

PARLIAMENT OF VICTORIA

Integrity and Oversight Committee



Performance of the Victorian integrity agencies 2020/21: focus on witness welfare

Parliament of Victoria
Integrity and Oversight Committee

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About the Committee

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

Functions

7 Integrity and Oversight Committee

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

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

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

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This report is available on the Committee's website.

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Chair's foreword

I am pleased to present to the Parliament of Victoria, the Integrity and Oversight Committee's (IOC) *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare* report.

The IOC is responsible for monitoring and reviewing the performance of the duties and functions of four of Victoria's leading integrity agencies: 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).

Before turning to the report itself, I would like to acknowledge the valuable contributions of the previous Chairs of this Committee: Steve McGhie MP, Hon Jill Hennessy MP, Hon Harriet Shing MLC and Mr Dustin Halse MP. In particular, it should be recognised that much of the work upon which this report is based was completed during Harriet Shing's tenure.

The report reviews the performance of the agencies during 2020/21, focusing on their management of the welfare of witnesses and others involved in their investigations. It represents the culmination of the IOC's monitoring and review activities with respect to witness welfare management, which began with the Committee's establishment in 2019.

In preparing the report, the Committee closely examined the integrity agencies' annual reports for 2020/21. The agencies also appeared before the Committee at public hearings, provided written submissions and answered questions on notice regarding their performance during the reporting period and their management of witness welfare. Finally, the Committee received written submissions and other responses from interstate and international integrity agencies, non-integrity organisations with expertise and experience in witness welfare, and members of the public, relating to the agencies' management of witness welfare. The Committee appreciates all these contributions to its review.

In particular, the Committee thanks the Victorian integrity agencies for their participation in the hearings, cooperation throughout the review, and important contributions to the Victorian integrity system during 2020/21. More generally, the Committee acknowledges the invaluable work of these agencies in enhancing the integrity of the Victorian public sector, and in investigating, exposing and helping to prevent corruption and other misconduct.

The Committee's review of the integrity agencies' management of the welfare of witnesses involved in their investigations has been informed by a range of best practice principles. Pleasingly, while the Committee has identified important areas for improvement, the agencies' policies, procedures and practices nevertheless reflect a serious commitment to ensuring the welfare of persons involved in their investigations.

For example, there have been significant improvements in IBAC's management of witness welfare since the VI's release, in 2018, of its *Special report: welfare of witnesses in IBAC investigations*. IBAC's current witness welfare policies, procedures and practices are informed by relevant expertise and experience, and are comprehensive, well-developed and sound. The Committee has, however, made a number of recommendations aimed at enhancing IBAC's gathering of information about the welfare of witnesses as well as the accuracy of its welfare risk assessments (particularly with respect to those coercive investigative processes which impose a greater welfare burden on witnesses). The Committee has also made recommendations aimed at strengthening public trust in IBAC's decision-making regarding its power to hold public examinations (hearings).

In relation to other matters, it is pleasing that, in response to a Committee recommendation, IBAC will next year undertake a review of its Health, Safety and Wellbeing Strategy 2021–23. It is similarly encouraging that IBAC's 2021 People Matter Survey results indicated improvements in its workplace culture. However, despite the successful rollout of a new triaging and allocation system, IBAC continues to experience difficulty meeting its Budget Paper 3 (BP3) timeliness performance targets for the assessment of complaints and notifications. The Committee considers that IBAC's BP3 measures need to evolve so they can accurately capture the nature and complexity of the agency's workload. This will enable the agency to better demonstrate its efficiency and effectiveness.

While, given the nature of its jurisdiction, OVIC has rarely exercised coercive powers, it is, prudently, maturing its witness welfare policies, procedures and practices, with guidance from the VI. On other matters, OVIC's performance of its freedom of information (FOI), privacy and data security functions during 2020/21 was strong, and the agency developed and refined a valuable suite of tools to assist public sector organisations. For example, the Committee anticipates that OVIC's recently introduced electronic file-sharing platform for FOI reviews, and its Professional Standards Toolkit and Information Security Incident Notification Scheme, will help public sector organisations become both more efficient and compliant with regard to FOI, privacy and information security standards.

The VI is committed to leading by example, and its current witness welfare policies, procedures and practices are well-intentioned and conscientious. However, the Committee considers that an external review, by an independent person or body with relevant health expertise and experience, would ensure that the VI's witness welfare policies, procedures and practices are fit for purpose and aligned with best practice principles. The Committee has also made recommendations aimed at improving the VI's capacity to identify, record and respond to welfare risks, and to ensure that witnesses at greatest risk of serious harm are provided with targeted support.

The Committee commends the VI on the successful implementation of remote-working improvements to its telephony and case management systems, which have better equipped the agency to maintain productivity in the context of more flexible working arrangements, initially necessitated by COVID-19. However, the VI has made only limited

progress with respect to the timeliness of its complaint handling. The Committee has therefore recommended the introduction of an additional BP3 timeliness performance target as an important step in ensuring that the VI continues to make progress in this area.

The VO's witness welfare policies, procedures and practices are well informed by mental health expertise and reflect the agency's vast experience in dealing with disadvantaged and vulnerable persons. Moreover, the VO has a deep understanding of the distinctive impacts of coercive powers on witnesses. The Committee has, however, recommended that witnesses who are subject to coercive powers that are more likely to have negative impacts on their welfare be given direct access to the VO's Employee Assistance Program, without the need for a referral from the agency.

In other quarters, the Committee commends the VO on its digital innovation with respect to data collection, analysis, sharing and reporting. The Committee considers that the VO can draw on this innovation to better identify, respond to and learn from witness welfare risks, and encourages the agency to do so. The Committee has also recommended that the Victorian Government examine the merits of several proposed legislative amendments aimed at strengthening the VO's investigative and alternative dispute resolution functions.

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

I also wish to acknowledge the work of the Committee Secretariat throughout this review: Sean Coley, Committee Manager; Dr Stephen James, Senior Research Officer; Tom Hvala, Research Officer; Holly Brennan, Complaints and Research Assistant; and Committee Administrative Officers, Maria Marasco and Bernadette Pendergast.

I commend this report to the Parliament.



Mr Gary Maas MP
Chair

Recommendations

3 Independent Broad-based Anti-corruption Commission

RECOMMENDATION 1: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Inspectorate (VI) and helplines providing telephone and online mental health crisis support services, seek to amend the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) to permit a person who is subject to an IBAC confidentiality notice to disclose a restricted matter to a telephone or online helpline providing mental health crisis support services, for the purpose of seeking mental health crisis support in relation to the investigation in respect of which the confidentiality notice has been issued, unless IBAC directs that the restricted matter must not be disclosed in that circumstance.

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RECOMMENDATION 2: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI), seek to amend the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') to require IBAC to:

- develop procedural guidelines relating to the requirements for holding public examinations, including the assessment of the mandatory criteria in s 117(1)(a)–(d) of the *IBAC Act 2011* (Vic), and, in particular, guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing'; and
- provide in its written report under s 117(5)(b) of the *IBAC Act 2011* (Vic) to the VI giving reasons for its decision to hold a public examination information about its compliance with those procedural guidelines.

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RECOMMENDATION 3: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI), seek to amend s 40A of the *Victorian Inspectorate Act 2011* (Vic) to require the VI to develop procedural guidelines relating to its review of IBAC's written report to the VI giving reasons for its decision to hold a public examination, including for its assessment of IBAC's compliance with the mandatory criteria in s 117(1)(a)–(d) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (and, in particular, guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing').

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RECOMMENDATION 4: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI), seek to amend the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') to require IBAC to include in a special report tabled under s 162 of the *IBAC Act 2011* (Vic), on an investigation in which public examinations were held, information setting out, in general terms, the Commissioner's decision to hold public examinations in the investigation:

- addressing the mandatory criteria in s 117(1)(a)–(d) of the *IBAC Act 2011* (Vic); and
- providing a description of the exceptional circumstances that led to the decision, the public interest in them and the consideration given to risks that any person's reputation would be damaged.

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RECOMMENDATION 5: That the Independent Broad-based Anti-corruption Commission (IBAC):

- update its policies and procedures to provide specific guidance on decision-making regarding confidentiality notice variation requests
- consider developing and implementing an application form for persons subject to a confidentiality notice who seek permission to disclose a specified matter to a third party, to assist in ensuring that such requests are appropriately recorded and assessed
- capture data relating to confidentiality notice variation requests to enable it to readily report on the number of requests received and approved during a particular reporting period
- update its policies and procedures providing specific guidance on complaints regarding reputational harm or damage in connection with IBAC's public examinations
- capture data relating to complaints received regarding reputational harm or damage in connection with IBAC's public examinations, to enable it to readily report on the number of complaints received during a particular reporting period.

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RECOMMENDATION 6: That the Independent Broad-based Anti-corruption Commission (IBAC), in consultation with Converge International Consultants (Converge), explore the feasibility of:

- IBAC officers who are serving a summons or confidentiality notice on a person seeking that person's consent to provide their name and contact information to Converge, for the purpose of Converge making contact with the person proactively in the first instance in order to familiarise the person with its witness welfare support services
- IBAC officers who are serving a summons to attend a public examination on a person seeking that person's consent to provide their name and contact information to Converge, for the purpose of Converge conducting a welfare evaluation and assessment of the person in relation to the examination
- Converge establishing an informed consent process and secure electronic information-sharing platform to facilitate the sharing of results of the pre-hearing welfare evaluation and assessment with IBAC, to inform the agency's operational risk assessment for the particular witness in relation to the public examination
- Converge, with the consent of the witness, providing proactive periodic mental wellbeing check-in calls on an ongoing basis, between the end of the examination and publication of IBAC's investigation report, regarding all witnesses who give evidence in a public examination.

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RECOMMENDATION 7: That the Independent Broad-based Anti-corruption Commission (IBAC):

- update its policies and procedures to provide specific guidance on decision-making regarding requests under s 117(3A)(a) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), including assessment of factors under s 117(3B) and (4) of the Act
- consider developing and implementing an application form for persons wanting to exercise their rights under s 117(3A)(a) of the *IBAC Act 2011* (Vic), to assist in ensuring that such applications are appropriately recorded and assessed
- capture data relating to requests received and own motion determinations made under s 117(3A) of the *IBAC Act 2011* (Vic) during a particular reporting period.

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5 Victorian Inspectorate

RECOMMENDATION 8: That the Victorian Inspectorate (VI) develop, as a matter of priority, capacity in its case management system to run automated reports to identify, record and analyse any welfare risks affecting persons who have made complaints to the VI, as well as witnesses involved in its investigations.

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RECOMMENDATION 9: That the Victorian Inspectorate:

- engage an external and independent person or body with psychological expertise to review its *Witness Welfare Policy*, templates and standard practices to ensure they conform to best practice principles
- drawing on external and independent psychological expertise, develop and implement a risk assessment matrix (with a focus on physical and mental health) that meets best practice, for use in relation to witnesses examined by the agency or subject to a confidentiality notice issued by the agency
- inquire into the feasibility of creating an at least 0.5 FTE, ongoing Complainant and Witness Welfare Officer position, for a psychologist, mental health nurse or mental health social worker
- inquire into the feasibility of engaging an external and independent counselling and support service to deliver, on a fee-for-service basis, welfare support services to witnesses at greatest risk of serious harm
- report to the Committee on these recommendations, including the outcomes of any inquiries undertaken in accordance with them.

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RECOMMENDATION 10: That the Victorian Government, in consultation with the Victorian Inspectorate (VI), develop a Budget Paper No. 3 timeliness performance measure for the VI's assessment of complaints, taking into account the VI's size and variations in the complexity of complaints received.

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6 Victorian Ombudsman

RECOMMENDATION 11: That the Victorian Ombudsman (VO) ensure that persons who are served with a confidentiality notice or summons to appear can directly access welfare support services provided by the VO's Employee Assistance Program provider, without the need for a referral by the VO. **168**

RECOMMENDATION 12: That the Victorian Ombudsman undertake UX (user experience) and focus group testing on its online complaint services (including use of SMS and webchat) and apply any lessons learnt to improve those services and enhance complainant satisfaction. **170**

RECOMMENDATION 13: That the Victorian Ombudsman inquire into the potential for using its improved data collection, analysis, sharing and reporting capacity (including the Power BI platform) to identify, record, analyse and act on welfare risks with respect to complainants and witnesses engaging with the agency, while complying with applicable laws and protecting the privacy, safety, health and wellbeing of those persons. **170**

RECOMMENDATION 14: That the Victorian Government examine whether amendment of s 26FC(1) *Ombudsman Act 1973* (Vic) is warranted to permit the Victorian Ombudsman (VO) to make, in the public interest, broader disclosures to the public of information received or obtained in the course of the VO's performance of duties or functions or the exercise of powers under the Act. **172**

RECOMMENDATION 15: That the Victorian Government examine the merits of legislative amendments authorising the Victorian Ombudsman (VO) to investigate all kinds of improper conduct, as defined in the *Public Interest Disclosures Act 2012* (Vic), alleged in public interest complaints referred to the VO by the Independent Broad-based Anti-corruption Commission. **173**

RECOMMENDATION 16: That the Victorian Government examine the merits of amending pt IIIAC of the *Ombudsman Act 1973* (Vic) to give the Victorian Ombudsman a discretion to attempt to resolve public interest complaints by alternative dispute resolution (including conciliation and mediation). **174**

Acronyms and abbreviations

ABI	acquired brain injury
ACLEI	Australian Commission for Law Enforcement Integrity
APS	Australian Psychological Society
BP3	Budget Paper No. 3, Department of Treasury and Finance (Victoria)
BPP	best practice principles
CCC Queensland	Crime and Corruption Commission Queensland
DJCS	Department of Justice and Community Safety (Victoria)
EAP	employee assistance program
FOI	Freedom of Information
FTE	full-time equivalent
FY	financial year
IBAC	Independent Broad-based Anti-corruption Commission, Victoria
IOC	Integrity and Oversight Committee, Parliament of Victoria
NSW ICAC	New South Wales Independent Commission Against Corruption
OH&S	occupational health and safety
OPP	Office of Public Prosecutions, Victoria
OVIC	Office of the Victorian Information Commissioner
PAEC	Public Accounts and Estimates Committee, Parliament of Victoria
PID	public interest disclosure
POI	person of interest
UX	user experience
VAGO	Victorian Auditor-General's Office
VAU	Victorian Ambulance Union
VCAT	Victorian Civil and Administrative Tribunal
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VI	Victorian Inspectorate
VO	Victorian Ombudsman
VPS	Victorian Public Service

1.1 Overview of Victoria's integrity system

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

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

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

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

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

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

1.2 The Integrity and Oversight Committee

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

- monitoring and reviewing the performance of the duties and functions of IBAC, OVIC, the VI and the VO

- examining the agencies' reports, including annual reports
- reporting to both Houses of Parliament on any matter requiring the attention of Parliament.¹

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

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

The IOC is authorised to engage an independent investigator to investigate public interest complaints ('whistleblower complaints') about the VI.⁶

Under the governing legislation, the budgets of IBAC, the VI and the VO 'for each financial year ... [are] to be determined in consultation with the Parliamentary Committee [IOC] concurrently with ... [their] annual plan[s] ...'⁷ Before the beginning of each financial year, each of these agencies must 'prepare' and 'submit' 'a draft annual

1 *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)') s 7(1); *Ombudsman Act 1973* (Vic) s 26H(1).

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

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

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

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

6 *PC Act 2003* (Vic) s 7(1)(ia); *Public Interest Disclosures Act 2012* (Vic) ('*PID Act 2012* (Vic)') s 56A(1)(d).

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

plan describing' their 'proposed work program for that financial year' for the IOC's 'consideration'.⁸

Further, the IOC is required to recommend to Parliament the appointment of an independent person to conduct a performance audit of IBAC, the VI and the VO at least once every four years.⁹ The independent performance audit must 'determine' whether these agencies are achieving their 'objectives effectively, economically and efficiently and in compliance' with the governing legislation.¹⁰ The inaugural reports of the independent performance auditor on the performance of IBAC and the VI are due to be tabled in the last quarter of 2022.

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

1.3 Integrity agencies' performance: focus on witness welfare

As an exercise of its functions under ss 7(1) of the *PC Act 2003* (Vic) and 26H(1) of the *Ombudsman Act 1973* (Vic), this report examines the performance of Victoria's integrity agencies during 2020/21, with a focus on their management of the welfare of witnesses and others involved in their investigations.

In preparing this report, the IOC has analysed the annual reports of IBAC, OVIC, the VI and the VO for 2020/21 and considered reports and recommendations relevant to the integrity agencies.

The Committee has also examined evidence received in written submissions and responses to its questions, as well as oral evidence given in public hearings. Further, the Committee received correspondence from interstate and international integrity and oversight bodies, as well as other relevant organisations, in response to written questions. This was complemented by primary and secondary legal and related research.

1.3.1 The role of the IOC as a parliamentary committee

As a joint investigatory committee of the Parliament of Victoria, the IOC is authorised to exercise all the powers that the United Kingdom House of Commons possessed as at 21 July 1855, as modified by subsequent Australian laws, and, in particular, by Victorian legislation.¹¹

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

⁹ *IBAC Act 2011* (Vic) s 170; *VI Act 2011* (Vic) s 90D; *Ombudsman Act 1973* (Vic) s 24D.

¹⁰ *IBAC Act 2011* (Vic) s 170(4); *VI Act 2011* (Vic) s 90D(4); *Ombudsman Act 1973* (Vic) s 24D(4).

¹¹ *Constitution Act 1975* (Vic) s 19(1)–(2).

These inherited powers include the longstanding power to inquire into matters,¹² which is supported by the *PC Act 2003* (Vic).¹³ Together, these sources, along with parliamentary law, custom and procedure,¹⁴ provide authority for, and stipulate the conditions under which, committee inquiries and reviews are initiated and conducted, and written and oral evidence is sought, received, assessed, accepted and used.¹⁵

In particular, in accordance with the doctrine of ‘exclusive cognisance’,¹⁶ parliamentary committees (or a House of Parliament by referral to a committee) set the parameters for their own inquiries and reviews, as well as the procedures and processes for taking evidence.¹⁷ This can include:

- public hearings—public and media can attend and evidence can be published, and quoted, paraphrased or cited in a committee report¹⁸

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- 12 *Stockdale v Hansard* (1839) 9 AD & E 1, 193 (Patteson J); *Howard v Gosset* (1845) 10 QB 359, 379–380 (Coleridge J); *Gosset v Howard* (1847) 10 QB 411, 450–451 (Parke B); *Dill v Murphy* (1864) 1 Moo PC, NS 487; *Speaker of the Legislative Assembly of Victoria v Glass* (1871) 7 Moo PC, NS 449; *Ellis v Atkinson* [1998] 3 VR 175; Thomas Erskine May, *A practical treatise on the law, privileges, proceedings and usage of Parliament*, 3rd edn, Butterworths, London, 1855; *Erskine May’s Treatise on the law, privileges, proceedings and usage of Parliament*, Parliament of the United Kingdom, 25th edn, 2019, <<https://erskinemay.parliament.uk>> accessed 3 August 2022; Neil Laurie, ‘The Grand Inquest of the Nation: A notion of the past?’, *Australasian Parliamentary Review*, vol. 16, no. 2, 2001, pp. 174–175; Enid Campbell, *Parliamentary privilege in Australia*, Melbourne University Press, Melbourne, 1966, p. 163; IJ Greenwood and RJ Ellicott, *Parliamentary committees: powers over and protection afforded to witnesses*, Parliamentary Paper no 168/1972, Commonwealth Government Printing Office, Canberra, 1973, pp. 3–6; Geoffrey Lindell, ‘Parliamentary inquiries and government witnesses’, *Melbourne University Law Review*, vol. 20, no. 2, 1995, p. 385; Zelman Cowen, ‘A historical survey of the Victorian Constitution, 1856 to 1956’, *Melbourne University Law Review*, vol. 1, no. 1, 1957, pp. 11–19; Greg Taylor, *The Constitution of Victoria*, Federation Press, Sydney, 2006, pp. 259–260; Greg Taylor, ‘Parliament’s power to require the production of documents—a recent Victorian case’, *Deakin Law Review*, vol. 13, no. 2, 2008, pp. 17–48.
- 13 *PC Act 2003* (Vic) s 33.
- 14 See Enid Campbell, *Parliamentary privilege in Australia*, Melbourne University Press, Melbourne, 1966, p. 1: ‘The privileges of parliament refer to those rights, powers and immunities which in law belong to the individual members and officers of a parliament and to the Houses of Parliament acting in a collective capacity. Broadly speaking, they exist to enable parliaments to proceed with the business of legislation and review of the activities of the administration without molestation, and to protect them against unwarranted attacks upon their authority.’
- 15 See, for example, *PC Act 2003* (Vic) s 27(1)–(2).
- 16 This long-established doctrine protects the ‘right’ of a House of Parliament or parliamentary committee to ‘control’ their own ‘proceedings’ and ‘procedures’ (*Control of proceedings in Erskine May’s Treatise on the law, privileges, proceedings and usage of Parliament*, Parliament of the United Kingdom, 25th edn, 2019, paragraph 11.16 <<https://erskinemay.parliament.uk>> accessed 3 August 2022: ‘Both Houses retain the right to be sole judge of the lawfulness of their own proceedings ... The fullest recognition has been accorded by the courts to the rights of both Houses to exclusive parliamentary cognisance of their proceedings ...’). See also *Bill of Rights 1688* Chapter 2 1 Will and Mar Sess 2, art 9 (‘the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament’), <<https://www.legislation.gov.uk/aep/WillandMarSess2/1/2>> accessed 5 August 2022; *Stockdale v Hansard* (1839) 9 AD & E 1; *Bradlaugh v Gossett* (1884) 12 QBD 271; *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157, 162 (‘... given an undoubted [parliamentary] privilege, it is for the House to judge of the occasion and of the manner of its exercise’); *O’Sullivan v Andrews* (2016) 50 VR 600; *Alford v Parliamentary Joint Committee on Corporations and Financial Services* (2018) 264 CLR 289, 292, 299 (parliamentary ‘proceedings’ in art 9 of the *Bill of Rights 1688* ‘is extended to include all words spoken and acts done in the course of or for the purposes of the transacting of the business of a House or committee, and includes the giving of evidence before a committee’—emphasis added), 301, 305; *Constitution Act 1975* (Vic) s 19(1) (‘privileges immunities and powers as ... were held enjoyed and exercised by the House of Commons ... and by the committees and members thereof ... whether such privileges immunities or powers were so held possessed or enjoyed by custom statute or otherwise’—emphasis added), 43(1) (‘[t]he Council and the Assembly may from time to time make amend or vary standing rules and orders for or with respect to ... (f) the conduct of all business and proceedings in the Council and the Assembly severally and collectively’); *PC Act 2003* (Vic) ss 4(1), 50; Jon Breukel et al., *Independence of Parliament*, Research Paper No. 3, May 2017, Parliamentary Library and Information Service, Department of Parliamentary Services, Parliament of Victoria, Melbourne, 2017; Gareth Griffith, *Parliamentary privilege: first principles and recent applications*, Briefing Paper No. 1/09, NSW Parliamentary Library Research Service, Sydney, February 2009, pp. 2, 11, 30–32.
- 17 *Constitution Act 1975* (Vic) ss 19–19A, 43; *PC Act 2003* (Vic) ss 4(1), 27–28, 33, 50; Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 24–27.
- 18 *PC Act 2003* (Vic) s 28(2).

- closed hearings—no media or public gallery but evidence taken can be published, and quoted, paraphrased or cited in a committee report¹⁹
- in camera hearings—evidence is taken in private and remains confidential²⁰
- public, confidential or partly confidential written submissions.²¹

Committees also have authority to hold *part* of a public hearing in camera.²² Moreover, committees decide who to invite, or require, to appear before them as witnesses.²³

While, under s 28(8) of the *PC Act 2003* (Vic), '[a]ny person may make a written submission to a Joint Investigatory Committee with respect to any proposal, matter or thing being inquired into or being considered by the Committee', again, it is for the Committee to determine by resolution:

- whether to accept a written submission as a submission to its inquiry or review
- the terms on which any written submission is accepted (for example, as a confidential submission in whole or part).²⁴

As with oral evidence received during an in camera committee hearing, evidence received in confidence through a written submission cannot be published, provided to anyone or quoted, paraphrased or cited in a committee report.²⁵

Parliamentary committees have longstanding authority to determine what evidence they will accept (and thereby receive the protection of parliamentary privilege), and on what terms.²⁶

As noted earlier in this chapter, s 7(1) of the *PC Act 2003* (Vic)²⁷ sets out the functions of the IOC. These functions include monitoring and reviewing the performance of the integrity agencies, conducting inquiries upon referral from a House of Parliament, or on its own initiative,²⁸ and reporting to Parliament on the outcomes of reviews and inquiries.²⁹

¹⁹ *PC Act 2003* (Vic) s 28(3); Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 32–33, 46.

²⁰ *PC Act 2003* (Vic) ss 28(3), 37(2); Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 32–33, 45–46.

²¹ *PC Act 2003* (Vic) ss 28(2)–(3), (8), 37(2); Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 28–31.

²² *PC Act 2003* (Vic) s 28(3); Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, p. 45.

²³ *PC Act 2003* (Vic) ss 27–28; Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, p. 36.

²⁴ Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 28–31.

²⁵ *PC Act 2003* (Vic) s 37(2); Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, p. 61.

²⁶ Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 30, 35. See also *PC Act 2003* (Vic) s 27(2) (committee refusal of evidence).

²⁷ And s 26H(1) of the *Ombudsman Act 1973* (Vic), which is a comparable provision.

²⁸ *PC Act 2003* (Vic) s 33.

²⁹ See, for example, *PC Act 2003* (Vic) s 7(1)(k): The IOC has the function 'to report to both Houses of Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament ...'. There are comparable provisions in the Act with respect to the Office of the Victorian Information Commissioner (OVIC) (s 7(1)(c)) and the VI (s 7(1)(g)). The comparable provision with respect to the VO is *Ombudsman Act 1973* (Vic) s 26H(1)(b).

Prohibitions under s 7(2) of the *PC Act 2003* (Vic)

While the IOC has broad review and monitoring functions and powers under s 7(1) of the *PC Act 2003*, and s 26H(1) of the *Ombudsman Act 1973* (Vic), importantly there are express prohibitions in s 7(2) of the *PC Act 2003* (Vic) and s 26H(2) of the *Ombudsman Act 1973* (Vic).

Section 7(2) begins with the following phrase:

Despite anything to the contrary in subsection (1), the Integrity and Oversight Committee cannot— ...

Subsection (2) then sets out things the IOC is expressly prohibited from doing in exercising its functions with respect to IBAC, OVIC and the VI. Section 26H(2) of the *Ombudsman Act 1973* (Vic) has the same effect regarding the IOC's oversight of the VO. The obligation to comply with the prohibitions is owed by the IOC. This is a consequence of the clear words in s 7(2) that the IOC 'cannot' do any of the things specified in the subsection.

In general terms,³⁰ s 7(2) of the *PC Act 2003* and s 26H(2) of the *Ombudsman Act 1973* (Vic) prohibit the IOC from:

- investigating a complaint or notification from a public sector body or public interest complaint made to an integrity agency
- reviewing (in the sense of challenging or overturning) any findings, recommendations, determinations or other decisions of an integrity agency—for example, in respect of a complaint or investigation outcome
- reviewing any decision by an integrity agency to investigate, not to investigate or discontinue the investigation of a matter
- (re IBAC, the VI and the VO) *disclosing* any information which may:
 - prejudice any criminal proceedings or criminal investigations; or
 - prejudice an investigation 'being conducted' by IBAC, the VI or the VO; or
 - contravene any secrecy or confidentiality provision in any relevant Act.

The fundamental rationale for these prohibitions is the preservation of the independence of the integrity agencies. In particular, the prohibitions protect the independence and integrity of integrity agencies' complaint-handling and investigative operations and decisions, as well as public perception of their independence and integrity.

³⁰ For greater detail, see, regarding IBAC, the VI and the VO: *PC Act 2003* (Vic) s 7(2)(g) and *Ombudsman Act 1973* (Vic) s 26H(2)(d); IBAC: *PC Act 2003* (Vic) s 7(2)(h)–(k); OVIC: *PC Act 2003* (Vic) s 7(2)(a)–(f); VI: *PC Act 2003* (Vic) s 7(2)(m)–(n); VO: *Ombudsman Act 1973* (Vic) s 26H(2)(a)–(c).

While the IOC is authorised to ‘monitor and review the performance’ of integrity agencies’ functions, and does so vigorously, it is not authorised to exercise functions of the agencies themselves.

The relevance of these prohibitions to this review of integrity agencies’ performance is discussed in the next section, after a survey of the Committee’s past monitoring and review of witness welfare management.

1.3.2 The IOC’s monitoring and review of integrity agencies’ witness welfare management

The IOC has a longstanding interest in Victorian integrity agencies’ management of witness welfare. At the very establishment of the IOC, the Committee reviewed³¹ the VI’s seminal special report on IBAC’s management of witness welfare, which was tabled in October 2018 and made ten recommendations for improvements.³² In that report, the VI found:

In 2016, two incidents involving IBAC’s coercive powers were brought to the Victorian Inspectorate’s attention. In both incidents, the health and safety of witnesses was seriously compromised—in one case, with potentially tragic consequences.

This special report finds that at their core, the incidents ... resulted from a failure of IBAC’s policies and procedures. The physical layout of IBAC’s premises, and what could reasonably be characterised as onerous security arrangements, contributed to the problem.³³

IBAC disputed the soundness of the VI’s own motion investigation and inquiry, which were the basis of the report, and did not accept its findings and recommendations.³⁴ Nevertheless, IBAC subsequently completed an independent review of its management of witness welfare management and made a number of improvements,³⁵ which have been recognised by the VI.³⁶ Even at the time of the publication of the VI’s special

³¹ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018–19*, Melbourne, December 2020, pp. 34–35.

³² VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018.

³³ *Ibid.*, p. 3.

³⁴ IBAC considered that the ‘VI’s investigation was fatally flawed’ (‘IBAC’s statement about the Special Report’, extracted in VI, *Annual report 2018–19*, Melbourne, 2019, p. 71). See also VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 31 (‘IBAC by its response indicated that it would not accept the recommendations while they were linked to factual conclusions it could not accept. It did, however, indicate that it would consider the issues underlying each of the recommendations made, and that it would secure the services of independent experts to assist in its review.’).

³⁵ ‘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; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018–19*, Melbourne, December 2020, pp. 34–35; IBAC, *Annual report 2018/19*, Melbourne, 2019, pp. 74, 78.

³⁶ VI, *Annual report 2018–19*, Melbourne, 2019, pp. 6 (‘While IBAC has made significant improvements to its practices, and to those policies and procedures [on witness welfare management] since the special report was published, they do not yet fully address the recommendations.’), 8, 44–45, 52–53, 59–72; VI, *Annual report 2019–20*, Melbourne, 2020, p. 43; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, p. 19; VI, Response to Integrity and Oversight Committee questions on notice, 11 September 2020, p. 6; VI, Response to Integrity and Oversight Committee questions on notice, 25 March 2021, p. 1; VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 1; Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 2, 7.

report, the VI acknowledged ‘that IBAC has changed its policies and procedures, and made improvements to its hearing room precinct, since the incidents’.³⁷ Even so, the VI emphasised that ‘more can, and must, be done’.³⁸

Given this conclusion, and the importance of witness welfare management to the Committee, the IOC engaged with both IBAC and the VI through correspondence and meetings. On 5 June 2019, for instance, the then Chair of the IOC, Mr Steve McGhie MP, wrote to the IBAC Commissioner, Hon Robert Redlich AM QC, in the following terms:

Like IBAC and the VI, the Committee recognises the importance of safeguarding the health and welfare of witnesses involved in IBAC investigations. In particular, the Committee recognises the need for best practice policies with respect to the management of the health and welfare of witnesses involved in IBAC investigations.

To that end, the Committee would appreciate receiving a copy of IBAC’s current policy on witness health and welfare management, together with any other relevant policies ... [which] will include any currently applicable policies reviewed by the VI in its [special] report ...³⁹

The Chair also requested a summary of any improvements to IBAC’s management of witness welfare, ‘whether as a result of IBAC internal reviews or as a direct response to the VI report’.⁴⁰

On the same date, the Chair also wrote to the Inspector, VI, Mr Eamonn Moran PSM QC, requesting ‘a summary of how, in your view, current IBAC policies on witness welfare management might be improved ... [including] a summary of the VI’s evaluation of all current IBAC policies bearing on the issue ...’⁴¹

In response to these letters, the IOC received copies of the requested policies from IBAC and a summary account of the VI’s assessment of them.⁴² In particular, the IOC received from IBAC a five-page policy document entitled *Welfare Management for IBAC Investigations*, which had only been authorised by IBAC’s Executive on 11 June 2019.⁴³ This newly developed policy was the progenitor of IBAC’s current witness welfare management policy, available on its website.⁴⁴

³⁷ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 4.

³⁸ Ibid.

³⁹ Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, 5 June 2019.

⁴⁰ Ibid.

⁴¹ Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, to Mr Eamonn Moran PSM QC, Inspector, VI, 5 June 2019.

⁴² Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019 (enclosing, among other policies, IBAC’s *Welfare Management for IBAC Investigations* policy, authorised by Kerry Ellis, Director Corporate Services, on 11 June 2019); Mr Eamonn Moran PSM QC, Inspector, VI, correspondence, 12 June 2019.

⁴³ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019.

⁴⁴ IBAC, *Welfare Management for IBAC Investigations*, authorised by Kerry Ellis, Director Corporate Services, 23 October 2019, <<https://www.ibac.vic.gov.au/docs/default-source/policies/welfare-management-for-ibac-investigations-policy.pdf>> accessed 1 August 2022.

The IOC's inaugural report, on the performance of Victoria's integrity agencies 2017/18–2018/19, which was tabled in December 2020, gave an account of the origins of IBAC's witness welfare management policy:

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'. One of the main outcomes of the internal review was IBAC's development of a consolidated witness welfare policy that recognised that [, in the IBAC Commissioner's words]

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.⁴⁵

The IOC's inaugural report also outlined some of the improvements IBAC had made to witness welfare management following the VI's special report and IBAC's internal review:

Following IBAC's internal review, it has advised that it has enhanced:

- identification and assessment of 'welfare risk factors'
- welfare monitoring
- escalation and management of 'welfare incidents'
- mental health first aid training for staff
- counselling and support information and referrals (and on-site counselling at examinations where appropriate).⁴⁶

The IOC concluded its review of IBAC's witness welfare management in its 2017/18–2018/19 report, as follows:

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

The Committee will continue to monitor IBAC's progress in relation to the safeguarding of witness welfare.⁴⁷

In its report on the performance of Victoria's integrity agencies 2019/20, the IOC reiterated its commitment to monitoring IBAC's management of witness welfare, and

⁴⁵ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018–19*. Melbourne, December 2020, p. 34 (quoting Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019).

⁴⁶ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018–19*. Melbourne, December 2020, p. 35 (quoting and paraphrasing Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 12 June 2019, and also relying on: IBAC, Response to Integrity and Oversight questions on notice, 17 February 2020, p. 24; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 59–60).

⁴⁷ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018–19*. Melbourne, December 2020, p. 35 (quoting VI, *Annual report 2018–19*, Melbourne, 2019, p. 59, and also relying on pp. 60–72).

1 also examined the VI's recommendations to the VO for improvements to its written and verbal communications with witnesses and persons of interest giving evidence to the VO.⁴⁸

The Committee recognises that being involved in an integrity agency investigation, particularly as a person of interest (POI) subject to coercive powers, is likely to be a stressful experience, especially if a witness is required to appear at a public examination (hearing), given the increased risk of negative impacts on their psychological wellbeing and reputation.⁴⁹

However, the Committee also understands the need for integrity agencies to undertake vigorous investigations that sometimes require the use of coercive powers, such as witness summonses for persons to answer questions and/or produce documents or other things. It also appreciates that integrity agencies must sometimes issue confidentiality notices prohibiting the disclosure of restricted information, in order to protect the integrity of investigations and evidence (and the safety of persons such as whistleblowers).

Further, the Committee acknowledges the important educative and deterrent purposes, especially for IBAC, in exposing and preventing corruption by shining a light on wrongdoing, and building the will and capacity to reduce its incidence in the public sector. Consequently, the Committee regards public examinations (hearings) as vital to IBAC's effective exercise of its functions.

However, the instrument of public hearings must always be used judiciously—with not only the public interest in the exposure of corruption duly in mind, but also the protection of witness welfare.⁵⁰ Accordingly, the Committee agrees with the VI that:

No matter who the witness is, or why they are being investigated, integrity agencies must demonstrate a regard for their welfare.⁵¹

The commencement and course of this review

On 9 February 2022, the IOC resolved to focus on witness welfare management in its review of the performance of Victoria's integrity agencies during 2020/21, in accordance with its review and monitoring function under s 7(1) of the *PC Act 2003* (Vic).⁵²

As part of the review, in March 2022 the Committee sent out written questions to Victoria's integrity agencies on the legal framework for witness welfare management;

⁴⁸ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, pp. 7, 61–63, 67, 82–83, 86. See also VI, *Integrity report: monitoring project on Victorian Ombudsman interviews*, Melbourne, June 2019.

⁴⁹ See, further, the discussion in Section 1.3.3 of this chapter and Chapter 2 in this report.

⁵⁰ See 'IBAC's statement about the Special Report', extracted in VI, *Annual report 2018–19*, Melbourne, 2019, p. 71.

⁵¹ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 3.

⁵² And under the comparable provision in the *Ombudsman Act 1973* (Vic) (s 26H(1)). See Integrity and Oversight Committee, *Media release: Parliamentary committee to review witness welfare*, Melbourne, 10 February 2022, <https://new.parliament.vic.gov.au/4a426c/contentassets/eb35616cf10b4b15b1e9f04030c9e4b4/20220210_media-release_ioc_integrity_witness-welfare-review_final-approved-for-release.pdf> accessed 23 August 2022.

their policies, procedures and standard practices; how they identified, and the extent to which they conformed to, best practice principles; and what measures they had taken to improve the management of witnesses involved in their investigations. It also sent comparable questions to 25 interstate integrity agencies, and 65 non-integrity agency organisations with experience in inquiry, investigative, court, tribunal or other court-like settings. The Committee received responses from all the Victorian integrity agencies it oversees, along with a number of contributions from intrastate and interstate stakeholders (some as submissions, others as correspondence).

The Committee also sent questions about witness welfare best practice to 16 international bodies, receiving responses to the questions from the following organisations: Serious Fraud Office, United Kingdom; Independent Commission Against Corruption, Hong Kong; Independent Investigations Office, British Columbia, Canada; Office of the Independent Police Review Director, Ontario, Canada; Special Investigations Unit, Ontario, Canada; and Independent Police Conduct Authority, New Zealand.

The Committee called for submissions on 18 March 2022, with a due date of 14 April 2022.⁵³ The Committee received and accepted 30 submissions (including one supplementary submission), with 16 of these accepted as public submissions and 14 as wholly confidential (see Appendix A for details).⁵⁴

The Committee held public hearings on 9 and 16 May 2022 as part of its review of agency performance, with a focus on witness welfare management, with Forensicare, IBAC, OVIC, the VI and the VO appearing (see Appendix A for details).⁵⁵ The Committee followed up with written questions on notice to these witnesses after the hearings were held.⁵⁶ On each day of the hearings, St John Ambulance first aid volunteers and a registered mental health nurse were available for witnesses and members of the public gallery.

In addition to oral and written evidence, the Committee undertook primary and secondary research, including reviewing agency reports and expert literature, especially to identify best practice principles on witness welfare management.

Relevance of the prohibitions in s 7(2) of the *PC Act 2003* (Vic)

Not surprisingly, the prohibitions in s 7(2) of the *PC Act 2003* (Vic) were highly relevant to the course of the Committee's review. This was emphasised consistently by the then Chair, Harriet Shing MP, throughout the review, and, in particular, in her statement

⁵³ Integrity and Oversight Committee, *Media release: Call for submissions—Victorian integrity agencies' management of witness welfare during investigations*, Melbourne, 18 March 2022, <https://new.parliament.vic.gov.au/4a2832/contentassets/d9dd696073384edd9783df5d1f26a02a/202220318_media_release_ioc_integrity_witness_welfare_review_call_for_submissions.pdf> accessed 1 August 2022

⁵⁴ Integrity and Oversight Committee, *Performance of Victorian Integrity Agencies 2020/21: Focus on Witness Welfare, Submissions*, <<https://new.parliament.vic.gov.au/get-involved/inquiries/performance-of-victorian-integrity-agencies-202021/submissions>> accessed 1 August 2022.

⁵⁵ Integrity and Oversight Committee, *Performance of Victorian Integrity Agencies 2020/21: Focus on Witness Welfare, Hearings and transcripts*, <<https://parliament.vic.gov.au/ioc/inquiries-iao/article/4861>> accessed 1 August 2022.

⁵⁶ Letters from Harriet Shing MP, Chair, Integrity and Oversight Committee, to Forensicare, IBAC, OVIC, the VI and the VO, 30 May 2022.

1 issued on 16 May 2022 published on the IOC's website;⁵⁷ statements before witnesses gave evidence at the Committee's hearings;⁵⁸ and in her chairing of the hearings. The Committee also clearly explained to submitters and potential witnesses the IOC's functions and powers, and the limitations of those powers, as well as their rights and obligations (including other avenues for making complaints) and welfare supports available.

The Committee was, and is, aware of ongoing integrity agency investigations, and therefore ensured that it complied with s 7(2) of the *PC Act 2003* (Vic). The Committee took a steadfastly cautious approach, as warranted, and remained focused on systemic dimensions of the integrity agencies' witness welfare management policies, procedures and standard practices; whether they conform to best practice principles; and how they might be improved. It was determined not to trespass into any individual matters, especially those subject to ongoing integrity agency investigations or legal proceedings.

As the Chair's statement on 16 May explained:

While this Committee oversees the integrity agencies, under s 7(2) of the *Parliamentary Committees Act 2003* (Vic) it is prohibited from investigating any matters being investigated by an agency (including reviewing any decision by an agency to investigate, not to investigate or discontinue to investigate a matter). Further, it is prohibited from reviewing any findings, recommendations, determinations or other decisions in relation to particular matters (including complaints to agencies and agency investigations). Consequently, the Committee has no power, and nor should it have any such power, to interfere with or overturn integrity agency determinations with respect to individual matters.

It is also important to note that under s 7(2) the Committee is prohibited from disclosing any information which may prejudice any criminal proceedings or criminal investigations; prejudice any investigation conducted by IBAC, the Victorian Inspectorate or the Victorian Ombudsman; or breach any secrecy or confidentiality provisions in any Act. That is why it is critical that the Committee ... not discuss individual matters that are before integrity agencies or currently subject to similar legal processes. It is also why confidentiality is so important with regard to these matters. Integrity agencies, like anyone else, can respond to any *public* evidence received by the Committee, which will be published on the Committee's website in due course. Confidential evidence, however, must, under the *Parliamentary Committees Act*, and as a matter of fundamental principle, *remain* confidential.

These provisions rightly protect the integrity and independence of Victoria's integrity agencies while subjecting them to necessary, but properly limited, oversight. ...

⁵⁷ Integrity and Oversight Committee, Parliament of Victoria, *Chair's statement: Harriet Shing MP—Performance of Victorian integrity agencies 2020/21: Focus on witness welfare*, 16 May 2022, <https://new.parliament.vic.gov.au/4a4269/contentassets/bd3d0fd280134775bdea3c51e0421f3b/chairs-statement_witness-welfare-review_16-may-2022.pdf> accessed 3 August 2022.

⁵⁸ See, for example, Harriet Shing MP, Chair, Integrity and Oversight Committee, at Forensicare public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, pp. 1–2; IBAC public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 17, 18, 19, 21–22, 24–25; VI public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 2, 4, 6; and VO public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, pp. 8, 10–11, 13–14.

As a Committee empowered to review integrity agency performance, we exist to oversight the processes and systems of integrity agencies, not to perform their duties or give rise to any perception that this can occur ...⁵⁹

The Chair reiterated throughout the review that parliamentary committees determine whether evidence received by it will be accepted as public or confidential evidence.⁶⁰

Further, it has never been the case that a body external to Parliament, let alone one of the very bodies subject to a parliamentary oversight committee's review, be permitted to examine parliamentary evidence before publication (if it is published) or make any determinations about it. In contrast to a parliamentary committee—and consistent with the Victorian Constitution, the doctrine of exclusive cognisance and the provisions of the *PC Act 2003* (Vic)—such external, non-parliamentary bodies have *no legal authority* to do so.

Moreover, allowing an external body access to confidential submissions, would not only breach the law⁶¹ but could also jeopardise the interests of submitters who, though they may not have requested it, were nevertheless protected by the confidentiality conferred on their submissions.

To avoid any doubt, the Committee emphasises that, under the law, confidential material in wholly or partly confidential submissions cannot be provided to anyone, or published, quoted, paraphrased or cited in any Committee report.⁶²

Finally, Committee deliberations and draft Committee reports are Committee-in-confidence. Under parliamentary law and custom, which encompasses the Parliament of Victoria's committee procedures,⁶³ disclosures of committee deliberations and draft reports are prohibited, and breaches of confidentiality can constitute contempts of the Parliament.⁶⁴

⁵⁹ Integrity and Oversight Committee, Parliament of Victoria, *Chair's statement: Harriet Shing MP—Performance of Victorian integrity agencies 2020/21: Focus on witness welfare*, 16 May 2022, <https://new.parliament.vic.gov.au/4a4269/contentassets/bd3d0fd280134775bdea3c51e0421f3b/chairs-statement_witness-welfare-review_16-may-2022.pdf> accessed 3 August 2022.

