter Survey results for the VO

Statement	Proportion of staff that ‘agree or strongly agree’ with the statement (%)
My organisation provides a safe work environment.	95
My organisation encourages respectful workplace behaviours.	90
My organisation has effective procedures in place to support employees who may experience stress.	80
In my workplace, there is good communication about psychological safety issues that affect me.	79

Source: VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, pp. 16–17.

⁷⁹⁵ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 3.

⁷⁹⁶ Ibid.

The VO's 2018/19 Annual Plan included a focus on '[c]reating a mentally healthy workplace', which involved the provision of an onsite counsellor through its Employee Assistance Program provider.⁷⁹⁷ The feedback from staff was that they found it difficult to secure an appropriate appointment via the offsite counselling service, which led to the exploration of an onsite weekly service.⁷⁹⁸

According to the VO, this initiative has been 'very effective',⁷⁹⁹ having been informed by:

- an internal anonymous staff survey, which generated positive feedback about the onsite counselling service, and the VO's willingness to support staff in this regard⁸⁰⁰
- quarterly reports from the counselling provider regarding frequency of use and general information about the types of support services used by staff.⁸⁰¹

In 2019, mental health training was also provided to a number of senior managers.⁸⁰² Three peer support staff members were 'appointed' to provide mental health support, consistent with the VO's objective to 'continue to champion a mentally healthy workplace'.⁸⁰³

The Ombudsman advised that she will continue to use the People Matter Survey to help track organisational health and address any issues that arise in that context.⁸⁰⁴

5.5 Accountability

5.5.1 External oversight

IOC

The VO is accountable to Parliament through the IOC. The IOC's functions in respect of the VO are to—

- monitor and review the performance of the VO's duties and functions
- report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the VO that requires the attention of the Parliament
- examine any reports by the VO that are laid before a House of the Parliament.⁸⁰⁵

⁷⁹⁷ VO, *Annual report 2018*, Melbourne, 2018, p. 123.

⁷⁹⁸ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 16.

⁷⁹⁹ *Ibid.*

⁸⁰⁰ *Ibid.*

⁸⁰¹ *Ibid.*

⁸⁰² *Ibid.*

⁸⁰³ *Ibid.*

⁸⁰⁴ *Ibid.*, p. 17.

⁸⁰⁵ *Ombudsman Act 1973* (Vic) s 26H(1).

The IOC oversees complaints about the VO under its general function to monitor and review performance. However, the Committee is prohibited from investigating a complaint; reviewing a decision to not investigate a complaint; reviewing any findings, recommendations, determinations or other decisions related to a complaint; and disclosing any information which may prejudice the work of the VO, IBAC or the VI or contravene a secrecy requirement.⁸⁰⁶

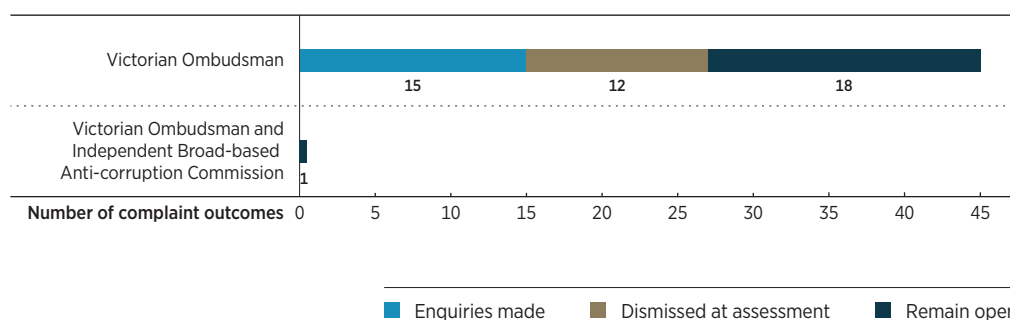
The one complaint received by the IOC about the VO during the 2018/19 reporting period⁸⁰⁷ related to governance issues and also concerned IBAC and the VI. The matter was closed after the complainant failed to respond to the Committee's request for further information.

VI

The VI has jurisdiction to investigate complaints about the exercise of coercive powers by the VO and its compliance with procedural fairness requirements.⁸⁰⁸ The number of complaints about the VO increased from 36 in 2017/18 to 45 in 2018/19.⁸⁰⁹ The VI also received one complaint that related to both IBAC and the VO.⁸¹⁰

Figure 5.4 depicts the outcomes of all complaints received by the VI about the VO in 2018/19.