⁶⁰ See, for example, Harriet Shing MP, Forensicare public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, pp. 1–2. See also Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, p. 30.

⁶¹ See *PC Act 2003* (Vic) s 37(2).

⁶² *PC Act 2003* (Vic) s 37(2); Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, p. 30.

⁶³ Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, p. 61.

⁶⁴ The position in Victoria is consistent with the Parliament of Australia's recognition of the confidentiality of unpublished, unauthorised Committee materials (including draft committee reports), as well as confidential evidence—see DR Elder and PE Fowler (eds), *House of Representatives practice*, 7th edn, Department of the House of Representatives, Canberra, 2018, pp. 679 ('The confidentiality made possible by a committee's power to meet in private is bolstered by the provision in the standing orders that a committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been reported to the House; or authorised by the House, the committee or the subcommittee ... Any unauthorised breach of this confidentiality may be dealt with by the House as a contempt.'). 761 ('the publication or disclosure of evidence taken in private, of private deliberations and of draft reports of a committee before their presentation to the House, have been pursued as matters of contempt'); Rosemary Laing (ed), *Odgers' Australian Senate practice as revised by Harry Evans*, 14th edn, Department of the Senate, Canberra, 2016, pp. 87–88, 501–502 (evidence taken in private), 530 ('Evidence taken by a committee and documents presented to it, and not published by the committee or presented to the Senate, may not be disclosed to any person other than a member or officer of the committee.'). See also *Parliamentary Privileges Act 1987* (Cth) s 13, under which the unauthorised publication or disclosure of in camera written or oral evidence, which has been submitted to or taken by a committee, is an offence.

The opportunity to respond to evidence accepted by a parliamentary committee—which is a parliamentary institution operating within a system of representative democracy—arises when public evidence is published. Similarly, Members of Parliament, members of the public, integrity agencies, journalists and other stakeholders can respond to a committee’s analysis, findings and recommendations when the report in which they are contained has been tabled in Parliament in accordance with the law.⁶⁵

1.3.3 Best practice principles for witness welfare management: a summary

Through the Committee’s research and examination of evidence it received, especially from submitters and witnesses with psychological expertise regarding investigative, court and court-like settings, it identified the following best practice principles (BPP), summarised below.⁶⁶

BPP 1: Welfare support should be appropriate and effective

There are three main dimensions of this BPP.

The importance of understanding the impact of investigative processes on witnesses

During its review of witness welfare management, the Committee received evidence regarding how persons, particularly those subject to the exercise of coercive powers, may be negatively impacted by investigative processes.

The importance of identifying witnesses’ support needs

During the review, the Committee sought to understand the benefits of providing appropriate support to persons involved in investigative processes, as well as the potential consequences of witnesses’ welfare support needs not being adequately identified or addressed.

The importance of providing targeted support

During the review, the Committee received evidence that tokenistic welfare support and ‘limited transparency’ regarding investigative processes may exacerbate any negative impacts on a witness’s welfare resulting from their involvement in an investigation.⁶⁷

⁶⁵ See *PC Act 2003* (Vic) ss 35–36; Parliament of Victoria, *Committee procedure manual*, Melbourne, 2020, pp. 63, 65–69.

⁶⁶ They are discussed in depth in Chapter 2 of this report.

⁶⁷ Australian Psychological Society (APS), *Submission 28*, 27 April 2022, p. 1.

BPP 2: Welfare support should be provided proactively

There are two main dimensions of this BPP.

The need for welfare support to be clearly explained

The Australian Psychological Society (APS) highlighted the importance of supporting, involving and educating witnesses throughout the investigative process to reduce the likelihood of, and to effectively ‘manage [, their] stress and anxiety’ responses to investigative processes.⁶⁸

The need for welfare support to be provided throughout the entire investigation

The APS and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) highlighted the importance of welfare support *throughout* the investigation, including the value and necessity of follow-up in managing the welfare of witnesses who may have delayed reactions to certain investigative processes.⁶⁹

BPP 3: Welfare support should be provided by persons with clinical expertise and experience

There are three main dimensions of this BPP:

- the need for independence
- the need for mental health expertise and experience
- the complexity of welfare risk assessments.

A critical aspect of the assessment and management of mental health is the identification of persons who are more vulnerable to the stressors they are facing (and monitoring them during the dynamic course of investigations, including examinations, for acute risks requiring an emergency medical intervention).⁷⁰

⁶⁸ APS, *Submission 28*, 27 April 2022, p. 1.

⁶⁹ APS, *Submission 28*, 27 April 2022, pp. 1–2; Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Submission 11*, 8 April 2022, p. 3.

⁷⁰ Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009, pp. 15–16; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011, p. 368, <<https://www.racgp.org.au/download/documents/AFP/2011/June/201106balaratnasingham.pdf>> accessed 24 July 2022; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, pp. 11, 68–69; Kathryn Turner et al., ‘Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework’, *Australian and New Zealand Journal of Psychiatry* (2020), p. 7; Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 4; Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 7; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

1.3.4 Performance of the integrity agencies: an overview

IBAC

IBAC's overall approach to the management of witness welfare involves the provision of mental health training for its officers and the use of individual welfare risk assessments, operational activity risk assessments, risk matrix and risk treatments to identify, assess and manage welfare risks and concerns. IBAC may seek input and advice from a witness's registered health practitioner where a serious welfare risk or concern has been identified.

The agency also has hearing protocols in place to ensure an examinee (or their legal representative) is provided with an opportunity to raise welfare concerns prior to the commencement of an examination, and that the procedure of an examination can be adapted, where necessary, to address welfare concerns.

Further, IBAC provides welfare support for witnesses, including information about the supports and resources available to them, such as their employer's or the agency's Employee Assistance Program (EAP).

In addition, IBAC complies with legislated procedural fairness requirements when publicly reporting on its investigations.

An independent expert review of IBAC's 'exercise of its coercive information-gathering powers',⁷¹ concluded in April 2019, resulted in the development and implementation of its *Welfare Management for IBAC Investigations* policy (*Welfare Management Policy*) and associated *Guideline (Welfare Management Guideline)*. The *Guideline* establishes a 'welfare risk assessment' process for identifying and managing potential risks to persons involved in its investigations, arising from the agency's operational activities.⁷² Further, IBAC introduced an independent specialist welfare support service for witnesses, provided by Converge International Consultants (Converge), that delivers counselling and other forms of support during an investigation, especially in relation to examinations.

The Committee found that IBAC's approach to the management of witness welfare is robust and well-developed in comparison to equivalent interstate integrity agencies. However, the Committee also found that IBAC places considerable weight on information obtained from 'contact assessments', which places undue faith in the ability of IBAC officers to garner welfare information when they are exercising coercive powers.⁷³ There are significant barriers to IBAC investigators obtaining information from witnesses given their understandably limited levels of trust in disclosing often sensitive welfare information, officers' lack of clinical expertise and experience, and the lack of (or at least greatly limited) rapport building given the nature of interactions between

⁷¹ IBAC, *Submission 29*, 3 May 2022, p. 21.

⁷² *Ibid.*, pp. 13, 15, 22.

⁷³ IBAC, *Response to Integrity and Oversight Committee questions on notice*, 8 July 2022, pp. 3–6.

investigators and persons involved in an investigation, especially if they are a POI (see the discussion in Section 1.3.3, above).

IBAC faces a variety of barriers to obtaining accurate and relevant welfare information which were not specifically addressed by the agency in its response to the Committee's questions on notice. These barriers include the following: IBAC's limited capacity to access current/historical welfare intelligence information held by organisations like Victoria Police or Converge, or by a witness's treating health practitioner; the impracticality of IBAC speaking to a witness's employer, family or friends (due to confidentiality issues at play in investigations and potential issues of distrust/defensiveness); and barriers to rapport-building due to the nature of the interaction (for example, when IBAC is exercising a coercive power).

IBAC is currently undertaking a review of its *Welfare Management Policy* and associated *Guideline*. In this regard, the Committee urges IBAC to consider the appropriateness and feasibility of creating a new position within its Operations Division (Investigations), for a person with appropriate psychological qualifications, expertise and experience, to oversee the agency's management of witness welfare.

Further the Committee has made a range of recommendations:⁷⁴

- to allow persons seeking mental health crisis support who are subject to an IBAC confidentiality notice to disclose a restricted matter to a mental health helpline, even if the operator is not a registered health practitioner (unless IBAC directs otherwise)
- to require IBAC to develop procedural guidelines relating to the requirements it must meet under s 117 of the *IBAC Act 2011* (Vic) in order to hold a public examination (hearing), including guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing'
- to require IBAC to include in its written report under s 117 of the *IBAC Act 2011* (Vic) to the VI, giving reasons for its decision to hold a public examination, information about its compliance with those procedural guidelines
- to require the VI to develop procedural guidelines relating to its review, as an oversight body, of IBAC's written report to the VI giving reasons for its decision to hold a public examination, including for its assessment of the requirements in s 117 of the *IBAC Act 2011* (Vic)
- to require IBAC to include in a special report tabled under s 162 of the *IBAC Act 2011* (Vic), on an investigation in which public examinations were held, information setting out, in general terms, the Commissioner's decision to hold public examinations in the investigation, which addresses the mandatory criteria in s 117 of the Act—including the 'exceptional circumstances' leading to the decision and the consideration given to risks that any person's reputation would be damaged

⁷⁴ These are described and discussed in detail in Chapter 3 in this report.

- for IBAC to update its policies and procedures to provide specific guidance on decision-making regarding confidentiality notice variation requests, and to capture data on these requests and their approval or denial in order to facilitate reporting on that data and continuous improvement of its witness welfare management
- for IBAC to update its policies and procedures providing specific guidance on complaints regarding reputational harm or damage in connection with IBAC's public examinations, and to capture data on these complaints to facilitate reporting on that data and continuous improvement of its witness welfare management
- to explore the feasibility of IBAC officers who are serving a summons or confidentiality notice on a person seeking their consent to provide their name and contact information to Converge, so Converge can proactively contact the person to familiarise them with its welfare support services
- to explore the feasibility of IBAC officers who are serving a summons to attend a public examination on a person seeking their consent to provide their name and contact information to Converge so Converge can conduct a welfare evaluation and assessment of the person in relation to the examination (and for Converge to establish an informed-consent process and secure electronic information-sharing platform so results of their evaluation and assessment can be shared with IBAC, to enhance its operational risk assessment of the witness regarding the examination)
- to explore the feasibility of Converge, with the consent of the witness, providing proactive periodic mental wellbeing check-in calls on an ongoing basis, between the end of the examination and publication of IBAC's investigation report, for all witnesses who give evidence in a public examination
- for IBAC to update its policies and procedures to provide specific guidance on its decision-making regarding requests for the agency to hold part of a public examination in private, and to capture data on these requests to facilitate reporting and contribute to continuous improvement of its witness welfare management.

With respect to other performance matters, the Committee notes that IBAC has accepted the Committee's recommendation, in its 2019/20 integrity agency performance report,⁷⁵ to review its occupational health and safety regime, and the agency has committed to conducting a review of its Health, Safety and Wellbeing Strategy 2021–23 'in early 2023'.⁷⁶ In its response to the Committee's 2019/20 report, IBAC informed it that there had been improvements in its 2020 and 2021 People Matter Survey results.⁷⁷

⁷⁵ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, p. 32.

⁷⁶ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 17 February 2022, pp. 1–2. See also IBAC, *Health, Safety and Wellbeing Strategy 2021–23*, <<https://www.ibac.vic.gov.au/docs/default-source/policies/ibac-health-safety-and-wellbeing-strategy.pdf>> accessed 6 August 2022.

⁷⁷ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 17 February 2022, p. 2.

The Committee is encouraged that IBAC's Health, Safety and Wellbeing Strategy 2021–23 appears to have had a positive impact on the agency's workplace culture. The IOC will monitor the results of IBAC's 2023 review of the Strategy to ensure that the matters raised in the Committee's 2019/20 report recommendation have been adequately addressed.

The Committee also noted the challenges IBAC has experienced in meeting its Budget Paper No. 3 (BP3) timeliness targets, failing to meet any of the timeliness targets in 2020/21 for assessment of complaints and notifications and completion of investigations.⁷⁸ The Committee agrees with IBAC that part of the explanation for these shortcomings lies in the inability of the present timeliness performance measures to accurately reflect and measure the complexity of IBAC's work.⁷⁹

For these reasons, the Committee encourages IBAC to consult with the Department of Treasury and Finance in developing BP3 measures which better reflect the complexity of its work. The Committee will continue to monitor and review the timeliness of IBAC's assessment of complaints and notifications, to evaluate the effectiveness of its triaging and allocation processes, as well as the timeliness of its completion of investigations.⁸⁰

OVIC

To date, OVIC has 'rarely' used its coercive powers,⁸¹ explaining that, compared with the other integrity agencies, its inquiries tend to be less contentious than other Victorian integrity agencies,⁸² and that its oversight focuses on agencies' 'systems and processes'

rather than malfeasance or criminality of individuals. Therefore, any interviews conducted ... often deal with subject matter of a less sensitive nature for witnesses than some other integrity agencies.⁸³

Further, when OVIC requires information or evidence it generally seeks to obtain it through 'voluntary provision of information or documents', which greatly reduces the need to exercise coercive powers.⁸⁴

Nevertheless, OVIC has proactively sought to improve its approach to witness welfare, including before the commencement of the Committee's review.⁸⁵

⁷⁸ See Table 3.2 in Chapter 3 in this report.

⁷⁹ See Section 3.6.2 in Chapter 3 in this report.

⁸⁰ See Section 3.6.2 in Chapter 3 in this report.

⁸¹ Office of the Victorian Information Commissioner (OVIC), *Submission 4*, 1 April 2022, p. 5.

⁸² Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 10–11; OVIC, *Submission 4*, 1 April 2022, p. 6.

⁸³ OVIC, *Submission 4*, 1 April 2022, p. 6.

⁸⁴ *Ibid.*, p. 5.

⁸⁵ OVIC, *Submission 4*, 1 April 2022, p. 7; Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11; Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 12. See also the discussion in Sections 4.3 and 4.4 in Chapter 4 in this report.

OVIC has, for example, engaged with the VI to further improve its witness welfare management content, particularly its policies, procedures and other supporting resources.⁸⁶

The Committee encourages OVIC to continue engaging with the VI, attend to the best practice principles, and draw on independent mental health expertise, in developing and improving its systems for managing witness welfare, so it is well prepared when it exercises its coercive powers.

With respect to FOI, during 2020/21 OVIC continued to assist agencies through a record year for FOI applications.⁸⁷ OVIC finalised ‘the largest number’ of FOI complaints in the past four years.⁸⁸ While OVIC’s timeliness in finalising complaints about delays on the part of agencies in responding to FOI requests (delay complaints) is a concern for the Committee, OVIC took useful steps in this area during 2020/21, including by encouraging agencies to engage with applicants early in the FOI process to manage their expectations regarding potential delays.⁸⁹

The Committee also acknowledges the enhanced information security and efficiencies the agency has been able to achieve by using a secure file-sharing platform implemented in July 2020, which allows agencies to share confidential review documents and other information electronically.⁹⁰ Given these gains, the Committee welcomes OVIC’s encouragement of more agencies to use the platform to send materials to OVIC.⁹¹

OVIC has also developed a useful online *Professional Standards Self-Assessment Tool-kit* to help agencies better understand and implement the FOI professional standards, and thereby reduce the need for regulatory action.⁹² The Committee encourages OVIC to continue to seek agencies’ feedback on the toolkit, and consider whether agencies might be required in the future to complete the self-assessment annually.⁹³

Regarding privacy and information security, notably OVIC continued to improve the usability and efficiency of its Information Security Incident Notification Scheme,

⁸⁶ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 12; OVIC, *Submission 4*, 1 April 2022, pp. 8–9; Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 13. See also the discussion in Section 4.4 in Chapter 4 in this report.

⁸⁷ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9; OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 57.

⁸⁸ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 79.

⁸⁹ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

⁹⁰ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 3–4; OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 88; Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 15–16.

⁹¹ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 15; Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 15–16.

⁹² Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14; Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14.

⁹³ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14; Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14.

which requires Victorian government entities to report certain security incidents to OVIC.⁹⁴ OVIC also developed a toolkit for privacy professionals, which, drawing on the experience of privacy officers across Victoria, provides in-depth information on privacy legislation and policies, data breaches and privacy impact assessments.⁹⁵

VI

The VI has long recognised the importance of integrity agencies' effective management of the welfare of witnesses and others involved in investigations, and this is reflected in its conscientious and well-intentioned *Witness Welfare Policy* (Policy).⁹⁶ The governing principle for the VI, with which the Committee agrees, is that the welfare of every person involved in one of their investigations must be respected, regardless of who they are and what, if any, allegations they may be subject to.⁹⁷ The VI is committed to leading 'by example' regarding Victorian integrity agencies' witness welfare management.⁹⁸

The Policy effectively identifies some of the key stressors that witnesses will face during VI investigations and the handling of complaints and, as one would expect, accurately identifies and explains its legal obligations regarding witness welfare under the applicable legislation and the common law.⁹⁹

The VI also understands the importance of clear, timely, regular, professional and sensitive communication with complainants, witnesses and persons of interest regarding their legal rights and obligations, the agency's processes, and available welfare supports and services.¹⁰⁰

Additionally, the Policy requires VI officers to make regular enquiries throughout investigations as to a witness's welfare interests and needs,¹⁰¹ consistent with the best practice principle that investigative bodies communicate effectively with those involved in their investigations.¹⁰²

Further, the VI appreciates that witness welfare encompasses a wide range of aspects of physical and mental health, safety, wellbeing and reputation, and that both a person's conditions and circumstances, as well as the impact of an investigation, are dynamic.¹⁰³ The Policy properly recognises that attention to welfare must be given at the very

⁹⁴ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 10; OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 51; OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 5, 7.

⁹⁵ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 35; OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 4–5.

⁹⁶ See, for example, VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018; VI, *Witness Welfare Policy*, Melbourne, n.d..

⁹⁷ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 3.

⁹⁸ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 5.

⁹⁹ VI, *Witness Welfare Policy*, Melbourne, n.d., pp. 4–9, 12, 14.

¹⁰⁰ *Ibid.*, *passim*.

¹⁰¹ *Ibid.*, p. 14.

¹⁰² See, for example, APS, *Submission 28*, 27 April 2022, p. 2.

¹⁰³ VI, *Witness Welfare Policy*, Melbourne, n.d., pp. 3, 5, 9–10, 12–18.

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outset of the VI's engagement with a person and continue until after any reporting process has been completed (including legislated natural justice processes).¹⁰⁴

The VI also recognises the importance of mental health awareness and first aid training for its staff.¹⁰⁵ Finally, the VI has effectively integrated the Policy into a wide range of useful information sheets, templates, checklists and scripts to ensure that it is complied with by officers in a consistent and rigorous fashion.¹⁰⁶

However, while the VI's Policy and approach to witness welfare is well-intentioned and conscientious, there remain shortcomings in terms of best practice principles, which reflect the agency's lack of expertise and experience with mental health, and, in particular, in the 'proactive'¹⁰⁷ and effective assessment and management of mental health risks to which witnesses may be exposed. In its 2018 special report on IBAC's management of witness welfare, the VI itself recognised the importance of health expertise with respect to the design, development, monitoring and review of integrity agencies' witness welfare policies, procedures and practices.¹⁰⁸ However, while the report referred to 'community standards' and 'expectations' regarding an integrity agency's duty of care to eliminate or reduce reasonably foreseeable risks of harm to witnesses and other involved in their investigations,¹⁰⁹ it did not identify best practice principles expressly, precisely, systematically or in detail. Further, while the VI emphasised the importance of mental health expertise, it did not cite any relevant health sciences literature, standards or widely available mental health information produced for a lay audience (such as resources produced by Lifeline, Beyond Blue or the Better Health Channel).¹¹⁰

This limitation in the foundations of the VI's *Witness Welfare Policy* was reflected in the agency's response to the Committee's question about what best practice principles the agency uses as benchmarks for the management of witness welfare, and the sources of those principles.¹¹¹ The VI referred to its experience in overseeing integrity agencies, including handling complaints about them, as a source of insight into the anxieties and vulnerabilities complainants and witnesses can be exposed to.¹¹² However, the VI does not presently have any staff with clinical expertise, stating that the 'VI's organisational structure does not contain positions requiring technical or clinical qualifications or expertise such as psychologists or social workers'.¹¹³ Instead, the agency relies on

¹⁰⁴ Ibid., pp. 15, 19–20.

¹⁰⁵ Ibid., p. 11.

¹⁰⁶ In correspondence, the VI provided the Committee with a wide range of these documents: VI, Response to Integrity and Oversight Committee questions, 6 April 2022.

¹⁰⁷ Forensicare, Response to Integrity and Oversight questions on notice, 10 June 2022, p. 2.

¹⁰⁸ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, pp. 16, 19.

¹⁰⁹ Ibid., pp. 3, 16–17, 20, 26, 30.

¹¹⁰ See, for example, Lifeline, *Resources*, <<https://www.lifeline.org.au/resources>> accessed 25 July 2022; Beyond Blue, *Learn about mental health*, <<https://www.beyondblue.org.au/thefacts>> accessed 25 July 2022; Better Health Channel (Victoria), *Assessments and evaluations for mental illness treatment*, <<https://www.betterhealth.vic.gov.au/health/servicesandsupport/assessments-and-evaluations-for-mental-illness-treatment>> accessed 15 August 2022.

¹¹¹ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 8.

¹¹² Ibid.

¹¹³ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2021, p. 14.

the on-the-ground experience of its complaint-handling staff, mental health first aid training and other ‘training and support to ensure that ... [VI staff] have the requisite skills and *continue to develop expertise* in these areas’.¹¹⁴

It is unclear to the Committee, however, how staff without the necessary health qualifications, training and clinical experience can attain *expertise*, bearing in mind the VI’s recognition that only health professionals should make judgements about the state of a witness’s mental health risk.¹¹⁵

The Committee’s examination of the VI’s *Witness Welfare Policy* and accompanying templates has identified the need for expert review and input, as a number of the tasks required of VI officers under these documents call for expertise which is presently lacking. For instance, there needs to be greater precision in the terminology used; more systematic and detailed descriptions of welfare responsibilities and their allocation to VI officers; more concrete, scenario-based guides to action for identifying and managing welfare risks; training of staff by experts in mental health; and ongoing support for witnesses following the publication of VI reports.

While the Committee appreciates that the VI is a comparatively small organisation, and that risk assessments of witnesses will commonly have to be undertaken by VI officers who lack the expertise of a mental health professional (a situation that is not ideal), this means that it is even more critical that there be expert input into the design, content and guidance in the agency’s policies, procedures, templates and checklists, in order to improve the accuracy, appropriateness and effectiveness of its witness welfare management. This is especially important with regard to witnesses assessed as being at higher and imminent risk of harming themselves or even taking their own lives.

To improve the VI’s witness welfare management, so that it is informed by best practice principles, developed and monitored with the benefit of mental health experts, and complied with, the Committee has made a number of recommendations. The first is that the VI develop the capacity in its case management system to run automated reports to identify, record and analyse welfare risks affecting not only complainants but witnesses involved in the agency’s investigations. This is consistent with best practice regarding ‘documentation’ as part of suicide risk assessment.¹¹⁶

Second, the Committee recommends the VI:

- engage an external and independent person or body with psychological expertise to review its *Witness Welfare Policy*, templates and standard practices to ensure they conform to best practice principles
- drawing on external and independent psychological expertise, develop and implement a risk assessment matrix (with a focus on physical and mental health)

¹¹⁴ Ibid. (emphasis added).

¹¹⁵ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 18.

¹¹⁶ CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, p. 16.

that meets best practice, for use in relation to witnesses examined by the agency or subject to a confidentiality notice issued by the agency

- inquire into the feasibility of creating an at least 0.5 FTE (full-time equivalent), ongoing Complainant and Witness Welfare Officer position, for a psychologist, mental health nurse or mental health worker
- inquire into the feasibility of engaging an external and independent counselling and support service to deliver, on a fee-for-service basis, welfare support services to witnesses at greatest risk of serious harm
- report to the Committee on these recommendations, including the outcomes of any inquiries undertaken in accordance with them.¹¹⁷

The proposed Complainant and Witness Welfare Support Officer would be able to provide in-house advice on the VI's enhanced witness welfare policies, procedures and practices (including how to keep them up to date with psychological best practice); assist in identifying and managing mental health risks affecting complainants and witnesses; deliver welfare management training to staff; and liaise between the VI and the recommended external mental health service provider.¹¹⁸

Regarding other performance matters during 2020/21, the Committee notes positive developments resulting from the VI's introduction of a new telephony system, which has enhanced its capacity to work securely and efficiently in remote contexts, and to monitor and respond in real time to complainant and staff welfare concerns. The Committee also acknowledges further maturing of the agency's case management system. However, timeliness in complaint handling remains a concern. For this reason, the Committee has recommended that the Victorian Government, following consultation with the VI, introduce a BP3 timeliness performance measure for the agency's assessment of complaints.

VO

The VO's approach to witness welfare management is outlined in its *Supporting the Wellbeing of VO Complainants and Witnesses (Welfare Policy)* ('Welfare Policy').¹¹⁹ This policy, which is supported by a range of operational policies and guidelines, provides high-level guidance on how VO officers are expected to support the welfare of persons they engage with when performing their duties.¹²⁰

¹¹⁷ See, further, the discussion in Section 5.4.1 in Chapter 5 in this report.

¹¹⁸ Gold Coast Mental Health and Specialist Services, in implementing the Zero Suicide Framework, recruited a 0.6 FTE clinical psychologist to support training through 'in-service education to teams, modelling and constructive feedback on clinical practice and documentation'—Kathryn Turner et al., 'Implementing a systems approach to suicide prevention in a mental health setting using the Zero Suicide Framework', *Australian and New Zealand Journal of Psychiatry* (2020), p. 4. See also Zero Suicide, <<https://zerosuicide.edc.org>> accessed 29 July 2022.

¹¹⁹ VO, *Supporting the Wellbeing of VO Complainants and Witnesses (Welfare Policy)*, Melbourne, April 2022 ('Welfare Policy').

¹²⁰ *Ibid.*, especially pp. 3–5.

The *Welfare Policy* reflects the agency's commitment to exercising its coercive powers judiciously and with 'consideration for those affected'.¹²¹ It also demonstrates the agency's commitment to providing appropriate training and practical guidance to staff on managing challenging behaviour and identifying and reducing welfare risks for complainants, and witnesses and others involved in their investigations.¹²² The *Welfare Policy* prescribes a range of values, measures and actions to identify, reduce and manage welfare risks.¹²³ These include:

- communicating in a way that is responsive to persons' individual needs, and throughout the complaint-handling or investigation process
- informing affected persons about what they can expect from the VO
- finalising complaints and investigations within a reasonable time
- identifying and responding to any welfare risks before, during and after the exercise of a coercive power
- (with informed consent) using its information-sharing powers to disclose personal information of a person to a registered health practitioner or welfare support service
- taking urgent action in response to serious, imminent welfare concerns (including the risk of a person harming themselves or suicide risk)
- encouraging affected persons to seek welfare support from qualified health professionals
- facilitating persons' access to the VO's EAP service provider.¹²⁴

The *Welfare Policy* is supported by a well-developed and informed *Service Delivery Charter*, and human rights, management of complex behaviours, and investigations policies.¹²⁵ The VO is also guided by its thorough and clinically informed *Good practice guide: managing complex complainant behaviour (Good practice guide)*,¹²⁶ which, based on the VO's extensive experience, is used throughout the Victorian public sector.

The VO has also implemented a wide range of investigation templates, including interview scripts and assessment checklists, to ensure that its officers comply with their obligations under applicable legislation, policies and procedures. These templates were supplied to the Committee in confidence in the course of the review.¹²⁷

¹²¹ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 9.

¹²² VO, *Welfare Policy*, April 2022, pp. 4–5.

¹²³ *Ibid.*, passim.

¹²⁴ *Ibid.*, pp. 4–5.

¹²⁵ VO, *Service Delivery Charter*, Melbourne, n.d., <<https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/service-delivery-charter>> accessed 2 September 2022; VO, *Policy: Human Rights*, Melbourne, July 2015; VO, *Policy: Dealing with Complex Behaviours from Members of the Public*, Melbourne, May 2018; VO, *Policy: Investigations*, Melbourne, December 2015.

¹²⁶ VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, February 2022 (*Good practice guide*).

¹²⁷ VO, *Submission 9*, 6 April 2022, p. 5.

The VO has extensive experience, spanning more than four decades, in receiving and handling a high volume of complaints about the public sector, often engaging with vulnerable complainants displaying complex behaviours.¹²⁸ Through this experience it has gained and applied a deep and sophisticated understanding of the psychological dimensions of its work, which is seen, for instance, in its *Good practice guide*.¹²⁹ This has been bolstered by its experience in overseeing and investigating sectors such as public health, disability, public/community housing, corrections and child protection sectors.¹³⁰ The VO's experience as a human rights investigator has also prepared the agency well for a welfare-oriented and human-centred approach to witnesses and others involved in its investigations.¹³¹

The VO's policies, procedures and practices generally conform to the best practice principles; they are clear, detailed, practically oriented, flexible and well informed by mental health expertise.

The VO is also committed to continuous improvement of its approach to witness welfare management, as demonstrated by its conscientious response to the VI's recommendations to the agency in its report on VO interviews.¹³² In the spirit of continuous improvement, the Committee has recommended that the VO improve access to the witness welfare support services provided by the agency's EAP, for persons involved in their investigations in particular circumstances (broadly, those subject to confidentiality notices and summonses).

In relation to other performance matters, the Committee commends the VO for its digital innovation in enhancing its data collection, analysis, sharing and reporting capacity, and has recommended that the agency use this capacity (while respecting privacy laws) to collect, analyse, use and report on data relating to the identification of welfare risks. The Committee also welcomes the VO's improved use of social media to raise awareness and understanding of the agency's functions, to engage with the public, and even to assist in the conduct of its investigations.

Finally, the VO has drawn the Committee's attention to a number of recommended legislative amendments the agency considers will strengthen its exercise of its investigative and alternative dispute resolution functions. The Committee has recommended that these proposals be examined by the Victorian Government.

¹²⁸ VO, *Good practice guide*, Melbourne, February 2022; VO, *Submission 9*, 6 April 2022, pp. 1, 8; Ms Deborah Glass OBE, Ombudsman, VO, public hearing, 16 May 2022, *Transcript of evidence*, pp. 9–10, 12. The VO has described 'complex behaviour' as 'any behaviour you find complex and challenging as a complaint handler ... Some types of behaviour are never acceptable. They include verbal abuse, threats and violence.'—*Good practice guide*, Melbourne, February 2022, p. 5.

¹²⁹ *Good practice guide*, Melbourne, February 2022.

¹³⁰ See the discussion in Section 6.4 in Chapter 6 in this report.

¹³¹ *Ombudsman Act 1973* (Vic) s 13(1)–(2); VO, *Policy: Human Rights*, Melbourne, July 2015. See also VO, *Annual report 2021*, Melbourne, 2021, pp. 4, 6, 8–10, 12, 20–21, 50–52, 54, 56–59.

¹³² VO, *Submission 9*, 6 April 2022, pp. 6–8. See also VI, *Integrity report: monitoring project on Victorian Ombudsman interviews*, Melbourne, June 2019.

1.4 Report structure

The report is comprised of seven chapters. This chapter has given an overview of Victoria's integrity system, the Committee's focus on witness welfare management, the role and work of the IOC as a parliamentary committee, best practice principles for witness welfare management, and the agencies' performance.

The remaining chapters evaluate each agency's performance in depth, with a focus on witness welfare management. In undertaking this evaluation, the Committee has drawn on the best practice principles for witness welfare management, identified and discussed in Chapter 2, and concentrated on legal frameworks and the agencies' policies, procedures and standard practices.

In evaluating other performance matters relevant to the agencies in 2020/21, the Committee examined their key activities, achievements and challenges within the following main areas: complaint handling, investigations and oversight; public information and education; governance and workplace; and accountability.

Chapter 2 identifies and discusses best practice principles for witness welfare management.

Chapter 3 examines the performance of IBAC.

Chapter 4 examines the performance of OVIC.

Chapter 5 examines the performance of the VI.

Chapter 6 examines the performance of the VO.

Chapter 7 concludes the report with brief reflections on the agencies' performance and the nature and significance of the Committee's recommendations.

2.1 Introduction

Considering the extensive powers integrity agencies have, and their critical role in helping instil and maintain trust and confidence in public administration, the management of the welfare of persons involved in their investigations needs to conform to best practice.

During this review, the Committee called for evidence regarding the best practice principles for the management of the welfare of witnesses and others involved in integrity agency investigations.¹ The Committee received specialist evidence from organisations with clinical expertise and experience in the field of psychology, including in the context of coercive investigative processes and legal proceedings, as well as those with experience in supporting witnesses in court and court-like settings.²

Evidence received by the Committee demonstrates that effective management of the welfare of witnesses is a complex and challenging task, which requires a deep understanding of the impact that investigative processes can have on those involved in them, and mental health expertise and experience. Ultimately, by ensuring that witnesses are appropriately and effectively supported throughout investigations, integrity agencies can fulfil their obligations to such persons in a way that enhances public trust in them.

This chapter summarises the best practice principles for the management of the welfare of witnesses, particularly persons subject to coercive investigative processes, involved in integrity agency investigations.

¹ Parliament of Victoria, Integrity and Oversight Committee, *Media release: Call for submissions—Victorian integrity agencies' management of witness welfare during investigations*, Melbourne, 18 March 2022.

² Forensicare, *Submission 6*, 4 April 2022; Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Submission 11*, 8 April 2022; Australian Psychological Society (APS), *Submission 28*, 27 April 2022; Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022; Georgia Blackie, Manager, Policy and Specialised Legal Division, Office of Public Prosecutions, Victoria (OPP), correspondence, 17 May 2022.

2.2 Welfare support should be appropriate and effective

2.2.1 The importance of understanding the impact of investigative processes on witnesses

During the review, the Committee received evidence regarding the impact that investigative processes can have on those involved in them.³ The Australian Psychological Society (APS), for example, noted:

Investigation processes involving witnesses can be long and emotionally demanding, which can negatively impact on a person's psychological wellbeing. Witnesses have reported experiencing anxiety and stress, as well as feelings of shame, depression, and suicidal thoughts associated with an investigation.⁴

The Committee also received evidence that persons subjected to coercive investigative processes may be at particular risk due to the nature of their involvement in the investigation, rather than their individual characteristics and circumstances.⁵ As Forensicare explained:

The investigative processes undertaken by integrity bodies threaten the reputation, employment and welfare of those who may be involved. In some cases, they may lead to criminal charges. They may also be the subject of significant media attention.

Forensicare emphasised that such witnesses do not have the kind of 'positive interest in the outcome' of the investigation that, for example, victims in a criminal investigation or prosecution would.⁶ They may therefore be reluctant to engage with the investigation or feel distressed at having to participate in investigative processes. Consequently, 'stress and trauma responses may be more likely'.⁷

The observations of APS and Forensicare were corroborated by other evidence received during the review regarding witnesses' experiences. It is clear that integrity agency investigators, particularly those who have significant coercive powers and exercise them frequently, are in a position of great power relative to the persons who are subject to those powers.⁸

³ Forensicare, *Submission 6*, 4 April 2022; VEOHRC, *Submission 11*, 8 April 2022; City of Casey, *Submission 22*, 14 April 2022; Victorian Ambulance Union (VAU), *Submission 27*, 22 April 2022; APS, *Submission 28*, 27 April 2022; Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, and Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022; Rebecca Falkingham, Secretary, Department of Justice and Community Safety (Victoria) (DJCS), correspondence, 12 April 2022; Georgia Blackie, Manager, Policy and Specialised Legal Division, OPP, correspondence, 17 May 2022.

⁴ APS, *Submission 28*, 27 April 2022, p. 1.

⁵ City of Casey, *Submission 22*, 14 April 2022; VAU, *Submission 27*, 22 April 2022; APS, *Submission 28*, 27 April 2022; Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022.

⁶ Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 1

⁷ Ibid.

⁸ APS, *Submission 28*, 27 April 2022, p. 2.

The Committee considers that in order to effectively identify and eliminate or mitigate welfare risks to witnesses—particularly persons investigated as actual, suspected or potential persons of interest (POIs) or persons directly or indirectly implicated in another’s alleged wrongdoing—it is imperative that integrity agencies have a deep understanding of the potential impact of coercive investigative processes on such persons, and that this is adequately reflected in their policies, procedures and practices.⁹

2.2.2 The importance of identifying witnesses’ welfare support needs

The Committee gained an understanding of the benefits of providing appropriate welfare support to persons involved in coercive investigative processes, as well as the potential consequences of their welfare support needs not being adequately identified or addressed.¹⁰ In its reply to the Committee on these matters, Forensicare noted that there were significant benefits to providing witnesses with effective welfare support during an investigation, including:

- adverse outcomes such as self-harm or serious mental health deterioration may be averted;
- [a] person who might otherwise be prevented from providing evidence effectively due to acute mental health disorder, may be able to engage better due to appropriate mental health support;
- a person compelled to give evidence may be able to provide more effective evidence and to participate more meaningfully if they are not impaired by [a] mental health disorder.¹¹

When a witness’s mental wellbeing deteriorates, whether because of the impact of investigative processes generally, or poor identification and management of welfare risks and concerns, this can have significant flow-on consequences for the witness and the investigating agency. Forensicare noted that such persons may be at risk of suffering an ‘acute deterioration in mental health’, significantly impairing their ability to participate in investigative processes in a meaningful way, and potentially necessitating medical intervention.¹²

⁹ Ibid.

¹⁰ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Dr Margaret Grigg, Chief Executive Officer, Forensicare, correspondence, 30 May 2022, p. 2.

¹¹ Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

¹² Ibid., p. 1.

2.2.3 The importance of providing targeted support

The Committee sought to understand what effective support looks like for persons compelled to give evidence, such as witnesses summonsed by integrity agencies to answer questions in coercive examinations.¹³ In its reply to the Committee on these matters, Forensicare advised:

The elements of appropriate and effective support involve the following:

- screening of all people exposed to the stressor;
- general advice on coping and where to seek assistance for all in the cohort;
- further clinical exploration of the issues with those [that] are assessed to be at increased risk;
- targeted interventions delivered by appropriately skilled and credentialed services or clinicians for those experiencing a clinically significant mental health disorder
- for those manifesting clinically significant concerns, ongoing and proactive monitoring and where necessary, linkage to appropriate supports (which can include pre-existing supports such as primary care, specialist mental health services and others).¹⁴

2.3 Welfare support should be provided proactively

2.3.1 The need for welfare support to be clearly explained

Submissions to the review, and other evidence received by the Committee, emphasised the need for witnesses involved in investigative processes to be properly informed about the nature of the matters being investigated, what the investigative process entails and the potential end result.¹⁵ APS, for example, explained:

To minimise the potential for distress ... it [is] imperative that witnesses are supported, involved and educated throughout the process to help address uncertainty and to better manage stress and anxiety associated with an investigation ...

[R]elevant professionals involved in the investigation process should ensure that they check in with witnesses to confirm that the key issues are understood and that the witness is aware of what is occurring at each different stage of the process. This can be managed through ongoing discussions, providing written information, as well as being open to, and addressing, any questions asked by a witness.¹⁶

¹³ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Dr Margaret Grigg, Chief Executive Officer, Forensicare, correspondence, 30 May 2022, p. 2.

¹⁴ Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2. See also APS, *Submission 28*, 27 April 2022, p. 2.

¹⁵ APS, *Submission 28*, 27 April 2022, p. 2.

¹⁶ *Ibid.*, pp. 1-2.

It is clear that tokenistic welfare support and ‘limited transparency’ about investigative processes may exacerbate any negative impacts on a witness’s welfare caused by an investigation.¹⁷ Distinguished Professor James Ogloff from Forensicare explained that simply providing information about the availability of welfare resources is insufficient:

[O]ne thing that is not sufficient is just to give statements or Lifeline/helpline sorts of numbers. That is simply often too little, too late. There is a lot more detail about how those services can be provided ... but essentially it is doing two things simultaneously: one is assessing and checking in with the welfare of the individual, and at the same time, it is familiarising them with the process and the situations that occur.¹⁸

Professor Ogloff highlighted that organisations such as the Office of Public Prosecutions, Victoria (OPP) do this well.¹⁹ The OPP summarised its approach to providing information about the welfare support available to witnesses, as follows:

Our solicitors and social workers establish an early relationship with victims, and assess and address their individual priorities, rather than adopting a standardised approach. They take into account whether victims wish to be contacted by the OPP, their preferred method of contact, and whether additional support is required in order to understand the information being provided. Additional support needs such as interpreter services and the Court Dog Program are utilised when required.

Solicitors proactively explain the prosecution, resolution and appeal processes to victims, advise of the offences charged against the accused person, advise of any decision to substantially modify charges or discontinue a prosecution or accept a plea of guilty to a lesser charge, seek victims’ views regarding any proposed resolution, and provide reasons for decisions made regarding the matter in which they are involved, in accordance with the *Victims’ Charter Act 2006*. Solicitors also advise victims of hearing details and locations, their entitlement to attend court, the outcome of any hearing and information regarding bail applications, if requested by the victim.²⁰

The Committee acknowledges that providing information about welfare support may be difficult where witnesses, particularly those subjected to coercive investigative processes, are not receptive to engaging in an open or meaningful way with the investigating agency. However, the Crime and Corruption Commission Queensland (CCC Queensland) emphasised the importance of providing high quality information to witnesses:

A great many witnesses (particularly in relation to coercive hearings) are not at all interested in engaging with the CCC any more than they are required to by law. In those circumstances communication with witnesses may be ‘one way’. To address this, the CCC seeks to ensure that its information for witnesses is clear, comprehensive,

¹⁷ Ibid., p. 1.

¹⁸ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.

¹⁹ Ibid.

²⁰ Georgia Blackie, Manager, Policy and Specialised Legal Division, OPP, correspondence, 17 May 2022, p. 1.

accurate, and provides witnesses ... [with] as much information about their rights and responsibilities as possible.²¹

Moreover, considering integrity agencies' extraordinary power to issue confidentiality notices to prevent prejudice to their investigations, witnesses need to know who they can seek support from. In this regard, the Department of Justice and Community Safety (Victoria) (DJCS) noted:

Staff members who are subject to integrity agency investigations can be unsure about the confidentiality of the matter and with who [sic] they can share information. For example, staff are often uncertain if they can tell their manager or senior leaders about the matter or their involvement and practical implications such as the need to be absent from the workplace or take leave to attend hearings or interviews. Strict confidentiality requirements and uncertainty can impact workplace culture, and this is heightened when an investigation takes a significant period of time.²²

2.3.2 The need for welfare support to be provided throughout the entire investigation

A number of submissions to the review emphasised the importance of integrity agencies providing witnesses with welfare support during the *entire* investigation, from investigators' initial interaction with a witness through to the tabling of the investigation report.²³ In particular, APS and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) emphasised the value and necessity of follow-up in managing the welfare of witnesses who may have delayed reactions to certain investigative processes.²⁴ VEOHRC noted:

Providing evidence, particularly through an interview, can be a challenging experience. The way participants feel about engaging with an investigation may change over time. They may have questions which arise weeks after the interview, so it is important that we make avenues available for participants to seek further information and that they feel welcome to do so. Appropriate support pathways should be in place, with an understanding that participants may not feel that they need support until weeks or even months after engaging with an investigation.²⁵

This observation was corroborated by concerns raised in other evidence received by the Committee during the review.

²¹ Jen O'Farrell, Chief Executive Officer, Crime and Corruption Commission Queensland, correspondence, 11 April 2022, p. 8.

²² Rebecca Falkingham, Secretary, DJCS, correspondence, 12 April 2022, p. 4.

²³ APS, *Submission 28*, 27 April 2022, p. 2; VEOHRC, *Submission 11*, 8 April 2022, p. 3.

²⁴ APS, *Submission 28*, 27 April 2022, p. 2; VEOHRC, *Submission 11*, 8 April 2022, p. 3.

²⁵ VEOHRC, *Submission 11*, 8 April 2022, p. 3.

2.4 Welfare support should be provided by persons with clinical expertise and experience

2.4.1 The need for independence

In the context of integrity agencies, lay investigators and lawyers, however well-intentioned, are unlikely to be perceived as sufficiently independent from the agency and relevant investigation to be trusted by a witness with sensitive personal information regarding their physical and mental health.²⁶

For instance, there is a clear tension, even conflict, between the roles of integrity agency officers as investigators, lawyers or examiners in coercive processes to which a witness is subject and their simultaneous roles as mental health risk assessors, managers and sources of personal support.²⁷ For these reasons, Forensicare emphasises the importance of any witness welfare supporter being not only expert but *independent*.²⁸ As Dr Danny Sullivan explained:

It is important that the person sees the clinicians as supporting them and not simply as an outgrowth of the integrity agency and perhaps as someone with divided loyalties ... [S]eparation from the agency is a really critical part. We certainly find that it is very rare that a person being evaluated for the courts does not participate reasonably openly and does not maintain a degree of courtesy. I think part of that is the reflection that the clinicians they are seeing are not a functionary of the court, they are independent and separate. As a result I think they can maintain that ethical separateness which encourages people to be trusting.²⁹

Health professionals also have a deep understanding of confidentiality requirements as part of a clinical relationship, and skill and experience in explaining these requirements to clients in an effective way.³⁰ This includes informing clients of ‘the limits to confidentiality’, and explaining that, as a health professional, they might be required to notify a third party such as a mental health crisis team in the event of an acute risk that the client will harm themselves.³¹

²⁶ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3; Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 6.

²⁷ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3; Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 6.

²⁸ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3; Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 6.

²⁹ Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 6.

³⁰ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3; Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.

³¹ Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.

2.4.2 The need for mental health expertise and experience

Research and experience in healthcare settings demonstrate that mental health and mental illness are complex phenomena.³² In addition, research and experience in legal settings demonstrate the challenge of defining conditions such as ‘mental impairment’, which, if present, require integrity agencies to make adjustments in how they examine witnesses.³³ The complexity in each of these domains has been corroborated by evidence received by the Committee during this review.³⁴

In particular, mental health risk assessments are complex to design, implement, undertake, monitor and review.³⁵ There is a wide range of assessment tools available, some tailored to the risk of suicide, which try to identify diverse risk factors, ‘warning signs’ and triggers.³⁶ One study examined the purpose, usefulness and relative merits of 15 mental health risk assessment tools.³⁷

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- 32 See, for example, Suicide Prevention Resource Center, *Suicide screening and assessment*, September 2014, <https://sprc.org/sites/default/files/migrate/library/RS_suicide%20screening_91814%20final.pdf> accessed 24 July 2022; Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009; Kathryn Turner et al., ‘Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework’, *Australian and New Zealand Journal of Psychiatry* (2020), pp. 1–13; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021 (‘PHN’ is an abbreviation of Primary Health Network); Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011, <<https://www.racgp.org.au/download/documents/AFP/2011/June/201106balaratnasingham.pdf>> accessed 24 July 2022; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011.
- 33 See, for example, Judicial College of Victoria, *Criminal charge book*, n.d., sections 8.4 and 8.8 (analysing judicial treatment in Australia, and especially Victoria, of terms such as ‘mental impairment’ and ‘diseases of the mind’); Sentencing Advisory Council, *Mental impairment and sentencing*, 2022, <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/mental-impairment-and-sentencing#:~:text=Mental%20impairment%20as%20a%20Sentencing,neurological%20impairment%20such%20as%20dementia>> accessed 24 July 2022; Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, Melbourne, June 2014; Philip Cummins, ‘“Crazed killer” headlines defy facts of crime and mental impairment’, *The Conversation*, 30 September 2014, <<https://theconversation.com/crazed-killer-headlines-defy-facts-of-crime-and-mental-impairment-30919>>, accessed 24 July 2022; *Victorian Inspectorate Act 2011* (Vic) s 59(4) (‘impairment’ is not defined in the Act); *Sentencing Act 1991* (Vic) s 10A(1) (meaning of ‘impaired mental functioning’); *Mental Health Act 2014* (Vic) s 4 (meaning of ‘mental illness’).
- 34 See, for example, Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, and Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022; APS, *Submission 28*, 27 April 2022.
- 35 Suicide Prevention Resource Center, *Suicide screening and assessment*, September 2014, pp. 2–3, <https://sprc.org/sites/default/files/migrate/library/RS_suicide%20screening_91814%20final.pdf> accessed 24 July 2022; Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009, pp. 6–17, 55–57; Kathryn Turner et al., ‘Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework’, *Australian and New Zealand Journal of Psychiatry* (2020), p. 7; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016, pp. 9, 14–19; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021, pp. 20–25.
- 36 General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016, p. 2 and passim. See also CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021.
- 37 CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, pp. 39–57, 62–64.

Further, mental health risk assessments are not ends in themselves; their purpose is to inform assessors so they can better manage risks of harm and help ensure safety, health, care and wellbeing supports are put in place, and that persons at risk are given appropriate clinical treatment when necessary.³⁸

Given that mental health risk assessment and management are complex and challenging processes, even in healthcare settings in which they are undertaken by health professionals, it is unsurprising that they will be still more challenging for laypersons in integrity agencies, who lack medical and psychological expertise and experience.

This is one reason why, in accordance with best practice principles, mental health expertise and experience are necessary in the design and use of integrity agencies' witness welfare policies, procedures, systems and training.³⁹ This conclusion is supported by Professor James Ogloff from Forensicare, when discussing management of the welfare of distressed witnesses at risk of harming themselves, or suicide:

[W]e think that there needs to be a supportive team approach to support witnesses, and it is best done by health professionals—not by lawyers, not by police, but by people who understand and can work with people in welfare realms ...

[R]ight from the investigation stage and throughout the process it is useful to have the welfare lens available and the opportunity to provide supports either directly or indirectly along the way.⁴⁰

Professor Ogloff found in court settings, for example, that lawyers have a 'dulled sense' of the stressors facing witnesses, not only because they lack clinical expertise but because of their constant exposure to hearing environments.⁴¹ They are therefore not well attuned to identifying or managing witness welfare risks compared with health professionals, as Dr Danny Sullivan from Forensicare has emphasised:

I think in general someone with a clinical background or a professional background in counselling or in health care is more likely to be able to make ... [these kinds of

38 Suicide Prevention Resource Center, *Suicide screening and assessment*, September 2014, pp. 2-3, <https://sprc.org/sites/default/files/migrate/library/RS_suicide%20screening_91814%20final.pdf> accessed 24 July 2022; Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009, pp. 8-9; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016, pp. 14-16; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, pp. 12-14, 36 ('[assessment] tools are to be regarded as one aspect of the risk assessment process that informs, but does not replace, clinical judgement of risk').

39 See Suicide Prevention Resource Center, *Suicide screening and assessment*, September 2014, pp. 2-3, <https://sprc.org/sites/default/files/migrate/library/RS_suicide%20screening_91814%20final.pdf> accessed 24 July 2022; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021.

40 Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, pp. 3-4.

41 *Ibid.*, p. 6.

assessments about mental health risk and the need for referrals to treatment] and perhaps also gain the trust of the person being evaluated. We certainly see that when, for instance, Victoria Police are tasked with identifying and supporting witnesses. They may exercise their duty responsibly, but as non-trained clinicians they do not necessarily have the focus or the links to be able to do so as effectively as a clinician would.⁴²

A further reason why mental health expertise and experience are necessary in witness welfare management is that a ‘rapport’ must be established between the witness and the person hoping to manage and support their welfare.⁴³ As Dr Danny Sullivan told the Committee, ‘when a clinician is dealing with someone in a situation, our clinicians will begin by building rapport with the person who they are about to perform an evaluation on’.⁴⁴ Rapport is a prerequisite for effective mental health risk assessments⁴⁵ and for developing a sound ‘therapeutic alliance’⁴⁶ as the foundation for the provision of care and support to a witness (including the development of safety, care and treatment plans, generally on the basis of referrals to health professionals).⁴⁷

Without the trust built through such processes, it will not be possible to make reliable mental health risk assessments, since the witness is much less likely to be forthcoming about their physical and mental health history, suicidal ideations and any acute work, family or personal stressors and triggers. Laypersons generally lack the skill in building clinical rapport, and, consequently, the capacity to ask the right questions in the right way as a part of a conversation with the witness about their mental health (see Box 2.1, below).⁴⁸

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- 42 Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 4.
- 43 Ibid., p. 3. See also CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011; Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021.
- 44 Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.
- 45 Kathryn Turner et al., ‘Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework’, *Australian and New Zealand Journal of Psychiatry* (2020), p. 4; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011, p. 367; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016, p. 9; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, pp. 12–14.
- 46 Kathryn Turner et al., ‘Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework’, *Australian and New Zealand Journal of Psychiatry* (2020), p. 4.
- 47 Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021; Kathryn Turner et al., ‘Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework’, *Australian and New Zealand Journal of Psychiatry* (2020), p. 7.
- 48 CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, pp. 12–14; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016, pp. 9, 14; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011, p. 368.

BOX 2.1: Successful strategies for building the therapeutic rapport

- Ask the person how he/she wants to be addressed
- Provide the person with an explanation of your role and the purpose of the assessment which will minimize feelings of uncertainty and anxiety
- Listen empathetically
- Take the time to consider a person's story
- Highlight the person's strengths
- Meet the person in a comfortable and private environment

Source: CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, p. 12.

2.4.3 The complexity of welfare risk assessments

During the review, the Committee received evidence indicating that mental health risk assessments undertaken by health professionals using clinical assessment tools are complex and challenging.⁴⁹ One critical aspect of the assessment and management of mental health is the identification of persons who are more vulnerable to the stressors they are facing, and monitoring them during the dynamic course of an investigation and examination for acute risks requiring an emergency medical intervention.⁵⁰ As Professor Ogloff explained:

⁴⁹ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, and Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*. See, generally, Suicide Prevention Resource Center, *Suicide screening and assessment*, September 2014, <https://sprc.org/sites/default/files/migrate/library/RS_suicide%20screening_91814%20final.pdf> accessed 24 July 2022; Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009; Kathryn Turner et al., 'Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework', *Australian and New Zealand Journal of Psychiatry* (2020), pp. 1–13; Department of Health (Commonwealth), *National PHN guidance: initial assessment and referral for mental healthcare*, Canberra, 2021; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011, <<https://www.racgp.org.au/download/documents/AFP/2011/June/201106balaratnasingham.pdf>> accessed 24 July 2022; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011.

⁵⁰ Department of Health (United Kingdom), *Best practice in managing risk: principles and evidence for best practice in the assessment and management of risk to self and others in mental health services*, London, March 2009, pp. 15–16; Sivasankaran Balaratnasingam, *Mental health risk assessment: a guide for GPs*, Royal Australian College of General Practitioners, 2011, p. 368, <<https://www.racgp.org.au/download/documents/AFP/2011/June/201106balaratnasingham.pdf>> accessed 24 July 2022; General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, pp. 11, 68–69; Kathryn Turner et al., 'Implementing a systems approach to suicide prevention in a mental health service using the Zero Suicide Framework', *Australian and New Zealand Journal of Psychiatry* (2020), p. 7; Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 4; Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 7; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

[I]dentifying people ... who would be more vulnerable—and some of them would be ... people who have already some sort of disability or other adversity. But then beyond that it is very difficult clinically to determine who will be more affected or less affected ... [H]aving the ability to see a counsellor or a clinician at some point is very helpful to assist in that determination. A lot of people who are more stoic and less emotive might be those more affected.⁵¹

Best practice mental health risk assessment and management therefore requires expertise in understanding and discerning not only (or even) overt signs of distress but non-verbal and other cues and warning signs.⁵² Evidence from Forensicare reinforced the importance of expert understanding of stress and trauma and relevant symptoms:

The use of the word[s] stress and trauma in the popular media may lead to a lack of clarity or precision about the meaning of these terms. In mental health disorders, for instance, the DSM-5 [mental disorders manual] describes an adjustment disorder as:

‘the presence of emotional or behavioural symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s)’

In addition to exposure to a stressor, other criteria must be present, including distress that is out of proportion with expected reactions to the stressor, and clinically significant symptoms which cause marked distress and impairment in functioning. ...

[T]he particular kinds of stress or trauma are best defined by whether or not they reach a clinically significant threshold rather than focussing on specific symptoms of anxiety, mood disturbance or behavioural problems which arise in the context of the stressor. Because the course of the investigation may be protracted or piecemeal, the stress may be ongoing or periodically flare up relating to the timing of the investigation or publicity about it.⁵³

As noted in Section 2.2.3 of this chapter, for those witnesses preliminarily assessed as being at higher risk of harm, Forensicare advised that appropriate and effective support would include an in-depth assessment of the issues by a clinician with appropriate expertise and experience. In the case of persons displaying behaviour which raises cause for concern clinically, or which may be symptomatic of ‘mental health disorder’, specialist interventions are required, including coordinated interdisciplinary care and ongoing monitoring.⁵⁴

51 Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 7.

52 General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, The Royal Australian College of General Practitioners, East Melbourne, 2016; CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, p. 4; Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

53 Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 1–2.

54 *Ibid.*, p. 2.

2.5 Conclusion

Victorian integrity agencies, given the broad and extensive nature of their legislative powers and functions, should lead by example regarding their management of the welfare of persons involved in their investigations, particularly those subject to the exercise of their extraordinary coercive powers.

Some integrity agency investigations have the potential to have adverse impacts on the employment and personal and professional reputations of persons involved in them, and may also expose them to negative media attention or criminal prosecution. The Committee appreciates that there will be some damage to the reputations of persons in pursuing the public interest in exposing corruption. Nevertheless, it is critical that integrity agencies have a proper understanding of the impact of coercive investigative processes on witnesses, particularly persons investigated as actual, suspected or potential POIs or persons directly or indirectly implicated in another's alleged wrongdoing, in order to effectively identify and eliminate or mitigate welfare risks to such witnesses. As the Victorian Inspectorate has emphasised:

No matter who the witness is, or why they are being investigated, integrity agencies must demonstrate a regard for their welfare.⁵⁵

Moreover, witness welfare management will reflect best practice when welfare support provided to persons involved in investigations is appropriate and effective, noting the importance of identifying and proactively responding to witnesses' support needs throughout the entire investigation. The need for welfare support to be provided by persons with clinical expertise and experience is paramount.

⁵⁵ Victorian Inspectorate, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 3.

3

Independent Broad-based Anti-corruption Commission

3.1 Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) is the principal anti-corruption and police oversight 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.¹

The agency is primarily responsible for exposing, investigating and preventing public sector corruption and police personnel misconduct and improving the capacity of the Victorian public sector to prevent corruption and misconduct through education. Its functions include receiving, handling, assessing and investigating public complaints and agency notifications about alleged corruption and police personnel misconduct, and it prioritises investigating 'serious' and 'systemic' 'corrupt conduct'. Further, it produces reports and makes recommendations as part of its investigative, audit, research and intelligence activities. It also performs a range of functions under the *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)'), including assessing and investigating public interest disclosures (PIDs, 'whistleblower complaints'), producing guidelines and reviewing public sector procedures.²

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.³

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.⁴

This chapter reviews IBAC's management of the welfare of persons involved in its investigations, collectively referred to as 'witnesses'. It examines the legal framework bearing on IBAC's management of witness welfare; surveys its current policies, procedures and practices; and evaluates their effectiveness, identifying areas for

1 IBAC, *Who we investigate*, <<https://www.ibac.vic.gov.au/investigating-corruption/who-we-investigate>> accessed 11 July 2022.

2 *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* ('IBAC Act 2011 (Vic)') especially ss 8, 15; *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)'), especially s 55; IBAC, *Annual report 2020/21*, Melbourne, 2021, especially pp. 12, 46–47.

3 *IBAC Act 2011 (Vic)*, especially pts 3, 4, 6; *Surveillance Devices Act 1999 (Vic)*, especially pt 4; *Telecommunications (Interception and Access) Act 1979 (Cth)*, especially chs 1–4.

4 *Victorian Inspectorate Act 2011 (Vic)* ('VI Act 2011 (Vic)'), especially s 11; *Parliamentary Committees Act 2003 (Vic)* ('PC Act 2003 (Vic)'), especially s 7(1); IBAC, *Annual report 2020/21*, Melbourne, 2021, especially pp. 46–48.

improvement. While IBAC interacts with a wide variety of people in connection with its investigations, this chapter focuses on IBAC's approach to managing the welfare of witnesses subject to the exercise of its coercive powers.

In addition, the chapter examines other performance matters related to IBAC's functions, as part of the Committee's regular review and monitoring of Victoria's integrity agencies.

3.2 IBAC's witness welfare legal framework

IBAC's approach to managing witness welfare is informed by the *Occupational Health and Safety Act 2004* (Vic) ('*OH&S Act 2004* (Vic)'), *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter'), *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') and *PID Act 2012* (Vic).

3.2.1 *OH&S Act 2004* (Vic)

Under the *OH&S Act 2004* (Vic), IBAC owes a duty not to expose persons with whom it comes into contact to risks to their health or safety resulting from its investigative activities.⁵ It must do everything which is 'reasonably practicable' in the circumstances to remove or minimise such risks.⁶ Discharging this duty requires IBAC to consider what is reasonably foreseeable in terms of the probability of a risk occurring, the severity of harm likely to result and the means at its disposal to remove or minimise the risk (including the associated cost).⁷ As the New South Wales Independent Commission Against Corruption (NSW ICAC) has highlighted, 'the greater the magnitude of the risk and the greater the gravity of the harm, should the event occur, the higher the duty to take precautions'.⁸

3.2.2 The Charter

When exercising its coercive powers, IBAC must act with due regard to human rights.⁹ In limiting, for example, a person's right against self-incrimination or to 'privacy and reputation' during investigative processes, it must consider whether the limitation is reasonable by reference to the Charter.¹⁰ As IBAC has highlighted, this requires an assessment of whether the 'limitation' is 'reasonable, justifiable, necessary and proportionate to the operational goals' of the agency, and whether appropriate alternatives exist.¹¹

⁵ *Occupational Health and Safety Act 2004* (Vic) ('*OH&S Act 2004* (Vic)') s 23(1).

⁶ *OH&S Act 2004* (Vic) s 20(1).

⁷ *OH&S Act 2004* (Vic) s 20(2).

⁸ New South Wales Independent Commission Against Corruption (NSW ICAC), *Submission 7*, 5 April 2022, p. 7.

⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter') s 38(1).

¹⁰ The Charter ss 7, 13, 25(2)(k); IBAC, *Submission 29*, 3 May 2022, p. 11.

¹¹ IBAC, *Submission 29*, 3 May 2022, pp. 11–12.

3.2.3 *PID Act 2012 (Vic)*

IBAC must assess all PIDs it receives through its complaints and notifications function, to determine whether they are ‘public interest complaint[s]’.¹² If IBAC is satisfied that the disclosure meets the definition of a PID within the meaning of s 9 of the *PID Act 2012 (Vic)*, it is required to determine that it is a public interest complaint and dismiss, investigate or refer it.¹³ The Act compels IBAC to do a number of things to support the welfare of public interest disclosers. For example, IBAC is required to protect the identity of the discloser and the content of the disclosure, and notify the discloser whether it has dismissed, referred or decided to investigate the public interest complaint, except in limited circumstances.¹⁴

Under the *PID Act 2012 (Vic)*, IBAC is responsible for issuing procedural guidelines for the Victorian public sector regarding the receipt and handling of PIDs and the protection of disclosers from ‘detrimental action’.¹⁵ IBAC is also required to issue welfare management guidelines for the Victorian public sector regarding public interest disclosers and others impacted by PIDs.¹⁶

IBAC’s *Guidelines for public interest disclosure welfare management* provides detailed best-practice guidance on welfare-related matters in the handling of PIDs.¹⁷ This includes advice on how Victorian public sector bodies are expected to protect and support public interest disclosers—such as keeping them informed throughout the investigation of their disclosure; maintaining confidentiality regarding their identity and the ‘subject matter’ of their disclosure; proactively assessing the risk of reprisal throughout the investigation; assessing their workplace ‘welfare and protection needs’; and maintaining appropriate record-keeping.¹⁸

3.2.4 *IBAC Act 2011 (Vic)*

The *IBAC Act 2011 (Vic)* imposes preconditions on IBAC’s exercise of coercive powers, provides for the protection of persons ancillary to the integrity of the agency’s investigations and establishes procedural fairness requirements for its reporting function.

¹² Provided the public interest disclosure (PID) is made to IBAC ‘in accordance with Division 2 of Part 2’ of the *PID Act 2012 (Vic)* or notified to IBAC under s 21 of the Act (*PID Act 2012 (Vic)* s 26(1)). See *PID Act 2012 (Vic)* ss 9(1) (a PID ‘is a disclosure by a natural person’ of ‘information that shows or tends to show’, or ‘information that the person reasonably believes shows or tends to show’, that ‘a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or ... a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45.’), 26(1).

¹³ *PID Act 2012 (Vic)* s 32; *IBAC Act 2011 (Vic)* s 58.

¹⁴ *PID Act 2012 (Vic)* ss 52–54; *IBAC Act 2011 (Vic)*, ss 58, 59(2), (4).

¹⁵ See *PID Act 2012 (Vic)* ss 45 (Detrimental action is prohibited under the Act, being ‘action taken in reprisal for a person making a disclosure under [the Act]’ (*PID Act 2012 (Vic)* s 1(a)(iii)), and includes, under s 3, ‘action causing injury, loss or damage’, ‘intimidation or harassment’, and ‘discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action’), 55(2)(a). See also IBAC, *Guidelines for handling public interest disclosures*, Melbourne, January 2020.

¹⁶ *PID Act 2012 (Vic)* s 55(2)(b). See also IBAC, *Guidelines for public interest disclosure welfare management*, Melbourne, January 2020.

¹⁷ IBAC, *Guidelines for public interest disclosure welfare management*, Melbourne, January 2020.

¹⁸ *Ibid.*, especially pp. 6–8.

Safeguards regarding IBAC's power to investigate corrupt conduct

IBAC has power to investigate 'corrupt conduct' in response to a notification or complaint, or on its 'own motion', in accordance with its function to 'identify, expose and investigate corrupt conduct'.¹⁹ However, it must 'prioritise the investigation and exposure of *serious* corrupt conduct or *systemic* corrupt conduct', and, in order to exercise its investigative powers, it must reasonably suspect that the conduct is 'corrupt conduct' within the meaning of s 4 of the *IBAC Act 2011* (Vic).²⁰

These requirements ensure that IBAC only exercises its coercive investigative powers in relation to the serious types of corrupt conduct specified in the Act, specifically particular conduct which negatively impacts on the performance of functions of, and by, public officers and public bodies.²¹ These requirements also assist IBAC to build public trust in the agency, by allowing it to demonstrate that every decision it makes to investigate corrupt conduct is reasonably justified in the circumstances.

IBAC's powers regarding notifications and complaints

The *IBAC Act 2011* (Vic) requires IBAC to take welfare considerations into account when making certain assessment decisions about a notification or complaint. For example, when exercising its power to refer a PID that IBAC has determined to be a public interest complaint²² to the Racing Integrity Commissioner or the Victorian Information Commissioner, IBAC must be satisfied, among other matters, that it will 'not increase the risk to any person's health, safety or welfare'.²³

Persons who make a notification or complaint to IBAC are ordinarily entitled to be informed of the outcome of IBAC's assessment and investigation of their disclosure.²⁴ The Act recognises that in certain circumstances it is inappropriate for IBAC to notify complainants of the outcomes of complaints, for welfare or other reasons.

IBAC is not permitted to provide a person who has made a notification or complaint (including a PID that IBAC has determined to be a public interest complaint) with information about the outcome, if it would:

- be contrary to the 'public interest' or the 'interests of justice'; or
- put the safety of a person at risk; or
- cause 'unreasonable' reputational harm to a person; or

¹⁹ *IBAC Act 2011* (Vic) ss 4, 15(2)(a), 51, 57(1), 60(1).

²⁰ *IBAC Act 2011* (Vic) ss 8(aa) (emphasis added), 60(2). See also s 4 (definition of 'corrupt conduct').

²¹ *IBAC Act 2011* (Vic) s 4.

²² See *PID Act 2012* (Vic) ss 26 (IBAC 'must assess' all PIDs and 'police complaint disclosure[s]' which it receives or is notified of, in accordance with the Act, to decide whether they are 'public interest complaint[s]'), 32 ('If the IBAC determines that a disclosure is a public interest complaint, the IBAC must deal with the disclosure in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*').

²³ *IBAC Act 2011* (Vic) s 73A(3).

²⁴ *IBAC Act 2011* (Vic) ss 59(1)-(2), 80(1), 163(1)-(2).

- ‘prejudice an investigation’ by IBAC, Victoria Police or a person or body to whom IBAC has referred a notification or complaint; or
- breach a statutory obligation regarding secrecy; or
- result in the ‘unreasonable disclosure’ of a person’s ‘personal affairs’.²⁵

This includes information about IBAC’s assessment decisions—for example, whether IBAC has dismissed, referred, withdrawn a referral, deferred investigating, or decided to investigate, a notification or complaint, and, if applicable, the reason(s) for dismissal.²⁶ It also includes information about IBAC’s investigation outcomes, including information about what action was taken and what recommendations were made.²⁷

Safeguards regarding IBAC’s exercise of coercive powers

IBAC’s power to summon witnesses

The *IBAC Act 2011* (Vic) imposes requirements regarding the issue, content and form of documents connected with IBAC’s use of coercive powers. These requirements protect witness welfare by ensuring that coercive powers are exercised reasonably and that persons subject to such powers are provided with information about their rights and obligations.

Before issuing a witness summons to produce a document or thing in a preliminary inquiry, for example, IBAC must first be satisfied that it is reasonable to issue the summons.²⁸ In determining what is reasonable, IBAC must give consideration to the person’s age and any ‘mental impairment’ they may have.²⁹ Additionally, IBAC must consider factors such as the potential probative value of the specified information, whether it can be reasonably obtained by alternative (that is, non-coercive) means, and whether it is required to make a decision about conducting an own motion investigation or dismissing, referring or investigating a complaint or notification.³⁰ IBAC cannot summons a person under 16 years of age and can only summons a person under 18 years of age if it is satisfied ‘on reasonable grounds’³¹ that the probative value of the specified information is high and it is impractical to obtain it by alternative means.³²

The Act requires recipients to be provided with written information about prescribed matters when the summons is served, such as the potential consequences of non-compliance and their rights to seek legal advice, claim privilege and complain to

²⁵ *IBAC Act 2011* (Vic) ss 59(4), 80(2), 163(4). See also ss 57–58, 58A, 59(1)–(2), (3A) of the Act.

²⁶ *IBAC Act 2011* (Vic) ss 58, 58A, 59(1)–(2), 80(1).

²⁷ *IBAC Act 2011* (Vic) s 163(1).

²⁸ *IBAC Act 2011* (Vic) s 59E(2).

²⁹ *IBAC Act 2011* (Vic) s 59E(2).

³⁰ *IBAC Act 2011* (Vic) s 59E(2).

³¹ See *George v Rockett* (1990) 170 CLR 104, 112 (‘When a statute prescribes that there must be “reasonable grounds” for a state of mind—including suspicion and belief—it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.’).

³² *IBAC Act 2011* (Vic) ss 59E(3), 59H.

the VI.³³ Witnesses must be re-informed of these matters, verbally and ‘in writing’, at the time of complying with the summons, unless they decline or indicate that they have received legal advice on written information originally provided with the summons.³⁴

Legislated service requirements similarly take into account the welfare of recipients by mandating that summonses be served at least seven days before the date on which they are required to comply.³⁵ IBAC has power to issue a summons requiring immediate production of a document or thing. However, it must be satisfied ‘on reasonable grounds’ that it is probable a delay will seriously disadvantage the inquiry, lead to the loss or destruction of evidence or the ‘commission of an offence’ or cause the recipient to escape.³⁶

Witnesses claiming privilege or secrecy over a document or thing (or part thereof) specified in a summons are ordinarily entitled to have the matter determined by an independent arbiter in a timely manner, in accordance with the procedures set out in ss 59L–59N of the Act.³⁷ Notably, IBAC is responsible for applying to the Supreme Court for a determination, and is not permitted to inspect the relevant document or thing unless the determination is made in its favour.³⁸

There are equivalent provisions regarding witness summonses to produce a document or thing or attend an examination in connection with an IBAC investigation.³⁹ Witnesses are ordinarily entitled to be informed of the ‘nature of the matters’ they will be examined on,⁴⁰ as well as additional prescribed matters, including their right to legal representation and whether they will be publicly or privately examined.⁴¹

IBAC’s power to hold examinations

IBAC’s examinations are inquisitorial and, consequently, in conducting examinations it is not required to follow the ‘rules of evidence’ that ordinarily apply to civil or criminal proceedings.⁴² A person summonsed by IBAC to provide documents or things or to attend an examination, must provide the information requested or answer questions directed to them in an examination, even if it might incriminate them.⁴³ However, witnesses are protected from such evidence being used against them in court

³³ *IBAC Act 2011* (Vic) s 59F(2)–(3).

³⁴ *IBAC Act 2011* (Vic) s 59K(c).

³⁵ *IBAC Act 2011* (Vic) s 59I(1).

³⁶ *IBAC Act 2011* (Vic) s 59I(2).

³⁷ *IBAC Act 2011* (Vic) ss 59L (‘Procedure for determining claims of privilege or claims of a secrecy requirement’), 59M (‘Application to Supreme Court to determine privilege or application of secrecy requirement’), 59N (‘Determination of claim’). See also s 97 of the Act, which establishes procedures to be followed in the event of a person claiming privilege over a document that IBAC intends to ‘inspect, copy or seize’ in connection with a search warrant.

³⁸ *IBAC Act 2011* (Vic) s 59L(4)–(5).

³⁹ See *IBAC Act 2011* (Vic) ss 120, 121, 123–124, 130, 146.

⁴⁰ Unless IBAC is satisfied on ‘reasonable grounds’ that it would prejudice the investigation or conflict with ‘the public interest’ (*IBAC Act 2011* (Vic) s 121(2)).

⁴¹ *IBAC Act 2011* (Vic) s 121(2), (4).

⁴² *IBAC Act 2011* (Vic) s 116(a).

⁴³ *IBAC Act 2011* (Vic) s 144(1).

proceedings, including criminal proceedings, except in limited circumstances (for example—if they are prosecuted for ‘perjury’, ‘contempt’ or other offences against the *IBAC Act 2011* (Vic) or *Victorian Inspectorate Act 2011* (Vic) (*VI Act 2011* (Vic)), specified offences under the *PID Act 2012* (Vic), or in proceedings relating to a ‘disciplinary process or action’).⁴⁴

Similarly, while public officers summonsed to IBAC examinations are not entitled to claim privilege on grounds of their statutory obligations regarding secrecy, they cannot be civilly or criminally prosecuted or subjected to ‘administrative or disciplinary’ action in connection with evidence given during an examination that breaches those duties.⁴⁵

The Act recognises that the coercive examination process, whether conducted privately or publicly, may impose additional burdens on some witnesses due to their age, comprehension or infirmity.⁴⁶ IBAC is required to provide targeted support to such witnesses during an examination, for example, providing an interpreter for a non-fluent English speaker, or ensuring the presence of a ‘parent’, ‘guardian’ or ‘independent person’ for a person under 18 years of age.⁴⁷ Similarly, if IBAC ‘believes’, or is provided with ‘reasonably satisfactory medical evidence’, that a witness is mentally impaired, it ‘must direct that an independent person be present’ for the examination.⁴⁸

As a matter of fairness to all witnesses, IBAC must video-record all examinations.⁴⁹ Witnesses are also entitled to be provided with a copy of the recording and any related transcript of their examination, except in cases where IBAC determines ‘on reasonable grounds’ that it may harm an investigation.⁵⁰ IBAC is also required to provide the VI with copies of video recordings and transcripts of all private and public examinations, ‘[a]s soon as possible’ following an examination.⁵¹ The VI has power to review this information, to assess whether IBAC has complied with the requirements of the Act.⁵² Additionally, the VI is authorised to assess whether it is reasonably open to conclude that IBAC’s questioning of a witness during an examination assisted the agency to ‘achieve the purposes of the investigation to which the investigation relates’.⁵³

Mandatory coercive power notifications to the Victorian Inspectorate

IBAC is accountable to the VI regarding the exercise of many of its coercive powers, including its coercive investigative powers.⁵⁴ The *IBAC Act 2011* (Vic) requires IBAC to provide certain information to the VI, including copies of relevant documents, which

⁴⁴ *IBAC Act 2011* (Vic) s 144(2).

⁴⁵ *IBAC Act 2011* (Vic) s 143(1), (4).

⁴⁶ *IBAC Act 2011* (Vic) s 129.

⁴⁷ *IBAC Act 2011* (Vic) s 129(2)–(3).

⁴⁸ *IBAC Act 2011* (Vic) s 129(4).

⁴⁹ *IBAC Act 2011* (Vic) s 133(1).

⁵⁰ *IBAC Act 2011* (Vic) s 133(4).

⁵¹ *IBAC Act 2011* (Vic) s 134.

⁵² *VI Act 2011* (Vic) s 40A(1)(i), (2)(a).

⁵³ *VI Act 2011* (Vic) s 40A(2)(c).

⁵⁴ See, for example, *IBAC Act 2011* (Vic) ss 59G, 122; *VI Act 2011* (Vic) s 40A.

demonstrate its compliance with the requirements of the Act.⁵⁵ In this way, IBAC is able to provide assurance that it exercises its coercive investigative powers lawfully and with adequate justification.

Within three days of issuing a witness summons to produce a document or thing in a preliminary inquiry or investigation, or a witness summons to attend an examination in an investigation, for example, IBAC must inform the VI of the witness's name and the reasons supporting IBAC's decision to issue the summons.⁵⁶ This includes, in the case of an 'immediate attendance' summons, the need for immediacy.⁵⁷ Further, if a summons to attend does not provide information regarding the matters the witness is to be questioned about, the nature of those matters.⁵⁸

Safeguards regarding unreasonable damage to a person's reputation, safety or wellbeing

IBAC's power to issue confidentiality notices

IBAC's capacity to preserve the integrity of its preliminary inquiries and investigations, and to protect persons involved in those processes, is greatly enhanced by its power to issue confidentiality notices.⁵⁹ The recipient of a confidentiality notice is prohibited from disclosing matters specified in the notice, unless the disclosure is directed or authorised by IBAC or otherwise permitted under s 44 of the *IBAC Act 2011* (Vic).⁶⁰ As IBAC has highlighted, this ensures that 'the identity of persons involved in an investigation' ordinarily remains private, which in turn enables IBAC to protect disclosers of 'corrupt conduct or misconduct ... from potential reprisal'.⁶¹

IBAC can issue a confidentiality notice to a person who has been summonsed in a preliminary inquiry if there is a reasonable risk that disclosure of a specified matter⁶² will 'prejudice' the inquiry.⁶³ IBAC can also issue a confidentiality notice in an investigation if there is a reasonable likelihood that disclosure of a specified matter will 'prejudice' the investigation or a person's 'safety or reputation', or interfere with the administration of justice.⁶⁴

IBAC is required to provide the recipient of a confidentiality notice with written information about prescribed matters when the notice is served, including a copy and an explanation of the operation and effect of ss 42(3)–(8) and 44 of the Act, and any

⁵⁵ See, for example, *IBAC Act 2011* (Vic), ss 43, 59G, 79(4), 115(7), 117(5), 122, 128, 134, 142, 154; *VI Act 2011* (Vic) s 40A.

⁵⁶ *IBAC Act 2011* (Vic) ss 59G, 122.

⁵⁷ *IBAC Act 2011* (Vic) ss 59G, 122.

⁵⁸ *IBAC Act 2011* (Vic) s 122(c).

⁵⁹ IBAC, *Submission 29*, 3 May 2022, p. 7.

⁶⁰ *IBAC Act 2011* (Vic) s 44(1)–(2).

⁶¹ IBAC, *Submission 29*, 3 May 2022, p. 7.

⁶² See *IBAC Act 2011* (Vic) 2003 s 42(1) (provided at least one of the pre-conditions in s 42(1)(a)–(c) is met, 'IBAC may issue a confidentiality notice ... specifying the restricted matter or restricted matters' to which confidentiality applies).

⁶³ *IBAC Act 2011* (Vic) s 42(1A).

⁶⁴ *IBAC Act 2011* (Vic) s 42(1).

additional confidentiality obligations that may apply to the person under the *PID Act 2012* (Vic).⁶⁵

While IBAC is not required to advise recipients how long a confidentiality notice will remain in force, such notices ‘are not intended to operate in perpetuity’.⁶⁶ IBAC must formally cancel a confidentiality notice if it considers that it is no longer reasonably necessary to protect against disclosure of the specified matter(s) for a prescribed protective purpose.⁶⁷ This obligation also applies to *part* of the specified matter(s) in a confidentiality notice, in which case IBAC must cancel the existing notice and issue a revised notice.⁶⁸ Notices generally expire automatically five years from the date of issue, unless extended by order of the Supreme Court on an application by IBAC.⁶⁹

IBAC gives assurance that it has complied with its legislative obligations by providing the VI with copies of all notices issuing and cancelling a confidentiality notice, as well as extension applications and orders.⁷⁰

The statutory exceptions to the prohibition on disclosure of specified matters seek to strike a fair balance between the need for IBAC to protect the integrity of its preliminary inquiries and investigations and the need to protect the welfare of persons who have been summonsed.

A person who, for example—because they have limited understanding of English, or are under 18 years of age, ‘illiterate’ or suffering from a ‘mental, physical or other impairment’—is unable to understand the content of a summons or confidentiality notice, can disclose a specified matter for the purpose of complying with the summons or notice.⁷¹ Such a person can disclose to an interpreter (in the case of a non-English speaker); a parent guardian or independent person (in the case of a young person); or an independent person (in the case of an impaired or ‘illiterate’ person).⁷²

Witnesses can also disclose a specified matter in order to obtain ‘legal advice or representation’ regarding a summons, confidentiality notice or extension order, or their rights and responsibilities under the Act and associated legislation.⁷³

The Act recognises the important support that particular persons or organisations can provide to witnesses. For example, recipients of confidentiality notices are not prohibited from disclosing a specified matter to their spouse, domestic partner, employer or manager unless IBAC directs otherwise.⁷⁴ Witnesses are also entitled

⁶⁵ *IBAC Act 2011* (Vic) s 42(2).

⁶⁶ IBAC, *Submission 29*, 3 May 2022, p. 7.

⁶⁷ *IBAC Act 2011* (Vic) s 42(5).

⁶⁸ *IBAC Act 2011* (Vic) s 42(4).

⁶⁹ *IBAC Act 2011* (Vic) s 42(6)–(8).

⁷⁰ *IBAC Act 2011* (Vic) s 43. See also *VI Act 2011* (Vic) s 40A(1)(a), 2(a).

⁷¹ *IBAC Act 2011* (Vic) s 44(2)(b).

⁷² *IBAC Act 2011* (Vic) s 44(2)(b).

⁷³ *IBAC Act 2011* (Vic) s 44(2)(c).

⁷⁴ *IBAC Act 2011* (Vic) s 44(2)(e).

to 'seek advice or support' regarding the investigation from a registered health practitioner, trade union or employee assistance program (EAP), unless IBAC directs otherwise.⁷⁵

Finally, a confidentiality notice does not preclude the recipient from exercising their right to complain to the VI about IBAC's conduct or the conduct of IBAC's officers, or from exercising certain other rights.⁷⁶ For example, the person can disclose specified information to the Victorian WorkCover Authority in relation to a 'workers' compensation claim', or to the Fair Work Commission in relation to an application.⁷⁷

IBAC's power to hold public examinations

As IBAC has highlighted, public examinations are an important tool in:

- supporting IBAC's primary function to expose corrupt conduct and police personnel misconduct;
- assisting in the prevention of corrupt conduct and police personnel misconduct by providing a deterrence to individuals who may consider engaging in corruption;
- facilitating the education of the public sector and the community about corrupt conduct, consistent with IBAC's educative function;
- providing transparency in relation to scrutiny of the activities of IBAC; and
- providing individuals in some circumstances with the opportunity to restore their reputation by providing sworn evidence in a public forum.⁷⁸

The *IBAC Act 2011* (Vic) limits the agency's power to hold public examinations, which protects against the risk of witnesses suffering 'unreasonable damage' to their 'reputation, safety or wellbeing' in connection with IBAC's investigations.⁷⁹

While IBAC has power to conduct coercive examinations in investigations, they must ordinarily be conducted in private.⁸⁰ IBAC can only hold a public examination if it is satisfied 'on reasonable grounds' that the conduct being investigated may amount to corrupt conduct or police misconduct which is 'serious' or 'systemic'; the examination 'can be held without causing unreasonable damage to a person's reputation, safety or wellbeing'; 'exceptional circumstances' exist; and it serves 'the public interest'.⁸¹ IBAC acknowledges that this is a high bar, and that, as a result, it conducts most of its examinations privately.⁸²

⁷⁵ *IBAC Act 2011* (Vic) s 44(2)(f).

⁷⁶ *IBAC Act 2011* (Vic) s 44(3).

⁷⁷ *IBAC Act 2011* (Vic) s 44(2)(f).

⁷⁸ IBAC, *Submission 29*, 3 May 2022, p. 8; *IBAC Act 2011* (Vic) ss 8(a)–(c), 15(5)–(6).

⁷⁹ See in particular, *IBAC Act 2011* (Vic) s 117.

⁸⁰ *IBAC Act 2011* (Vic) ss 115(1), 117(1), 120(1)(a), (c).

⁸¹ *IBAC Act 2011* (Vic) s 117(1).

⁸² IBAC, *Submission 29*, 3 May 2022, p. 8; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 10 (citing *R and M v IBAC* [2015] VSCA 271 [66]).

IBAC is able to consider the needs of individual witnesses through its power to determine examination procedures and to hold part of a public examination in private.⁸³ The latter power was introduced in 2019, and may be exercised ‘on its own motion’ or at the request of a summonsed person or ‘interested party’ authorised to appear at the examination.⁸⁴

In deciding whether to hold part of a public examination in private, IBAC may consider whether it will ‘prevent unreasonable damage to a person’s reputation, safety or wellbeing’ and whether the ‘public interest’ will be better served by the witness being publicly examined on the matters at issue.⁸⁵ IBAC can consider a variety of factors in determining what is in the ‘public interest’, for example, the benefits of publicly exposing corruption and police misconduct and the seriousness of the conduct being investigated, including whether it relates to individual or organisational behaviour, and is recurring or systemic.⁸⁶

IBAC is required to provide the VI with written reasons for a decision to hold a public examination, at least 10 business days before the examination.⁸⁷ Further, IBAC is prohibited from publicly announcing a public examination before it has notified the VI.⁸⁸ These important safeguards aim to ensure that IBAC has complied with the mandatory criteria in s 117 of the *IBAC Act 2011* (Vic), and that a decision to hold a public examination is justified in the circumstances.⁸⁹

IBAC is also able to exert a degree of control over publication of ‘information or evidence given’ in a public examination if it determines it is necessary to protect witnesses and other persons, or prevent interference with the administration of justice.⁹⁰ A ‘suppression order’, which prohibits or places restrictions on the publication of information, can be issued by IBAC if it considers that it is needed to ‘prevent prejudice or hardship’ to a person (‘including harm to their safety or reputation’), or address the risk of prejudicing ‘legal proceedings’.⁹¹

IBAC’s power to publish reports

IBAC has power to publicly report on its investigations.⁹² As IBAC has highlighted, its reporting power complements its ‘functions to expose corrupt conduct and police personnel misconduct and to achieve its education and prevention functions’.⁹³

⁸³ *IBAC Act 2011* (Vic) ss 116(b), 117(3A).

⁸⁴ *IBAC Act 2011* (Vic) ss 117(3A), 119A.

⁸⁵ *IBAC Act 2011* (Vic) s 117(3B).

⁸⁶ *IBAC Act 2011* (Vic) s 117(4).

⁸⁷ *IBAC Act 2011* (Vic) s 117(5).

⁸⁸ *IBAC Act 2011* (Vic) s 117(5A).

⁸⁹ See *VI Act 2011* (Vic) s 40A(1)(f), (2)(a).

⁹⁰ *IBAC Act 2011* (Vic) s 129A(1).

⁹¹ *IBAC Act 2011* (Vic) s 129A(1).

⁹² *IBAC Act 2011* (Vic) s 162(1).

⁹³ IBAC, *Submission 29*, 3 May 2022, p. 10.

The *IBAC Act 2011* (Vic) establishes a procedural fairness process through which affected persons and public sector bodies are provided with a ‘reasonable opportunity to respond’ to adverse comments, opinions or findings about them that IBAC intends to publish in a report, and to have their responses ‘fairly set out’ in the final published report.⁹⁴ Persons about whom IBAC intends to publish a comment or opinion in a public report ‘which is not adverse’, must also be provided with the relevant part(s) of the draft report.⁹⁵

The Act provides significant protections against unreasonable reputational damage by restricting who can be identified in a public report and the information that can be published about them. IBAC is prohibited from identifying a person about whom no adverse comment or opinion is made, unless it determines that it will serve ‘the public interest’ and will not result in ‘unreasonable damage to the person’s reputation, safety or wellbeing’.⁹⁶ In such cases, the report must contain a statement that IBAC has not made an adverse comment or opinion about the person.⁹⁷

The Act also restricts IBAC’s ability to publish information in a report that may interfere with the administration of justice or cause unreasonable reputational damage. For example, IBAC is prohibited from publishing findings or opinions that a person ‘is guilty of or has committed, is committing or is about to commit’ a ‘criminal’ or ‘disciplinary’ offence, or a recommendation that a person be ‘prosecuted’ for such an offence.⁹⁸ IBAC is also prohibited from publishing information that would ‘prejudice’ a ‘criminal investigation, criminal proceedings or other legal proceedings’, provided it is aware of the investigation or proceedings.⁹⁹

IBAC’s power to declare a document or thing protected, and to restrict access to protected information

IBAC has power to declare that a ‘document or other thing’ received or created in the performance of its functions, is protected information, if it considers that it is ‘likely’ disclosure would, among other things, identify or endanger the safety of:

- an informer; or
- a person summonsed to attend an IBAC examination; or
- a person who has given evidence in an IBAC examination; or
- a person who has provided information in connection with an IBAC investigation; or
- a person named in ‘evidence given’ or ‘information provided’ to IBAC; or
- a person who was or is a person of interest in an IBAC investigation.¹⁰⁰

⁹⁴ *IBAC Act 2011* (Vic) s 162(2)–(3).

⁹⁵ *IBAC Act 2011* (Vic) s 162(4).

⁹⁶ *IBAC Act 2011* (Vic) s 162(7).