Figure 5.4 VI outcomes for complaints received about the VO—2018/19



Source: VI, *Annual report 2018-19*, Melbourne, 2019, pp. 34–35.

The IOC notes the responsiveness of the VO in addressing issues raised by the VI as part of its oversight responsibilities, in particular by:

- providing a comprehensive response to all requests for information made by the VI about complaints
- acknowledging an administrative error in the handling of a complaint and taking appropriate remedial action

⁸⁰⁶ *Ombudsman Act 1973* (Vic) s 26H(2).

⁸⁰⁷ From the date of the Committee's establishment on 3 May 2019 to 30 June 2019.

⁸⁰⁸ *Ombudsman Act 1973* (Vic) s 11(4)(a).

⁸⁰⁹ Victorian Inspectorate (VI), *Annual report 2018-19*, Melbourne, 2019, p. 32.

⁸¹⁰ *Ibid.*

- correcting an instance of non-compliance associated with a summons
- implementing improvements to its confidentiality notices following suggestions from the VI.⁸¹¹

IBAC

IBAC receives complaints about corrupt conduct from the public and notifications of corrupt conduct from public sector agencies. The number of complaints and notifications received in respect of some agencies is published by IBAC in its intelligence reports⁸¹² and available on its website.

The IOC considers allegations statistics to be a useful indicator of misconduct risks or at least perceived misconduct. IBAC does not publicly report on the number of complaints or notifications of corrupt conduct it receives about the VO (or its staff). Similar information (for example, the number of complaints) about the other integrity agencies is published by the VI in its annual report. It should be noted that the *IBAC Act 2011* (Vic) does not preclude the publication of such information, and that these figures relate only to allegations and do not amount to findings of corrupt conduct.

To assist with the identification of potential integrity risks, and in the interests of transparency, the IOC supports IBAC including in its annual report the number of complaints and notifications of corrupt conduct it receives in relation to the Office of the Victorian Information Commissioner and the VO.

RECOMMENDATION 8: That the Independent Broad-based Anti-corruption Commission publish in its annual report the number of complaints and notifications of corrupt conduct it receives in relation to the Office of the Victorian Information Commissioner and the Victorian Ombudsman.⁸¹³

5.5.2 Internal oversight

The VO has an internal review process for complaints about service delivery and the merits of its decisions, which ‘feeds into [the] VO’s continuous improvement activities’.⁸¹⁴

A complainant dissatisfied with how the VO has handled their complaint may request an internal review of the action or decision. A senior officer not involved in the original handling of the case then conducts an internal review of the original decision.

⁸¹¹ Ibid., pp. 73–74.

⁸¹² See for example, IBAC, *Corruption risks associated with public regulatory authorities*, Melbourne, July 2018, <<https://www.ibac.vic.gov.au/docs/default-source/intelligence-reports/corruption-risks-associated-with-public-regulatory-authorities.pdf>> accessed 5 February 2020.

⁸¹³ The VI and VI officers are not public officers for the purposes of the *IBAC Act 2011* (Vic): *IBAC Act 2011* (Vic) s 6(2).

⁸¹⁴ VO, *Annual report 2019*, Melbourne, 2019, p. 73; VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 5.

A complaint is considered ‘resolved’ where the outcome—whether at first instance or upon review—accords with the VO’s legislative obligations, strategic objectives, service delivery commitments and policies and procedures.⁸¹⁵ The VO informs both the original case officer and complainant of the review outcome.⁸¹⁶

Eighty-five internal reviews were completed in 2018/19.⁸¹⁷ Of the 20 service delivery complaints, service delivery was determined to be satisfactory in 11 of the cases.⁸¹⁸ For the other nine, the VO attempted to resolve the concerns by providing an explanation or apology or by agreeing to take further action.⁸¹⁹

Of the 65 that were merit reviews, the original decision was found to be satisfactory in 54 cases.⁸²⁰ A decision to reconsider the complaint was made in the remaining 11.⁸²¹

5.5.3 Budget independence and independent performance audits

The VO must consult the IOC on the VO’s draft annual plan and budget before 1 July each year, as a consequence of the amendments in the *IALA Act 2019* (Vic).⁸²²

The VO has welcomed this change, considering it to be ‘a vital principle, when tasked with investigating executive government, that it is not appropriate to be reliant on the executive for funding’.⁸²³

In her 2019 annual report, the Ombudsman elaborated on the impact of the budget and the conferral of additional statutory functions on her office, stating that ‘new powers without funding would make a meaningless gesture of an important principle, so I have alerted the government that I will run an operating deficit if necessary to achieve that’.⁸²⁴

The IOC has been informed that, ‘[f]or the last ten years the VO has not been funded at the level required to effectively perform the core legislated functions of the Office. As such, the VO has required budget supplementation by the DPC [Department of Premier and Cabinet] on an ad hoc basis’.⁸²⁵ The Ombudsman has stated that, as a result, she ‘cannot plan and ... cannot invest’.⁸²⁶

⁸¹⁵ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, pp. 7–9.

⁸¹⁶ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 5.

⁸¹⁷ VO, *Annual report 2019*, Melbourne, 2019, p. 73.

⁸¹⁸ Ibid.

⁸¹⁹ Ibid.

⁸²⁰ Ibid.

⁸²¹ Ibid.

⁸²² *Ombudsman Act 1973* (Vic) s 24A.

⁸²³ VO, *Annual report 2019*, Melbourne, 2019, p. 5.

⁸²⁴ Ibid.

⁸²⁵ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 12.

⁸²⁶ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, p. 10.

Further, the Victorian Auditor-General's Office has raised issues related to the VO's 'going concern' status in its external audits of the VO. The VO has advised that it cannot perform its new functions within its 2019/20 allocated budget.⁸²⁷ Accordingly, it has budgeted for a deficit in 2019/20 which will allow the new functions to be carried out for the time being.⁸²⁸

The VO was allocated \$21.123 million for the 2019/20 financial year, an amount which included supplementation funds and a Treasurer's Advance.⁸²⁹

The table below sets out the amounts sought by the VO as part of its bid for the next State Budget.

Table 5.5 Funding request by the VO—2020/21 Budget

Amount requested (\$ million)	Rationale	Frequency
25.14	Ongoing base budget	Annually from 2020/21
2.20	To support implementation of core system improvements, reflect the VO's new functions, achieve efficiencies and replace end-of-life cycle technology assets	One-off request
0.45	To deal with the operational impact of the <i>Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019</i> (Vic)	One-off request

Source: VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 1.

The Committee notes that the above amounts do not include funding for investigating parliamentary referrals.⁸³⁰ The VO views these referrals as additional to its day-to-day work that it is legislatively required to investigate.⁸³¹ Therefore it does not attempt to absorb the cost of this work into its budget but 'will send the bill to Parliament'.⁸³² As with previous parliamentary referrals, the Ombudsman does 'what is necessary to resource those investigations'.⁸³³ The VO has further emphasised that, despite the constraints, funding is not something which is expected to undermine its ability to investigate parliamentary referrals.⁸³⁴

⁸²⁷ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 12.

⁸²⁸ Ibid., pp. 12–13.

⁸²⁹ VO, Response to Integrity and Oversight Committee questions on notice and supplementary questions, 11 September 2020, p. 1.

⁸³⁰ Ibid.

⁸³¹ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, p. 11; *Ombudsman Act 1973* (Vic) s 16(2) ('Where a matter is referred to the Ombudsman ... [by Parliament] the Ombudsman shall ... forthwith investigate that matter and report thereon.'—emphasis added).

⁸³² Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 17 August 2020, *Transcript of evidence*, p. 11.

⁸³³ Ibid.

⁸³⁴ Ibid.

The VO is currently working with DTF to address these budget concerns. The VO has argued that

[u]nless the VO secures sustainable funding with an adequate recognition of the expanded legislative mandate and budget independence, the VO cannot absorb the increasing volume and demand and continue to offer an effective service to the Victorian community and a tailored service for vulnerable complainants. Nor could we proactively engage with agencies to improve public administration by assisting them to resolve their own complaints or by effectively examining systemic issues to improve standards and practices across the public sector. Given the increased mandate of the new public interest disclosures legislation, a lack of sustainable funding will also risk significantly damaging confidence in the broader integrity regime.⁸³⁵

The VO prepared and submitted a draft plan and budget for the IOC's consideration, as required by the budget independence provisions of the *Ombudsman Act 1973* (Vic).⁸³⁶ The IOC reviewed the VO's submission and provided its response to the VO on its draft annual plan and budget as part of the statutory consultation process.