⁹⁷ *IBAC Act 2011* (Vic) s 162(7).

⁹⁸ *IBAC Act 2011* (Vic) s 162(6).

⁹⁹ *IBAC Act 2011* (Vic) s 162(5).

¹⁰⁰ *IBAC Act 2011* (Vic) s 46(a). See also s 46(b)–(d).

IBAC officers cannot be compelled to provide or facilitate access to protected information in connection with civil proceedings or in disciplinary processes and proceedings.¹⁰¹ Additionally, if an IBAC officer objects to providing access to protected information in connection with a subpoena issued in criminal proceedings, it can apply to the relevant court to determine the matter.¹⁰²

3.3 IBAC's witness welfare policies, procedures and standard practices

3

In April 2019, IBAC completed an independent, expert review of the 'exercise of its coercive information-gathering powers'.¹⁰³ Since then, IBAC has actioned the recommendations of that review and matured its policies, procedures and practices regarding its management of witness welfare.¹⁰⁴

In particular, IBAC developed and implemented its *Welfare Management for IBAC Investigations Policy (Welfare Management Policy)* and associated *Guideline (Welfare Management Guideline)*. The *Guideline* establishes a welfare risk assessment process for identifying and managing potential risks to persons involved in its investigations, arising from the agency's operational activities.¹⁰⁵ IBAC integrated witness welfare considerations into decision-making when exercising its power to regulate the procedure of an examination. It also initiated additional supports for high-risk examinees, such as the presence of an 'on-site counsellor' during an examination.¹⁰⁶

Further, IBAC introduced an independent specialist welfare support service for witnesses, provided by Converge International Consultants (Converge), which provides counselling and other forms of support during an investigation, especially in relation to examinations. IBAC now publishes information about welfare support services and resources for witnesses on its website.¹⁰⁷ Finally, IBAC supported amendment of the *IBAC Act 2011 (Vic)* to permit witnesses under a confidentiality notice to disclose specified matters to a registered health practitioner unless directed not to by IBAC.¹⁰⁸

¹⁰¹ *IBAC Act 2011 (Vic)* s 47(2).

¹⁰² *IBAC Act 2011 (Vic)* s 48(1)–(2).

¹⁰³ IBAC, *Submission 29*, 3 May 2022, p. 21.

¹⁰⁴ IBAC, *Submission 29*, 3 May 2022, p. 21; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 4.

¹⁰⁵ IBAC, *Submission 29*, 3 May 2022, pp. 13, 15, 22.

¹⁰⁶ IBAC, *Submission 29*, 3 May 2022, p. 22; *IBAC Act 2011 (Vic)* s 116(b).

¹⁰⁷ IBAC, *Submission 29*, 3 May 2022, p. 22. See, for example, IBAC, *IBAC examinations*, <<https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations>> accessed 5 July 2022; IBAC, *Information for witnesses*, <<https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/if-you-are-called-as-a-witness>> accessed 5 July 2022; IBAC, *Standard directions for public examinations*, Melbourne, September 2021, <<https://www.ibac.vic.gov.au/docs/default-source/education-resources/standard-directions---ibac-public-examinations---september-2021.pdf>> accessed 5 July 2022; IBAC, *Mental health support*, <<https://www.ibac.vic.gov.au/reporting-corruption/what-happens-to-your-complaint/mental-health-support>> accessed 5 July 2022.

¹⁰⁸ IBAC, *Submission 29*, 3 May 2022, p. 21. See, now, *IBAC Act 2011 (Vic)* s 44(2)(f).

3.3.1 IBAC's witness welfare management policies

IBAC recognises that a person's welfare may be negatively impacted as a consequence of being involved in or subjected to the agency's investigative activities, including its exercise of coercive powers.¹⁰⁹ As IBAC has highlighted, '[p]ersons of interest'—whose wrongdoing may be exposed and reported on publicly as a result of an investigation and who may also be criminally prosecuted or subjected to disciplinary action in connection with an investigation—are particularly susceptible.¹¹⁰ So, too, '[p]eripheral witnesses', who may be required to provide information incriminating other persons, and whose contribution to wrongdoing may also be exposed and reported on publicly by way of 'an adverse comment or finding'.¹¹¹

IBAC officers are required to give reasonable consideration to certain matters before exercising many of their investigative powers.¹¹² The *Welfare Management Policy* provides valuable guidance for IBAC officers regarding their assessment of such matters, by clearly defining terms which are not defined in the *IBAC Act 2011* (Vic)—for example, the term 'mental impairment', which is a factor that IBAC must consider in determining whether it is reasonable to issue a summons or whether it is required to make a direction regarding the presence of an independent person at an examination.¹¹³ Similarly, the Policy elaborates on what is meant by a person's 'safety' and 'wellbeing', to assist in determining whether a decision to hold a public examination or to hold part of a public examination in private may cause 'unreasonable damage' to the person's 'safety or wellbeing'.¹¹⁴

The *Welfare Management Policy* reflects the agency's commitment to providing appropriate training and practical guidance to its officers on how to recognise and manage such welfare risks.¹¹⁵ The Policy considers that, where it is 'reasonably practicable' to do so, IBAC officers should take the following actions to identify, remove or minimise, and manage welfare risks to affected persons when performing their duties, but particularly when exercising their coercive investigative powers:

- *Identify potential welfare risks before an interaction*—by completing 'welfare risk assessments' prior to an interaction or operational activity, using IBAC intelligence holdings and other information regarding affected persons, and documenting and implementing measures to remove or minimise identified risks to their health, safety or welfare
- *Identify potential welfare risks during and after an interaction*—by monitoring the welfare of affected persons during the exercise of coercive powers, and by considering the state of a person's welfare immediately following the exercise of coercive powers

¹⁰⁹ IBAC, *Welfare management for IBAC investigations*, Melbourne, 2019, p. 1; IBAC, *Submission 29*, 3 May 2022, pp. 3–4.

¹¹⁰ IBAC, *Submission 29*, 3 May 2022, p. 3.

¹¹¹ *Ibid.*, p. 4.

¹¹² See the discussion in Section 3.2 in this chapter.

¹¹³ IBAC, *Welfare management for IBAC investigations*, Melbourne, 2019, p. 4. See also *IBAC Act 2011* (Vic) ss 59E(2), 120(2), 129(4).

¹¹⁴ IBAC, *Welfare management for IBAC investigations*, Melbourne, 2019, p. 5. See also *IBAC Act 2011* (Vic) ss 117(1), (3B).

¹¹⁵ IBAC, *Welfare management for IBAC investigations*, Melbourne, 2019, p. 2.

- *Take timely action in relation to identified welfare risks*—by escalating welfare concerns raised during an interaction with an affected person, and by notifying ‘relevant welfare support services’, when appropriate, following the interaction
- *Obtain an affected person’s informed consent before notifying a welfare support provider of an identified welfare risk*—by obtaining their permission to share personal information with a registered health practitioner or welfare support service
- *Take immediate action in relation to a medical incident during an interaction*—by arranging for an affected person to be seen by an ‘appropriately qualified medical professional without unreasonable delay’
- *Inform affected persons that they can access welfare support services*—by providing them with information about welfare resources
- *Assist affected persons to access welfare support services*—by making IBAC’s EAP available to them, when appropriate. Further, IBAC can assist affected persons by referring them to IBAC’s EAP, their own employer’s EAP, or to another service that provides welfare support to the public, when needed, provided it will not jeopardise an investigation.
- *Encourage affected persons to seek welfare support from qualified professionals*—by only prohibiting disclosure of specified matters in a confidentiality notice to a registered health practitioner if it will jeopardise an investigation
- *Provide targeted support to affected persons during examinations*—by completing a pre-examination risk assessment to determine whether a person is a ‘high welfare risk’. Further, by regulating IBAC’s examination procedures to accommodate the needs of such witnesses, providing an on-site counsellor during an examination, and, in the case of a public examination, by appointing an IBAC welfare contact officer to assist the person.¹¹⁶

3.3.2 IBAC’s witness welfare management procedures

The *Welfare Management Guideline* sets out what IBAC officers are required to do, *in practice*, to undertake the actions detailed in Section 3.3.1 of this chapter.¹¹⁷ This includes detailed information, step-by-step instructions and assurance ‘checklists’ regarding how they are expected to assess, monitor, treat and escalate welfare risks when performing their duties, particularly when exercising their investigative powers.¹¹⁸

The *Welfare Management Guideline* details the type of information which IBAC officers are required to consider when completing welfare risk assessments before exercising a coercive power or conducting an ‘operational activity’.¹¹⁹ The primary purpose of the risk assessment is to provide a standardised, systematic, comprehensive and documented

¹¹⁶ IBAC, *Welfare management for IBAC investigations*, Melbourne, 2019, pp. 1–2, 4; IBAC, *Submission 29*, 3 May 2022, pp. 13–14; *OH&S Act 2004 (Vic)* ss 20, 23. See also *IBAC Act 2011 (Vic)* s 44(2)(f).

¹¹⁷ IBAC, *Submission 29*, 3 May 2022, pp. 14–15.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, p. 15.

procedure for identifying potential welfare risks regarding a particular individual or operational activity.¹²⁰ Risk assessments, particularly those conducted in relation to significant operational activities, are reviewed by an IBAC Deputy Commissioner, who is independent of the investigation team.¹²¹

IBAC officers are assisted by the *Guideline's* risk assessment matrix in determining the objective seriousness of a potential welfare risk and probability of the risk occurring. The matrix assigns a standardised 'risk rating' to a potential welfare risk, on a continuum from 'low' to 'very high'.¹²² This enables IBAC officers to determine whether they are required to take further action to remove or minimise identified risks, for example, where the welfare risk rating falls within the 'medium' to 'very high' range.¹²³ The *Guideline* also provides guidance on what is reasonably practicable to do to remove or minimise identified risks, noting that what is appropriate will vary depending on the circumstances.¹²⁴

The *Welfare Management Guideline* recognises that welfare risks do not necessarily remain static throughout an investigation. In particular, IBAC officers are expected to be alert and respond dynamically to changing welfare risks by:

- following the guidance provided in the *Guideline* regarding identifying and responding to 'static and dynamic welfare risk factors'¹²⁵ and managing difficult behaviour, such as a threat of self-harm
- monitoring witnesses' welfare during all interactions with them throughout an investigation
- approaching the welfare risk assessment as evolving throughout the life cycle of an investigation, and revising it as new information and intelligence is received
- 're-assessing welfare risk' each time they exercise a coercive power or conduct an 'operational activity', including reviewing IBAC's intelligence database to identify all current and 'emerging welfare risk factors'
- implementing additional 'risk treatments'¹²⁶ to respond to emerging welfare risks or changes in the overall welfare 'risk rating'
- communicating with others to ensure that officers who engage with a particular witness during an investigation are aware of identified welfare risks regarding that person

¹²⁰ Ibid.

¹²¹ Ms Marlo Baragwanath, Chief Executive Officer (CEO), IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 27.

¹²² IBAC, *Submission 29*, 3 May 2022, p. 15.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ IBAC, *Submission 29*, 3 May 2022, p. 17. 'Static' risk factors are unchanging (for example, a '[h]istory of self-harm', whereas 'dynamic' risk factors are changeable (for example, '[s]uicidal ideation')—Joe Bouch and John James Marshall, 'Suicide risk: structured professional judgement', *Advances in Psychiatric Treatment*, vol. 11, no. 2, 2005, pp. 85–86.

¹²⁶ Actions designed to remove or minimise a potential welfare risk—IBAC, *Submission 29*, 3 May 2022, p. 15.

- communicating with each other to ensure that officers working on an investigation (and other IBAC units as appropriate) are aware of the ‘risk assessment[s], risk treatments, and any emerging welfare risk factors’ regarding witnesses in the investigation
- briefing the IBAC examiner and Security and Facilities Officer, prior to an examination, on identified welfare risks regarding the examinee, including the risk treatments in place to manage those risks, preceding, during and following the examination
- following the guidance provided in the *Guideline* regarding when and how to escalate welfare concerns about a witness, including, where appropriate: arranging specialist support services for a person through IBAC’s independent witness support service, Converge or the person’s employer’s EAP; referring a person to a registered health practitioner; or, in the event of an imminent risk of harm, contacting emergency services.¹²⁷

3.3.3 IBAC’s witness welfare management practices

IBAC officers are expected to demonstrate due regard for the welfare of witnesses by performing their duties in a professional manner, by, for example, complying with the Code of Conduct for Victorian Public Sector Employees of Special Bodies and the agency’s values of ‘fairness’, ‘professionalism’, ‘courage’, ‘respect’ and ‘trust’, and identifying themselves when exercising coercive powers.¹²⁸

IBAC recognises that effectiveness of a welfare risk assessment will depend, in part, on the ability of the person completing it to access relevant and accurate information.¹²⁹ IBAC officers take a broad approach to information-gathering to assist with this complex task, and are required to evaluate the ‘source’, ‘strength’, ‘credibility’ and recency of information when completing a risk assessment.¹³⁰

An important aspect of IBAC’s approach to welfare information-gathering is the information that its officers obtain by interacting with witnesses over the life cycle of investigations, known as ‘contact assessments’.¹³¹ This includes welfare information provided by a witness and IBAC officers’ observations of a person during all interactions with them, including when exercising coercive powers.¹³² IBAC notes that IBAC officers, through their training and investigative experience, develop expertise in identifying

¹²⁷ IBAC, *Submission 29*, 3 May 2022, pp. 15–16; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 5.

¹²⁸ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 5, 7; IBAC, *IBAC values*, <<https://www.ibac.vic.gov.au/about-us>> accessed 8 July 2022. See also Victorian Public Sector Commission (VPSC), *Code of conduct for Victorian public sector employees of special bodies*, Melbourne, June 2015.

¹²⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 4–6.

¹³⁰ *Ibid.*, p.6.

¹³¹ *Ibid.*, pp. 4–5.

¹³² *Ibid.*

‘static and dynamic welfare risk factors’ and recognising the signs of ‘emotional distress’.¹³³ In IBAC’s view, this enables them to gain a deeper understanding of a person’s personal circumstances, their welfare concerns regarding an investigation and their support needs.¹³⁴ Relevant information obtained through ‘contact assessments’ is appropriately recorded to ensure that it is included in each new risk assessment.¹³⁵

IBAC officers provide tailored support to witnesses where it is necessary and appropriate to manage identified ‘welfare concerns’.¹³⁶ This can range from making accommodations regarding the ‘timing and nature’ of interactions to, in the case more serious concerns, forewarning a person’s ‘treating healthcare professional’ of an upcoming interaction, or arranging access to a ‘professional counsellor or psychologist’ during the execution of a search warrant, service of a summons or when providing a draft investigation report.¹³⁷ For witnesses with complex welfare needs, IBAC officers may request specialist input and assistance from ‘Converge consultants’, or a person’s ‘treating healthcare professionals’, in developing an ‘individual welfare management plan’ for serious welfare risks or concerns that have been identified.¹³⁸

Where IBAC officers determine that there may be an immediate threat to a witness’s welfare, whether because the person has disclosed certain information, or officers have observed that a person is exhibiting signs of ‘emotional distress’, they provide the person with contact details for ‘crisis support services’ and advise them to seek support from a trusted person.¹³⁹ If the threat is determined to be ‘serious’, such as where officers ‘observe a significant deterioration in a person’s wellbeing’, they are expected to escalate the matter to a ‘senior officer’ for further action.¹⁴⁰ This may include referring a person to, or facilitating a consultation with, a registered health practitioner or seeking specialist assistance from emergency services or an ‘acute mental health response team’, where necessary.¹⁴¹

IBAC officers serve a Statement of Rights and Obligations with every summons to produce a document or thing or attend an examination in connection with an IBAC investigation.¹⁴² The Statement includes information about prescribed matters in s 59F(3) or s 121(4) of the *IBAC Act 2011* (Vic), as applicable, and, in the case of a summons to attend a public examination, information explaining the operation

¹³³ Ibid., p. 4.

¹³⁴ Ibid., pp. 4–5.

¹³⁵ Ibid.

¹³⁶ IBAC, *Submission 29*, 3 May 2022, p. 19.

¹³⁷ IBAC, *Submission 29*, 3 May 2022, p. 19; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 5.

¹³⁸ IBAC, *Submission 29*, 3 May 2022, p. 18; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 5.

¹³⁹ IBAC, *Submission 29*, 3 May 2022, p. 17; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 5, 9.

¹⁴⁰ IBAC, *Submission 29*, 3 May 2022, pp. 16–17; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 5.

¹⁴¹ IBAC, *Submission 29*, 3 May 2022, p. 17; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 5, 9.

¹⁴² IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 8, 10, 12–13.

and effect of s 117(3A)(a)(i) of the Act.¹⁴³ Information included in the Statement for Persons Summoned to a Public Examination ‘explains that a person attending a public examination may make application to IBAC to hold any part of the examination in private, and expressly sets out the provisions under s 117(3A)[(a)](i)’ of the Act.¹⁴⁴

The content of the Statement is also explained verbally before the recipient complies with the summons, unless the person indicates they do not wish to be informed of the matters again, or indicates that they have had the document explained to them by an Australian legal practitioner.¹⁴⁵ Notably, the Statement of Rights and Obligations references the fact that Converge is independent of IBAC and that its services are provided confidentially.¹⁴⁶

Summons recipients are also provided with IBAC’s *Witness wellbeing* information sheet at the time of service, which contains information about who witnesses can seek welfare support from, and their ability to disclose specified matters in a confidentiality notice or the content of a draft investigation report, when seeking support.¹⁴⁷

The *Witness wellbeing* information sheet also contains information about the services offered by Converge. Specifically, for persons involved in an IBAC investigation who are not summonsed to an examination, Converge can:

- support people through the process
- attend to help manage the impacts of graphic material
- support and normalise feelings of guilt or failure about what individuals should/might have done differently
- conduct risk assessments on declining mental health
- refer if specialised help is required.¹⁴⁸

For persons who are summonsed to an examination, Converge can:

- support people through the process including addressing issues noted for those involved but not called to testify
- provide coaching on how to manage anxiety especially when giving evidence
- provide tips on avoiding media exposure
- attend the examination with individuals if required as a support person
- follow up post examination attendance to ensure sound mental health.¹⁴⁹

¹⁴³ Ibid., pp. 6, 8, 10.

¹⁴⁴ Ibid., p. 10.

¹⁴⁵ Ibid., p. 7.

¹⁴⁶ Ibid., pp. 8, 13.

¹⁴⁷ IBAC, *Submission 29*, 3 May 2022, pp. 16–17, 30–31; IBAC, *Witness wellbeing*, Melbourne, n.d.

¹⁴⁸ IBAC, *Submission 29*, 3 May 2022, pp. 30–31; IBAC, *Witness wellbeing*, Melbourne, n.d.

¹⁴⁹ IBAC, *Submission 29*, 3 May 2022, pp. 30–31; IBAC, *Witness wellbeing*, Melbourne, n.d.; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 13.

Importantly, the *Witness wellbeing* information sheet notes that Converge is contactable '24 hours a day, seven days a week', and that its services are available to IBAC witnesses throughout the entire investigation process, up to and including publication of the related report and the completion of related legal proceedings.¹⁵⁰

Where it is practicable to do so, IBAC officers make reasonable accommodations for the recipients of immediate-production¹⁵¹ summonses as a matter of general practice.¹⁵² Such summonses ordinarily require a person to deliver a document or thing to IBAC's offices without delay. However, if a recipient indicates that immediate attendance would be impractical, IBAC officers may, with the person's consent, dispense with the need for attendance by taking possession of the item at the time of service.¹⁵³ If the specified item in an immediate-production summons is a mobile telephone, IBAC officers seek to lessen the inconvenience to the recipient, where practicable, by providing the person with an opportunity to retrieve key contact numbers from the device; explaining how to divert the service number to an alternate device; and returning the device to the person as soon as possible.¹⁵⁴

Throughout an investigation, officers routinely remind witnesses of the support services available to them, when, for example, executing a search warrant, prior to an examination, or when providing a copy of a draft investigation report as part of IBAC's procedural fairness process regarding its reporting function.¹⁵⁵

IBAC officers are expected to act with restraint when determining whether to exercise their discretionary power under s 44(2)(e) of the *IBAC Act 2011* (Vic) to direct the recipient of a confidentiality notice not to disclose a specified matter to their 'spouse', 'domestic partner', 'employer' or 'manager'.¹⁵⁶ As IBAC has highlighted:

Such a direction will only be made where disclosure of the restricted matters to a spouse, domestic partner, employer or manager would prejudice the investigation, the safety or reputation of a person, or the fair trial of a person who has been, or may be charged with an offence.¹⁵⁷

In determining whether to make a direction under s 44(2)(e) of the *IBAC Act 2011* (Vic), IBAC officers give careful consideration to factors which heighten the risk that disclosure to a particular person would prejudice an investigation, such as a workplace investigation potentially involving the witness's colleagues or superiors.¹⁵⁸ For context, 64% of

¹⁵⁰ IBAC, *Submission 29*, 3 May 2022, pp. 30–31; IBAC, *Witness wellbeing*, Melbourne, n.d.; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 16.

¹⁵¹ Immediate-production summonses are witness summonses issued by IBAC under ss 59I(2) or 124(2) of the *IBAC Act 2011* (Vic), 'requiring immediate attendance by a person before the IBAC'.

¹⁵² IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 6.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*, p. 9.

¹⁵⁵ IBAC, *Submission 29*, 3 May 2022, p. 17.

¹⁵⁶ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 16–17.

¹⁵⁷ *Ibid.*

¹⁵⁸ Mr David Wolf, Deputy Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 19–20.

confidentiality notice recipients were specifically prohibited from disclosing specified matters to their ‘employer or manager’ during the 2020/21 reporting period.¹⁵⁹

Conversely, IBAC rarely directs confidentiality notice recipients from disclosing specified matters to their spouse or domestic partner.¹⁶⁰ During the 2020/21 reporting period, IBAC did not issue a single confidentiality notice prohibiting disclosure of specified matters to the recipient’s spouse or domestic partner.¹⁶¹

Where the recipient of a confidentiality notice applies to IBAC for ‘permission to disclose’ a specified matter to a third party they have been specifically prohibited from disclosing to, the application is determined ‘on its merits’.¹⁶² Provided it is appropriate to do so, IBAC officers are expected to vary the notice, permitting disclosure.¹⁶³

IBAC officers give consideration to the following factors when deciding when to cancel a confidentiality notice in accordance with their obligations under s 42(5) of the *IBAC Act 2011* (Vic):

- the status of the investigation;
- whether allowing disclosure of the restricted matters would prejudice the safety or reputation of the person;
- whether the restricted matters over which confidentiality is sought are already in the public domain;
- whether there are other mechanisms by which the person’s safety and reputation can be protected; and
- the impact on the safety and reputation of the person (and others) in the event the confidentiality notice(s) are/are not lifted.¹⁶⁴

Witness welfare considerations are embedded in IBAC’s standard practices regarding the conduct of examinations—examiners, for example, encourage witnesses and their legal representatives to raise any ‘welfare concerns’ before commencing questioning in an examination.¹⁶⁵ Witnesses are also informed of their right to confer with their legal representative (and if applicable, their ‘support person or counsellor’), and to ask for ‘additional breaks’ during the examination.¹⁶⁶ At the conclusion of an examination, witnesses are provided with information about what the post-examination process may entail.¹⁶⁷

¹⁵⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 16–17.

¹⁶⁰ Ibid.

¹⁶¹ Ibid., p. 17

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid., p. 18.

¹⁶⁵ IBAC, *Submission 29*, 3 May 2022, p. 18; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 5.

¹⁶⁶ IBAC, *Submission 29*, 3 May 2022, p. 18.

¹⁶⁷ Ibid.

IBAC officers complete ‘operational welfare risk assessments’ for every examination.¹⁶⁸ Officers are expected to take appropriate action if they identify ‘welfare concerns’ regarding a particular witness, including concerns raised by the person or their legal representative.¹⁶⁹ This is especially so if the concerns are supported by ‘cogent’ evidence.¹⁷⁰

Witnesses are commonly invited to have a ‘support person’ present during the examination if concerns have been identified or raised.¹⁷¹ IBAC ordinarily permits a witness to disclose specified matters in a confidentiality notice to their support person during the examination, provided it would not ‘prejudice the investigation’, in which case IBAC facilitates ‘access to alternative support services as appropriate’.¹⁷²

Particular ‘risk treatments’ are considered standard practice for examinees who have been classified, using IBAC’s *Welfare Management Guideline*’s risk assessment matrix, as a ‘high welfare risk’.¹⁷³ Such witnesses are provided, for the duration of the examination, with a ‘private room’ and access to a professionally qualified on-site counsellor through Converge.¹⁷⁴ IBAC officers typically ‘provide [verbal] [i]nformation about the counsellor and the counsellor’s role’ to the witness prior to the examination.¹⁷⁵ Importantly, conversations between an on-site counsellor and an examinee are confidential.¹⁷⁶

Depending on the nature and seriousness of the ‘welfare concern’, IBAC may regulate the procedure of an examination to accommodate a witness’s welfare needs.¹⁷⁷ What is reasonably practicable in the circumstances will vary.¹⁷⁸ IBAC may request a report from a witness’s treating medical practitioner, providing information about a range of matters (for example, explaining a physical or mental illness or impairment that the person may be suffering from; their opinion as to how this may impact on the person’s ability to participate in the examination; and recommended strategies for addressing identified ‘welfare concerns’).¹⁷⁹ IBAC has previously regulated the procedure of examinations in accordance with medical advice, by:

- holding the examination in an informal setting;
- holding the examination in private, rather than in public;

¹⁶⁸ IBAC, *Submission 29*, 3 May 2022, pp. 13, 22; IBAC, *Submission 29A*, 15 July 2022, p. 2.

¹⁶⁹ IBAC, *Submission 29*, 3 May 2022, p. 19.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*, pp. 17–19.

¹⁷² IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 18.

¹⁷³ IBAC, *Submission 29*, 3 May 2022, pp. 14–15, 17–20, 22; IBAC, *Submission 29A*, 15 July 2022, pp. 2–3.

¹⁷⁴ *Ibid.*

¹⁷⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 13.

¹⁷⁶ *Ibid.*

¹⁷⁷ IBAC, *Submission 29*, 3 May 2022, pp. 10–11, 14–15, 17–19; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 13–14.

¹⁷⁸ IBAC, *Submission 29*, 3 May 2022, pp. 11, 13–14.

¹⁷⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 13–14, 19. IBAC does not have power to compel a report of this nature, so it is a matter for the medical practitioner, in consultation with the witness, to decide whether to provide a report.

- delaying the examination for a specified period to allow the witness to undergo therapy or treatment;
- including breaks at specified intervals throughout the examination; and/or
- conducting questioning in a non-confrontational and non-challenging manner which might preclude counsel from asking the witness questions in a leading manner or challenging the witness on his or her responses.¹⁸⁰

In the most serious cases, IBAC may adjourn an examination or excuse a witness from attending altogether, if satisfied, on the basis of ‘cogent medical evidence’, that it is necessary to prevent unreasonable harm to the person’s mental health or wellbeing.¹⁸¹

In determining whether to examine a witness publicly, IBAC gives careful consideration to the legislative requirements of s 117(1)(a)–(d) of the *IBAC Act 2011* (Vic) and relevant ‘jurisprudence’.¹⁸² IBAC has emphasised that ‘each determination will turn on the circumstances of the particular case’ and that if it ‘is not reasonably satisfied’ that all mandatory criteria for holding a public examination are met, the witness will be examined privately.¹⁸³ When reporting to the VI under s 117(5) of the Act, IBAC provides information about how it has ‘satisfied’ each of the mandatory criteria.¹⁸⁴

Assessing whether ‘a public examination can be held without causing unreasonable damage to a person’s reputation, safety or wellbeing’ is a complex ‘balancing exercise’, in which IBAC gives consideration to a variety of different factors, including, but not limited to:

- whether there is cogent evidence the person has engaged in serious corrupt conduct or police misconduct;
- the strength of the evidence and gravity of the alleged corrupt conduct or misconduct;
- the public interest in exposing and preventing corrupt conduct;
- the extent to which a public examination would harm or cause damage to an individual’s reputation; and
- whether a public examination would cause damage to the safety and wellbeing of the individual and/or their family.¹⁸⁵

An IBAC ‘welfare contact officer’ is appointed to every witness who is publicly examined.¹⁸⁶ Typically, the ‘case officer or member of the investigations team’ to which

¹⁸⁰ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 14.

¹⁸¹ IBAC, *Submission 29*, 3 May 2022, p. 19; Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 19.

¹⁸² IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 10.

¹⁸³ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 10, 12, 15; Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 18–19, 22–23.

¹⁸⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 10.

¹⁸⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 9–10; *IBAC Act 2011* (Vic) s 117(1)(c).

¹⁸⁶ IBAC, *Submission 29*, 3 May 2022, p. 14; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 12.

the examination relates will perform this role.¹⁸⁷ The purpose of a ‘welfare contact officer’ is to:

- provide information to the witness on entering the IBAC building, including details of how to access the rear (private) entrance;
- provide information about the welfare services available on site during the examination;
- introduce them to the counsellor present on-site and allow the person the opportunity to speak with the counsellor in private before the examination commences; and
- monitor the demeanour of the witness throughout the examination (including any breaks) and escalate any concerns if the witness becomes emotionally distressed or overtly anxious.¹⁸⁸

IBAC has integrated a range of ‘reputational harm’ mitigation strategies into its standard practices regarding the conduct of public examinations.¹⁸⁹ For example, IBAC applies a ‘time delay’ of ‘up to 30 minutes’ to its livestreaming link during an examination, to protect against the risk of inadvertent publication of confidential information when a public feed is suddenly cut.¹⁹⁰ This enables IBAC to make appropriate redactions to the public transcript and, where considered necessary for the purposes of s 129A(1) of the *IBAC Act 2011* (Vic), to issue a suppression order prohibiting or restricting the ‘publication of any information or evidence given’.¹⁹¹ Further, IBAC only publishes the transcript of a public examination once it has redacted all information subject to a suppression order and ‘identifying information in respect of persons named by witnesses during public examinations where publication of that information would cause prejudice or hardship to that person, including harm to their safety or reputation’.¹⁹² Finally, IBAC facilitates ‘fair and accurate reporting’ on public examinations by providing redacted transcripts to the media.¹⁹³

3.4 Evaluation of IBAC’s management of witness welfare

IBAC’s approach to the management of witness welfare—mental health training for its officers; use of individual welfare risk assessments, operational activity risk assessments, risk matrix and risk treatments to identify, assess and manage welfare risks and concerns; seeking input and advice from a witness’s qualified health practitioner where a serious welfare risk or concern has been identified; hearing protocols ensuring that an examinee (or their legal representative) is provided with an opportunity to raise welfare concerns prior to the commencement of an examination and that the

¹⁸⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 12.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, p. 15.

¹⁹⁰ *Ibid.*, pp. 14–15.

¹⁹¹ *Ibid.*, p. 15.

¹⁹² *Ibid.*, pp. 14–16.

¹⁹³ *Ibid.*, pp. 14–15.

procedure of an examination can be adapted, where necessary, to address welfare concerns; welfare support for witnesses, including information about the supports and resources available to them such as their employer's or the agency's EAP; and following procedural fairness requirements when publicly reporting on its investigations—is robust and well-developed in comparison to its interstate equivalents.¹⁹⁴ IBAC's policies, procedures and practices are equivalent to those of the NSW ICAC and the Crime and Corruption Commission Queensland (CCC Queensland), each of which take a similar approach to the management of witness welfare.¹⁹⁵

IBAC is to be commended on the introduction of its specialist welfare support service for witnesses, Converge. While the Committee notes that Converge is IBAC's EAP provider, and that other interstate anti-corruption agencies also provide witnesses with access to their own EAP provider, Converge provides services which are specifically tailored to the needs of witnesses in IBAC investigations, particularly witnesses summonsed to examinations.¹⁹⁶

In its submission to the Committee's review, IBAC acknowledged the toll that its investigative processes may take on witnesses:

It is self-evident that individuals who fall within the first two categories (POIs [persons of interest] and Peripheral Witnesses) will be susceptible to welfare issues where IBAC's activities may lead to the identification, investigation and exposure of their corrupt conduct or misconduct. This is an inevitable consequence of the emotional turmoil experienced when persons are under scrutiny or when they have engaged in possible dishonest or unlawful behaviour.¹⁹⁷

IBAC's approach to information-gathering for the purpose of undertaking welfare risk assessments, relies, in part, on the capacity of IBAC officers to obtain accurate and relevant welfare information from witnesses during 'contact assessments' and to recognise obvious signs of deterioration of a person's wellbeing.¹⁹⁸ IBAC illustrated the various ways in which welfare concerns have manifested in past investigations in its supplementary submission to the Committee's review.¹⁹⁹ IBAC explained that

where ... no welfare risks are identified in IBAC's intelligence holdings or contact assessments prior to the exercise of coercive powers, and no signs or symptoms of overt distress are evidenced at the time of service of the summons, during the examination or during the natural justice process ... IBAC will follow its standard practices to inform the

¹⁹⁴ Independent Commission Against Corruption South Australia, *Submission 5*, 1 April 2022; NSW ICAC, *Submission 7*, 5 April 2022, pp. 12–18; Jen O'Farrell, Chief Executive Officer (CEO), Crime and Corruption Commission Queensland (CCC Queensland), correspondence, 11 April 2022, pp. 4–9.

¹⁹⁵ See NSW ICAC, *Submission 7*, 5 April 2022, especially pp. 12–18; Jen O'Farrell, CEO, CCC Queensland, correspondence, 11 April 2022, pp. 4–9.

¹⁹⁶ IBAC, *Submission 29*, 3 May 2022, pp. 30–31; IBAC, *Witness wellbeing*, Melbourne, n.d.; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 13, 20; NSW ICAC, *Submission 7*, 5 April 2022, p. 17.

¹⁹⁷ IBAC, *Submission 29*, 3 May 2022, p. 4.

¹⁹⁸ IBAC, *Submission 29A*, 15 July 2022, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 4–5.

¹⁹⁹ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 3. See also IBAC, *Submission 29A*, 15 July 2022, p. 2.

witness of the welfare support services available to them and to ask the witness (or their legal representative) to draw any welfare concerns to IBAC's attention. However, there would be no risk factors or 'red flags' that would warrant further inquiry or require adjustment to standard practices for the conduct of the examination or natural justice process.²⁰⁰

The Committee received evidence during its review highlighting the complexity of welfare information-gathering and welfare risk assessments. The CCC Queensland, for example, noted:

There is a degree of speculation in any risk assessment. Such assessments are also necessarily undertaken based on incomplete information. A witness's particular vulnerability (such as unreported coercion or domestic violence) may be unknown to investigators until a witness attends. But decisions can be made based on ordinary human experience, and matters which are obvious from the relationship between the witness and the target. For example, it is inevitable that a spouse being compelled to give incriminating evidence against the other spouse is likely to place some strain on that relationship ...

The nature and detail of such an assessment will depend on a variety of factors, including the amount of information known about a witness, information more broadly about the investigation, and the nature of the hearing being undertaken. For example, witnesses appearing at a public hearing raise different considerations than do witnesses in closed hearings. Such risk assessments inevitably consider information (where that information is known to the CCC) about a witness's personal circumstances and background, including any physical or mental health issues which may be compromised by participation in the hearing.²⁰¹

Similarly, Dr Danny Sullivan of Forensicare highlighted that investigators' lack of clinical expertise and experience may impede their ability to engage in meaningful welfare information-gathering during 'contact assessments':

[O]bviously the management of witnesses is somewhat at odds with the purpose of an integrity commission, and it may not fall naturally to the staff involved there. Just to emphasise the difference, when a clinician is dealing with someone in a situation, our clinicians will begin by building rapport with the person who they are about to perform an evaluation on. They will provide an informed consent procedure, where they explain what will occur, where the information will go, the limits to confidentiality, but, also, situations in which they might notify a third party, such as if they form a concern that the person is at risk of self-harm. Then finally, as an integral part of all assessments, a clinician will be gauging whether or not there are risks or acute issues which warrant some degree of immediate escalation.²⁰²

²⁰⁰ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 3. See also IBAC, *Submission 29A*, 15 July 2022, p. 2.

²⁰¹ Jen O'Farrell, CEO, CCC Queensland, correspondence, 11 April 2022, p. 7.

²⁰² Dr Danny Sullivan, Executive Director, Clinical Services, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.

During the review, the Committee requested information from IBAC regarding its processes for ensuring that risk assessments are informed by relevant and accurate information.²⁰³ The Committee also gained an understanding of how IBAC overcomes the barriers to obtaining such information.²⁰⁴ In its reply to the Committee on these matters, IBAC indicated that its officers ‘undertake a holistic assessment of an individual’s welfare risk’ and seek to overcome barriers to effective welfare information-gathering by:

- interrogating its intelligence holdings to identify any pre-existing (or current) welfare risk factors;
- assessing and re-assessing welfare risk in accordance with operational risk assessments and in response to new intelligence;
- monitoring and escalating concerns where officers observe a significant deterioration in a person’s wellbeing;
- inviting the witness or their legal representative at the beginning of an examination to bring any welfare concerns to IBAC’s attention before questioning commences; and
- seeking advice from Converge consultants and/or an individual’s treating healthcare professionals where appropriate if specific welfare concerns are identified.²⁰⁵

The Committee considers that IBAC faces a variety of challenges in obtaining accurate and relevant welfare information about witnesses, which were not specifically addressed by the agency in its response to the Committee’s questions on notice.²⁰⁶

IBAC has, for example, limited capacity to access historical and current welfare intelligence information held by organisations like Victoria Police. Further, without a person’s consent, IBAC has limited capacity to access historical and current welfare information held by Converge or a person’s treating health practitioner(s), and only proactively seeks such information if it has already identified specific welfare concerns.²⁰⁷ It may also not be practicable for IBAC to speak to a person’s employer or family members for the purpose of welfare information-gathering, due to the confidentiality issues at play in an investigation (and, in the case of families, potential issues of distrust and defensiveness, given IBAC’s investigation and examination of one of their family members).²⁰⁸

²⁰³ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 2.

²⁰⁴ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 5–6.

²⁰⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 5–6 and *passim*.

²⁰⁶ *Ibid.*, pp. 5–6.

²⁰⁷ *Ibid.*, p. 5. Forensicare has emphasised the importance of a ‘proactive’ approach to witness welfare management: Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

²⁰⁸ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 2.

Finally, due to the nature of their work, IBAC officers face significant barriers to building rapport with '[p]ersons of interest' and '[p]eripheral witnesses' in investigations, noting that their interactions with such witnesses frequently involve the exercise of coercive powers.²⁰⁹ This was highlighted by the Victorian Ambulance Union (VAU) in its submission to the Committee's review:

Some of the descriptions of tactics used by IBAC in how they interview and investigate were: deliberately aggressive, dishonest, bullying, accusatory, manipulative, coercive, shocking and deliberately intended to isolate and intimidate.²¹⁰

The concerns raised by the VAU were corroborated by other evidence received by the Committee. The Committee acknowledges that the conduct described by the VAU is at odds with the information provided by IBAC regarding its policies, procedures and practices, and recognises that it may be difficult for persons subjected to the agency's exercise of coercive powers to provide an objective or unbiased account. The Committee further acknowledges that the VAU's account does not necessarily reflect the experiences of all '[p]ersons of interest' or '[p]eripheral witnesses' in IBAC investigations, nor IBAC's treatment of witnesses more generally.²¹¹

However, the Committee considers that the VAU's description of witnesses' experiences clearly demonstrates how their perspectives regarding the impact of IBAC's investigative processes may differ greatly from the agency's. This contrast was illustrated by Distinguished Professor James Ogloff at the Committee's public hearing with Forensicare on 16 May 2022, during which he noted:

One of the things that it is important for people to note is that for most witnesses who are coming before these integrity commissions it may be for them the first time they have done that and they will not be used to the situation, whereas for commissioners and others who work in these systems it may be their everyday work.²¹²

This contrast was further described in submissions received by the Committee regarding the impact of confidentiality notices on witnesses' wellbeing. As the VAU explained:

The intensity of the confidentiality terms that IBAC officers conveyed to members, meant they feared imprisonment for talking to anyone in their life. In this terrifying and anxious period of being investigated, they had to do it completely alone and isolated for months.²¹³

Similarly, the City of Casey noted:

The confidentiality obligations feel very limited/restricted and added to impacted staff's anxiety and negative welfare implications; impacted staff report experiencing great

²⁰⁹ IBAC, *Submission 29*, 3 May 2022, pp. 3–4.

²¹⁰ Victorian Ambulance Union (VAU), *Submission 27*, 22 April 2022, p. 6.

²¹¹ IBAC, *Submission 29*, 3 May 2022, p. 4.

²¹² Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.

²¹³ VAU, *Submission 27*, 22 April 2022, p. 6.

uncertainty and not knowing/being fearful about what they could or couldn't ask for e.g. intensity of experience around summons—can I ask for help, can I ask for a lawyer from my employer, given the confidentiality restrictions.²¹⁴

The Committee notes that IBAC is currently undertaking a review of its *Welfare Management Policy* and associated *Guideline*. Pleasingly, IBAC has indicated that the review 'will be informed by, and consider, the outcomes and any recommendations arising from the Committee's inquiry'.²¹⁵

The Committee considers that, in reviewing its *Welfare Management Policy*, *Welfare Management Guideline* and associated policies, procedures and practices, IBAC should consider the appropriateness and feasibility of creating a new position within its Operations (Investigations) Division, for a person with appropriate psychological qualifications, expertise and experience, to oversee the agency's management of witness welfare, with responsibility for:

- overseeing the maturation and continuous improvement of IBAC's policies, procedures and practices regarding its management of witness welfare, including the agency's criteria for individual welfare risk assessments and risk assessment matrix;
- overseeing the continuous improvement of verbal and written information provided to witnesses involved in IBAC's investigations;
- coordinating in-house and external training for IBAC officers relevant to their management of witness welfare;
- advising IBAC officers on appropriate risk treatments for persons summonsed to private and public examinations;
- acting as the first point of contact for witnesses who have questions regarding their confidentiality notice or who wish to discuss their welfare support arrangements with IBAC.

3.4.1 Oversight by the VI

During this review, the Committee gained an understanding of whether IBAC considers that it has further work to do to implement the recommendations in the VI's *Special report: welfare of witnesses in IBAC investigations*.²¹⁶ In its reply to the Committee, IBAC advised:

IBAC is satisfied that the issues that gave rise to the VI's special report on the welfare of witnesses have been appropriately addressed through IBAC's internal review of the exercise of its coercive information-gathering powers (Review). The Review identified

²¹⁴ City of Casey, *Submission 22*, 14 April 2022, p. 2.

²¹⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 4.

²¹⁶ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 4. See also VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, especially pp. 30–31; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 60–70.

opportunities to ensure its processes, procedures and practices supported industry best-practice in respect of welfare management. A number of initiatives have been implemented in response to the Review's recommendations to strengthen and formalise IBAC's approach to witness welfare management.

IBAC continues to work with the VI to identify further opportunities to improve its welfare management practices as part of its commitment to continuous improvement.²¹⁷

The Committee also enquired whether IBAC's policies, procedures and practices aligned with the VI's *Guidance Note 1: Can a legal practitioner's notes be removed after a coercive examination?* (*Guidance Note*).²¹⁸ As part of its power to regulate the procedure of examinations under s 116 of the *IBAC Act 2011* (Vic), IBAC may prevent a legal representative from retaining notes they have made during the coercive examination of a witness they are representing.²¹⁹ As the VI has explained, IBAC may take such action if it considers it is necessary to prevent information being disclosed that would potentially harm the investigation or 'the safety or reputation' of any person.²²⁰ The *Guidance Note* provides that, when exercising this power, IBAC should indicate its intention at the beginning of the examination and give reasons if requested to do so.²²¹ Additionally, the VI has advised that IBAC should, at the direction of the practitioner, destroy the notes, or alternatively, securely store them at its offices, and allow the practitioner reasonable on-site access to them.²²²

In its response to the Committee, IBAC advised:

It is not IBAC's current practice to remove a legal practitioner's notes following an examination. If IBAC, for any reason, considers it appropriate to remove a practitioner's notes, it will do so in accordance with the IBAC Act ...

The Victorian Inspectorate's Guidance Note was circulated to relevant staff internally to ensure staff were fully aware of the expectations and requirements if a legal representative's notes are to be removed after a coercive examination.

The examiner's script was also updated to ensure consistency with practices outlined in the Guidance Note. This included the introductory comments to be adopted by the examiner in the event it is intended that IBAC will remove a legal practitioner's notes at the end of an examination. In such cases, the examiner will:

- foreshadow that intention at the commencement of an examination; and
- advise that the notes will be secured in a confidential envelope by IBAC or destroyed, at the request of the legal practitioner.

²¹⁷ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 4.

²¹⁸ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 2.

²¹⁹ VI, *Guidance Note 1: Can a legal practitioner's notes be removed after a coercive examination?*, Melbourne, December 2021, p. 2.

²²⁰ *Ibid.*, p. 1.

²²¹ *Ibid.*, p. 2.

²²² *Ibid.*, p. 2.

IBAC's Examination Procedure is currently under review and will include information about the expectations and requirements if a legal practitioner's notes are to be removed after a coercive examination. However, IBAC's usual practice, that is that the legal practitioner's notes are generally not taken at the end of the examination will remain as we acknowledge the right of witnesses to access legal advice and representation.²²³

The Committee is pleased that IBAC has been receptive and responsive to the VI's ongoing engagement and feedback, and commends the agency on its commitment to continuous improvement.