The delay in the passing of the annual appropriation Act meant that the VO did not present its annual plan before 1 July 2020 as required by the legislation. The Ombudsman advised the Committee that she would table her agency's finalised annual plan in its 2019/20 annual report, once the budget outcomes for 2020/21 were known.⁸³⁷ At the time of publication, the VO had yet to table its 2020/21 annual plan in Parliament.

The VO will receive \$19 m from the 2020/21 Victorian State Budget.⁸³⁸

The IOC will also engage a suitably qualified person to conduct an independent performance audit of the VO at least once before 1 July 2024, as part of its new oversight function.

5.6 Conclusion

The VO has had a productive two years, dealing with an ever-increasing number of complaints and highlighting systemic issues that exist within the wider public sector. The IOC notes, in particular, the vital role of the Early Resolution Team as a cost-effective and expeditious mechanism for the resolution of complaints.

While its profile within the community is growing, increasing awareness and understanding of the VO's role continues to be a challenge. Its redeveloped website will be a valuable resource in that respect. The desire to carry out more extensive outreach and education programs to support improvements in public sector administration

⁸³⁵ VO, Response to Integrity and Oversight Committee questions on notice, 20 January 2020, p. 13.

⁸³⁶ *Ombudsman Act 1973* (Vic) ss 24A–C.

⁸³⁷ Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 11 September 2020.

⁸³⁸ Department of Treasury and Finance (Victoria), *Victorian Budget 20/21: service delivery* (Budget Paper No. 3), Melbourne, May 2020, p. 396.

and complaints handling is evident. However, the Committee notes that the VO is constrained by its budget from doing more.

The IOC supports the VO's recommendation to designate her office as Victoria's National Preventive Mechanism and to be adequately resourced to perform this new role. It is especially appropriate given the VO's legislative mandate to investigate incompatibility with the Victorian Charter of Human Rights.

The IOC is encouraged by the results of the VPSC's staff survey, which indicate that the VO is fostering a positive and safe working culture.

The IOC looks forward to further engaging with the VO as both prepare to take on new statutory functions and the VO continues its program to improve the standard of public administration in Victoria.

6 Conclusion

The Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC), the Victorian Inspectorate (VI) and the Victorian Ombudsman (VO) have exercised their various educative, preventive, investigative and oversight functions during 2017/18 and 2018/19 for the benefit of the public sector and the Victorian community. This is particularly commendable given significant changes to the Victorian integrity landscape brought about by the *IALA Act 2019* (Vic). This legislation expanded each agency's jurisdiction and created additional responsibilities and accountabilities associated with the budgets and annual plans of IBAC, the VI and the VO.

IBAC continues to make invaluable contributions to the Victorian integrity system through its investigative, intelligence, audit and applied research activities. The Committee also acknowledges that IBAC is working towards taking a more complainant-centred approach to its police oversight work, especially in relation to vulnerable Victorians. Further, the Committee recognises the importance of IBAC's work with Victoria Police to enhance the quality of its anti-corruption and ethical leadership education and training.

IBAC has also produced a range of high-quality print and digital resources that help the public sector and members of the public better understand Victoria's integrity system, IBAC's role and function within it and ways to prevent or address corruption and other misconduct. IBAC has made an especially important contribution to explaining changes to Victoria's whistleblower protection regime through publications and active engagement with key stakeholders, including Public Interest Disclosure Coordinators.

While IBAC monitors the implementation of the recommendations it makes to public sector bodies, the Committee has recommended improvements to the comprehensiveness, transparency and currency of its reporting on the progress of their implementation. In particular, the Committee has recommended that IBAC consolidate public sector body responses to its recommendations on a dedicated, easily searchable and regularly updated web page.

With regard to IBAC's vital police oversight function, the Committee is concerned that IBAC has neither increased the number of investigations of police-complaint matters it undertakes nor the number of its reviews of police investigations of complaints it carries out. This reduces the effectiveness of IBAC's police oversight role. IBAC has advised the Committee that, while it recognises the value in undertaking more oversight work of this kind, it is unable to do so without additional funding.

OVIC has wide-ranging responsibilities relating to FOI, privacy and data security. During the period under review, OVIC met the establishment and governance challenges of a newly established organisation and oversighted an information access regime which saw increases in FOI requests (the largest number in Australia), requests for reviews of FOI decisions and privacy complaints.

During 2017/18–2018/19, OVIC was unable to meet its Budget Paper No. 3 (BP3) timeliness targets in completing reviews of FOI decisions by public sector bodies or ministers. OVIC has advised the Committee that a key reason for delays has been a significant backlog of older, and often complex, review requests. OVIC is prioritising the completion of these legacy reviews and finalising incoming requests more quickly so that its completion rates can meet the BP3 targets. Encouragingly, OVIC exceeded its BP3 timeliness targets with regard to privacy complaints received during 2017/18 and 2018/19.

The Committee has identified some ambiguity in OVIC's reporting of data due to the use of inconsistent terminology in its annual reports. In order to avoid potential confusion about the meaning of terms, and to enable like-for-like comparisons to be made across different years, the Committee has recommended that OVIC use consistent terminology in its annual reports. In addition, the Committee recommends that OVIC provide greater transparency in its annual reporting of its oversight of Victoria Police's information security processes and practices by publishing the number of security incidents reported by Victoria Police each year.

The Committee welcomes OVIC's efforts to try to effect cultural change in the Victorian public sector by helping public sector bodies understand that sound protective data security extends well beyond cybersecurity, and that the FOI scheme is merely one approach to the release of information in the interests of transparency and accountability.

With regard to the VI, the Committee notes improvements to its internal governance structures and processes, including the adoption of an 'Operations Model'. It also recognises the strengthening of its staff capability with the recruitment of complaint-assessment and investigative staff. Further, the Committee welcomes the benefits expected to result from CMS upgrades and the introduction of a database for the more efficient review of coercive power notifications. As a small agency, the VI has, however, advised the Committee that without additional funding it can only exercise its mandatory oversight functions and cannot undertake the kind of in-depth monitoring and educational outreach work it would like to.

While the VI has made significant improvements to its website and related digital content, the Committee has recommended that the VI produce a number of targeted and accessible videos explaining the role of the VI in the integrity system, the processes for making complaints or public interest disclosures and how they are handled. It has also recommended that the VI create a dedicated communications and publishing officer position to enhance its communications capacity and performance.

The VO has had a productive two years, dealing with an ever-increasing number of complaints and highlighting systemic issues within the public sector. The Committee notes, in particular, the invaluable role of the Early Resolution Team as a cost-effective and efficient way to resolve complaints.

While the VO has a newly legislated education function, it has advised the Committee that its desire to carry out more extensive outreach and education programs to support improvements in public sector administration and complaint handling has been limited by budgetary constraints.

The Committee supports the VO's recommendation to designate her office as Victoria's National Preventive Mechanism (NPM) to help ensure that people in detention are not mistreated. Given the VO's legislative mandate to investigate incompatibilities with the Victorian Charter of Human Rights it is fitting that it be appointed as Victoria's NPM.

Finally, the Committee is encouraged by the results of the 2018/19 VPSC's People Matter Survey, which indicate that the VO has a positive and safe working culture, providing an impressive model for the public sector it oversees.

The Committee looks forward to continuing to engage constructively with the integrity bodies it oversees in order to enhance the transparency, integrity and accountability of the Victorian public sector.

**Adopted by the Integrity and Oversight Committee
Parliament of Victoria, East Melbourne
30 November 2020**

Appendix

Public hearings

Monday 2 March 2020

Name	Position	Organisation
Mr Sven Bluemmel	Information Commissioner	Office of the Victorian Information Commissioner
Ms Joanne Kummrow	Public Access Deputy Commissioner	
Ms Rachel Dixon	Privacy and Data Protection Deputy Commissioner	

Monday 17 August 2020

Name	Position	Organisation
Hon Robert Redlich AM QC	Commissioner	Independent Broad-based Anti-corruption Commission
Ms Marlo Baragwanath	Chief Executive Officer	
Mr Glenn Ockerby	Director, Corporate Services	
Ms Deborah Glass OBE	Ombudsman	Victorian Ombudsman
Ms Megan Philpot	Deputy Ombudsman	
Dr Marija Maher	Chief Operating Officer	
Mr Eamonn Moran PSM QC	Inspector	Victorian Inspectorate
Ms Kathryn Phillips	Director, Budget Independence and Strategy	
Ms Cathy Cato	Executive Director, Legal and Integrity	