3.5 How IBAC can improve its management of witness welfare

3.5.1 Witnesses' use of mental health support crisis services

IBAC has a dedicated *Mental health support* page on its website with information and contact details for telephone and online helplines providing mental health crisis support, suicide prevention and mental health support services for the general public—Lifeline Australia, Beyond Blue, Mindspot, SuicideLine Victoria, Suicide Call Back Service, 1800Respect, MensLine, Switchboard Victoria, QLife, GriefLine and Mental Health in Multicultural Australia.²²⁴

The Committee notes that not all operators working or volunteering for telephone and online helplines providing mental health crisis support, suicide prevention and mental health support services are registered health practitioners within the meaning of the *IBAC Act 2011* (Vic).²²⁵ IBAC acknowledges that s 44 of the Act does not provide an 'implied authorisation' permitting a witness who is subject to a confidentiality notice to disclose a specified matter to a mental health crisis support helpline if the operator is not a registered health practitioner within the meaning of the Act.²²⁶ While the person could apply to IBAC for permission to disclose a specified matter to a helpline operator who is not a 'registered health practitioner' within the meaning of the Act, IBAC recognises that

at a time when someone is experiencing a [mental health] crisis, it is not ideal that they would have to seek IBAC's authorisation to discuss the matter with a crisis service.²²⁷

²²³ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 2.

²²⁴ See IBAC, *Mental health support*, <<https://www.ibac.vic.gov.au/reporting-corruption/what-happens-to-your-complaint/mental-health-support>> accessed 13 July 2022.

²²⁵ See *IBAC Act 2011* (Vic) s 44(2)(f), (8) ('registered health practitioner means a person registered under the Health Practitioner National Law to practise a health profession (other than as a student)').

²²⁶ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 17.

²²⁷ *Ibid.*

RECOMMENDATION 1: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Inspectorate (VI) and helplines providing telephone and online mental health crisis support services, seek to amend the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) to permit a person who is subject to an IBAC confidentiality notice to disclose a restricted matter to a telephone or online helpline providing mental health crisis support services, for the purpose of seeking mental health crisis support in relation to the investigation in respect of which the confidentiality notice has been issued, unless IBAC directs that the restricted matter must not be disclosed in that circumstance.

3.5.2 Requirements for public examinations

The Committee acknowledges that IBAC's power to hold public examinations is necessary if it is to effectively perform its functions of exposing, investigating and preventing public sector corruption and police personnel misconduct and improving the capacity of the Victorian public sector to prevent corruption and misconduct through education.²²⁸ As Commissioner Redlich explained during the public hearing:

I do not think at this time of the Western world's development that there is a serious alternate view to the view that public hearings are by far the most effective way of placing in the public domain issues about corruption or police misconduct, not only because of their educative purposes ...

I do not think there can be any argument that public hearings are still the most effective way of developing trust in the institutions that have to investigate and expose corruption. I do not think there is a doubt that by placing matters in the public domain one is best able to ensure that there is a public and executive government appetite to embrace reforms that are exposed when particular wrongdoing is revealed.²²⁹

However, IBAC recognises that the mandatory criteria under s 117(1) of the *IBAC Act 2011* (Vic) for holding public examinations 'establishes a high threshold'.²³⁰ Commissioner Redlich told the Committee that

[a]s the Committee probably is aware, before we can examine any single witness in a public hearing we have to be satisfied about all of the criteria set out in section 117 of the [IBAC] Act [2011 (Vic)]. I say that, but there is a profound misunderstanding within the public domain about that fact ... [W]ith each witness that we determine should be called in a public setting we must be satisfied that there are reasonable grounds to conclude either that the witness has committed conduct which may be characterised as corrupt or ... police misconduct, we have to be satisfied in relation to each individual witness that there are exceptional circumstances that justify examining that witness, that it serves

²²⁸ *IBAC Act 2011* (Vic) ss 8, 15; IBAC, *Annual report 2020/21*, Melbourne, 2021, especially pp. 12, 46–47.

²²⁹ Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 24.

²³⁰ IBAC, *Submission 29*, 3 May 2022, p. 8.

the public interest to examine that witness and that no unreasonable damage will be done to the reputation or wellbeing of that witness.²³¹

Importantly, Commissioner Redlich agreed that the mandatory criterion under s 117(1)(c) of the *IBAC Act 2011* (Vic) is an important limitation on IBAC's power to hold public examinations:

... I think it would be evident to all members of the Committee that the provision that says 'Don't call a witness in public unless you can be reasonably satisfied that there will be no unreasonable damage done to reputation or wellbeing' is a good criteria. It is a protective criteria, which enables the integrity agency to focus on whether or not unreasonable damage to reputation or unreasonable damage to welfare will occur, so I certainly do not want to be understood as suggesting that provision is other than a beneficial one for all concerned.²³²

During the review, the Committee sought information regarding the policies and procedures guiding IBAC's assessment of mandatory criteria under s 117(1) of the *IBAC Act 2011* (Vic) in determining to hold a public examination.²³³ In its reply to the Committee on these matters, IBAC noted that while its determinations were 'informed and guided by the relevant legislative provisions and jurisprudence', '[t]here are no applicable policies or procedures'.²³⁴ This is concerning to the Committee, particularly considering that Commissioner Redlich and Deputy Commissioner Mr David Wolf were unable to provide a clear explanation in the public hearing of the concept of 'unreasonable damage' and how IBAC determines what is 'unreasonable'.²³⁵

The Committee considers that formalising policies and procedures regarding IBAC's decision-making about public examinations, including the development and use of procedural guidelines, is vital to providing the public with assurance that the agency is exercising its powers fairly and responsibly. This should be paired with an amendment to the *VI Act 2011* (Vic), to ensure the VI develops and uses procedural guidelines when exercising its discretionary power to review a written report received from IBAC under s 117(5) of the *IBAC Act 2011* (Vic) setting out the reasons for the agency's decision to hold a public examination, to assess whether it has complied with the applicable legislative requirements.

²³¹ Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 17-18.

²³² *Ibid.*, pp. 24-25.

²³³ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 3.

²³⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 10.

²³⁵ Ms Vicki Ward MP, Integrity and Oversight Committee; Hon Robert Redlich AM QC, Commissioner, IBAC; and Mr David Wolf, Deputy Commissioner, IBAC; public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 28.

RECOMMENDATION 2: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI), seek to amend the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') to require IBAC to:

- develop procedural guidelines relating to the requirements for holding public examinations, including the assessment of the mandatory criteria in s 117(1)(a)–(d) of the *IBAC Act 2011* (Vic), and, in particular, guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing'; and
- provide in its written report under s 117(5)(b) of the *IBAC Act 2011* (Vic) to the VI giving reasons for its decision to hold a public examination information about its compliance with those procedural guidelines.

RECOMMENDATION 3: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI), seek to amend s 40A of the *Victorian Inspectorate Act 2011* (Vic) to require the VI to develop procedural guidelines relating to its review of IBAC's written report to the VI giving reasons for its decision to hold a public examination, including for its assessment of IBAC's compliance with the mandatory criteria in s 117(1)(a)–(d) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (and, in particular, guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing').

In its submission to the Parliament of New South Wales, Committee on the Independent Commission Against Corruption's Inquiry on Reputational Impact on an Individual being Adversely Named in the ICAC's Investigations, the VI noted:

In some Special Reports, IBAC has included a statement explaining the Commissioner's decision to hold public examinations, including a description of the exceptional circumstances that led to the decision, the public interest in them, and the consideration given to risks that any person's reputation will be damaged. The VI considers such a statement a desirable inclusion to strengthen the public's confidence in the justification of public examinations.²³⁶

In its special report on *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*, for example, IBAC provided a thorough overview of the Commissioner's decision to hold public examinations. Specifically, the report referenced:

²³⁶ Mr Eamonn Moran PSM QC, Inspector, VI, *Submission 40*, submission to the Parliament of New South Wales, Committee on the Independent Commission Against Corruption (Committee on the ICAC), Inquiry on Reputational Impact on an Individual being Adversely Named in the ICAC's Investigations, 2 September 2020, p. 4. See also 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, pp. 12–13; IBAC, *Operation Dunham: an investigation into the conduct of officers of the Department of Education and Training, including Darrell Fraser, in connection with the Ultraneet project and related matters*, Melbourne, January 2017, p. 15; Parliament of New South Wales, Committee on the ICAC, *Reputational impact on an individual being adversely named in the ICAC's investigations*, Sydney, November 2021.

- the evidence that the Commissioner considered when assessing the mandatory criteria in s 117(1) of the *IBAC Act 2011* (Vic). In particular, it referred to evidence gathered through warrants, ‘interviews and private examinations’.
- the factors that the Commissioner considered in determining that holding public examinations in the investigation was in the public interest: the benefits obtained by the POIs through their alleged corrupt conduct, the covert nature of their conduct, the significant value of the publicly funded contracts alleged to have been ‘corruptly awarded’, the possibility that others in the public sector were engaging in similar corrupt conduct, and the need to ‘restore public confidence’ in the Victorian public sector bodies under investigation
- the importance of public examinations to IBAC’s function of exposing serious public sector corruption. Notably, IBAC emphasised the deterrent and educative effect of public examinations, their importance in encouraging persons with information of interest to the investigation to come forward, and their improvement of the public’s understanding of IBAC investigations and coercive powers.
- the ‘scope and purpose’ of public examinations held in the investigation
- the fact that there was no evidence indicating that holding public examinations in the investigation posed a risk to any person’s ‘safety or wellbeing’ (including IBAC’s reasons for refusing witnesses’ applications to be privately rather than publicly examined).²³⁷

The Committee endorses the VI’s comment that it would be beneficial for IBAC to include statements in its special reports that explain the Commissioner’s decision to hold any public examinations. The Committee considers that requiring IBAC to publish such information in its special reports on investigations in which public examinations are held is important in combating the ‘profound [public] misunderstanding’ of how and why IBAC exercises its power under s 117(1) of the *IBAC Act 2011* (Vic).²³⁸

RECOMMENDATION 4: That the Victorian Government, following consultation with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI), seek to amend the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (*‘IBAC Act 2011 (Vic)’*) to require IBAC to include in a special report tabled under s 162 of the *IBAC Act 2011* (Vic), on an investigation in which public examinations were held, information setting out, in general terms, the Commissioner’s decision to hold public examinations in the investigation:

- addressing the mandatory criteria in s 117(1)(a)–(d) of the *IBAC Act 2011* (Vic); and
- providing a description of the exceptional circumstances that led to the decision, the public interest in them and the consideration given to risks that any person’s reputation would be damaged.

²³⁷ 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, pp. 12–13, 90.

²³⁸ Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 17–18.

3.5.3 IBAC's policies, procedures and practices

The Committee has identified that there is scope for IBAC to review certain aspects of its policies, procedures and practices for managing witness welfare, to ensure that its approach is better aligned with the best practice principles detailed in Chapter 2 of this report.

During the review, the Committee requested copies of IBAC's current policies and procedures relating to its management of the welfare of members of the public, persons of interest, witnesses and others involved in its investigations.²³⁹ Excepting the *Welfare Management Policy*, IBAC's policies and procedures were provided to the Committee in confidence.²⁴⁰

The Committee is concerned that IBAC's policies and procedures do not provide formal guidance on decision-making regarding confidentiality notice variation requests, including a systematic process for recording and assessing such requests. Nor do they specifically address the issue of complaints received regarding reputational harm or damage in connection with IBAC's public examinations.

The Committee requested performance data from IBAC regarding the number of requests received during the 2020/21 reporting period from witnesses subject to a confidentiality notice seeking permission to disclose a specified matter to a third party, together with information about the proportion of such requests that were approved by the agency.²⁴¹ In its reply to the Committee on these matters, IBAC was unable to provide the requested information, noting:

At present, IBAC's information systems do not allow IBAC to readily capture or report on requests from persons subject to a confidentiality notice to seek permission to disclose a restricted matter to a third party.²⁴²

The Committee considers that formalising policies and procedures regarding such matters is crucial to ensuring that confidentiality notice variation requests are properly recorded, uniformly assessed and reasonably decided. The Committee further considers that capturing data regarding such matters is important to the continuous improvement of IBAC's witness welfare management practices and in building public trust in the agency.

The Committee also requested performance data from IBAC regarding the number of complaints received in the 2020/21 reporting period about reputational harm or

²³⁹ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 9 March 2022, p. 1.

²⁴⁰ IBAC, Response to Integrity and Oversight Committee questions, 11 April 2022; Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Busra Daskalakis, Executive Assistant to CEO, IBAC, correspondence, 29 April 2022; Ms Marlo Baragwanath, CEO, IBAC, correspondence, 2 May 2022.

²⁴¹ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 4.

²⁴² IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 17.

damage in connection with its public examinations.²⁴³ In its reply to the Committee on these matters, IBAC noted:

At the present time, IBAC's information systems do not allow IBAC to readily capture or report with accuracy as to whether any complaints specifically relate to reputational harm or damage in connection with public examinations.²⁴⁴

The Committee considers that formalising policies and procedures regarding such matters is important to assist with identifying post-examination welfare risks or concerns regarding witnesses who are publicly examined, and in ensuring that their post-examination welfare support needs are met. The Committee further considers that capturing data regarding such matters is important to the continuous improvement of IBAC's witness welfare management practice and in building public trust in the agency.

RECOMMENDATION 5: That the Independent Broad-based Anti-corruption Commission (IBAC):

- update its policies and procedures to provide specific guidance on decision-making regarding confidentiality notice variation requests
- consider developing and implementing an application form for persons subject to a confidentiality notice who seek permission to disclose a specified matter to a third party, to assist in ensuring that such requests are appropriately recorded and assessed
- capture data relating to confidentiality notice variation requests to enable it to readily report on the number of requests received and approved during a particular reporting period
- update its policies and procedures providing specific guidance on complaints regarding reputational harm or damage in connection with IBAC's public examinations
- capture data relating to complaints received regarding reputational harm or damage in connection with IBAC's public examinations, to enable it to readily report on the number of complaints received during a particular reporting period.

The Committee is concerned that IBAC's current approach to welfare information-gathering relies heavily on witnesses or their legal representatives bringing welfare concerns to IBAC's attention, and on IBAC officers' capacity to obtain relevant and accurate information from witnesses despite their lack of clinical expertise and experience.

During this review, the Committee received public evidence indicating that IBAC's exercise of some coercive powers—such as summoning a person to an examination or subjecting them to strict non-disclosure conditions in a confidentiality notice—

²⁴³ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 4.

²⁴⁴ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 15.

places a heavier burden on the person from a welfare perspective, compared with the exercise of other coercive powers. This was corroborated by other evidence received by the Committee. Commissioner Redlich also acknowledged the impact of public examinations on witnesses during IBAC's public hearing with the Committee:

Every witness who is ever called under a coercive process is going to be subject to some level of distress and anxiety, and that level of distress or anxiety will obviously be greater if it is in the public domain.²⁴⁵

The Committee considers that, in such circumstances, it is appropriate for IBAC to take additional proactive action to identify potential welfare risks and mitigate welfare concerns.

RECOMMENDATION 6: That the Independent Broad-based Anti-corruption Commission (IBAC), in consultation with Converge International Consultants (Converge), explore the feasibility of:

- IBAC officers who are serving a summons or confidentiality notice on a person seeking that person's consent to provide their name and contact information to Converge, for the purpose of Converge making contact with the person proactively in the first instance in order to familiarise the person with its witness welfare support services
- IBAC officers who are serving a summons to attend a public examination on a person seeking that person's consent to provide their name and contact information to Converge, for the purpose of Converge conducting a welfare evaluation and assessment of the person in relation to the examination
- Converge establishing an informed consent process and secure electronic information-sharing platform to facilitate the sharing of results of the pre-hearing welfare evaluation and assessment with IBAC, to inform the agency's operational risk assessment for the particular witness in relation to the public examination
- Converge, with the consent of the witness, providing proactive periodic mental wellbeing check-in calls on an ongoing basis, between the end of the examination and publication of IBAC's investigation report, regarding all witnesses who give evidence in a public examination.

During this review, the Committee gained an understanding of IBAC's decision-making processes regarding the exercise of its power under s 117(3A) of the *IBAC Act 2011* (Vic), to hold part of a public examination in private on the application of a summonsed person.²⁴⁶ The Committee is concerned that IBAC's policies and procedures do not provide formal guidance on decision-making regarding requests under s 117(3A)(a) of the Act, including a systematic process for recording and assessing such requests.

²⁴⁵ Hon Robert Redlich AM QC, Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 18.

²⁴⁶ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 3.

Consistent with the Committee's recommendations for the Government regarding s 117(1) of the *IBAC Act 2011* (Vic), the Committee considers that formalising policies and procedures regarding IBAC's decision-making about public examinations is vital to providing the public with assurance that the agency is exercising its powers fairly and responsibly. The Committee further considers that capturing data regarding such matters is important to the continuous improvement of IBAC's witness welfare management practice and in building public trust in the agency.

RECOMMENDATION 7: That the Independent Broad-based Anti-corruption Commission (IBAC):

- update its policies and procedures to provide specific guidance on decision-making regarding requests under s 117(3A)(a) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), including assessment of factors under s 117(3B) and (4) of the Act
- consider developing and implementing an application form for persons wanting to exercise their rights under s 117(3A)(a) of the *IBAC Act 2011* (Vic), to assist in ensuring that such applications are appropriately recorded and assessed
- capture data relating to requests received and own motion determinations made under s 117(3A) of the *IBAC Act 2011* (Vic) during a particular reporting period.

3.6 Other performance matters

This section addresses a range of other performance matters identified during the year under review, with a focus on the efficiency and timeliness of IBAC in assessing complaints and notifications.

3.6.1 OH&S

During its Inquiry into the Performance of Victorian Integrity Agencies 2019/20, the Committee raised concerns regarding certain aspects of IBAC's workplace culture that were identified in the results from the agency's 2019 People Matter Survey.²⁴⁷ In response to the Committee's concerns, IBAC noted:

As a result of the [2019] People Matter Survey findings, IBAC implemented a number of immediate changes to address these areas of concern, in particular, by implementing its 2021–23 Health, Safety and Wellbeing Strategy (Strategy). In devising this [S]trategy, IBAC has engaged an independent consultant to review our approach to OHS and our framework for managing staff health, safety and wellbeing.²⁴⁸

²⁴⁷ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, pp. 28–32.

²⁴⁸ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 17 February 2022, p. 1.

In the Committee's report on the performance of integrity agencies during the period 2019/20, it made one recommendation to IBAC:

That the Independent Broad-based Anti-corruption Commission review its occupational health and safety strategies, policies and practices, and report to the Committee on the methodologies, processes and outcomes of that review. The review should focus on bullying, sexual harassment, occupational violence and discrimination. It should encompass both the conditions and steps necessary to ensure psychological safety in the workplace and the safe reporting of misconduct.²⁴⁹

IBAC accepted the Committee's recommendation and committed to conducting a review of its Health, Safety and Wellbeing Strategy 2021–23 'in early 2023'.²⁵⁰ In its response to the Committee's report, IBAC provided information regarding the results from its 2021 People Matter Survey:

IBAC's re-focused Strategy and ongoing and transparent commitment to fostering a safe working environment for its staff through targeted and well received health and safety and mental health and wellbeing initiatives, has resulted in improvements in both IBAC's 2020 and 2021 People Matter Survey results.

The 2020 and 2021 results in relation to sexual harassment and discrimination showed significant improvements in both surveys. Pleasingly, the 2021 survey results then indicated improvement in the other two categories related to OHS and workplace culture—bullying and violence aggression.²⁵¹

The Committee is pleased that IBAC's Health, Safety and Wellbeing Strategy 2021–23 appears to have had a positive impact on the agency's workplace culture. The Committee will monitor the results of IBAC's 2023 review of the Strategy, to ensure that it adequately addresses the matters raised in the recommendation.

3.6.2 Timeliness in assessing complaints and notifications

IBAC has implemented a range of measures to improve its timeliness in assessing complaints and notifications, including publishing and updating a Service Charter to improve the public's understanding of its complaints process, and piloting a new system for triaging and allocating complaints (the pilot project).²⁵² IBAC advised the Committee that the purpose of the pilot project was to

²⁴⁹ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, p. 32.

²⁵⁰ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 17 February 2022, pp. 1–2. See also IBAC, *Health, Safety and Wellbeing Strategy 2021–23*, <<https://www.ibac.vic.gov.au/docs/default-source/policies/ibac-health-safety-and-wellbeing-strategy.pdf>> accessed 18 July 2022.

²⁵¹ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 17 February 2022, p. 2. See also VPSC, *Independent Broad-based Anti-corruption Commission 2021 people matter survey results report*, Melbourne, 2021, <<https://vpsc.vic.gov.au/wp-content/uploads/2021/11/Independent-Broad-based-Anti-corruption-Commission-Organisation-results-2021.pdf>> accessed 26 August 2022.

²⁵² IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 7, 16. See also IBAC, *Our service charter*, <<https://www.ibac.vic.gov.au/reporting-corruption/our-service-charter>> accessed 18 July 2022; IBAC, *Updates to our service charter*, <<https://www.ibac.vic.gov.au/publications-and-resources/ibac-insights/issue-28/updates-to-our-service-charter>> accessed 18 July 2022.

identify matters requiring a priority assessment sooner and allocate them for assessment sooner and allocate them for assessment by appropriately skilled and experienced assessment staff.²⁵³

The Committee gained an understanding of how the pilot project has enhanced IBAC's triaging and allocation of complaints and notifications.²⁵⁴ IBAC advised the Committee that it has, as a result of the pilot project, 'appointed a dedicated Triage Coordinator' and established an Engagement and Early Resolution Team within the Assessment & Review Team of its Assessment, Review, Compliance & Legal Division.²⁵⁵ IBAC explained the role of the Triage Coordinator as follows:

[T]o oversee the triaging and allocation of complaints and notifications. The focus of this role has been on identifying opportunities for process improvements to drive efficiencies in IBAC's work. For example, workflow reporting has been improved by:

- implementing a regular weekly report to support triage and allocation of matters across all assessment teams; and
- refining workflow reporting to help identify matters requiring a priority assessment such as public interest disclosures, notifications under s 57 of the IBAC Act, and sensitive complaints.²⁵⁶

IBAC informed the Committee that the pilot project has resulted in 'a marked improvement in time taken to complete new assessments'.²⁵⁷ However, the Committee considers that this is not adequately reflected in IBAC's reporting on performance data for its assessment of complaints and notifications during the 2020/21 period. Table 3.1, below, provides an overview of IBAC's performance in this area during the 2020/21 period.

²⁵³ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, p. 1.

²⁵⁴ Harriet Shing MLC, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 30 May 2022, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 1-2.

²⁵⁵ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 1-2; IBAC, *Organisational chart*, <<https://www.ibac.vic.gov.au/about-us/our-people>> accessed 18 July 2022.

²⁵⁶ IBAC, Response to Integrity and Oversight Committee questions on notice, 8 July 2022, pp. 1-2.

²⁵⁷ *Ibid.*, p. 1.

Table 3.1 IBAC's assessment of complaints and notifications in 2020/21

Performance measure	Unit of measure	2019/20	2020/21	Difference
Complaints and notifications received by IBAC				
Total complaints and notifications received	Number	2,419	2,832	17% increase
Total complaints from the general public	Number	1,787	2,272	27% increase
Complaints from the general public assessed as protected and public interest disclosures	Number	19	28	47% increase
Notifications (including mandatory notifications) from departments and agencies	Number	632	560	11% decrease
Notifications (including mandatory notifications) from departments and agencies assessed as protected and public interest disclosures	Number	457	414	9% decrease
Total allegations assessed	Number	5,955	4,965	17% decrease
Allegations assessed as public interest or protected disclosures	Number	1,184	785	34% decrease
Outcomes of complaints and notifications assessed by IBAC				
Allegations dismissed	Number	3,081	2,690	13% decrease
Allegations investigated by IBAC	Number	72	67	7% decrease
Allegations referred to another entity	Number	2,370	1,884	21% decrease
Allegations resulting in other outcomes (returned, withdrawn, no further action and deferred)	Number	432	309	28% decrease
Reviews completed by IBAC	Number	67	92	37% increase

Source: Adapted from IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

The Committee notes that there was a 17% increase in the total number of complaints and notifications received by IBAC in 2020/21 from 2019/20.²⁵⁸ This increase was attributable to a 27% increase in the number of complaints received from the general public, noting that notifications received from departments and agencies declined by 11% during the same period.²⁵⁹ However, information about the source of the complaints, together with the total number of allegations assessed, provides greater context regarding IBAC's workload and productivity in this area.

IBAC's performance data for assessments shows that notifications received from departments and agencies typically contain a much higher number of allegations assessed as protected and public interest disclosures.²⁶⁰ Allegations containing such disclosures are often complex and time-intensive. In 2019/20 and 2020/21, 72.31% and 73.93% of all notifications received from departments and agencies were assessed as protected and public interest disclosures, whereas only 1.06% and 1.23% of complaints

²⁵⁸ IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 2, 19–21.

²⁵⁹ See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

²⁶⁰ See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

received from the general public during the same periods were assessed as protected and public interest disclosures.²⁶¹ Further, in 2019/20 and 2020/21, only 0.79% and 0.99% of all complaints and notifications received by IBAC that were assessed as protected and public interest disclosures, generated from complaints received from the public, whereas that rose to 18.89% and 14.62% respectively for notifications received from departments and agencies.²⁶² This was borne out by the fact that the significant decrease in the number of notifications received by IBAC in 2020/21 compared to 2019/20 was accompanied by substantial decreases in the number of allegations received and the number notifications assessed as protected and public interest disclosures.²⁶³

Additionally, there was a 17% decrease in the total number of allegations assessed in complaints and notifications received by IBAC in 2020/21 from 2019/20.²⁶⁴ This is significant because, while IBAC received fewer complaints and notifications in 2019/20, each complaint/notification contained 2.46 allegations on average, compared to 1.75 allegations on average in 2020/21.²⁶⁵ Finally, in 2019/20, 19.88% of all allegations received were assessed by IBAC as public interest complaints or protected disclosures, whereas in 2020/21, that figure fell to 15.81%.²⁶⁶

Therefore, IBAC's reporting on the timeliness of its assessment of notifications and complaints is not demonstrative of changes in the volume or complexity of the agency's workload, nor of the pilot project's impact on productivity.

Factors contributing to delays in assessments

In its 2020/21 annual report, IBAC reported that, for a variety of reasons, it was unable to meet the performance targets regarding the timeliness of assessment of complaints and notifications in the Victorian Budget Paper No. 3 (BP3) on Service Delivery for 2020/21.²⁶⁷ Principally, this was attributed to the substantial increase in the total number of complaints received in 2020/21; IBAC's added assessment burden regarding PIDs, arising from the 2020 amendments to the Victorian PID scheme; and the 'increased complexity of assessments'.²⁶⁸ The Committee notes that IBAC did not meet

²⁶¹ See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

²⁶² See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

²⁶³ IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

²⁶⁴ IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 2, 19–21.

²⁶⁵ See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20.

²⁶⁶ See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 4, 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 2, 19–20.

²⁶⁷ IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 14. See also Department of Treasury and Finance (Victoria), *Victorian Budget 2020/21: service delivery* (Budget Paper No. 3), Melbourne, 2020, pp. 393–394.

²⁶⁸ IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 14. In January 2020, significant changes to the Victorian PID scheme came into effect pursuant to the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic). In particular, the *Protected Disclosure Act 2012* (Vic) was renamed the *Public Interest Disclosures Act 2012* (Vic); the definition of 'improper conduct' was expanded; and a "no wrong door" principle was introduced for disclosers, requiring bodies who are able to receive PIDs, such as IBAC, to redirect 'misdirected disclosures' to an appropriate body, in certain circumstances. The cumulative impact of these changes was to 'lower [the] threshold for making PIDs to IBAC' (relying here on the legislation and IBAC, *Information sheet: key changes—Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence Act) 2019* (No. 2/2019), September 2019, <<https://www.ibac.vic.gov.au/docs/default-source/education-resources/information-sheet-key-changes-for-pid-integrity-and-accountability-legislation-amendment.pdf>> accessed 20 July 2022).

its BP3 performance targets regarding the timeliness of assessments in 2019/20 either, though by significantly smaller margins.²⁶⁹

The Committee considers that these factors, when read in conjunction with IBAC's 2020/21 BP3 performance targets regarding the timeliness of assessments, do not readily explain IBAC's poorer performance in 2020/21 compared to 2019/20. Notably, IBAC received a similar number of complaints and notifications assessed as protected and public interest disclosures (442 in 2020/21 versus 476 in 2019/20); assessed 990 fewer allegations overall; and assessed 399 fewer allegations as protected and public interest disclosures.²⁷⁰

IBAC's BP3 timeliness performance targets

The 2020/21 BP3 identifies two timeliness and three quantitative performance targets for IBAC, all related to its assessment of complaints and notifications and finalisation of investigations.²⁷¹ In 2020/21, IBAC did not meet any of these targets, as laid out in Table 3.2, below.

Table 3.2 IBAC's performance against the 2020/21 BP3 timeliness performance targets

Performance measures	Unit of measure	2020/21 target	2020/21 actual	Result
Complaints or notifications about public sector corrupt conduct assessed within 45 days	Per cent	85	46	×
Complaints or notifications about police personnel conduct and corrupt conduct assessed within 45 days	Per cent	90	49	×
Proportion of standard IBAC investigations into public sector corrupt conduct (excluding police personnel corrupt conduct) completed within 9 months	Per cent	60	0	×
Proportion of complex IBAC investigations into public sector corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) completed within 18 months	Per cent	60	50	×
Proportion of standard IBAC investigations into police personnel conduct and police personnel corrupt conduct completed within 9 months ²⁷²	Per cent	60	0	×

Source: Adapted from IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 14; Department of Treasury and Finance (Victoria), *Victorian Budget 2020/21: service delivery* (Budget Paper No. 3), Melbourne, 2020, pp. 393–394.

²⁶⁹ IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 20–21.

²⁷⁰ See IBAC, *Annual report 2019/20*, Melbourne, 2020, pp. 36–37; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–21.

²⁷¹ Department of Treasury and Finance (Victoria), *Victorian Budget 2020/21: service delivery* (Budget Paper No. 3), Melbourne, 2020, pp. 393–394.

²⁷² IBAC has noted, regarding the three BP3 quantitative performance targets relating to the agency's investigations, that, '[d]ue to relatively small number of investigations in ... [this] category, performance variation can be volatile' (IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 14).

The 2021/22 BP3 introduced an additional timeliness performance target—‘Public Interest Disclosure (PID) complaints and notifications assessed within 30 days’.²⁷³ It also re-introduced a previous performance target from the 2019/20 BP3, ‘Proportion of complex IBAC investigations into police personnel conduct and police personnel corrupt conduct within 18 months’.²⁷⁴

Notwithstanding this new timeliness target, the Committee is concerned that IBAC’s BP3 timeliness performance targets do not adequately reflect the complexity of its work—clearly demonstrated in the discussion in Section 3.6.2 of this chapter. The Committee considers that such targets are therefore limited in their ability to measure IBAC’s productivity. As the agency’s Chief Executive Officer, Ms Marlo Baragwanath, noted during the public hearing on 9 May 2022:

Lest there be any suggestion that we are somehow inefficient, we have recently been subject to a base review that looked at our efficiency and effectiveness, and indeed no areas of inefficiency or ineffectiveness were found in that review. So it is simply a matter of resourcing and arithmetic.²⁷⁵

The Committee notes that IBAC has committed to prioritising ‘the development of new performance measures to better assess IBAC’s impacts and outcomes’.²⁷⁶ The Committee encourages IBAC to consult with the Victorian Department of Treasury and Finance in developing BP3 measures which better reflect the complexity of its work. The Committee will continue to monitor and review the timeliness of IBAC’s assessment of complaints and notifications, to evaluate the effectiveness of its new triaging and allocation processes.

3.7 Conclusion

IBAC’s approach to witness welfare management is comprehensive and robust. The agency’s policies, procedures and practices reflect its serious commitment to identifying potential risks to the health, safety and welfare of persons involved in its investigations and documenting and implementing measures to remove or minimise such risks.

IBAC’s power to hold public examinations is extraordinary. While it is an important and necessary power to enable the agency to perform its anti-corruption and police misconduct functions, it is clear from the evidence received by the Committee during the review that the public examination process places a significant welfare burden on those subjected to it.

²⁷³ Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, p. 377.

²⁷⁴ Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, p. 377; Department of Treasury and Finance (Victoria), *Victorian Budget 2019/20: service delivery* (Budget Paper No. 3), Melbourne, 2019, p. 317.

²⁷⁵ Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 28.

²⁷⁶ Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 1 December 2021, p. 1. See also IBAC, *Annual Plan 2021/22*, Melbourne, February 2022, especially p. 16; IBAC, *The IBAC Plan 2021–25*, Melbourne, September 2021, especially pp. 5, 12.

Similarly, while the Committee recognises that IBAC's power to issue strict confidentiality notices is crucial to maintaining the integrity of its highly sensitive investigations, it is clear from the evidence received by the Committee during the review that such notices have the potential to take a heavy emotional toll on recipients, including engendering feelings of isolation.

IBAC has taken significant steps to ensure that witnesses are supported throughout the public examination process, including implementing the findings of a 2019 independent expert review of its policies, procedures and practices with respect to its coercive information-gathering powers. In particular, IBAC has introduced an independent specialist welfare support service for witnesses provided through its EAP provider, Converge. Further, it requires its officers to perform operational risk assessments for public examinations (including individual welfare risk assessments), using a risk assessment matrix tool, to ensure that potential risks are identified, assessed and managed in a considered and systematic way. Finally, it ensures that specialist risk treatments are implemented for those considered at high risk, such as facilitating the presence of an on-site counsellor during examinations, and implementing other measures in consultation with Converge or a witness's treating health practitioner, where appropriate.

However, IBAC investigators face significant barriers to obtaining accurate and relevant welfare information to inform individual welfare risk assessments, including their lack of clinical expertise and experience. Additionally, the nature of their interactions with examinees inhibits trust and the kind of rapport-building necessary to conduct meaningful welfare assessments.

The policies and procedures provided by IBAC to the Committee in confidence during the review do not provide specific guidance on assessment of mandatory criteria for holding a public examination under s 117(1) of the *IBAC Act 2011* (Vic), including guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing'.²⁷⁷ Nor do they provide specific guidance on decision-making regarding requests received under s 117(3A)(a) of the Act.

Considering the seriousness of the potential welfare ramifications for persons subject to a strict confidentiality notice or IBAC's public examination process, the Committee has made a number of recommendations. These recommendations are designed to enhance public trust in IBAC's decision-making processes regarding the exercise of its powers with respect to public examinations and confidentiality notices, and to ensure that the agency's witness welfare management practices reflect best practice.

Regarding other performance matters during 2020/21, the Committee notes positive developments in IBAC's 2021 People Matter Survey results for its workplace culture, specifically with respect to sexual harassment, discrimination, bullying and workplace aggression. The Committee also acknowledges the work that IBAC has done to improve

²⁷⁷ *IBAC Act 2011* (Vic) s 117(1)(c) (emphasis added); IBAC, Response to Integrity and Oversight Committee questions, 11 April 2022; Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Busra Daskalakis, Executive Assistant to CEO, IBAC, correspondence, 29 April 2022; Ms Marlo Baragwanath, CEO, IBAC, correspondence, 2 May 2022.

the timeliness of its assessment of complaints and notifications, including the successful rollout of a new triaging and allocation system. However, the Committee considers that IBAC's performance reporting on the timeliness of its assessment of complaints and notifications, including the agency's BP3 timeliness measures more broadly, do not adequately reflect the nature and complexity of its workload, nor its productivity. The Committee encourages IBAC, in conjunction with the Government, to work towards establishing BP3 measures which, having regard to the complexity of its work, better reflect the agency's productivity.

4

Office of the Victorian Information Commissioner

4.1 Introduction

The Office of the Victorian Information Commissioner (OVIC) is an independent regulator responsible for protecting the Victorian public's information rights.¹ It 'promotes fair access to information' while encouraging its 'proper use and protection' by the Victorian Government, the Victorian Public Service (VPS) and the broader Victorian community.²

OVIC's functions are found in the *Freedom of Information Act 1982 (Vic)* ('*FOI Act 1982 (Vic)*') and *Privacy and Data Protection Act 2014 (Vic)* ('*PDP Act 2014 (Vic)*').³ The *FOI Act 1982 (Vic)* provides Victorians with 'a general right to access documents' held by the Victorian Government.⁴ OVIC's functions include promoting agencies' and the public's 'understanding and acceptance' of the *FOI Act 1982 (Vic)* and its objectives; reviewing agencies and ministers' decisions made under the *FOI Act 1982 (Vic)*; 'providing advice, education and guidance to agencies' and the public about the Information Commissioner's functions; and developing and monitoring 'compliance with Professional Standards'.⁵

The *PDP Act 2014 (Vic)* regulates information privacy, protective data security and law enforcement data security.⁶ This Act specifies OVIC's functions regarding information privacy, and protective and law enforcement data security. Some of these functions include promoting awareness and understanding of the Information Privacy Principles; undertaking research, issuing reports and guidelines, and producing other materials concerning information privacy; and issuing protective data security standards and promoting their use by the VPS.⁷

While OVIC has seldom used its coercive powers, the Committee notes its commitment to improving its approach to witness welfare during the Committee's review. In particular, the Committee endorses OVIC's proactive approach to engaging with witnesses and stakeholders on a voluntary basis, while also welcoming feedback—from other stakeholders, such as the Victorian Inspectorate (VI)—as a result of the

1 OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 6.

2 Ibid.

3 For an explanation of recent 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)*') introduced by the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021 (Vic)*, see OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 17–18.

4 OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 8.

5 *FOI Act 1982 (Vic)* s 6; OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 8.

6 OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 8.

7 See *PDP Act 2014 (Vic)* ss 8A–8D; OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 8.

Committee’s review of witness welfare management. The Committee looks forward to seeing OVIC improve its current witness welfare-related practices, procedures and policies, as a result of both its pre-existing commitments and insights contained in this report.

In 2020/21, OVIC continued building its resilience in light of the COVID-19 pandemic.⁸ In the FOI space, it assisted Victorian agencies to navigate a record year of FOI applications,⁹ while also preparing two significant reports—*Impediments to timely FOI and information release* and *The state of freedom of information in Victoria: a special look at FOI in Victoria from 2019 to 2021*.¹⁰ In terms of privacy and data security, OVIC improved its Information Security Incident Notification Scheme and developed a toolkit for privacy officers, while successfully furthering its privacy-related functions.

This chapter evaluates OVIC’s performance in respect of witness welfare, as well as its performance in the following areas: handling of FOI-related complaints, reviews and related developments; management of privacy complaints and data security, and related developments; public information and education; governance and workplace; and accountability.

4.2 Witness welfare: legal framework

The legislative framework underpinning OVIC’s approach to managing the welfare of witnesses, persons of interest, members of the public and relevant stakeholders is comprised of four Acts:

- *FOI Act 1982 (Vic)*
- *Victorian Inspectorate Act 2011 (Vic)* (‘VI Act 2011 (Vic)’)
- *PDP Act 2014 (Vic)*
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (‘the Charter’).

A more detailed explanation of the witness welfare-related obligations contained in these Acts is provided below.

4.2.1 FOI Act 1982 (Vic)

The *FOI Act 1982 (Vic)* grants OVIC coercive powers to issue notices to produce documents or attend in relation to FOI reviews, complaints and investigations.¹¹ The *FOI Act 1982 (Vic)* also provides various protections to persons subjected to OVIC’s coercive powers. For instance, persons subject to FOI notices are entitled to seek legal advice

⁸ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9.

⁹ Ibid.

¹⁰ *Impediments to timely FOI and information release*, Melbourne, September 2021; OVIC, *The state of freedom of information in Victoria: a special look at FOI in Victoria from 2019 to 2021*, Melbourne, April 2022.

¹¹ *FOI Act 1982 (Vic)* ss 49KB, 61U–61ZI. See also s 5(1) definition of ‘notice to produce or attend’; OVIC, *Submission 4*, 1 April 2022, p. 2.

and representation,¹² and are provided with the same protection and immunity as witnesses in Supreme Court proceedings.¹³ Similarly, witnesses' lawyers are protected as if they were representing a party in the Supreme Court.¹⁴ Persons named in reports prepared under div 2 of the Act must be given an opportunity to respond to any adverse material.¹⁵ Elements of a person's response must be included in the report.¹⁶

4.2.2 **VI Act 2011 (Vic)**

The *VI Act 2011 (Vic)* facilitates the VI's oversight of OVIC, including by imposing various reporting requirements on OVIC in respect of FOI notices. For example, OVIC must provide a written report to the VI within 3 days of issuing a FOI notice.¹⁷ In addition, the Information Commissioner must provide the VI with a report regarding a person's appearance during OVIC investigations, complaints or reviews under the *FOI Act 1982 (Vic)*, regardless of whether their attendance is voluntary or compulsory.¹⁸

4.2.3 **PDP Act 2014 (Vic)**

Under the *PDP Act 2014 (Vic)*, the Information Commissioner can issue coercive notices during the conciliation of complaints or investigations relating to compliance notices.¹⁹ Notices may require persons to produce documents or attend to produce documents or for examinations.²⁰ In some circumstances, the Information Commissioner may request immediate attendance.²¹ Such notices are reviewed by OVIC's general counsel or an external senior lawyer to determine whether the notice for immediate attendance (and its terms) is 'appropriate and necessary', noting the potential imposition on a person's rights, such as their right to obtain legal advice.²²

4.2.4 **The Charter**

The Charter requires OVIC to consider people's human rights, particularly when making decisions.²³ The Information Commissioner must consider various factors before adversely impacting a person's human rights,²⁴ such as whether an outcome can be achieved using less restrictive means.²⁵ When issuing or serving notices, the Information

¹² *FOI Act 1982 (Vic)* s 61ZF; OVIC, *Submission 4*, 1 April 2022, p. 3.

¹³ *FOI Act 1982 (Vic)* s 61ZG(2); OVIC, *Submission 4*, 1 April 2022, p. 3.

¹⁴ *FOI Act 1982 (Vic)* s 61ZG(1); OVIC, *Submission 4*, 1 April 2022, p. 3.

¹⁵ *FOI Act 1982 (Vic)* s 61R(2); OVIC, *Submission 4*, 1 April 2022, p. 3.

¹⁶ *FOI Act 1982 (Vic)* s 61R(2); OVIC, *Submission 4*, 1 April 2022, p. 3.

¹⁷ *FOI Act 1982 (Vic)* s 61ZD; OVIC, *Submission 4*, 1 April 2022, p. 3.

¹⁸ *FOI Act 1982 (Vic)* s 61ZD; OVIC, *Submission 4*, 1 April 2022, pp. 3–4.

¹⁹ *PDP Act 2014 (Vic)* ss 68, 79; OVIC, *Submission 4*, 1 April 2022, p. 4.

²⁰ *PDP Act 2014 (Vic)* ss 68, 79; OVIC, *Submission 4*, 1 April 2022, p. 4.

²¹ *PDP Act 2014 (Vic)* ss 83C(2); OVIC, *Submission 4*, 1 April 2022, pp. 4–5.

²² OVIC, *Submission 4*, 1 April 2022, pp. 4–5.

²³ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ('the Charter') s 38(1); OVIC, *Submission 4*, 1 April 2022, p. 1.

²⁴ The most relevant human rights are freedom of movement and privacy and reputation: the Charter ss 12–13; OVIC, *Submission 4*, 1 April 2022, p. 1.

²⁵ The Charter s 7(2); OVIC, *Submission 4*, 1 April 2022, p. 1.

Commissioner must prepare a written human rights impact assessment if there is a real risk of contravening a person's rights—such as their freedom of movement or privacy and reputation—under the Charter.²⁶ This may occur, for example, when the Information Commissioner directs coercive powers toward persons in their personal capacity or non-senior executive level employees, or toward employees of any seniority at organisations outside of OVIC's jurisdiction.²⁷

4.3 Witness welfare: procedures, practices and policies

OVIC's approach to witness welfare is informed by three key sources:²⁸ legislation; the Australian Government Investigation Standards; and the VI, including its resources and publications.

4.3.1 OVIC's use of coercive powers

It is worth noting, as referenced above, that OVIC has seldom utilised its coercive powers under the *FOI Act 1982 (Vic)* and *PDP Act 2014 (Vic)*. It has not used coercive powers to call individuals to give information or evidence.²⁹ To date, OVIC has used its coercive powers requiring documents to be produced on only two occasions,³⁰ as follows:

We have on a couple of occasions used coercive powers to require the production of a document, and in most, if not all, of those cases that was actually at the request of an agency, where the agency wanted to be completely sure that providing the information to us did not put them in some sort of trouble with some other party.³¹

There are two key reasons for this. First, OVIC's inquiries tend to involve less contentious subject matter compared to Victoria's other integrity agencies. OVIC has explained:

The focus of OVIC's investigations is on agencies' systems and processes, rather than malfeasance or criminality of individuals. Therefore, any interviews conducted ... often deal with subject matter of a less sensitive nature for witnesses than some other integrity agencies.³²

Second, where information or evidence is required, OVIC seeks the 'voluntary provision of information or documents prior to exercising coercive powers unless special circumstances requiring the exercise of coercive powers exist'.³³ For instance, in its recent own motion investigation, OVIC obtained 100 per cent compliance from

²⁶ The Charter ss 12–13; OVIC, *Submission 4*, 1 April 2022, pp. 1–2.

²⁷ OVIC, *Submission 4*, 1 April 2022, p. 2.

²⁸ OVIC, *Submission 4*, 1 April 2022, p. 9.

²⁹ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 10, 12.

³⁰ OVIC, *Submission 4*, 1 April 2022, p. 5.

³¹ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 10.

³² OVIC, *Submission 4*, 1 April 2022, p. 6.

³³ *Ibid.*, p. 5.

participants with its requests for information, including voluntary participation by interviewees.³⁴

While OVIC's use of its coercive powers is limited, it has proactively sought to improve its approach to witness welfare, as discussed below.

4.3.2 Procedures, practices and policies

The scope of OVIC's procedures, practices and policies is limited. OVIC acknowledges that its witness welfare procedures are not well documented.³⁵ Drawing on its recent own motion investigation as an example, OVIC's standard approach to managing witness welfare largely focuses on the pre-interview and interview stages of an investigation.³⁶ These interview practices include:

- Allowing agencies to choose which officers participate in interviews;
- Utilising fact sheets;
- Hosting pre-interview briefing sessions explaining the purpose and expectations of parties, the agenda and interview format, and providing an opportunity for interviewees to ask questions;
- Using an opening script, obtaining consent to record interviews, and confirming that interviews may be paused or stopped at the interviewee's request;
- Providing breaks during interviews; and
- Allowing interviewees from the same agency to be interviewed together.³⁷

Witnesses are provided with a contact point from OVIC after an interview.³⁸ While OVIC does not typically follow up witnesses' welfare after interviews, it did conduct post-interview debriefing sessions in its recent own motion investigation.³⁹ In these sessions, OVIC investigators shared 'thematic observations' from interviews and reiterated the investigation's next steps.⁴⁰ Participants were also provided with further opportunities to ask questions.⁴¹ OVIC highlighted that these sessions

allowed interviewees to see that their comments had been heard and understood by OVIC, and avoided interviewees being surprised about the findings of the investigation report. The de-briefing sessions also had the benefit of reminding witnesses of the

³⁴ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 9.

³⁵ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11.

³⁶ Ibid.

³⁷ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11; OVIC, *Submission 4*, 1 April 2022, p. 7.

³⁸ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11.

³⁹ OVIC, *Submission 4*, 1 April 2022, p. 7.

⁴⁰ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11; OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 9.

⁴¹ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11.

timeline for the investigation and what would happen next. Following the de-briefing sessions, some interviewees contacted the OVIC investigators to provide clarifying comments or additional supporting material, which improved the accuracy of OVIC's report.⁴²

OVIC also informed the Committee that it utilises confidential policies and fact sheets addressing the exercise of coercive power, which contain 'policy considerations and procedures' for OVIC officers to follow when exercising coercive powers.⁴³ These documents were provided to the Committee as part of its review.

In terms of publicly available policies, OVIC's *Regulatory Action Policy 2019–2021* contains OVIC's regulatory approach in respect of the *FOI Act 1982* (Vic) and *PDP Act 2014* (Vic);⁴⁴ however, it does not contain any information or guidance specific to witness welfare.⁴⁵

4.4 Witness welfare: evaluation

OVIC 'takes witness welfare issues seriously and is taking action to respond to these issues'.⁴⁶ It recognises the 'need to strengthen and develop [its] policy and procedures and is proactively improving its practices'.⁴⁷ OVIC has proactively identified various areas for improvement in respect of its management of witness welfare, noting, for instance, that its relevant procedures are not well documented.⁴⁸

The Committee commends OVIC on its proactive approach, including the active steps it has taken to improve its treatment of witnesses prior to the Committee's review.⁴⁹ These steps are largely directed at improving and developing witness welfare-related resources.⁵⁰ OVIC acknowledges there is scope for further improvement. The agency has committed to improving its approach to witness welfare by

- ensuring it follows up on witnesses' welfare after interviews, including by incorporating witness welfare considerations into its 'revised policies, procedures and practices'⁵¹
- continuing to conduct post-interview debriefs, including in respect of ongoing regulatory action, such as OVIC's audit of several agencies against the Victorian Protective Data Security Standard 8⁵²

⁴² OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 9.

⁴³ OVIC, *Submission 4*, 1 April 2022, p. 5.

⁴⁴ OVIC, *Regulatory Action Policy 2019–2021*, Melbourne, 2019.

⁴⁵ OVIC, *Submission 4*, 1 April 2022, p. 6.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p. 9.

⁴⁸ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 11.

⁴⁹ OVIC, *Submission 4*, 1 April 2022, pp. 5–6.

⁵⁰ *Ibid.*, p. 7.

⁵¹ *Ibid.*

⁵² *Ibid.*

- reflecting on its practices after each investigation or regulatory action ‘to improve them for future projects’⁵³
- formalising general principles in templates and procedural documents (as opposed to incorporating such principles through ‘tailored procedures’ for each investigation on an ad hoc basis)⁵⁴
- (in respect of interviews) undertaking additional work to ‘develop appropriate policies, procedures and guidance material for staff and interviewees’, noting that interviews may cause individuals ‘significant stress’⁵⁵
- Updating its Regulatory Action Plan after it further refines its procedures for promoting witness welfare.⁵⁶

The Committee welcomes OVIC’s initiative in further improving its approach to witness welfare by introducing the measures immediately above. The Committee encourages OVIC to ensure such measures reflect various best practice principles in supporting witnesses, such as ensuring witnesses can seek information and support, and have access to healthcare professionals with appropriate clinical expertise and experience.⁵⁷

OVIC has also sought the VI’s guidance to improve its approach to witness welfare:

What we have been doing is trying to be proactive in that regard should the need arise more in the future for us to exercise ... [coercive] powers, and in that regard we have actually been working closely with the Victorian Inspectorate ... to formalise those processes, policies and procedures.⁵⁸

This collaboration has led to meaningful improvements. After reviewing OVIC’s key documents, the VI suggested OVIC clarify its staff’s expectations during each step of the witness welfare process, interview scripts and related material, and differentiate interview resources depending on their format (that is, in-person or virtual).⁵⁹

OVIC has committed to incorporating the VI’s feedback. For example, it will clearly distinguish between voluntary interviews and coercive examinations, noting that they ‘give rise to different welfare issues, such as summonsed witnesses requiring more information about rights and legal obligations’.⁶⁰ This approach accords with best practice principles in respect of providing appropriate and effective support relative to the type of coercive power being used, as identified in Chapter 2 of this report.⁶¹ OVIC would benefit from ensuring it understands the importance of providing targeted

⁵³ Ibid.

⁵⁴ Ibid., p. 6.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ See the discussion in Sections 2.3 and 2.4 in Chapter 2 in this report.

⁵⁸ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 12.

⁵⁹ OVIC, *Submission 4*, 1 April 2022, p. 8.

⁶⁰ Ibid.

⁶¹ Australian Psychological Society, *Submission 28*, 27 April 2020, pp. 1–2. See also the discussion in Section 2.2 in Chapter 2 in this report.

support and identifying which individuals may require additional support (particularly in the event witnesses are required to give evidence on a non-voluntary basis in the future).⁶²

The opportunity to work with the VI has presented valuable learnings for OVIC. As explained by OVIC's Assistant Commissioner Boag:

[T]he point that has come out with our engagement with VI is the need for us to mature what we are doing. At the moment we have an approach that we take in the matters that we are conducting, but it is run a bit case by case. What we are doing now is trying to really formalise it to support witnesses but also to support the staff so that they know what they need to do to help people out.

The other point that has come up in our discussion with the VI is that our investigations typically are looking at whether an agency rather than an individual has contravened the legislation we are investigating. You might think that the stakes are a bit lower for the people we are interviewing than if we were looking at whether they were in breach of the law, but I think something the VI has made clear to us and which we are communicating to our staff is that everyone who is a witness in a formal legislative procedure is under significant pressure. So even though our witnesses are not going to have an adverse finding made against them or are not going to face personal consequences, they still have reputational consequences, career consequences, and we need to be aware of that.⁶³

The Committee welcomes OVIC's commitment to continually improving its treatment of witnesses for the purpose of improving their welfare. It encourages OVIC to ensure it incorporates this report's best practice principles into pre-existing initiatives, continues to work with the VI, and otherwise extends its proactive approach to witness welfare, regardless of whether witnesses are engaged with on a voluntary or non-voluntary basis.

4.5 Complaint handling, investigations and oversight

4.5.1 The operation of the *FOI Act 1982 (Vic)*

The *FOI Act 1982 (Vic)* facilitates the public's right to access information held by the Victorian Government, while ensuring its proper use and protection. The following section highlights OVIC's performance in respect of its FOI-related functions and other notable developments for the 2020/21 period.

⁶² See the discussion in Sections 2.2.2 and 2.2.3 in Chapter 2 in this report.

⁶³ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 13.

Freedom of information trends

In 2020/21, Victorian government agencies and ministers received a record number of FOI applications—42,249.⁶⁴ This is a 3.16% increase from 2019/20.⁶⁵ Most requests were from individuals requesting access to personal information.⁶⁶ As stated by Information Commissioner Bluemmel, ‘Clearly the public’s appetite for information did not decrease during the pandemic, and I would say that that should not be a surprise’.⁶⁷

Table 4.1 FOI outputs

FOI indicator	2019/20	2020/21
Number of FOI decisions	34,895	34,623
Percentage of FOI applications granted in full	65.85	66.29
Percentage of FOI applications granted in part	30.52	29.90
Percentage of FOI applications denied	3.63	3.90
Number of FOI complaints received	522	739
Number of FOI complaints finalised	556	604
Average number of days to finalise FOI complaints	71	61

Source: OVIC, *Annual report 2019–20*, Melbourne 2020, pp. 71, 75–76, 86, 91; OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 14, 58, 79, 103; Ms Penny Eastman, Assistant Commissioner, Public Access Reviews & Regulation, OVIC, correspondence, 8 August 2022.

OVIC published two reports regarding the timeliness of agencies’ FOI-related decision-making. First, in September 2021, OVIC tabled its own motion investigation report *Impediments to timely FOI and information release*.⁶⁸ The report highlights COVID-19’s impact on the processing of FOI requests by Victorian agencies, especially Victoria Police, which has over 3,000 current FOI requests (2,400 of which are outstanding).⁶⁹

Second, OVIC’s report, *The state of freedom of information in Victoria: a special look at FOI in Victoria from 2019 to 2021*, evaluates COVID-19’s impact on agencies’ processing of FOI requests in Victoria from July 2019 to June 2021.⁷⁰ Published in April 2022, the report found that

[t]he COVID-19 pandemic intensified existing challenges for the administration of the FOI Act in Victoria. The large FOI workload continues to overwhelm agency resources. This workload, combined with the 30-day statutory timeframe for processing an FOI request and impacts from the COVID-19 pandemic, contributed to further delays in

⁶⁴ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9; OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 57.

⁶⁵ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 99.

⁶⁶ *Ibid.*, p. 57.

⁶⁷ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9.

⁶⁸ OVIC, *Impediments to timely FOI and information release*, Melbourne, September 2021; OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 1.

⁶⁹ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 1.

⁷⁰ OVIC, *The state of freedom of information in Victoria: a special look at FOI in Victoria from 2019 to 2021*, Melbourne, April 2022.

decision making and timeliness, an increasing number of FOI complaints received from the public by OVIC, and a stronger reliance by agencies on the use of exceptions to categorically refuse FOI requests.⁷¹

OVIC's handling of freedom of information complaints

Complaints regarding agencies or ministers' handling of FOI requests can be made to OVIC.⁷² Complaints can be made for various reasons, including delay, loss or alleged non-existence of documents, or the release of documents containing personal or business information.⁷³

In 2020/21, OVIC received 739 complaints; a 41.6% increase from 2019/20 (522).⁷⁴ Despite this, OVIC finalised 604 complaints compared to 556 in 2019/20, which is the largest number of complaints finalised in the last 4 years.⁷⁵ This is a significant achievement. In addition, in 2020/21, 'the average time taken by OVIC to finalise' FOI complaints decreased from 71 to 61 days compared with the 2019/20 period.⁷⁶ The Committee welcomes these improvements.

Delay complaints continue to constitute much of OVIC's work in this space. They are made after the statutory time frame has expired but before the relevant agency has made a decision regarding the FOI request.⁷⁷ After receipt, delay complaints remain active until agencies make a decision or the complainant applies to the Victorian Civil and Administrative Tribunal (VCAT) on the basis of a 'deemed refusal'.⁷⁸ Of the 739 complaints OVIC received in 2020/21, 479 concerned agencies' delays in finalising FOI decisions within statutory or agreed time frames.⁷⁹ This is a significant increase in the volume of delay complaints compared to 2019/20 (242).⁸⁰

The Committee reiterates its interest in OVIC's ability to efficiently finalise FOI complaints.⁸¹ OVIC's timeliness in finalising delay complaints during 2020/21 decreased compared with 2019/20, with the average time taken to finalise them increasing from 50 to 54 days.⁸² Two related considerations explain this. First, OVIC remains unable to require agencies to finalise decisions by a certain date.⁸³ Second, as explored in OVIC's

⁷¹ Ibid., p. 12.

⁷² OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 75.

⁷³ Ibid.

⁷⁴ Ibid., pp. 76, 79.

⁷⁵ Ibid., p. 79.

⁷⁶ Ibid., p. 81.

⁷⁷ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

⁷⁸ Ibid.

⁷⁹ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 76.

⁸⁰ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9; OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

⁸¹ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, pp. 38–39.

⁸² OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

⁸³ Ibid., p. 3.

own motion investigation, COVID-19 continues to negatively impact agencies' capacity to action FOI requests.⁸⁴

OVIC has improved its efficiency in finalising FOI delay complaints by encouraging agencies to engage with applicants early in the FOI process, particularly to foreshadow any expected delays.⁸⁵ OVIC also supports agencies by, for instance, conducting meetings with key agencies impacted by COVID-19; requesting statistical information regarding agencies' FOI workloads, resourcing and other challenges; and seeking written submissions.⁸⁶ The own motion report details additional ways in which OVIC supports agencies with COVID-related impacts.⁸⁷

OVIC's freedom of information reviews

As distinct from FOI complaints, OVIC also receives requests to review agencies' FOI decisions.⁸⁸ OVIC independently reviews agencies' decisions where an applicant contests a decision rejecting their request to access documents or how their FOI request has been handled.⁸⁹ In 2020/21, OVIC received 607 applications to review FOI decisions made by 127 agencies and 1 minister refusing applicants' access to documents.⁹⁰ This was 39 fewer than the 2019/20 period (646).⁹¹ Most review applications came from members of the public.⁹²

OVIC has improved its timeliness in finalising review applications.⁹³ The average time OVIC took to finalise a review decreased from 139 to 118 days, improving by 15.1% compared with the 2019/20 period.⁹⁴ OVIC completed 56.1% of reviews within statutory or agreed time frames, which is a 16.9% improvement in timeliness compared with 2019/20.⁹⁵ The time taken to complete reviews also decreased from 139 days (2019/20) to 118 days (2020/21).⁹⁶ Importantly, OVIC's efforts to resolve FOI reviews informally—including by establishing an Informal Resolution Team—demonstrates its ongoing commitment to improving its ability to meet statutory time frames.⁹⁷ While these initiatives are positive, the Committee encourages OVIC to further improve its ability to complete review applications efficiently.

⁸⁴ Ibid., pp. 1–2. See also OVIC, *Impediments to timely FOI and information release*, Melbourne, September 2021.

⁸⁵ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

⁸⁶ Ibid.

⁸⁷ See OVIC, *Impediments to timely FOI and information release*, Melbourne, September 2021.

⁸⁸ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

⁸⁹ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 57.

⁹⁰ Ibid., p. 62.

⁹¹ Ibid.

⁹² OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 62 (The breakdown of review applicants is as follows: members of the public, 81.1%; Members of Parliament, 11%; organisations, 5.3%; media, 2.6%).

⁹³ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9.

⁹⁴ OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 58, 73.

⁹⁵ Ibid., p. 73.

⁹⁶ Ibid.

⁹⁷ Ibid., pp. 61, 68.

File-sharing platform

In July 2020, in response to COVID-19, OVIC implemented a secure file-sharing platform to enable agencies to share confidential review documents and information electronically.⁹⁸ The platform was expanded to allow agencies to provide documents relating to reviews and complaints in March 2021.⁹⁹ The platform has created multiple efficiencies for OVIC, such as removing the need for OVIC staff to attend offices to inspect physical documents under review.¹⁰⁰ The platform is also more secure compared with previous systems and minimises the proliferation of documents.¹⁰¹

Only 20% of agencies utilised the platform to provide confidential documents to OVIC in 2020/21.¹⁰² Noting the efficiencies created by this platform, the Committee endorses OVIC's efforts to encourage more agencies to use the platform.

Freedom of Information Professional Standards

The Freedom of Information Professional Standards (Professional Standards) commenced on 2 December 2019. They help regulate agencies' conduct and support OVIC's administration of the *FOI Act 1982* (Vic).¹⁰³ They comprise 33 standards covering 10 themes, which apply to, and bind, Victorian government agencies subject to FOI obligations.¹⁰⁴

OVIC launched its online *Professional Standards Self-assessment Tool-kit* (Professional Standards Toolkit) to help agencies implement and develop their understanding of the standards.¹⁰⁵ The Professional Standards Toolkit resulted from an examination of how 6 FOI agencies implemented the Professional Standards.¹⁰⁶ Agencies have made various improvements to their FOI processes after using the toolkit, including improving the recording of document searches, implementing procedures for the proactive release of information, and introducing FOI processing checklists.¹⁰⁷ Agencies have responded positively to the tool:

[T]here are a number of ... [agencies] participating, which is terrific, but we would like to see more, ideally, participating, and the results of the ones that are participating are generally very positive.¹⁰⁸

⁹⁸ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 3–4.

⁹⁹ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 88.

¹⁰⁰ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 4; Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 15.

¹⁰¹ Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 15–16.

¹⁰² OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

¹⁰³ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 86.

¹⁰⁴ *Ibid.*

¹⁰⁵ Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14.

¹⁰⁶ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 20.

¹⁰⁷ *Ibid.*, p. 89.

¹⁰⁸ Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14.

Importantly, the Professional Standards Toolkit encourages agencies to proactively consider their compliance with the Professional Standards before any regulatory intervention by OVIC:

[W]e would rather they be able to identify any issues where they may be falling below what is expected and have them address those issues proactively prior to the need for an own motion investigation, for example, or some other form of regulatory action that ... [OVIC] may need to take.¹⁰⁹

The Committee encourages OVIC to continue seeking agencies' feedback on the Professional Standards Toolkit and evaluate whether agencies can be required to complete the self-assessment on a compulsory basis, such as each calendar or financial year.

4.6 The operation of the *PDP Act 2014 (Vic)*

The *PDP Act 2014 (Vic)* helps protect Victorians' information privacy rights while promoting lawful information-sharing and effective information security. The following section evaluates OVIC's performance during 2020/21 in respect of its privacy and information security functions, while noting key developments.

4.6.1 Privacy and information security trends

In 2020/21, in addition to managing ongoing and emerging security risks, OVIC continued to support agencies' responses to COVID-19 'to ensure that activities such as contact tracing and verification of vaccination status occurred in a way that minimised the collection, use and disclosure of personal information'.¹¹⁰ OVIC received 86 complaints in 2020/21 from individuals seeking remedies for interference with their information privacy, which is a 19% decrease compared to 2019/20.¹¹¹ In addition to COVID-19, there are various explanations for this decrease:

This change may signal a change in how agencies are handling personal information or what community members expect. It may also have been influenced by the greater willingness of our case officers to provide advice to prospective complainants on the likely application of the PDP Act and their prospects should they proceed to make a complaint.¹¹²

¹⁰⁹ Ibid.

¹¹⁰ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 10.

¹¹¹ OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 27–28.

¹¹² Ibid., p. 27.

Table 4.2 Privacy and data security outputs

Privacy/data security indicator	2019/20	2020/21
Number of privacy complaints received	106	86
Number of privacy complaints finalised	119	94
Percentage of privacy complaints finalised without referral to VCAT	75	69
Average number of days to finalise complaints	144	147
Number of data breaches voluntarily reported by agencies to OVIC	96	159

Source: OVIC, *Annual report 2019–20*, Melbourne 2020, pp. 28, 30, 32. OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 28–30, 32.

OVIC's proactive approach to dispute resolution, as it relates to privacy complaints, has had a positive impact by facilitating more conciliated outcomes. In 2020/21, OVIC 'provided preliminary views' to complainants in 55% of finalised complaints.¹¹³ As a result, OVIC achieved a high number of conciliated complaints (21, which is a 31% increase compared with 2019/20) and low referral of complaints to VCAT (31%, compared to a historical average of around 50%).¹¹⁴

Information Security Incident Notification Scheme

In 2020/21, OVIC's Information Security Incident Notification Scheme (Scheme) operated for its first full year.¹¹⁵ The Scheme requires Victorian government entities—state or local—to report certain security incidents to OVIC so it can improve security practices, identify 'information security trends' and address 'emerging issues'.¹¹⁶ The number of notifications received under the Scheme has increased each year since it was introduced in 2019.¹¹⁷ In 2020/21, OVIC received 373 incident notifications, of which 73% related to soft-copy material and 82% concerned confidentiality of information.¹¹⁸ Human error remains the leading reason for incident notifications.¹¹⁹

OVIC continues to improve the Scheme. In 2020/21, it developed a single online notification form to capture privacy and information security incidents simultaneously, as opposed to requiring separate soft-copy forms.¹²⁰ This approach is more efficient for OVIC.¹²¹ Stakeholders have also preferred using an online form that combines privacy and information security notifications (particularly if one incident relates to both types of notification or if a user is uncertain about how to characterise the incident).¹²²

¹¹³ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 29.

¹¹⁴ *Ibid.*, pp. 28–29.

¹¹⁵ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 10.

¹¹⁶ *Ibid.*

¹¹⁷ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 32.

¹¹⁸ *Ibid.*, p. 51.

¹¹⁹ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 14.

¹²⁰ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 51; OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 7.

¹²¹ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 7.

¹²² *Ibid.*

Privacy Officer Toolkit

In June 2021, OVIC also developed a Privacy Officer Toolkit. Drawing on more than 20 interviews with privacy officers across Victoria, the toolkit contains in-depth information regarding privacy legislation and policies, data breaches and privacy impact assessments.¹²³ OVIC has explained the benefit of the Privacy Officer Toolkit:

[It] makes it easier for privacy officers and other staff who have privacy responsibilities to locate relevant resources to assist them in doing their jobs. The Toolkit provides an overview of 16 topics that privacy officers are likely to deal with in their roles. For each of them, the Toolkit explains the essentials, how it is important to the privacy officer role and links to all other OVIC content on the topic. In this way, it is a one stop shop to allow stakeholders to find information quickly and easily.¹²⁴

4.6.2 Regulatory actions and investigations

OVIC strives to ensure its regulation action is 'fair, measured and mature'.¹²⁵ In 2020/21, it conducted 5 regulatory activities.¹²⁶ Commissioner Bluemmel noted that 'while the volume of our proactive regulatory action is low, reflecting of course the size and resources of the organisation, the complexity involved in the investigations, audits and examinations can be high'.¹²⁷ OVIC's reports into unauthorised access to information held by the Victorian Department of Health and Human Services, as well as the privacy and security policies of Victorian universities, are two strong examples of this.¹²⁸

4.6.3 Law enforcement data security

OVIC continued to work closely with Victoria Police in 2020/21. The agency regularly met with Victoria Police's Information, Systems, and Security Command team to 'discuss emerging issues' in law enforcement information security, and implemented a working group to address the former Office of the Commissioner for Law Enforcement Data Security and the former Office of the Commissioner for Privacy and Data Protection's recommendations.¹²⁹ OVIC also reviewed Victoria Police's protective data security plans and information security incidents.¹³⁰

¹²³ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 35.

¹²⁴ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 4.

¹²⁵ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 10.

¹²⁶ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 13.

¹²⁷ Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 10.

¹²⁸ OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 19–20; OVIC, *Unauthorised access to client information held in the CRISP database*, Melbourne, March 2021; OVIC, *Examination of Victorian universities' privacy and security policies*, Melbourne, June 2021.

¹²⁹ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 53.

¹³⁰ *Ibid.*

OVIC inspected 3 Victoria Police facilities in 2020/21.¹³¹ These site inspections are an important aspect of OVIC's oversight of Victoria Police, particularly at an operational level:

They are really an opportunity for us to speak to members at individual units and locations to try to talk about what they understand about security and how they can improve it. So the sorts of issues that come up are important but, I would say, not large systemic issues. So they are things around labelling documents appropriately, storing hard-copy documents in the correct places, having access to archiving and security facilities and issues of that nature—adherence to Victoria Police security policies and procedures.¹³²

4

4.7 Public information and education

OVIC conducted a range of public information and education activities during 2020/21. OVIC's e-Learning modules were completed over 5,000 times and its training sessions were attended by over 400 VPS staff.¹³³ OVIC's online events and forums also doubled in attendance compared with 2019/20, attracting over 3,000 attendees.¹³⁴ Its education and training offerings are positively received by clients, receiving client satisfaction levels of 97.5%.¹³⁵ OVIC continues to prepare its FOI guidelines and make further improvements to its website using feedback from its user-research project.¹³⁶

The Committee's recent inquiry into the education and prevention functions of Victoria's integrity agencies contains further information and analysis regarding OVIC's education-related functions and performance.¹³⁷

4.8 Governance and workplace

4.8.1 Governance

OVIC reported no breaches of the Code of Conduct for Victorian Public Sector Employees of Special Bodies in 2020/21.¹³⁸

¹³¹ Ibid., pp. 20, 53.

¹³² Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 13.

¹³³ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 22.

¹³⁴ Ibid., p. 21.

¹³⁵ Ibid., p. 13.

¹³⁶ OVIC, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 6–7.

¹³⁷ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022.

¹³⁸ OVIC, *Annual report 2020–21*, Melbourne, 2021, p. 15.

4.8.2 General staff wellbeing

OVIC's staff continued to work from home for most of 2020/21 due to COVID-19, although staff began returning to OVIC's office in early 2021 in accordance with the agency's hybrid work model.¹³⁹

Responses to the Victorian Public Sector Commission's People Matter Survey for 2020/21 by OVIC staff were largely favourable. For example, 96% of survey participants agreed with the statement 'I enjoy the work in my current job'.¹⁴⁰

4.9 Accountability

The VI and the Committee perform oversight and complaint-handling functions in respect of OVIC.¹⁴¹ Complaints regarding OVIC's use of performance, coercive powers or compliance with procedural fairness can be made to either entity (subject to their individual jurisdictional and legislative requirements).

In 2020/21, the VI received no complaints and 5 enquiries regarding OVIC.¹⁴² The Committee received and finalised 5 complaints regarding OVIC.¹⁴³

4.10 Conclusion

In 2020/21, OVIC performed its FOI, privacy and data security functions to a high standard while implementing a number of initiatives directed at further improving its operations.

The Committee notes OVIC's active engagement in the Committee's review of the Victorian integrity agencies' approach to witness welfare. While it has acknowledged its management of witness welfare is 'run a bit case by case',¹⁴⁴ OVIC has proactively sought feedback to improve its practices and policies. As noted above, the Committee welcomes OVIC's commitment to implementing these improvements, particularly before the agency uses its coercive powers. The Committee further encourages OVIC to rely on the best practice principles in Chapter 2 of this report to ensure any improvements reflect the most robust approach to managing witness welfare possible.

In 2020/21, OVIC continues to support agencies with a record number of FOI applications. In addition to its complaint-handling and review functions, it implemented or improved resources, such as its file-sharing platform and Professional Standards

¹³⁹ Ibid., p. 9.

¹⁴⁰ Victorian Public Sector Commission, *Office of the Victorian Information Commissioner 2021 people matter survey results report*, Melbourne, 2021, p. 14.

¹⁴¹ *Victorian Inspectorate Act 2011* (Vic) s 11(5)(a)–(d); *Parliamentary Committees Act 2003* (Vic) s 7(1)(a)–(e).

¹⁴² VI, *Annual report 2020–21*, Melbourne, 2021, p. 66.

¹⁴³ IOC, *Complaints data—2020/21*, Melbourne, 2022.

¹⁴⁴ Mr Annan Boag, Assistant Commissioner, Privacy and Assurance, OVIC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 13.

Toolkit, to enable agencies and stakeholders better navigate this development. Similarly, in the privacy and data protection space, OVIC continued to support stakeholders by developing its Information Security Incident Notification Scheme and Privacy Officer Toolkit.

The Committee supports OVIC's initiative in identifying areas of improvement, and its commitment to continually improving its performance—particularly as COVID-19 continues to reshape Victoria's FOI and privacy and data security regulatory landscape, as well as public expectations.

5 Victorian Inspectorate

5.1 Introduction

The Victorian Inspectorate (VI) has extensive oversight functions and powers in relation to Victorian integrity bodies, including the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC) and the Victorian Ombudsman (VO).¹ 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.² 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.³

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.⁴

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).⁵

The first part of this chapter is focused on the VI's management of the welfare of witnesses and others involved in its investigations—covering the legal framework; policies, procedures and standard practices; and evaluation. The remainder of the chapter addresses other performance matters related to the VI's functions.

5.2 Witness welfare: legal framework

The key Acts relevant to the VI's management of witness welfare are the *Victorian Inspectorate Act 2011* (Vic) ('VI Act 2011 (Vic)'), the *Public Interest Disclosures Act 2012* (Vic) ('PID Act 2012 (Vic)'), the *Occupational Health and Safety Act 2004* ('OH&S Act 2004 (Vic)') and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter').⁶

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

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

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

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

5 *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 Victorian Auditor-General's Office (VAGO) officers: *PC Act 2003* (Vic) s 14(1)(ab)–(ad); VI, *Annual report 2018–19*, Melbourne, 2019, p. 14.

6 VI, Response to Integrity and Oversight Committee questions, 6 April 2022, pp. 1–2.

5.2.1 VI Act 2011 (Vic)

The provisions most relevant to the management of witness welfare are those on confidentiality notices, the conduct of examinations (hearings) and requirements for reports of investigations.⁷ The VI also has an oversight role with respect to aspects of other integrity agencies' management of witness welfare.

Confidentiality notices

The VI is authorised to issue confidentiality notices during an investigation, which require a person not to disclose specified restricted matters (including, in some cases, even the existence of the notice itself).⁸

The purposes of confidentiality notices are not only to protect the integrity of an investigation by prohibiting prejudicial disclosures but also to prevent disclosures that can harm a person's safety or reputation, including, potentially, that of the person subject to the notice.⁹ The VI has noted:

During an investigation the VI may issue a confidentiality notice to a person involved in the investigation specifying matters that they are prohibited from disclosing if it considers on reasonable grounds that the disclosure of any one or more of those matters would be likely to prejudice the safety or reputation of a person.¹⁰

While confidentiality notices could potentially be used in a beneficial fashion for persons involved in an investigation, there is accommodation in the legislation of the fact that these notices can also negatively affect a person's wellbeing by limiting what they can say about the investigation, and to whom—restricting, for example, the extent to which they can talk things through with family, friends, colleagues and other support networks.¹¹ As the VI's Executive Director, Legal and Integrity, Ms Cathy Cato, acknowledged at a public hearing:

The damage that a confidentiality notice can do to an individual is the inability to talk about something they are going through, so that needs to be taken into consideration when you are issuing the confidentiality notice—you need to consider the fact that the person that is subject to that notice has limitations on being able to share the experience that they are going through.¹²

⁷ Ibid., p. 1.

⁸ Ibid. See also *VI Act 2011 (Vic)* ss 3(1) (definition of 'restricted matter'), 38–39.

⁹ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011 (Vic)* ss 38(1)(b), 39; Mr Eamonn Moran PSM QC, Inspector, and Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 2–3, 5. The paternalistic issuing of a confidentiality notice for the benefit of a person subject to it—in contrast, for example, to being issued for the exclusive benefit of a person or persons *not* subject to the notice—has been recognised by IBAC and the VO—see Mr David Wolf, Deputy Commissioner, IBAC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 19 (a confidentiality notice can afford 'the witness who receives one protection from having to talk about it—so it is a protection for the witness in themselves'); Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 15 ('Sometimes people ask for them [confidentiality notices]; a notice protects them if they are asked a question by a colleague.').

¹⁰ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1.

¹¹ Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 3; *VI Act 2011 (Vic)* s 39(2).

¹² Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 3.

Through exemptions and qualifications in the Act,¹³ there is recognition that confidentiality notices can exacerbate the inherent stress of being involved in an integrity agency investigation and subject to coercive questioning. The confidentiality provisions in the Act therefore allow, in prescribed circumstances and conditions, a person subject to a confidentiality notice to make disclosures to various persons in the course of seeking treatment, support or advice.¹⁴ As the VI has explained:

[T]he VI may authorise the recipient of a confidential[ity] notice to disclose a restricted matter to any other person, including a support person or a health professional. In addition, in the absence of a direction to the contrary, the recipient is authorised to disclose such a matter to (among others) their partner, employer, manager, registered health practitioner, an employee assistance program or trade union. In any event they can disclose a restricted matter to an Australian legal practitioner from whom they seek legal advice or representation.¹⁵

Summonses and the conduct of examinations

There are a number of welfare-related legislative requirements regarding the issuing of summonses and holding of private examinations (hearings) by the VI.¹⁶ It should be noted that, unlike IBAC, the VI is not authorised to hold public examinations,¹⁷ in which the risk of harm to a person's 'reputation, safety or wellbeing'¹⁸ is higher. Nevertheless, as noted by the Australian Commission for Law Enforcement Integrity (ACLEI) in its submission to this review, even private examinations can be stressful for witnesses:

That is not to say that coercive hearings held in private cannot create stresses for witnesses. There is no doubt that they both can and do. The prohibition of the disclosure of the fact that a witness has been summoned to appear and the hearing itself, means that witnesses cannot reach out to those closest to them for support.¹⁹

In determining whether to summon a person to a private examination, the VI must 'consider whether it is reasonable to do' so, taking into account their age and 'any mental impairment to which the person is known or believed to be subject'.²⁰ There are also various provisions regarding the issuing of witness summonses to persons under 18 years of age.²¹

The VI must inform persons summonsed to an examination about what they will be questioned about 'unless the VI considers on reasonable grounds that to do so would

¹³ *VI Act 2011* (Vic) s 39(2).

¹⁴ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 39(2).

¹⁵ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 39(2).

¹⁶ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) ss 53–55, 58–61.

¹⁷ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 51(1).

¹⁸ This phrase comes from the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') s 117(1)(c).

¹⁹ Australian Commission for Law Enforcement Integrity (ACLEI), *Submission 24*, 14 April 2022, p. 5.

²⁰ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 53(2)(b).

²¹ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) ss 53(3), 55(1).

be likely to prejudice the conduct of the inquiry or would be contrary to the public interest'.²²

Witnesses summonsed to VI examinations are also entitled to legal representation²³ and, under prescribed conditions, 'to have an interpreter, parent, guardian or independent person present at the examination'.²⁴

Reports of investigations

In publicly reporting on its investigations, the VI is bound by a number of 'natural justice' requirements relevant to the appropriate minimisation of harm to the reputation, safety and wellbeing of persons involved in those investigations.²⁵ These requirements have been summarised as follows:

- a person about whom adverse material is included in a public report of an investigation must be given a reasonable opportunity to respond to that material and the VI must fairly set out each element of that response in the report
- a public report of an investigation cannot include a finding or opinion that a specified person is guilty of, or has committed, is committing or about to commit a criminal or disciplinary offence, or a recommendation or opinion that they should be prosecuted for such an offence
- a person who is not the subject of any adverse comment or opinion in a public report of an investigation can only be named or otherwise identified in the report if the VI is satisfied that it is necessary or desirable to do so in the public interest and that doing so will not cause unreasonable damage to the person's reputation, safety or wellbeing. In addition, the report must state that the person is not the subject of an adverse comment or opinion.²⁶

Oversight of witness welfare management by other integrity agencies

In addition to its management of the welfare of witnesses involved in its own investigations, the VI has legislative responsibility for overseeing aspects of other integrity agencies' management of witness welfare, including IBAC's, OVIC's and the VO's.²⁷ The VI has carried out this responsibility principally through its oversight of these agencies' use of summonses and confidentiality notices, as well as their holding

²² VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 60(2).

²³ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 58.

²⁴ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 59.

²⁵ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1; *VI Act 2011* (Vic) s 87.

²⁶ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1. See also *VI Act 2011* (Vic) s 87(3), (7)–(8).

²⁷ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, pp. 4, 7–9; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 6, 10, 12–17, 24, 40–52, 54–55, 59, 62, 66; *VI Act 2011* (Vic) pts 3 (IBAC), 5 (Victorian Ombudsman—VO), 5A (Office of the Victorian Information Commissioner—OVIC).

and conduct of interviews and public examinations.²⁸ Overall, as noted, the VI has given particular attention in its oversight to agencies' use of their coercive powers:

One of the VI's core functions is to oversight the use of coercive powers—powers that limit the freedoms and rights of individuals—by Victorian integrity, accountability and investigatory bodies.²⁹

The VI has identified that its exercise of a range of powers under the *VI Act 2011* (Vic) with respect to integrity agencies it oversights may have an impact on a person's welfare:

- For limited purposes with regard to IBAC (s 12A):
 - Access, copy and take extracts from relevant records
 - Require IBAC or IBAC personnel to give the VI relevant information
 - Require in writing IBAC personnel attend the VI office to give information or documents
- Require IBAC ... VO ... OVIC ... and their personnel ... to give any assistance reasonably required by the VI to enable the conduct of an investigation about the agency or its personnel (s 48)
- Enter premises of IBAC ... VO ... OVIC ... to:
 - search for relevant documents/things
 - inspect or copy documents/things
 - seize documents/things

if body has wilfully failed to give assistance in accordance with s 48
- Issue and cancel confidentiality notices
- Summons witnesses to give evidence at a private examination
- Summons witnesses to produce documents/things.³⁰

The VI has a limited oversight role in relation to IBAC public examinations.³¹ Under s 117(1) of the *IBAC Act 2011* (Vic), examinations are not open to the public unless IBAC 'considers on reasonable grounds' that there are 'exceptional circumstances', it is in the public interest that they be public, that the public examination 'can be held without causing unreasonable damage to a person's reputation, safety or wellbeing', and that the conduct being investigated 'may constitute' serious or systemic corrupt conduct

²⁸ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, pp. 4, 7–9; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 6, 10, 12–17, 24, 40–52, 54–55, 59, 62, 66; *VI Act 2011* (Vic) pts 3 (IBAC), 5 (VO), 5A (OVIC). See also VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018; VI, *Integrity report: monitoring project on Victorian Ombudsman interviews*, Melbourne, June 2019.

²⁹ VI, *Annual report 2020–21*, Melbourne, 2021, p. 40.

³⁰ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 8.

³¹ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, pp. 4, 7–9; IBAC, *Submission 29*, 3 May 2022, pp. 8–9.

or serious or systemic police personnel misconduct.³² Not less than ten business days before any such public examination is held, IBAC must inform the VI and provide it with a report setting out its reasons for deciding to hold a public examination, in accordance with the requirements of s 117(1).³³

5.2.2 *PID Act 2012 (Vic)*

Persons who have made a public interest disclosure ('whistleblower complaint') alleging improper conduct on the part of a public officer or public body are entitled to a range of legal protections under the *PID Act 2012 (Vic)*.³⁴ They include protection of their identity through confidentiality provisions prohibiting disclosure of the content of the disclosure and/or the identity of the discloser.³⁵ Disclosers are also given immunity from liability for making their disclosure³⁶ and protection against detrimental action (reprisals) for doing so.³⁷ The VI has developed and published PID guidelines, which also cover aspects of the management of the welfare of both disclosers and those subject to disclosures.³⁸

5.2.3 *OH&S Act 2004 (Vic)*

Under s 23 of the *OH&S Act 2004 (Vic)*, the Inspector is under a 'duty to ensure, so far as reasonably practicable, non-staff members involved in VI investigations are not exposed to risks to their health or safety from the conduct of ... [an] investigation'.³⁹

In addition, under s 26 of the Act, there is a duty on the part of those managing or controlling VI premises 'to ensure so far as is reasonably practicable' that they, and 'the means of entering and leaving them, are safe and without risks to health'.⁴⁰

5.2.4 *The Charter*

As the VI has noted, under s 38(1) of the Charter, it is 'unlawful' for the agency, as 'a public authority', to act incompatibly with a human right 'or, in making a decision, to fail to give proper consideration to a relevant human right'.⁴¹

³² See also IBAC, *Submission 29*, 3 May 2022, p. 8.

³³ *IBAC Act 2011 (Vic)* s 117(5). See also IBAC, *Submission 29*, 3 May 2022, pp. 8–9.

³⁴ *PID Act 2012 (Vic)* pts 2, 6, 7; VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1.

³⁵ *PID Act 2012 (Vic)* ss 52–53; VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1.

³⁶ *PID Act 2012 (Vic)* ss 39, 41; VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1.

³⁷ *PID Act 2012 (Vic)* s 45; VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 1.

³⁸ VI, *Public interest disclosures: guidelines for making and handling public interest disclosures*, Melbourne, 2022, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 6 July 2022 (the VI states, at p. 1, that '[t]hese guidelines ... constitute the procedures of the VI for the purposes of section 58 of the *Public Interest Disclosures Act 2012* ...').

³⁹ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 2.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

The VI has identified the following human rights in the Charter as ‘relevant’ to the conduct of their investigations:

- recognition and equality before the law (s 8)
- protection from torture and cruel, inhuman or degrading treatment (s 10)
- freedom of movement (s 12)
- privacy and reputation (s 13)
- protection of families and children (s 17)
- cultural rights (s 19)
- right to liberty and security of person (s 21)
- humane treatment when deprived of liberty (s 22)
- fair hearing (s 24).⁴²

5.3 Witness welfare: policies, procedures and standard practices

This section describes the VI’s witness welfare management policies, procedures and standard practices, which will then be evaluated, drawing on the best practice principles, in the section that follows.

5.3.1 Policies and procedures

The principal policy for the VI’s management of the welfare of witnesses is its *Witness Welfare Policy* (the Policy).⁴³ It is notable that the Policy recognises the overlap and potential interaction between the management of the welfare of complainants and witnesses, since welfare management necessarily focuses on the nature of a *person’s* welfare (including physical safety and health and mental health and wellbeing) rather than their formal status as a witness or complainant:

As investigations can commence with a complaint or be undertaken on the VI’s own motion, witness welfare must be considered during any of the VI’s activities that impact on witnesses. Witnesses can include employees of oversighted agencies.⁴⁴

At the same time, it is important to recognise the relevance of distinctive obligations an agency might owe to complainants and witnesses under applicable laws.⁴⁵ As the VI explains:

The Victorian Inspectorate’s (VI) Witness Welfare Policy sets out how the VI will manage the welfare of complainants and witnesses.

⁴² Ibid.

⁴³ It is part of its *Integrity Operations Policy: Witness Welfare Considerations*, Melbourne, n.d.

⁴⁴ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 8.

⁴⁵ See, for example, the discussion in Section 5.2 in this chapter.

The VI aims to lead by example in demonstrating regard for witness welfare and ensuring their health and safety is the VI's first priority. Underpinning this policy is the principle that regardless of who the complainant or witness is, or what allegations have been made, the VI, like all integrity agencies, must demonstrate a regard for their welfare.⁴⁶

Obligations and other requirements set out in the Policy are integrated in the VI's Investigation Templates, including checklists and scripts for VI officers, which were supplied to the Committee in the course of this review (see Table 5.1, below).⁴⁷ They are supplemented by the VI's *Integrity Response Guidelines* and PID guidelines.⁴⁸

Table 5.1 VI Investigation Templates

Templates relating to confidentiality notices
Cover memo—Decision to issue a confidentiality notice (CN)
Cover letter—Standalone confidentiality notice
Information sheet—confidentiality notice
Authorisation to Disclose
Templates relating to compelling attendance at the VI
Cover memo—decision to compel witness
Notice of Requirement to Attend
Cover letter and information sheet—Notice of Requirement to Attend
Cover letter and information sheet—Witness Summons
Templates relating to interviews and examinations
Witness welfare checklist
Witness welfare checklist—virtual
Voluntary Interview Preamble
Section 47 Interview Preamble
Examination Preamble

Source: VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 3.

According to the VI, the Policy aims to make sure that the agency and its officers:

- Understand, and meet the duty of care owed to[,] witnesses and complainants;
- Consider the welfare of complainants in their interactions with the VI and its officers;

⁴⁶ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 3.

⁴⁷ VI, Response to Integrity and Oversight Committee questions, 6 April 2022.

⁴⁸ VI, *Integrity Response Guidelines*, Melbourne, 2020, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 4 July 2022; VI, *Public interest disclosures: guidelines for making and handling public interest disclosures*, Melbourne, 2022, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 6 July 2022.

- Manage the welfare of witnesses in their interactions with the VI during preliminary inquiries, investigations and inquiries, including when the VI is exercising coercive powers;
- Consider the welfare of witnesses when making reports, or other integrity responses;
- Consider human rights when making decisions that affect witnesses.⁴⁹

The scope of the Policy, which binds all staff, is broad.⁵⁰ It covers complainants and subjects of VI investigations or complaints; witnesses; and others ‘sufficiently connected’ with VI complaint handling, inquiries or investigations ‘that their welfare should be considered’ by the agency.⁵¹

Legal framework

The Policy describes the main features of the legal framework within which the VI operates, including occupational health and safety obligations, and obligations and entitlements under the *VI Act 2011* (Vic), with a focus on confidentiality notices, coercive powers (including the use of summonses and the conduct of examinations), the duty of care, and human rights.⁵²

With regard to confidentiality notices, the Policy notes that, in accordance with the *VI Act 2011* (Vic), a person under a notice is allowed to disclose a restricted matter in prescribed circumstances to an interpreter, independent person, parent or guardian, legal representative, or Victoria Police.⁵³

Persons subject to confidentiality notices may also disclose restricted matters to the following persons and organisations, *provided the VI has not directed them to do otherwise*: spouse or domestic partner, employer or manager, registered health practitioner, trade union, employee assistance program (EAP), Victorian WorkCover Authority (for a workers’ compensation claim), and the Fair Work Commission (for an application).⁵⁴ In addition, the VI can permit other disclosures through a direction or authorisation to that effect.⁵⁵

When issuing a confidentiality notice, the VI considers whether it is appropriate to proactively include additional authorisations to ensure the witness, person of interest or other relevant person has access to immediate supports upon service [of the notice].⁵⁶

⁴⁹ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 3.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., pp. 4–9.

⁵³ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 5; *VI Act 2011* (Vic) s 39(2)–(2A).

⁵⁴ VI, *Witness Welfare Policy*, Melbourne, n.d., pp. 5–6; *VI Act 2011* (Vic) s 39(2).

⁵⁵ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 6; *VI Act 2011* (Vic) s 39(2)(a).

⁵⁶ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 15.

The VI recognises that, while the law authorises the agency to use confidentiality notices not only to protect the integrity of its investigations but the safety or reputation of a person, including, potentially, someone subject to the notice,⁵⁷ these notices can affect their welfare by restricting the range of people with whom they can talk things through, and receive valuable support in doing so.⁵⁸

In accordance with s 38(5) of the *VI Act 2011* (Vic), the VI continues to assess the need for any confidentiality notices in force, and whether any notice should be lifted.⁵⁹ Under s 38(5) of the Act, '[i]f at any time' the VI reasonably considers 'that it is no longer necessary to restrict' the disclosure of certain matters identified in a confidentiality notice in order to prevent likely prejudice to an investigation, a person's safety or reputation or the fair trial of someone, it must cancel the notice. As the VI has observed,

[w]hen the circumstances of an investigation change such that it is no longer necessary to restrict disclosure ... the VI must consider which confidentiality notices it can cancel, noting that leaving a confidentiality notice in place when not necessary may impact witness welfare.⁶⁰

The VI has also acknowledged that it owes a general duty of care, in all its operations bearing on the welfare of persons, 'to take reasonable care to avoid a foreseeable risk of physical injury (and any consequential mental harm) or a recognised psychiatric illness'.⁶¹

The Policy states that the VI is required to duly take into account human rights considerations in accordance with the Charter in making decisions and in designing and using document templates to ensure compliance and consistency.⁶² The Policy notes that this is especially important regarding the VI's consideration of whether—and, if so, how—to exercise its coercive powers.⁶³ The VI has explained that the Charter requires the agency to turn its attention to the following factors, which will be relevant in deciding whether to exercise a coercive power:

- Nature of the right—what does the human right protect?
- Purpose of the limitation—what are you trying to achieve?
- Extent of the limitation—how will your action impact on the person's human rights?
- Relationship between limitation and purpose—will your actions achieve your objective (evidence base)?

⁵⁷ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 15; *VI Act 2011* (Vic) s 38(1)(b).

⁵⁸ Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 3, 5; VI, *Witness Welfare Policy*, Melbourne, n.d., pp. 6, 15.

⁵⁹ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 6; *VI Act 2011* (Vic) s 38(5).

⁶⁰ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 6.

⁶¹ *Ibid.*, p. 9. See also s 72(1) of the *Wrongs Act 1958* (Vic), which states, in part, that a 'person (the defendant) does not owe a duty to another person (the plaintiff) to take care not to cause the plaintiff pure mental harm unless the defendant foresaw or ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a *recognised psychiatric illness* if reasonable care were not taken' (emphasis added). Note that under s 72(3) of the Act, s 72 'does not affect the duty of care of the ... defendant ... to ... the ... plaintiff ... if the defendant knows, or ought to know, that the plaintiff is a person of less than normal fortitude'.

⁶² VI, *Witness Welfare Policy*, Melbourne, n.d., p. 9.

⁶³ *Ibid.*

- Less restrictive options—can you do anything that will achieve your objective without impacting on the person’s rights?⁶⁴

The Policy describes the practical implications of these considerations in the VI’s coercive power decision-making as follows:

Before determining to summons a witness or issue a confidentiality notice, the VI will consider:

- Whether information can be obtained from an alternative source that does not require a person being subject to a coercive notice.
- Conducting a voluntary interview instead of a compulsory examination.
- The potential welfare impact on the witness of issuing a confidentiality notice, balanced against the potential welfare impact on other persons if a witness is not subject to confidentiality obligations.
- Appropriate approaches to confidentiality notice obligations that enable witnesses to obtain advice and support.
- The Charter of Human Rights.⁶⁵

Witness welfare during investigations

The Policy recognises that VI investigations can affect the rights and welfare of witnesses and others involved, especially since they may:

- Have accessibility, language or communication needs.
- Need support to make informed decisions about how to exercise or protect their rights.
- Be fearful of reputational damage, detrimental action or other consequences from interacting with the VI.
- Be anxious about being subject to a compulsory process, where a failure to comply can attract a penalty.
- Have existing mental health conditions or other vulnerabilities.
- Be reluctant to provide information or give evidence about their employer, colleagues, or other people they know.
- Need access to affordable and effective legal advice or representation.⁶⁶

In order to address these concerns, at least in part, the Policy states that the VI ‘will aim’ to have information available on its website regarding witnesses’ rights, accessibility supports for language or other needs, available welfare supports, and Victoria Legal Aid.⁶⁷

64 Ibid.

65 Ibid., p. 15.

66 Ibid., p. 14.

67 Ibid.

'Overarching Principles' governing VI investigations also require the agency to:

- Make appropriate enquiries into a witness'[s] needs.
- Communicate with witnesses and other persons in plain English. The VI will carefully explain a person's rights and obligations, and their role in the investigation.
- Provide people interacting with the VI with contact details for them to ask questions or seek more information.
- Consider other potential sources of information, before obtaining it by exercising coercive power.
- Consider the potential for any action of the VI to impact on a person's reputation.
- Afford procedural fairness to witnesses, other relevant persons, and entities.
- Protect the privacy of witness[es]' information as much as possible.
- Treat everyone involved in a way that is objective, respectful and fair, and to consider and respect human rights.
- Strictly comply with all of its obligations with respect to the exercise of coercive powers.⁶⁸

The Policy also includes sections on procedures and responsibilities for welfare risk assessments, the exercise of coercive powers, the conduct of examinations, and managing the risk of self-harm on and off VI premises.⁶⁹

Risk assessments

The Policy gives an account of the allocation of responsibilities for risk assessments, and risk and welfare management, between three classes of persons: investigation 'Owner[s]', investigation 'Lead[s]' and 'VI Welfare Officer[s]'.⁷⁰ The responsibilities of VI officers are defined in the Policy, albeit without an express definition of VI Welfare Officers (see Table 5.2, below).

Table 5.2 Responsibilities under VI Witness Welfare Policy

Role	Responsibilities
VI officer	Complainant welfare management
Lead	Ensuring use of processes and templates at section 4 of this policy [which is titled 'Welfare in Investigations']
Owner	Supporting the Lead in implementing the processes and templates at section 4

Source: VI, *Witness Welfare Policy*, n.d., p. 10.

⁶⁸ Ibid.

⁶⁹ Ibid., pp. 15–18.

⁷⁰ Ibid., p. 15.

The investigation Owner must ensure that the investigation Lead assesses the welfare risks raised by an investigation.⁷¹ The investigation Lead has the following responsibilities:

- Take into account all information held by the VI that is relevant to the welfare of a witness or other relevant person.
- Take into account the age of the witness and any mental impairment. If the age of a witness is not known, or whether they have a mental impairment is not known, the Lead is responsible for obtaining that information.
- Document and assess identified risks to the witness or other person.
- Use the investigation templates and file notes to manage risk and implement mitigation strategies.
- Brief the investigation Owner on the risk assessment and plan.
- Maintain the currency of the risk assessment and plan over the life of the investigation, including updating both, if necessary, following an interview or examination.⁷²

If the Lead assesses that there is a 'high' risk of harm to a witness's welfare, the Owner must ensure that the Lead 'takes extra steps to provide support to that witness'.⁷³ While the Policy notes that the necessary steps 'are likely to vary on a case-by-case basis', they could involve:

- Conducting a voluntary interview instead of a compulsory examination.
- Conducting an examination in an informal room.
- Arranging for an independent person, a support person, a translator, a parent/guardian, or a professional counsellor to be present at the location of the examination, or at the examination.
- Nominating a VI Welfare Officer to be present at the examination to provide support to the witness and to be responsible for arranging other support measures if a need for them arises.⁷⁴

Exercise of coercive powers

The investigation Owner is required to use the VI's templates to ensure that a comprehensive risk assessment has been completed and to brief the Inspector on relevant risks.⁷⁵

When the VI contemplates using a coercive power, the relevant investigation team must prepare a memorandum, 'settled by the Executive Director, Legal and Integrity',

71 Ibid.

72 Ibid.

73 Ibid.

74 Ibid.

75 Ibid., p. 16.

which takes into account factors the agency has identified in the Policy.⁷⁶ These include alternatives to obtaining information coercively, balancing any ‘welfare impact’ on a witness subject to a confidentiality notice against any ‘potential welfare impact on other persons’ if a notice is *not* issued, ensuring adequate opportunities for the witness to receive support and/or advice, and human rights obligations owed by the VI under the Charter.⁷⁷ This process also applies to applicable ‘instruments’ and documentation, such as confidentiality notices, summonses, cover letters and information sheets.⁷⁸

The Policy also identifies responsibilities when a witness is notified that the VI intends to serve a confidentiality notice on them.⁷⁹ The Lead must ensure the witness ‘is asked or advised’:

- Whether they have any health concerns for the VI to consider (including mental and physical health concerns). Any concerns raised should be included in the risk assessment and mitigated where possible.
- If they have any accessibility needs. This should include asking whether they wish to request translation services for written documents, an interpreter for an examination, whether they require any physical assistance to attend the location of the examination, whether they have any physical requirements during the examination.
- Whether they will have legal representation; they should be advised of their right to seek legal advice and representation at any time in the process.
- Of the information available for witnesses on the VI’s website.
- Who they should contact if they have additional questions.⁸⁰

Conduct of examinations

When a witness arrives at the Inspectorate to attend a compulsory interview or an examination, the VI’s *Witness welfare checklist* must be filled out, signed and dated by the relevant VI staff member.⁸¹

The checklist includes information and action items regarding delays, breaks and adjournments; fire escape and emergency procedures, and amenities; and rights to legal representation.⁸² Importantly, the checklist also includes a ‘General enquiry’ question

⁷⁶ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16; VI, *Memorandum—Decision to issue confidentiality notice* (template).

⁷⁷ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 15.

⁷⁸ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16; VI, *Information sheet: confidentiality notice* (template); VI, *Authorisation to disclose* (cover letter template); VI, *Memorandum—Decision to compel witness* (template); VI, *Notice of requirement to attend the Victorian Inspectorate* (cover letter template); VI, *Information sheet: notice of requirement to attend the Victorian Inspectorate* (template); VI, *Witness summons* (cover letter template); VI, *Information sheet: witness summons* (template).

⁷⁹ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16.

⁸⁰ Ibid.

⁸¹ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16; VI, *Witness welfare checklist*, n.d. The Policy (p. 16) states that ‘When a witness arrives at the VI workplace to attend an examination, the investigation Lead is responsible for ensuring that appropriate enquiries are made of the witness as to their welfare, using the witness welfare checklist’, although the Lead is not designated on the checklist itself as the responsible staff member. Note that there is a comparable checklist for witnesses participating virtually in a compulsory interview or examination via Microsoft Teams.

⁸² VI, *Witness welfare checklist*, Melbourne, n.d.

that the VI staff member completing the checklist must ask the witness, together with a range of actions for the staff member dependent on the witness's response(s):

Is there anything the VI should be aware of that may impact the witness's physical or mental health today?

If yes: make further enquiries, and determine whether or not to suspend or defer the interview or examination.

If necessary, enquire about medications they are taking (if any), whether they are seeing a medical professional (and what kind), and whether there are any special steps that can be taken during the interview/examination, such as more frequent breaks, or suspending the interview/examination and arranging for an independent or support person to attend.

If in doubt, consult with the examiner/interviewer. The advice of qualified medical professionals may be required in some circumstances.⁸³

The checklist also contains a caution for the VI staff member completing the checklist regarding the age, potential 'mental or physical impairment', and English language capacity of the witness:

If the witness appears to be under 18, suffering from any kind of mental or physical impairment, or have difficulty with English, consult with the examiner. The examination may need to be suspended to allow an interpreter, independent person or guardian to attend. If the witness is under 16, the summons has no effect.⁸⁴

The VI staff member is required to '[i]nform the examiner/interviewer of [the] results of [the] checklist'.⁸⁵

Similar questions and commentary with regard to a witness's physical or mental health and concerns appear in other VI templates and scripts related to the agency's investigative, interview and examination processes.⁸⁶

In accordance with the Policy, after the checklist has been completed the Lead 'should adjust the risk assessment and plan if necessary, and take appropriate action if the risk level is escalated to high', although neither the circumstances in which risk might be considered high, nor what action might be appropriate in response, are described.⁸⁷ The Policy also requires a VI officer with certified training in First Aid be on-site during an examination.⁸⁸

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ See, for example, the following VI templates and scripts: *Voluntary interview (section 12)*, pp. 1–2; *Compulsory interview (section 47)*, pp. 1–2, 4; *Examination (section 50(a))*, pp. 5, 9–10. See also VI, *Integrity Operations Policy: public interest disclosures*, 18 January 2021 (especially sections 2.9, 'Managing the welfare of disclosers', and 3, 'Roles and responsibilities').

⁸⁷ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16.

⁸⁸ Ibid., p. 11.

Under the Policy, the VI's general approach is not to 'seize' items that a witness or other person has brought into the examination, such as mobile phones, bags and medication.⁸⁹ However, an item may be seized if the Inspector considers that it 'represents a major risk to the safety of any person, to the security of the physical environment, or to the confidentiality of the examination'.⁹⁰ Similarly, '[t]he Inspector may direct a witness not to record an examination'.⁹¹

After the examination ('usually the next day'), the Lead is to make sure 'a VI officer who has previously been in contact with the witness' follows up by 'check[ing] on their welfare and offer[ing] them available support'.⁹²

Once the investigation is over, the VI will consider whether it should cancel any confidentiality notices in force or reissue any notices in less restrictive form.⁹³

Risk of 'self-harm'⁹⁴

Regarding 'welfare incidents' in the VI's workplace, the Policy states that when there is an incident '[m]edical attention from a medical professional should be sought'.⁹⁵ The Policy defines welfare incidents as follows:

[A welfare incident] [o]ccurs on an indication (or from a series of indicators) that a witness or other relevant person attending the VI workplace is suffering physical or mental distress, harm or injury, or is at immediate risk of distress, harm or injury.⁹⁶

While not explicitly addressed in this definition, it would encompass a witness harming themselves or at risk of harming themselves.

The Policy also includes a section entitled 'Witness Risk of Self-Harm Outside the Workplace', which covers risks arising off VI premises.⁹⁷ This section emphasises that the VI and its officers are required to comply with the duty of care owed to complainants and witnesses and to 'take appropriate steps to protect their health and safety where they identify a risk of harm'.⁹⁸ Further, it is noted, without elaboration, that risk of witness harm will be reduced by following the steps outlined in section 4.4 of the Policy (which concerns coercive powers, risk assessments and the conduct of examinations).⁹⁹ The Policy then turns to how the VI and its officers are to respond when a witness has communicated 'that they intend to harm themselves':

⁸⁹ Ibid., p. 17. This is consistent with Recommendation 5 in the VI's *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, pp. 25–26, 30.

⁹⁰ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 17.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid., p. 18.

⁹⁶ Ibid., p. 10.

⁹⁷ Ibid., p. 17.

⁹⁸ Ibid.

⁹⁹ Ibid.

Where a witness or complainant states to a VI officer (orally or in writing) that they intend to harm themselves, the VI will take immediate action to address the risk of self-harm by:

- Notifying the Owner of the investigation or—in their absence—either the Inspector, the Executive Director or the General Manager Integrity Operations and Policy.
- Gathering information about the witness'[s] situation to support an emergency response (if possible). If on the phone, a VI officer should attempt to keep the person on the phone, seeking further information and providing support by talking to the person calmly.
- Contacting an emergency service provider about the risk of harm to request that they attend to the person.¹⁰⁰

This section of the Policy also addresses circumstances in which there is partial written information about a risk of self-harm to a person, though the Policy in this case refers only to a complainant:

Where a complainant has made a reference, in writing, to the possibility of self-harm or severe emotional distress, but it is not clear that there is an immediate risk to their safety, a VI officer must seek direction as soon as possible from the Owner of the investigation or—in their absence—either the Inspector, the Executive Director or the General Manager Integrity Operations and Policy.¹⁰¹

VI reports and recommendations

The VI's *Integrity Response Guidelines* state that the agency considers 'the welfare of persons affected by ... [its] actions and ensure[s] compliance with procedural fairness requirements' and the Charter.¹⁰² The *Witness Welfare Policy* identifies appropriate respect for the '[p]rivacy and reputation' of persons as one of the key human rights. This human right is especially relevant to the naming of a person in a VI report.¹⁰³

In this regard, s 87 of the *VI Act 2011* (Vic) is particularly important. Section 87(3) requires the VI 'first provide' a person about whom the agency plans to make an 'adverse' 'comment' or 'opinion' in a report 'a reasonable opportunity to respond to the adverse material', with that response 'fairly set out' by the VI in its special report.¹⁰⁴

Even if the VI does not intend to publish adverse comments or opinions about a person in a special report, under s 87(4) of the *VI Act 2011* (Vic), the agency must 'first provide that person with the relevant material in relation to which ... [it] intends to name that person'. This provision is augmented by s 87(8) of the Act, which provides:

¹⁰⁰ Ibid., pp. 17–18.

¹⁰¹ Ibid., p. 18.

¹⁰² VI, *Integrity Response Guidelines*, Melbourne, 2020, p. 7. The VI's *Witness Welfare Policy*, Melbourne, n.d., also notes (p. 19) that, at the time of its publication, the VI was drafting a Recommendations and Reports Procedure.

¹⁰³ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 19; the Charter s 13.

¹⁰⁴ *VI Act 2011* (Vic) s 87(3); VI, *Witness Welfare Policy*, Melbourne, n.d., p. 19.

The Victorian Inspectorate must not include in a report under this section any information that would identify any person who is *not* the subject of any adverse comment or opinion unless the Victorian Inspectorate—

- (a) is satisfied that it is necessary or desirable to do so in the public interest; *and*
- (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; *and*
- (c) states in the report that the person is not the subject of any adverse comment or opinion. [emphasis added]

Further, in its special reports the VI

must not include ... a statement as to—

- (a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or
- (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence.¹⁰⁵

Other provisions in this Act bearing on welfare include non-identification requirements applying to the VI's special reports, including to protect whistleblowers and those in a witness protection program.¹⁰⁶

Staff training

Under the Policy, the VI is to provide training to any officers 'who have any contact with complainants or witnesses'.¹⁰⁷ The training for officers is to:

- Make them aware of their responsibilities when dealing with complainants, witnesses and other relevant persons, and the duties they owe with respect to the health and safety of those persons.
- Train them in the elements of this Policy and any applicable practices, including how to identify and assess welfare risks.
- Raise their awareness of mental health risks.
- Give them a general understanding of welfare management measures and support strategies.
- Ensure they know what to do when a welfare incident occurs.¹⁰⁸

The VI is also to make sure that officers have:

- Contact details for emergency services or other relevant service providers, and instructions on who to call where there is an immediate risk of harm to a

¹⁰⁵ *VI Act 2011* (Vic) s 87(7); VI, *Witness Welfare Policy*, Melbourne, n.d., p. 20.

¹⁰⁶ *VI Act 2011* (Vic) s 87(9)–(14A); VI, *Witness Welfare Policy*, Melbourne, n.d., p. 20.

¹⁰⁷ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 11.

¹⁰⁸ *Ibid.*

complainant, witness or other person. See Attachment A—Crisis Services [which lists a range of physical and mental health service providers' contact details].

- [The] Policy to give them appropriate direction where they identify a welfare risk.
- A resource which is kept in the VI's Hearing Room (or other room, if applicable) and contains clear and simple instructions for what to do if a welfare incident occurs during an examination or interview. See Attachment A—Crisis Services ...¹⁰⁹

5.3.2 Standard practices

The VI has informed the Committee that its standard practices regarding witness welfare during investigations 'aim to ensure the VI and its officers':

- understand, and meet[,] the duty of care owed to witnesses and complainants[;]
- consider the welfare of complainants in their interactions with the VI and its officers;
- manage the welfare of witnesses in their interactions with the VI during preliminary inquiries, investigations and inquiries, including when the VI is exercising coercive powers;
- consider the welfare of witnesses when making reports, or other integrity responses; [and]
- consider human rights when making decisions that affect witnesses.¹¹⁰

The VI has stated that the *Witness Welfare Policy* (the Policy) and the agency's templates facilitate conscientious attention to witness welfare and human rights when making decisions regarding confidentiality notices, witness summonses, the holding and conduct of examinations, and the tabling of public reports:

The VI has a methodical process, preparing a memorandum on an exercise of power for the Inspector's consideration which addresses relevant issues, including welfare. This ensures powers are exercised in a fully informed manner, with risks considered.¹¹¹

In addition to ensuring that its practices comply with the governing legislation, the VI reports that it 'takes proactive steps' to limit the impact of investigations on witnesses' welfare.¹¹² They include:

- ... arranging an appropriately private place or email address to serve documents ...
- explaining the documents ...
- informing witnesses of rights to seek authorisation to disclose restricted matters ...
- making enquiries about whether there are any welfare concerns and taking mitigating steps, such as permitting a support person at the examination ...

¹⁰⁹ Ibid.

¹¹⁰ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 5.

¹¹¹ Ibid.

¹¹² Ibid.

- informing witnesses about what to expect during an examination, including that they can seek an adjournment at any time, leave the building during an adjournment, and seek legal representation at any time during an examination.¹¹³

Further, the VI conducts a ‘welfare check’ on witnesses when they arrive for an examination in order to have enough ‘time to escalate and mitigate any issues before the examination’.¹¹⁴ Other standard practices include the assurance of confidentiality during virtual examinations and the use of standardised scripts for the conduct of examinations, which accommodate adjournments/breaks for witnesses as needed (for example if they are ‘visibly upset’).¹¹⁵

As noted in the preceding section of this chapter, the VI also explains to the witness that, the day after the examination, the agency will call them to see how they are going, providing them with another opportunity to express any concerns about their welfare.¹¹⁶ According to the VI,

[t]his is a useful feedback loop that can inform best practice. Such a small gesture can help the witness feel they have some power in what can feel like a powerless situation which can make a difference to their welfare.¹¹⁷

Other standard practices for witness welfare management used by the VI include the following:

- taking appropriate ‘timing’ into account when serving documents (not, for example, ‘before a long weekend ... [which] can leave a witness unable to seek help or further information for a longer period than usual’)
- being vigilant in ‘identifying’, escalating and managing any ‘specific threats to or concerns about welfare’, or ‘[t]hreats or concerns about harm to others’, in accordance with the Policy (including notifying police or other emergency service)
- providing a Crisis and Welfare Services hand-out to witnesses not at risk of ‘imminent’ harm (which includes contact details for emergency and support services), and implementing ‘[c]ontact management plans ... for complainants who are communicating inappropriately with staff’
- enquiring appropriately about the ‘needs’ of witnesses (and public interest disclosers)
- explaining witnesses’ obligations and rights in ‘plain English’
- giving witnesses VI contact details so they can ‘ask questions or seek more information’
- using coercive powers judiciously, and asking whether there are alternative ways to obtain necessary information

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid., pp. 5–6.

- taking potential impacts of VI actions on witnesses' reputation into account in agency decision-making
- ensuring 'witnesses, other relevant persons, and entities' are afforded 'procedural fairness' by the VI
- 'protecting the privacy of [a] witness's information as much as possible'
- 'treating everyone involved in a way that is objective, respectful and fair, and considering and respecting human rights in accordance with the *Charter of Human Rights and Responsibilities Act 2006*'
- 'strictly complying with all of its obligations with respect to the exercise of coercive powers'.¹¹⁸

5.4 Witness welfare: evaluation

The VI has long recognised the importance of integrity agencies' effective management of the welfare of witnesses and others involved in investigations, and this is reflected in its conscientious and well-intentioned *Witness Welfare Policy* (the Policy).¹¹⁹ The governing principle for the VI is that the welfare of every person involved in one of their investigations must be respected, regardless of who they are and what, if any, allegations they may be subject to.¹²⁰

The Policy effectively identifies some of the key stressors that witnesses face during VI investigations and complaint-handling and, as one would expect, accurately identifies and explains its legal obligations respecting witness welfare under the applicable legislation and the common law.¹²¹ The VI also understands the importance of clear, timely, regular, professional and sensitive communication with complainants, witnesses and persons of interest in relation to their legal rights and obligations, the agency's processes, and available welfare supports and services.¹²² The Policy also requires VI officers to make regular enquiries throughout investigations as to a witness's welfare interests and needs.¹²³ This is consistent with the best practice principle that investigatory bodies communicate effectively with those involved in their investigations. The VI's approach is largely consistent with good practice in this regard, as recommended by the Australian Psychological Society (APS) in evidence to the Committee:

[R]elevant professionals involved in the investigation process should ensure that they check in with witnesses to confirm that the key issues are understood and that the

¹¹⁸ Ibid., pp. 6–7. On the VI's views on reputational impact, see also VI, *Submission No. 40*, Committee on the Independent Commission Against Corruption, Parliament of New South Wales, Inquiry into Reputational Impact on an Individual being Adversely Named in the ICAC's Investigations, 2 September 2020, p. 10 ('[W]e place considerable importance on measures that will prevent unfair damage to reputations in the first place.').

¹¹⁹ See, for example, VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018.

¹²⁰ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 3.

¹²¹ Ibid., pp. 4–9, 12, 14.

¹²² Ibid., *passim*.

¹²³ Ibid., p. 14.

witness is aware of what is occurring at each different stage of the process. This can be managed through ongoing discussions, providing written information, as well as being open to, and addressing, any questions asked by a witness. ...

It is also important to ensure that operating procedures, policies, and codes of conduct underpinning investigations are made known to all involved parties, and enforced.¹²⁴

Further, the VI appreciates that witness welfare encompasses a wide range of aspects of physical and mental health, safety, wellbeing and reputation, and that both a person's conditions and circumstances, as well as the impact of an investigation, are dynamic.¹²⁵ For example, the Policy requires maintenance of 'the currency of ... risk assessment[s] and plan[s] over the life of the investigation, including updating both, if necessary'.¹²⁶ The Policy properly recognises that attention to welfare must be given at the very outset of the VI's engagement with a person and continue until after any reporting process has been completed (including legislated natural justice processes).¹²⁷

Additionally, the VI recognises the importance of mental health awareness and first aid training for its staff.¹²⁸ Finally, the VI has effectively integrated the Policy into a wide range of useful information sheets, templates, checklists and scripts to ensure that it is complied with by officers in a consistent and rigorous fashion.¹²⁹

However, while the VI's Policy and approach to witness welfare management is well-intentioned and conscientious, there remain shortcomings in terms of best practice principles, which reflect the agency's lack of expertise and experience with respect to mental health, and, in particular, in the 'proactive'¹³⁰ and effective assessment and management of mental health risks to which witnesses may be exposed. The next section addresses these concerns and, drawing on best practice principles, makes a number of recommendations for improvements.

5.4.1 The VI's approach and recommendations for improvement

VI's recognition of the need for expertise

In its 2018 special report on IBAC's management of witness welfare, the VI recognised the importance of health expertise with respect to the design, development, monitoring and review of integrity agencies' witness welfare policies, procedures and practices.¹³¹ However, while the report referred to 'community standards' and 'expectations'¹³²

¹²⁴ Australian Psychological Society (APS), *Submission 28*, 27 April 2022, p. 2.

¹²⁵ VI, *Witness Welfare Policy*, Melbourne, n.d., pp. 3, 5, 9-10, 12, 14-15.

¹²⁶ *Ibid.*, p. 15.

¹²⁷ *Ibid.*, pp. 15, 19-20.

¹²⁸ *Ibid.*, p. 11.

¹²⁹ In correspondence, the VI provided the Committee with a wide range of these documents: VI, Response to Integrity and Oversight Committee questions, 6 April 2022.

¹³⁰ Forensicare, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

¹³¹ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 16.

¹³² *Ibid.*, pp. 3, 16, 17, 20, 26.

regarding an integrity agency's duty of care to eliminate or reduce reasonably foreseeable risks of harm to witnesses and others involved in their investigations,¹³³ it did not identify best practice principles expressly, precisely, systematically or in detail. Further, while the VI emphasised the importance of mental health expertise, it did not cite any relevant health sciences literature, standards or widely available mental health information produced for a lay audience (such as resources produced by Lifeline, Beyond Blue or the Better Health Channel).¹³⁴

This limitation was also reflected in the VI's response to the Committee's question about what best practice principles the agency uses as benchmarks for the management of witness welfare, and the sources of those principles.¹³⁵ The VI referred to its experience in overseeing integrity agencies, including handling complaints about them, as a source of insight into the anxieties and vulnerabilities complainants and witnesses can be exposed to.¹³⁶

The agency also emphasised its consultation with a forensic psychiatrist, 'who is fully on top of best practice principles', as part of its training of its staff in responding to sometimes challenging behaviour from complainants.¹³⁷ The principles identified by the VI in its response included having a demonstrated 'regard' for the welfare of every witness they engage with, regularly enquiring about a witness's welfare throughout investigations, and avoiding 'taking any steps ... likely to add to a witness'[s] stress and anxiety, that are not necessary in the proper conduct of the investigation'.¹³⁸

With regard to risk assessment with respect to witnesses, the VI has reinforced that it

is critical that people with no expertise not be placed in positions of making [health] assessments beyond their expertise. Only an appropriately qualified medical professional can and ought to make a judgment about those matters ...¹³⁹

Furthermore, the VI emphasised that '[s]pecific guidance' in policies and procedures 'is only as useful as the expertise it reflects', and, consequently, that the design, development, use and review of such governance mechanisms require health expertise.¹⁴⁰ The agency therefore argued in the report that these mechanisms should be proactively, systematically and regularly reviewed 'with the input of those expert in handling mental health and who are external to, and independent from' it, to ensure they 'reflect new circumstances, evolving community expectations and changing operational requirements'.¹⁴¹

¹³³ Ibid., pp. 3–4, 30.

¹³⁴ See, for example, Lifeline, *Resources*, <<https://www.lifeline.org.au/resources>> accessed 25 July 2022; Beyond Blue, *Learn about mental health*, <<https://www.beyondblue.org.au/the-facts>> accessed 25 July 2022; Better Health Channel (Victoria), *Assessments and evaluations for mental illness treatment*, <<https://www.betterhealth.vic.gov.au/health/servicesandsupport/assessments-and-evaluations-for-mental-illness-treatment>> accessed 25 July 2022.

¹³⁵ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 8.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 18.

¹⁴⁰ Ibid., p. 19.

¹⁴¹ Ibid., pp. 16, 20.

The VI does not presently have any staff with clinical expertise regarding mental health, stating that the ‘VI’s organisational structure does not contain positions requiring technical or clinical qualifications or expertise such as psychologists or social workers’.¹⁴² Instead, the agency relies on the experience of complaint-handling staff in ‘dealing with vulnerable and distressed people’, on mental health first aid training, and on other ‘training and support to ensure that ... [staff] have the requisite skills and *continue to develop expertise* in these areas’.¹⁴³

It is unclear to the Committee, however, how staff without the necessary health qualifications, training and clinical experience can attain *expertise*, bearing in mind the agency’s recognition that only health professionals should make judgements about the state of a witness’s mental health risk.¹⁴⁴

The VI’s *Witness Welfare Policy*

The Committee’s examination of the VI’s *Witness Welfare Policy* (the Policy) and accompanying templates¹⁴⁵ has identified the need for expert review and input, as a number of the tasks required of VI officers under these documents call for expertise which is presently lacking. For instance, there needs to be greater precision in the terminology used; more systematic and detailed descriptions of welfare responsibilities and their allocation to VI officers; more concrete, scenario-based guides to action for identifying and managing welfare risks; training of staff by experts in mental health; and ongoing support for witnesses following the publication of VI reports. The following analysis examines aspects of the Policy, which bear out these conclusions.

The Policy refers to obligations under the *OH&S Act 2004 (Vic)* to eliminate or reduce, ‘so far as is reasonably practicable’,¹⁴⁶ hazards and risks of harm to witnesses, which involves having ‘regard’ to:

- (a) the likelihood of the hazard or risk concerned eventuating;
- (b) the degree of harm that would result if the hazard or risk eventuated;
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
- (e) the cost of eliminating or reducing the hazard or risk.¹⁴⁷

¹⁴² VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 14.

¹⁴³ Ibid. (emphasis added).

¹⁴⁴ VI, *Special report: welfare of witnesses in IBAC investigations*, Melbourne, October 2018, p. 18.

¹⁴⁵ See, for example, the following VI templates, information sheets and scripts: *Memorandum—Decision to issue confidentiality notice: Risk management* (which requires a ‘risk description’, including mental health risks, as well as how each risk ‘will be mitigated’—pp. 3–4); the cover letter template for the VI’s *Notice of requirement to attend* (which asks witnesses to ‘inform the Inspectorate as soon as possible’ if they have a mental impairment or ‘any matters that may impact ... [their] physical or mental health on the day of the interview’); *Information sheet: Notice of requirement to attend the Victorian Inspectorate*, p. 2; cover letter template for *Witness summons*; *Voluntary interview (section 12)* script; *Compulsory interview (section 47)* script, pp. 1–2; *Examination (section 50(a))* script, especially p. 9.

¹⁴⁶ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 4.

¹⁴⁷ *OH&S Act 2004 (Vic)* s 20(2).

However, all these assessments with respect to mental health risks, for example, depend on a level of expert understanding, given that different mental health conditions will under particular circumstances raise different risks in terms of likelihood of occurrence, gravity of harm, and ‘availability and suitability’ of management and care responses. While the Committee appreciates that the VI is a comparatively small organisation, and that risk assessments of witnesses will commonly have to be undertaken by VI officers who lack the expertise of a mental health professional, it is critical that there be expert input into the design, content and guidance in the agency’s policies, procedures, templates and checklists, in order to improve the accuracy, appropriateness and effectiveness of its witness welfare management. Specific recommendations for improvements are made later in this section.

This is also evident in the ‘Risk Assessment’ section of the Policy.¹⁴⁸ The investigation Lead has the responsibility of assessing, managing and documenting welfare risks to which witnesses are exposed.¹⁴⁹ Further, the Policy states that ‘[w]here the Lead assesses the risk to a witness’[s] welfare as *high*, the [investigation] Owner is responsible for ensuring the Lead takes extra steps to provide support to that witness’, with the support ‘measures’ taken ‘likely to vary on a case-by-case basis’.¹⁵⁰ This response could involve:

- Nominating a VI Welfare Officer to be present at the examination to provide support to the witness and to be responsible for arranging other support measures if a need for them arises.¹⁵¹

However, this guidance lacks precision and concrete detail. What are the criteria for ‘high’ risk? What indicia or symptoms can a lay officer rely on in assessing whether a risk has reached that threshold? Who are ‘VI Welfare Officers’? Are they only appointed on an ad hoc basis? What are their responsibilities? What training are they required to undertake? While well-intentioned, this aspect of the Policy again reinforces the importance of expert input. In particular, the Policy would be improved by comprehensive and methodical descriptions, in a consolidated section, of the various welfare responsibilities of VI officers, the chain of command and reporting responsibilities, and accountabilities. A good example of how this might be done is the ‘Roles and responsibilities’ table in IBAC’s *Welfare Management for IBAC Investigations* policy.¹⁵²

In the VI, the investigation Lead has a number of responsibilities to make enquiries of witnesses regarding any physical or mental health concerns they want to bring to the VI’s attention when notified of the agency’s plans to exercise a coercive power, and when they attend its premises for an examination.¹⁵³

¹⁴⁸ VI, *Witness Welfare Policy*, Melbourne, n.d., Section 4.3, p. 15 and sections 4.5–4.6, pp. 17–18.

¹⁴⁹ Ibid., pp. 10, 14–18.

¹⁵⁰ Ibid., p. 15 (emphasis added).

¹⁵¹ Ibid.

¹⁵² IBAC, *Welfare management for IBAC investigations*, Melbourne, 2019, p. 3, <<https://www.ibac.vic.gov.au/docs/default-source/policies/welfare-management-for-ibac-investigations-policy.pdf>> accessed 27 July 2022.

¹⁵³ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16.

While these enquiries are valuable, and the Policy does a good job reinforcing that such enquiries must be made regularly through investigations, they are heavily dependent on the witness's insight into their own mental state, and their capacity, trust and confidence in sharing that information. As discussed in Chapter 2, this commonly depends on therapeutic rapport having been established between the witness and enquirer.¹⁵⁴ Indeed, the more acute a witness's mental state is, the *less* likely they will be able to effectively communicate their concerns (for example, a witness experiencing a panic attack).¹⁵⁵

Similarly, it is asking a lot of VI officers without mental health expertise to make the following prescribed enquiries of a witness during a voluntary interview (if, when asked by an officer, they communicate any information about physical or mental health concerns):

Ensure you enquire about what medications they are taking (if any), whether they are seeing a medical professional (and what kind), and whether there are any special steps that can be taken during the interview ...¹⁵⁶

Regarding a witness's response to these kinds of enquiries, the Policy requires the investigation Lead to adjust the 'risk assessment and plan' and 'take appropriate action if the risk level is escalated to high'.¹⁵⁷ However, there is no detailed explanation of when a risk will be classified as 'high', or of what actions will be appropriate. These shortcomings are also reflected in the Policy's account of 'the risk of harm' to witnesses 'outside', or on, VI premises, which is discussed in the next section.¹⁵⁸

Risk of witnesses harming themselves, including risk of suicide

Regarding potential harms to witnesses off VI premises, the Policy requires VI officers to comply with their duty of care by taking 'appropriate steps to protect ... [the] health and safety' of witnesses exposed to risks of harm.¹⁵⁹ The Policy then states that the 'steps at [section] 4.4 will help reduce the risk of harm to the witness'.¹⁶⁰ Section 4.4 of the Policy covers considerations for the VI to take into account in deciding whether (and, if so, how) to exercise coercive powers, the notification of any planned exercise of a coercive power to witnesses, and how examinations are to be conducted.¹⁶¹ But the Policy does not explain how these considerations reduce the risk of harm to witnesses.

¹⁵⁴ See the discussion in Section 2.4.2 in Chapter 2 in this report.

¹⁵⁵ See Better Health Channel (Victoria), *Panic attack*, <<https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/panic-attack#symptoms>> accessed 27 July 2022.

¹⁵⁶ VI, *Voluntary interview (section 12)* script, pp. 1–2. See also VI, *Compulsory interview (section 47)* script, pp. 1–2.

¹⁵⁷ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 16.

¹⁵⁸ *Ibid.*, pp. 17–18.

¹⁵⁹ *Ibid.*, p. 17.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*, pp. 15–17.

The VI properly gives a high priority to risks of witnesses harming themselves, including suicide risks.¹⁶² However, at times the Policy does not clearly enough distinguish between ‘self-harm’ and suicidality (suicide risk).¹⁶³ In the psychological literature, ‘self-harm’ and suicidality may overlap but are not identical.¹⁶⁴

[I]t is good to distinguish between the terms ‘self-harm’ and ‘suicide’. Often the terms ‘self-harm’ and ‘suicide’ are used interchangeably, yet they are different on both a conceptual and treatment level.

Suicide is an intentional, self-inflicted act that results in death. The difficulty in distinguishing suicidal behaviours from purposeful self-harm is in determining the person’s intent. ...

Self-harm is an intentional and often repetitive behaviour that involves the infliction of harm to one’s body for purposes not socially condoned ... and without suicidal intent ...¹⁶⁵

These complexities in terminology, diagnosis and treatment demonstrate again the importance of an expert review of the VI’s welfare risk and management policies, procedures and practices.

The Policy requires that VI officers ‘take immediate action to address the risk of self-harm’ when ‘a witness or complainant states’ to them ‘orally or in writing ... that they intend to harm themselves’.¹⁶⁶ The Policy prescribes the following ‘immediate’ actions:

- Notifying the Owner of the investigation or—in their absence—either the Inspector, the Executive Director or the General Manager Integrity Operations and Policy.
- Gathering information about the witness’[s] situation to support an emergency response (if possible). If on the phone, a VI officer should attempt to keep the person on the phone, seeking further information and providing support by talking to the person calmly.
- Contacting an emergency service provider about the risk of harm to request that they attend to the person.¹⁶⁷

The Committee has two main concerns with this aspect of the Policy. First, the policy relies heavily on a complainant or witness expressly stating that they intend to harm themselves, even though such express communication will not always be present

¹⁶² See, for example, VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 12.

¹⁶³ ‘Self-harm’ is the most commonly used term in the Policy, which encompasses a wide range of possible harms inflicted by complainants or witnesses on themselves (see, for example, VI, *Witness Welfare Policy*, Melbourne, n.d., pp. 12–13, 17–18). The American Psychological Association defines suicidality as ‘the risk of suicide, usually indicated by suicidal ideation or intent’—*APA Dictionary of Psychology*, <<https://dictionary.apa.org/suicidality>> accessed 28 July 2022.

¹⁶⁴ CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, p. 3.

¹⁶⁵ *Ibid.*

¹⁶⁶ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 17.

¹⁶⁷ *Ibid.*, p. 18.

(despite critical symptoms that might be evident to a mental health professional).¹⁶⁸
As one expert suicide risk-assessment manual urges:

It is important to recognise that risk may still be high in persons who are not explicitly expressing ideation or plans, searching for means, or threatening suicidal behaviour. Persons who may be truly intent on ending their lives may conceal warning signs ... [S]uicide risk assessment tools can assist in detecting incongruity between a person's level of distress and his or her stated level of intent regarding suicide.¹⁶⁹

Second, arguably, given the acute situation described in the Policy, emergency services should be called *before* the prescribed governance steps are taken. As one expert manual has emphasised:

Providers need to recognize, organize and act on potentiating risk factors and warning signs. ...

These challenges are compounded by the urgency and consequences associated with a person's condition. Timely, informed decisions need to be made regarding a person's safety and the risk that the person may pose to himself or herself ...¹⁷⁰

Mental health first aid guidelines also note the importance of urgency:

Once you have established that a suicide risk is present, you need to take action to keep the person safe. A person who is suicidal should not be left on their own. If you think there is an immediate risk of the person acting on suicidal thoughts, act quickly, even if you are unsure.¹⁷¹

The New South Wales Independent Commission Against Corruption takes a similarly clear and direct approach in its policy on compulsory examinations and public inquiries:

Where a person is unwell or attempts self-harm, immediate medical assistance will be sought, including in all cases of attempted self-harm the calling of an ambulance. Police will also be notified of any attempt at self-harm.¹⁷²

The Policy also addresses the circumstances in which a complainant (witnesses are not mentioned) 'has made reference, in writing, to the possibility of self-harm or severe emotional distress, but it is not clear there is an immediate risk to their safety'.¹⁷³ In this situation, the Policy requires that

a VI officer ... seek direction as soon as possible from the Owner of the investigation or—in their absence—either the Inspector, the Executive Director or the General Manager Integrity Operations and Policy.¹⁷⁴

¹⁶⁸ CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, p. 4

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., p. 11.

¹⁷¹ E Colucci et al., *Suicide first aid guidelines for people from immigrant and refugee backgrounds*, University of Melbourne and Mental Health First Aid Australia, Melbourne, 2014, p. 7.

¹⁷² New South Wales Independent Commission Against Corruption, *Submission 7*, 5 April 2022, p. 17.

¹⁷³ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 18.

¹⁷⁴ Ibid.

This guidance is imprecise given the references to ‘severe emotional distress’ and uncertainty over whether there is an immediate safety risk. What is the evidence base for this guidance and prescribed action, including seeking direction from senior governance staff?

Finally, the Policy addresses the risk of ‘self-harm’, which in the VI’s characterisation would also include the risk of suicide, for a witness on VI premises.¹⁷⁵ There are two parts to the VI’s response here. First, the Policy defines what it terms a ‘welfare incident’ as follows:

Occurs on an indication (or from a series of indicators) that a witness or other relevant person attending the VI workplace is suffering physical or mental distress, harm or injury, or is at immediate risk of distress, harm or injury.¹⁷⁶

Second, there is a one-sentence prescription in Section 4.6 of the Policy, entitled Welfare Incidents in the Workplace: ‘Medical attention from a medical professional should be sought when an incident happens.’¹⁷⁷

This prescription properly recognises the need for a proactive and preventive approach and urgent professional assistance, which contrasts with the guidance in Section 4.5 of the Policy, which unwittingly appears to prioritise governance measures (such as notifying lay senior VI staff in order to receive ‘direction’ from them on next steps).¹⁷⁸ However, given the importance of a policy addressing health incidents on VI premises, a single sentence is insufficient guidance for VI staff.

Given the importance of reducing the risks of complainants or witnesses seriously harming themselves, including suicide risks, the Committee sought further information from the VI through written questions, and examination at the public hearing, regarding how it responds to these risks.¹⁷⁹

In particular, the Committee sought assurance from the VI that the agency was appropriately escalating, prioritising and responding to such risks urgently and effectively.¹⁸⁰ The VI has informed the Committee that its ‘officers take all threats to self-harm, or to harm others, seriously and respond accordingly’.¹⁸¹ The VI reported that, during 2020/21,

11 complainants referred to welfare concerns that included potential self-harm. Around half of these complainants raised a welfare concern on multiple occasions. Fortunately, we are not aware of any threats of self-harm having been carried out by these complainants.

¹⁷⁵ Ibid., p. 18.

¹⁷⁶ Ibid., p. 10.

¹⁷⁷ Ibid., p. 18.

¹⁷⁸ Ibid., pp. 17–18.

¹⁷⁹ VI, Response to Integrity and Oversight Committee questions, 6 April 2022; VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022; VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*.

¹⁸⁰ Mr Brad Rowswell MP and Hon Kim Wells MP, VI public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 3–4, 5–6.

¹⁸¹ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 12.

The vast majority of these complainants, either orally or in writing, provided the VI with information that was both identifiable and actionable. This means that the VI received information that identified the person or persons at risk, and had enough information to understand the location and circumstances of that person (or persons) at risk that would enable emergency services to conduct a welfare check.

When complainant(s) made claims, but declined to provide actionable information, the VI was prevented from taking any meaningful steps in relation to the welfare of unknown individuals.

Whether the VI shares welfare information with another integrity agency is influenced by factors such as whether permission has been given by the complainant and whether the agency is already aware of a risk.¹⁸²

The VI has further advised that it is committed to improving its data collection regarding ‘welfare concerns’ affecting complainants, noting that the 11 complainants identified during 2020/21 must be regarded as a ‘minimum’ of those who ‘raised welfare concerns with the VI’:

The VI is enhancing its case management system to improve the VI’s ability to run automated reports on all complaints received where specific concerns, including serious welfare concerns, have been addressed. Whilst welfare concerns are clearly identifiable in the management of each file, identifying this information over a specified period is currently resource-intensive.¹⁸³

Given the importance of this data for the identification and management of welfare risks, the Committee recommends that the VI develop the capacity in its case management system to run automated reports to identify, record and analyse welfare risks affecting not only complainants but also witnesses involved in the agency’s investigations. This is consistent with best practice regarding ‘documentation’ as part of suicide risk assessment.¹⁸⁴

RECOMMENDATION 8: That the Victorian Inspectorate (VI) develop, as a matter of priority, capacity in its case management system to run automated reports to identify, record and analyse any welfare risks affecting persons who have made complaints to the VI, as well as witnesses involved in its investigations.

In terms of urgency in responding to complainants at risk, the VI clarified that, while it might take the agency months to assess, investigate and finalise outcomes in relation to a complaint (due, variously, to the need to seek further information from the complainant and/or the relevant agency, as well as the complexity of the matter), it

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ CM Perlman et al., *Suicide risk assessment inventory: a resource guide for Canadian health care organizations*, Ontario Hospital Association and Canadian Patient Safety Institute, Toronto, 2011, p. 16.

would never take that long to acknowledge a complaint.¹⁸⁵ Further, the VI reassured the Committee that it would be in regular contact with complainants, especially those at risk:

I guess the really important thing to understand is that it would not take us six months to come back to somebody who had raised a welfare issue. It may take several months to get an outcome to the complaint, but in circumstances where someone raises a welfare issue with us, we look to connect and engage and see if that person has got enough support and assist them wherever we can ... [W]e would keep in contact and provide updates to complainants, so it is not that they submit their complaint and then wait for an outcome letter. There is generally a lot of contact that happens ... throughout the process.¹⁸⁶

The VI further explained that if the agency identified the risk of a complainant or witness harming themselves, including the risk of suicide, there would be an urgent, high-level response, such as a welfare check or emergency medical intervention:

Staff managing complaints and witnesses in investigations are trained to identify and escalate to their manager any specific threats to or concerns about welfare. Specific threats are escalated to a manager and[,] where appropriate, notified to emergency services or a local police station ... Such notification is important if there is a risk of imminent self-harm. The VI informs the person at risk that they are making the notification.¹⁸⁷

In answer to a question from the Committee about how long the VI would take to escalate a matter to arrange a welfare check on a person they had ‘real concern’ over,¹⁸⁸ the Inspector, Mr Eamonn Moran PSM QC, said:

Instantaneous—within an hour at most—because it would be escalated within the VI. We would look at it, look at what has been said and what is the cause for concern and then authorise contact to be made with the local police. So ... absolutely, because you are not going to delay a response like that.¹⁸⁹

Regarding witnesses during 2020/21, the VI noted that two of its ‘ongoing investigations’ in this period ‘involved witnesses with significant welfare concerns’, but ‘not specifically involving suicidal ideation or attempted suicide’.¹⁹⁰ The VI told the Committee that it ‘proactively managed’ these witnesses’ welfare, including by:

- ... proactively offering transport (e.g. taxis) to witnesses, post examination, where they appear distressed to ensure their safe travel home and requesting contact on their safe arrival.

¹⁸⁵ Mr Eamonn Moran PSM QC, Inspector, and Ms Alison Lister, General Manager, Integrity Operations, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, pp. 4, 6.

¹⁸⁶ Ms Alison Lister, General Manager, Integrity and Operations, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 6.

¹⁸⁷ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 6. See also Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, 9 May 2022, *Transcript of evidence*, p. 4.

¹⁸⁸ Hon Kim Wells MP, VI public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 6. See also Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, 9 May 2022, *Transcript of evidence*, p. 4.

¹⁸⁹ Mr Eamonn Moran PSM QC, Inspector, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 6.

¹⁹⁰ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 13.

- Encouraging witnesses to have a family member or support person present during an examination where emotional support is needed.¹⁹¹

The Policy also has a section on training, which states that the VI will train its officers to enhance ‘their awareness of mental health risks’, provide them with ‘a general understanding of welfare management measures and support strategies’, and ensure ‘they know what to do when a welfare incident occurs’.¹⁹² However, it is unclear whether this training is delivered by mental health professionals using best practice resources.

Finally, the VI recognises that welfare risks and concerns may persist throughout the course of an investigation, during and following an examination, and after a VI report is published, especially if it contains adverse comments about a witness.¹⁹³ This point was reflected in evidence received by the Committee and in the best practice principle that ongoing welfare support is needed for witnesses.¹⁹⁴ For instance, the Victorian Equal Opportunity and Human Rights Commission explained that in its experience of conducting human rights investigations:

Providing evidence ... can be a challenging experience. The way participants feel about engaging with an investigation may change over time. They may have questions which arise weeks ... [later] so it is important that we make avenues available for participants to seek further information and that they feel welcome to do so. Appropriate support pathways should be in place, with an understanding that participants may not feel that they need support until weeks or even months after engaging with an investigation.¹⁹⁵

Similarly, the APS stressed the importance of following up with witnesses after the completion of an investigation:

Follow up [sic] should occur after the investigation process has concluded, i.e., to manage any reactions the witness may have (e.g. by offering psychological debriefing), and to maintain support when witnesses remain vulnerable following the investigation via appropriate after-care.¹⁹⁶

The Policy accommodates this consideration to a limited degree by requiring ‘a VI officer who has previously been in contact with a witness’ to enquire the day after an examination about ‘their welfare and offer them available support’.¹⁹⁷ However, to conform to best practice principles, this support should be ongoing. Given the comparatively smaller size of the VI as an integrity agency, and its current lack of clinical expertise, the Committee recommends that the VI inquire into the feasibility of engaging their EAP provider, or an alternate external mental health service, to provide, on a fee-for-service basis, this kind of ongoing support (including independent counselling for witnesses at highest risk of serious harm).

¹⁹¹ Ibid.

¹⁹² VI, *Witness Welfare Policy*, Melbourne, n.d., p. 11.

¹⁹³ Ibid., *passim*.

¹⁹⁴ See the discussion in Chapter 2 in this report.

¹⁹⁵ Victorian Equal Opportunity and Human Rights Commission, *Submission 11*, 8 April 2022, p. 3.

¹⁹⁶ APS, *Submission 28*, 27 April 2022, p. 2.

¹⁹⁷ VI, *Witness Welfare Policy*, Melbourne, n.d., p. 17.

As reiterated throughout the evaluation of the VI's management of witness welfare in this chapter, the Committee considers that the agency's policies, procedures, templates and practices would benefit from external, independent review by a person or body with psychological expertise. In particular, this would assist the VI in developing and implementing a risk assessment matrix, with a focus on physical and mental health, for use in identifying and managing risks to the welfare of witnesses involved in their investigations.

Further, the Committee considers that the VI should inquire into the feasibility of creating an ongoing, at least 0.5 FTE (full-time equivalent), Complainant and Witness Welfare Support Officer position, for a psychologist, mental health nurse or mental health social worker.¹⁹⁸ This officer would be able to provide in-house advice on the VI's enhanced witness welfare policies, procedures and practices (including how to keep them up to date with psychological best practice); assist in the identification and management of mental health risks affecting complainants and witnesses; deliver welfare management training to staff; and liaise between the agency and the recommended external mental health service provider.¹⁹⁹

RECOMMENDATION 9: That the Victorian Inspectorate:

- engage an external and independent person or body with psychological expertise to review its *Witness Welfare Policy*, templates and standard practices to ensure they conform to best practice principles
- drawing on external and independent psychological expertise, develop and implement a risk assessment matrix (with a focus on physical and mental health) that meets best practice, for use in relation to witnesses examined by the agency or subject to a confidentiality notice issued by the agency
- inquire into the feasibility of creating an at least 0.5 FTE, ongoing Complainant and Witness Welfare Officer position, for a psychologist, mental health nurse or mental health social worker
- inquire into the feasibility of engaging an external and independent counselling and support service to deliver, on a fee-for-service basis, welfare support services to witnesses at greatest risk of serious harm
- report to the Committee on these recommendations, including the outcomes of any inquiries undertaken in accordance with them.

¹⁹⁸ Of interest, ACLEI is 'examining' whether they should 'provide each witness with a suitably qualified "support" person ... [which] would enable the witness to be able to lawfully talk to this support person about what is happening to them and for the support person to provide professional guidance on how to mitigate or deal with any health or wellbeing issues they are experiencing'—ACLEI, *Submission 24*, 14 April 2022, pp. 5–6.

¹⁹⁹ Gold Coast Mental Health and Specialist Services, in implementing the Zero Suicide Framework, recruited a 0.6 FTE clinical psychologist to support training through 'in-service education to teams, modelling and constructive feedback on clinical practice and documentation'—Kathryn Turner et al., 'Implementing a systems approach to suicide prevention in a mental health setting using the Zero Suicide Framework', *Australian and New Zealand Journal of Psychiatry* (2020), p. 4. See also Zero Suicide, <<https://zerosuicide.edc.org>> accessed 29 July 2022.

5.5 Other performance matters

This section addresses a range of other performance matters identified by the Committee during its review, with a focus on the efficiency and timeliness of the VI in handling and finalising complaints and completing investigations.

5.5.1 Telephony system

The VI has previously advised the Committee that its telephony system was not well-suited in terms of adaptability and security for remote work arrangements, and that this was exacerbated by the disruptions of the COVID-19 pandemic and work-from-home requirements, particularly throughout 2020–2021.²⁰⁰ It is pleasing that the VI now reports that it has an appropriate telephony system that works well in conjunction with remote working arrangements.²⁰¹

After substantial due diligence, including testing, the VI's new Multi Line Client Softphone system went live on 26 November 2021.²⁰² Staff can now securely access the VI's telephone queues when working remotely.²⁰³ According to the VI, this has 'streamlined the VI's contact with complainants and members of the public'.²⁰⁴ Voicemails are now accessible to any staff member logged in and calls can be returned on the same day, or the next if the call has been received after business hours.²⁰⁵

The new system also facilitates support for Complaints Officers when handling 'challenging calls', which not only enhances the safety and wellbeing of those officers but helps provide callers with better-informed service and support.²⁰⁶ In particular, the new telephony system allows supervisors to 'monitor or join' calls, and provide assistance to staff members who have sent an alert through the system.²⁰⁷ As the VI has explained:

This functionality is important as VI Complaints Officers are often faced with challenging calls, including calls to or from vulnerable, emotionally distressed and aggressive complainants. In circumstances where Complaints Officers, senior staff and managers may be working in different locations, having access to support in real time is crucial in situations such as ... [:] when staff are new to the VI, if the call relates to a complex issue, if the complainant is distressed or making threats which may require alerting emergency services, if technical issues are impacting the quality of service, and if the Complaints Officer requires support for their own welfare (particularly relevant during, or after, a distressing call).²⁰⁸

²⁰⁰ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, p. 58.

²⁰¹ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3.

²⁰² *Ibid.*, pp. 3–4.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, p. 3.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

5.5.2 Timeliness in finalising complaints

As it does with all integrity agencies it oversees, the Committee continues to monitor and review the timeliness of the VI's handling and finalisation (sometimes following the completion of investigations) of complaints. The VI has advised the Committee that 57% of all the complaints it received in 2020/21 'took six months or more to finalise' (see Box 5.1 for more details of complaints in this period).²⁰⁹

BOX 5.1: VI's handling of complaints in 2020/21

At the start of the 2020–21 year, the VI carried forward complaints received in 2019–20. The VI received an additional 91 complaints in the 2020–21 year. The VI closed 68 complaints in the 2020–21 year; 39 of those complaints were both received and finalised in the 2020–21 reporting year.

In addition to finalising 39 complaints received in 2020–21, the VI also finalised 29 complaints carried over from the 2019–20 year.

32 complaints received in 2020–21 were closed after the end of the reporting period. 22 complaints received in 2020–21 have a current open status; almost all of these cases are expected to be finalised within the current financial year. Two of these complaints relate to an integrity response that is currently undergoing a natural justice process.

Source: VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 5.

How the VI handles complaints

The VI has emphasised to the Committee that, given its wide oversight and complaint-handling jurisdiction, its assessment process requires thorough and careful attention in adherence to the *VI Act 2011* (Vic) and the *PID Act 2012* (Vic).²¹⁰

In addition, the agency has explained that the majority of the complaints it receives are 'complex' and often involve 'vulnerable' complainants, some with 'accessibility needs', who are sometimes 'frustrated, even angry'.²¹¹ Complaint files can, according to the VI, run to 'many hundreds of pages'.²¹²

Further, in order to adequately assess complainants' allegations, the VI commonly finds it necessary to seek 'information or records' from the body subject to the complaint, provided complainants have consented to their names being disclosed to the body for that purpose.²¹³ This process can also delay complaint assessments.²¹⁴

²⁰⁹ Ibid., p. 5.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

Factors contributing to delays

In addition to the complexity of complaints, the challenging needs and circumstances of some complainants, and the work in liaising with bodies oversighted by the VI, the agency has attributed delays in finalising complaints to the COVID-19 environment, the expansion of the PID regime and limited funding.²¹⁵

First, with regard to COVID-19, the VI has advised the Committee that its air-gapped IT system, which was inaccessible through the Internet by design as a security measure, was not well-suited to remote work arrangements.²¹⁶ For example, notifications of complaints to the VI were customarily securely hand-delivered or transferred through a laptop on the agency's physical premises.²¹⁷ These arrangements were disrupted by work-from-home directives during the height of the pandemic.²¹⁸ While the VI adapted by installing an encrypted drive on its 'CenITEX-managed Internet system' so that files could be securely transferred (better accommodating work-from-home arrangements), the agency reported that productivity was nevertheless reduced.²¹⁹

Second, the VI has advised that the expansion of the legislative PID regime in January 2020 increased the number and 'complexity' of complaints received.²²⁰ For example, there was

a fourfold increase in investigations under the PID scheme by 30 June 2020 which significantly impacted the VI's ability to utilise supplementary resources from the investigations team.²²¹

Third, with regard to resourcing, the VI has stated that

[s]ince 2018-19, the VI's public statements in Annual Reports and Annual Plans have been very clear about the insufficiency of VI funding to undertake our uniquely broad and ever expanding remit. Valuable resources have been expended in seeking ongoing funding increases, with ongoing funding sufficient to deliver the VI's complaints function only received in May 2022.²²²

The VI has further advised the Committee that at 30 June 2020 it had 15.6 FTE staff, comprised of 9 ongoing and 6.6 fixed-term staff members.²²³ The agency had only one fixed-term Complaints Officer, who received some support from the fixed-term Integrity Operations Support Officer.²²⁴ The challenge of handling complaints with only one designated Complaints Officer became 'critical' with that officer's resignation in

²¹⁵ Ibid., pp. 6-7.

²¹⁶ Ibid., p. 6.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² Ibid., pp. 6-7.

²²³ Ibid., p. 7.

²²⁴ Ibid.

January 2021.²²⁵ This situation was also compounded by the fact that ‘the VI’s only two investigators’ were occupied with investigating public interest complaints under the revised whistleblowing regime, and therefore unable to help with complaint handling as they had previously.²²⁶

However, with additional funding provided to the VI in the delayed State Budget of November 2020, the agency was able to expand to 19.3 FTE, including a Manager Complaints and Investigation, a Senior Complaints Officer and a Complaints Officer.²²⁷

The VI will also engage an independent expert to assist the agency in developing a service charter and enhanced complaint-handling framework based on best practice principles, which it considers will help reduce delays.²²⁸

5.5.3 Performance measures

The Victorian Budget Paper No. 3 (BP3) on Service Delivery for 2020/21 identifies three quantitative performance measures, each of which also has implied qualitative dimensions, which measure, at least to some degree, the effectiveness of the agency in its complaint-handling and integrity system oversight functions.²²⁹

The three performance measures and the VI’s performance measured against them are laid out in Table 5.3, below.

Table 5.3 VI’s performance against the 2020/21 BP3 performance measures

Performance measure	Unit of measure	2020/21 target	2020/21 actual	Result
Recommendations of the VI accepted by agencies	Per cent	75	100	✓
Reasons for decisions provided for complaint outcomes	Per cent	100	100	✓
Improvements to the integrity system	Number	5	5	✓

Source: Adapted from VI, *Annual report 2020–21*, Melbourne, 2021, p. 22.

Both the recommendations performance measure and the integrity system improvements measure give at least some indication of the effectiveness of the VI’s oversight in identifying shortcomings in integrity agency operations and how they might be addressed.²³⁰ Regarding the integrity system improvements measure, for example, the VI has explained:

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid., pp. 5–6.

²²⁹ Department of Treasury and Finance (Victoria), *Victorian Budget 20/21: service delivery* (Budget Paper No. 3), Melbourne, 2020, p. 395; VI, *Annual report 2020–21*, Melbourne, 2021, p. 22.

²³⁰ VI, *Annual report 2020–21*, Melbourne, 2021, pp. 22–23.

This performance measure is intended to ensure the VI, in responding to issues that it identifies in overlooking other bodies, focuses on systemic improvements that prevent future non-compliance.

The VI measures an improvement to the integrity system where its integrity response to an identified issue has demonstrably influenced an integrity body's conduct in a way that will help prevent non-compliance.²³¹

As indicated in Table 5.3, the VI met all its 2020/21 targets, including five improvements being made to the integrity system. These improvements included the VO improving its 'compliance' regarding the lawful use of coercive powers during its investigations; IBAC ensuring that its draft special reports always accord with s 162(6)(a) of the *IBAC Act 2011* (Vic) (by not including 'a finding or opinion about the commission of a criminal or disciplinary offence'); and the VO, IBAC and Victoria Police updating various procedures and policies bearing on witness welfare, public examinations and confidentiality.²³²

BP3 timeliness performance measures

Since the establishment of the IOC, the VI has regularly emphasised the agency's challenges in reducing delays in complaint handling and investigations—identifying contributing factors such as limited staffing and resources; infrastructure and technology constraints; level of preparedness for remote work arrangements; and the agency's broad, complex and increasing jurisdiction.²³³

With the developing maturity of the VI as an integrity agency (including its governance and operational reforms,²³⁴ recent augmentation of staffing and resources following the 2021 independent base review of the agency,²³⁵ and new case management system),²³⁶ the Committee expects to see improvements in the timeliness of complaint handling and investigation completions. This is especially important given that, as the VI has recognised in the context of giving reasons for complaint outcomes, often 'those who make complaints have already been through a complaint process with one or two public sector bodies'.²³⁷

²³¹ Ibid., p. 23.

²³² Ibid.

²³³ See, for example, VI, *Annual report 2018–19*, Melbourne, 2019, pp. 6–8, 41, 98; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 3–6, 8, 24–25, 41, 44, 47, 78; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 3–4, 19–20, 24–25, 37, 46, 78; VI, *Annual Plan 2020–21* (as amended January 2021), Melbourne, 2021, pp. 3–4, 6, 12–17.

²³⁴ See, for example, VI, *Annual report 2018–19*, Melbourne, 2019, pp. 5–8, 19–21 (Operations Model); VI, *Integrity Response Guidelines*, Melbourne, 2020, <<https://www.vicinspectorate.vic.gov.au/guidelines-victorian-inspectorate>> accessed 4 July 2022.

²³⁵ In February 2021, the VI appointed Ernst and Young to conduct an independent base review of the VI, which involved a 'detailed analysis' and costing of 'the VI's current and future functions and operations' (VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 8). Following this review, the VI reported that it had 'secured in the ... [2022/23 State Budget] a very important and welcome increase in our ongoing base funding ... [that] allows the VI to undertake strategic planning for a longer-term outlook and continue to build towards increasing integrity outputs ... [and also to] invest in building ongoing staffing capability' (VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 8–9.).

²³⁶ VI, *Annual report 2020–21*, Melbourne, 2021, pp. 3–4, 25, 49; VI, *Annual Plan 2020–21* (as amended January 2021), Melbourne, 2021, p. 10; Ms Cathy Cato, Executive Director, Legal and Integrity, VI, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 7.

²³⁷ VI, *Annual report 2020–21*, Melbourne, 2021, p. 22.

The importance of efficiency and timeliness in complaint handling and the conduct of investigations, while ensuring thoroughness and due process, is greater still when ‘vulnerable’ complainants are involved.²³⁸ In its *Good practice guide: managing complex complainant behaviour*, the VO provides valuable insights into the impact of delays on complainants, especially if the complaint-handler has not regularly and effectively communicated with them:

In our experience, delays and failure to communicate are among the main reasons people become upset with organisations.

People can interpret lack of contact in ways you did not intend. They may assume your organisation does not care and is doing nothing.

Alternatively, if you take a long time to investigate their concerns without explanation, they may assume you are finding serious problems which will lead to a significant outcome for them ...

It is good practice to acknowledge all complaints within five business days at most. You should respond sooner if the matter is urgent.

We recommend organisations resolve straightforward complaints within 28 days. If the complaint is likely to take longer because it is complex or needs investigation, give the person a timeframe and update them regularly.²³⁹

The importance of regular, high-quality communication with complainants was also highlighted by the Independent Police Conduct Authority of New Zealand in correspondence with the Committee:

Another aspect of complainant welfare is our communication with complainants, particularly keeping them informed of the progress of their complaint. We are very conscious that the complaint process can be extremely stressful and upsetting for complainants, and that a failure to keep a complainant regularly informed of the progress of their complaint can increase that stress.²⁴⁰

The VI has recently given particular emphasis to improving the timeliness of its operations, which is reflected in one of its strategic priorities for 2022–2024: ‘Improve timeliness and ease of access for integrity participants’.²⁴¹ A related positive development is the addition of two new 2022/23 BP3 timeliness performance measures for the VI with respect to complaints and investigations (see Table 5.4, below).

²³⁸ VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 3, 5, 14; VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, February 2022, pp. 2–3, 10. See also VO, *Complaints: good practice guide for public sector agencies*, Melbourne, September 2016, pp. 2, 5, 8, 12; VO, *Good practice guide: managing complaints involving human rights*, Melbourne, May 2017, p. 12; VO, *Councils and complaints—a good practice guide*, 2nd edn, Melbourne, July 2021, p. 16; Commonwealth Ombudsman, *Better practice complaint handling guide*, n.d., pp. 18–19, 21, 29, 32, 41–42; Ombudsman New South Wales, *Managing unreasonable conduct by a complainant: a manual for frontline staff, supervisors and senior managers*, Sydney, 2021, pp. 80–81.

²³⁹ VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, February 2022, p. 10.

²⁴⁰ Judge Colin Doherty, Chair, Independent Police Conduct Authority, New Zealand, correspondence, 13 April 2022, p. 8.

²⁴¹ VI, *Annual Plan 2022–2023*, Melbourne, June 2022, p. 5. See also VI, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 9.

Table 5.4 2022/23 BP3 timeliness performance measures for the VI

Performance measure	Unit of measure	2022/23 target	Notes
Acknowledge receipt of new complaints within 5 business days	Per cent	95	New performance measure for 2022/23 to reflect the increased funding for the VI.
Proportion of standard VI investigations completed within 12 months	Per cent	30	New performance measure for 2022/23 to reflect the increased funding for the VI. The target for completion of investigations is relatively low as the VI is unable to control the number of investigations it undertakes due to the VI's statutory requirement to investigate all public interest complaints.

Source: Adapted from Department of Treasury and Finance (Victoria), *Victorian Budget 2022/23: service delivery* (Budget Paper No. 3), Melbourne, 2022, p. 380.

While it is encouraging that, like the other Victorian integrity agencies²⁴² oversights by the Committee, there are now BP3 timeliness performance measures for the VI, the Committee considers that another measure should be added for timeliness in *assessing* complaints, as exists for IBAC.²⁴³ The Committee therefore recommends that the Victorian Government, in consultation with the VI, develop a BP3 timeliness performance measure with respect to the VI's assessment of complaints, which takes into account the size of the agency and variations in the complexity of complaints received.

RECOMMENDATION 10: That the Victorian Government, in consultation with the Victorian Inspectorate (VI), develop a Budget Paper No. 3 timeliness performance measure for the VI's assessment of complaints, taking into account the VI's size and variations in the complexity of complaints received.

5.6 Conclusion

It is clear the VI is committed to improving not only the standard of witness welfare management in the integrity agencies it oversees, but also in its own agency, by leading 'by example'.²⁴⁴ The VI is to be commended for this commitment, and for developing, implementing and applying a wide range of policies, procedures, templates and standard practices for its management of witness welfare, especially for witnesses subject to coercive processes.

The VI's *Witness Welfare Policy* is well-intentioned and conscientious, and generally describes the agency's functions, jurisdiction and powers well. The Policy also clearly

²⁴² Department of Treasury and Finance (Victoria), *Victorian Budget 2022/23: service delivery* (Budget Paper No. 3), Melbourne, 2022, pp. 383 (IBAC), 305 (OVIC), 385 (VO).

²⁴³ *Ibid.*, p. 383.

²⁴⁴ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 5.

explains the rights and obligations of witnesses, the procedures and processes applicable to investigations and coercive powers, and the various kinds of interviews and examinations conducted by the VI. Further, importantly, the Policy also describes key welfare supports the agency can provide.

However, this report has demonstrated that witness welfare management, and especially mental health risk (including suicide risk) assessment and management, are complex and dynamic, even for professionals in healthcare settings with mental health expertise and experience. It is not surprising, then, that witness welfare management presents still greater challenges for an integrity agency presently lacking that expertise and experience.

For these reasons, the Committee considers that the VI's policies, procedures, templates and practices would benefit from review by an external, independent person or body with psychological expertise and experience, particularly for the development of an appropriate risk assessment matrix. More generally, such a review would help ensure the agency's approach conforms to best practice principles.

In a similar spirit, the Committee has recommended that the VI inquire into the feasibility of creating an in-house position for a mental health professional to provide expert advice on the use and updating of the agency's enhanced witness welfare management tools, including by providing regular staff training. Further, the Committee has recommended the VI improve its data holdings and analysis capacity with respect to identifying, recording and responding to welfare risks to which complainants and witnesses are exposed.

Finally, regarding witness welfare management, the Committee has recommended the agency inquire into the feasibility of engaging an external mental health provider on a fee-for-service basis for witnesses at most risk of serious harm.

Regarding other performance matters during 2020/21, the Committee notes positive developments in the agency's introduction of a new telephony system, which has enhanced its capacity to work securely and efficiently in remote contexts, and to monitor and respond in real time to complainant and staff welfare concerns. The Committee also acknowledges further maturing of the agency's case management system. However, timeliness in complaint handling remains a concern. For this reason, the Committee has recommended that the Victorian Government, following consultation with the VI, introduce a BP3 timeliness performance measure for the agency's assessment of complaints.

6 Victorian Ombudsman

6.1 Introduction

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

The Ombudsman can conduct enquiries or investigations in response to the receipt of a complaint² or use its 'own motion' powers.³ It must investigate a public interest complaint⁴ and may investigate a 'complaint' or 'notification', as defined in the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), that has been referred by the Independent Broad-based Anti-corruption Commission (IBAC).⁵ The Ombudsman must also investigate matters referred by the Legislative Assembly, Legislative Council or a joint committee of both Houses of Parliament, other than those which concern a judicial proceeding.⁶

This chapter reviews the performance of the VO during 2020/21, with a focus on witness welfare management. It also reviews other selected performance matters within the areas of complaint handling, investigations and public information and education.

6.2 Witness welfare: legal framework

The key Acts relevant to the VO's management of witness welfare include the *Public Administration Act 2004* (Vic), the *Occupational Health and Safety Act 2004* (Vic) ('*OH&S Act 2004* (Vic)'), *Ombudsman Act 1973* (Vic), *Public Interest Disclosures Act 2012* (Vic) ('*PID Act 2012* (Vic)'), *Equal Opportunity Act 2010* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter').⁷ The breadth of the VO's authority to gather evidence during its investigations is a notable feature:

1 *Ombudsman Act 1973* (Vic) s 13. See also Column 1 of Schedule 1 for a list of the 'specified' entities that fall under the definition of an 'authority' in s 2 of the Act.

2 *Ombudsman Act 1973* (Vic) s 13A, 15B.

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

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

5 *Ombudsman Act 1973* (Vic) ss 15B, 16C-16D; *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') s 73.

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

7 Victorian Ombudsman (VO), *Submission 9*, 6 April 2022, pp. 1-4.

... The Ombudsman is not required to hold any hearing for the purposes of an investigation, and the Ombudsman may obtain information from such persons and *in such manner as the Ombudsman thinks fit*.⁸

6.2.1 **Public Administration Act 2004 (Vic)**

Section 7 of the *Public Administration Act 2004* (Vic) requires the responsible use by the VO of its powers and the fair treatment of people throughout its operations.⁹

6.2.2 **OH&S Act 2004 (Vic)**

Under the *OH&S Act 2004* (Vic), the VO must ‘ensure as far as is reasonably practicable’ that risks of harm to the health and safety of ‘persons other than employees’ are eliminated or reduced.¹⁰

6.2.3 **Ombudsman Act 1973 (Vic)**

In accordance with the *Ombudsman Act 1973* (Vic), the VO has the authority to conduct informal enquiries to determine whether to conduct an investigation.¹¹ Coercive powers are not exercised during these enquiries.¹²

During investigations, however, the VO is authorised to exercise coercive powers, such as summoning witnesses to give oral evidence and/or ‘to produce documents or other things’.¹³ Under the Act, investigations, including the taking of evidence, must be conducted privately.¹⁴ The VO can also obtain sworn evidence by taking a statutory declaration from a person.¹⁵ The Act also prescribes a range of requirements for witnesses who are children, including the presence of independent support persons.¹⁶

The VO can issue a confidentiality notice if it considers on reasonable grounds that disclosure of certain restricted information would ‘likely prejudice the safety or reputation of a person’.¹⁷ There are, however, a range of exemptions under the Act allowing, in particular circumstances, a person subject to a confidentiality notice to make disclosures ‘to access support services or to speak about matters with their partner’.¹⁸ Section 26FC of the Act authorises the VO ‘to share information’¹⁹ in order

⁸ *Ombudsman Act 1973* (Vic) s 17(3) (emphasis added).

⁹ VO, *Submission 9*, 6 April 2022, p. 1.

¹⁰ VO, *Submission 9*, 6 April 2022, pp. 1–2; *OH&S Act 2004* (Vic) ss 20, 23.

¹¹ VO, *Submission 9*, 6 April 2022, p. 2; *Ombudsman Act 1973* (Vic) s 13A.

¹² VO, *Submission 9*, 6 April 2022, p. 2 (‘Enquiries allow the Ombudsman to “tread lightly” and do not involve the use of coercive power.’); *Ombudsman Act 1973* (Vic) s 13A.

¹³ VO, *Submission 9*, 6 April 2022, p. 2; *Ombudsman Act 1973* (Vic), s 18.

¹⁴ VO, *Submission 9*, 6 April 2022, p. 2; *Ombudsman Act 1973* (Vic) s 17(2).

¹⁵ VO, *Submission 9*, 6 April 2022, p. 2; *Ombudsman Act 1973* (Vic) s 18J.

¹⁶ VO, *Submission 9*, 6 April 2022, p. 3; *Ombudsman Act 1973* (Vic) s 18O.

¹⁷ VO, *Submission 9*, 6 April 2022, p. 3; *Ombudsman Act 1973* (Vic) s 26C.

¹⁸ VO, *Submission 9*, 6 April 2022, p. 3. See also *Ombudsman Act 1973* (Vic) ss 26C, 26F.

¹⁹ VO, *Submission 9*, 6 April 2022, p. 3.

‘to prevent or lessen the risk of harm to a person’s health, safety or welfare’.²⁰ The VO has informed the Committee that it commonly uses this provision to make ‘contact [with] Victoria Police where a person presents with an immediate risk of harm to themselves or others’.²¹

With regard to VO reports, the Act provides a range of ‘measures to protect the identities of people *not* subject to adverse comments or opinions, subject to public interest considerations’.²²

Under s 25A(2) of the Act, if the VO ‘intends’ to make an ‘adverse’ ‘comment’ or ‘opinion’ about a person in a report, it must give the person a ‘reasonable opportunity’ to respond to it, and set their response out ‘fairly’ in the published report.²³ Similarly, if the VO is considering making an ‘adverse’ report about a body, that body must be given an ‘opportunity to comment on the subject-matter’ of the Ombudsman’s investigation.²⁴

Other provisions in the Act relevant to witness welfare are described in Table 6.1, below.²⁵

Table 6.1 *Ombudsman Act 1973 (Vic): selected provisions relevant to witness welfare*

Provision	Effect and significance
s 15D	Provides the Ombudsman must refuse to investigate (or continue investigating) (section 17(6C)) a public interest complaint unless reasonably satisfied it shows or tends to show improper conduct or detrimental action. This is an important provision to promote proportionate and judicious investigations that safeguard the rights of the parties, including those alleged to have engaged in improper conduct. The same threshold does not apply to other investigating entities, including IBAC and the VI [Victorian Inspectorate].
s 18	Regulates the issue of witness summons, including the information that must be provided to the person directed to give evidence.
s 18E	Provides a witness summons directed to [a] person under 16 years has no effect and[,] accordingly, promotes the rights of children.
s 18M	Provides people with the right to legal advice and representation.
s 18P	Allows a person attending a voluntary or compulsory appearance to request a support person accompany them. This was a recent amendment promoted by the Ombudsman.
s 18O	Regulates the conduct of voluntary appearance of child witnesses (person[s] under 16 but of or over 10 years old) and provides for the involvement of an independent support person.
s 24	Requires the Ombudsman to inform a complainant or person who made a public interest complaint of the outcome of an investigation, subject to certain exceptions, including where to do so would put a person’s safety at risk or cause unreasonable reputational damage.

Source: VO, *Submission 9*, 6 April 2022, pp. 2–3.

²⁰ VO, *Submission 9*, 6 April 2022, p. 3; *Ombudsman Act 1973 (Vic)* s 26FC(2).

²¹ VO, *Submission 9*, 6 April 2022, p. 3.

²² VO, *Submission 9*, 6 April 2022, p. 3 (emphasis added). See also *Ombudsman Act 1973 (Vic)* s 25A.

²³ *Ombudsman Act 1973 (Vic)* s 25A(2).

²⁴ *Ombudsman Act 1973 (Vic)* s 17 (especially sub-s (4)).

²⁵ VO, *Submission 9*, 6 April 2022, pp. 2–3.

6.2.4 *PID Act 2012 (Vic)*

In its handling and investigation of public interest disclosures and complaints, the VO is bound by the *PID Act 2012 (Vic)*, which prohibits disclosure of the subject matter of disclosures and identity of disclosers, protects disclosers from liability that might otherwise result from their disclosures, and protects them against ‘detrimental action’ (reprisal) for making a disclosure.²⁶ The VO also uses IBAC’s *Guidelines for public interest disclosure management*²⁷ in supporting public interest disclosers.²⁸

6.2.5 *Equal Opportunity Act 2010 (Vic)*

The *Equal Opportunity Act 2010 (Vic)* requires the VO as a service provider to ‘make reasonable adjustments for people with a disability’.²⁹ This is especially relevant to the VO’s complaint-handling function.³⁰ The VO has emphasised that its case management system ‘prompts’ its staff, at the outset of any engagement with a complainant, to enquire whether they have any particular ‘communication needs’.³¹ Moreover, as a matter of course the VO is receptive to making any ‘reasonable adjustments for people to access or utilise its services’.³²

6.2.6 The Charter

Under s 38(1) of the Charter, ‘it is unlawful for VO staff to act incompatibly with human rights or, in making a decision, fail to give proper consideration to relevant human rights’.³³ The VO has drawn attention to a range of human rights that are engaged when the VO exercises coercive powers:

- protection from degrading treatment (section 10(b))
- freedom of movement (section 12)
- privacy and reputation (section 13)
- demonstrate religion (section 14)
- protection of children (section 17(2))
- practice [sic] culture (section 19)
- liberty (section 21)
- humane treatment when deprived of liberty (section 22).³⁴

²⁶ *PID Act 2012 (Vic)* pts 6, 7; VO, *Submission 9*, 6 April 2022, p. 3.

²⁷ IBAC, *Guidelines for public interest disclosure welfare management*, Melbourne, January 2020, <<https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf>> accessed 21 July 2022.

²⁸ VO, *Submission 9*, 6 April 2022, p. 3.

²⁹ *Ibid.*, p. 3.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, pp. 3–4.

³⁴ *Ibid.*, p. 4.

6.3 Witness welfare: policies, procedures and standard practices

6.3.1 VO's witness welfare management policies

Supporting the Wellbeing of VO Complainants and Witnesses (Welfare Policy)

The VO's overarching policy regarding the agency's management of witness welfare is its *Welfare Policy*.³⁵ The *Welfare Policy*, which is complemented by a suite of operational policies and guidelines, provides high-level guidance on how VO officers are expected to support the welfare of persons with whom they come into contact when performing their duties.³⁶

The *Welfare Policy* reflects the agency's commitment to exercising its coercive powers 'with care, restraint and consideration for those affected'.³⁷ Further, it demonstrates the agency's commitment to the provision of appropriate training and practical guidance to its staff on how to approach challenging behaviour and identify and manage welfare risks to affected persons, including complainants and those involved in the agency's investigations.³⁸

The *Welfare Policy* considers that is reasonably practicable for VO officers to take the following actions to support the welfare of persons with whom they come into contact when performing their duties, and to identify, remove or minimise, and manage welfare risks associated with the exercise of the VO's powers and functions:

- *Communicate in a way that is responsive to individual needs*—by adapting their 'communication style[s] and methods', where appropriate, and responding to individual needs when assisting members of the public, including persons with disability, to access the VO's services
- *Inform affected persons about what they can expect from the VO*—by explaining the agency's complaints-handling and investigations processes and informing affected persons of 'their rights and responsibilities'
- *Communicate effectively with affected persons throughout the complaint or investigation process*—by properly engaging with parties to a complaint or investigation, where it is reasonably practicable to do so, and regularly updating affected persons on the progress of their matters, including, where possible, providing them with information about the 'next steps' and likely outcome

³⁵ VO, *Supporting the Wellbeing of VO Complainants and Witnesses (Welfare Policy) (Welfare Policy)*, Melbourne, April 2022; VO, *Submission 9*, 6 April 2022, p. 4.

³⁶ VO, *Welfare Policy*, Melbourne, April 2022, especially pp. 3–5; VO, *Submission 9*, 6 April 2022, p. 4.

³⁷ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 9.

³⁸ VO, *Welfare Policy*, Melbourne, April 2022, pp. 4–5.

- *Communicate the outcome of a complaint or investigation to an affected person effectively*—by informing parties to a complaint or investigation of an adverse outcome or opinion at an appropriate time; explaining the reason(s) for the decision and the ‘avenues for internal and external review’ available to them
- *Finalise complaints and investigations within a reasonable time*—by meeting the VO’s ‘timeliness performance measures’
- *Identify potential welfare risks before an interaction involving the exercise of a coercive power*—by completing ‘operational risk assessments’ prior to an interaction to identify ‘potential risks’ to the health or safety of an affected person, and documenting the implementation of measures taken to remove or minimise identified welfare risks
- *Identify potential welfare risks during and after an interaction involving the exercise of a coercive power*—by monitoring the welfare of an affected person during the exercise of coercive powers; escalating welfare concerns raised during the interaction; considering the state of the person’s welfare immediately following the exercise of coercive powers; and, where appropriate, notifying ‘welfare support services’
- *Obtain an affected person’s informed consent before notifying a welfare support provider of an identified welfare risk*—by obtaining their permission to share personal information with a ‘registered health practitioner or welfare support service’
- *Take timely action in relation to serious imminent welfare concerns*—by informing Victoria Police, or other appropriate bodies or persons, of disclosures regarding self-harm or suicidal ideation
- *Take action in relation to a medical incident during an interaction*—by using their ‘information sharing powers’ to support affected persons to access medical care
- *Inform affected persons that they can access welfare support services*—by providing them with information about welfare resources
- *Assist affected persons to access welfare support services*—by making the VO’s Employee Assistance Program (EAP) available to them, when appropriate. Further, the VO can assist affected persons by referring them to the VO’s EAP, their own employer’s EAP, or to another service that provides welfare support to the public, when needed, provided it will not jeopardise an investigation.
- *Exercise the power to issue a confidentiality notice sparingly*—by only issuing confidentiality notices when it is ‘necessary and proportionate’ to the investigation, and properly considering relevant factors under the Charter before issuing a confidentiality notice
- *Encourage affected persons to seek welfare support from qualified professionals*—by only prohibiting disclosure of specified matters in a confidentiality notice to a registered health practitioner if it will jeopardise an investigation

- *Exercise the power to summon a person to a compulsory appearance sparingly*—by only issuing a witness summons to give evidence when it is ‘necessary and proportionate’ to the investigation, and properly considering relevant factors under the Charter before issuing a summons to give evidence
- *Consider alternatives to issuing a summons to give evidence in certain circumstances*—by determining whether it would be appropriate to take evidence via a statutory declaration where issuing a witness summons to give evidence may have an unreasonable impact on the recipient
- *Exercise the power to summon a person to produce a document or thing sparingly*—by only issuing a witness summons to produce when it is ‘necessary and proportionate’ to the investigation, and by properly considering relevant factors under the Charter before issuing a summons to produce.³⁹

The *Welfare Policy* is complemented by the VO’s *Service Delivery Charter*, which sets out the standards of service that the agency’s officers are expected to provide to members of the public who seek their assistance.⁴⁰ In particular, VO officers are required to ‘be respectful and responsive’ when communicating with such persons; to provide complainants with monthly progress updates if it is reasonably practicable to do so; and to advise them of the outcome of the complaint and the reason(s) for the VO’s decision.⁴¹

Human Rights policy

The VO’s *Human Rights* policy (the Policy) provides high-level guidance on how VO officers are expected to discharge their obligations and functions under the Charter.⁴² In accordance with the Policy, every VO policy is accompanied by a ‘statement of compatibility’ demonstrating its compliance with the Charter.⁴³

The Policy emphasises that human rights must be factored into all decision-making by VO officers in the performance of their duties.⁴⁴ Specifically, VO officers are required to consider whether a particular decision or action they are contemplating may impact on another person’s rights under the Charter, and, if so, how and to what extent.⁴⁵ They are also required to give consideration to ‘competing interests or obligations’ to ensure that an appropriate balance is struck.⁴⁶

The Policy provides guidance for VO officers on the interaction between the Charter and certain legislative provisions in the *Ombudsman Act 1973* (Vic). For example,

³⁹ VO, *Welfare Policy*, Melbourne, April 2022, pp. 4–5.

⁴⁰ VO, *Service Delivery Charter*, Melbourne, n.d., <<https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/service-delivery-charter>> accessed 18 August 2022.

⁴¹ Ibid.

⁴² VO, *Policy: Human Rights*, Melbourne, July 2015, p. 3.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

under s 13 of the *Ombudsman Act 1973* (Vic), the VO, in exercising its functions to determine complaints and conduct enquiries and investigations regarding certain types of ‘administrative action’, is required to consider whether the action is ‘incompatible’ with any right(s) under the Charter.⁴⁷ In making this assessment, the Policy directs VO officers to determine:

- whether the administrative action limits a human right in the Charter; and if so,
- whether that limitation is ‘reasonable’ and in accordance with section 7(2) of the Charter.⁴⁸

The Policy describes further matters that VO officers may take into account in making their determination:

When conducting enquiries or investigations, [the] VO may also have regard to human rights principles contained in international law and the judgments of domestic, foreign and international courts and tribunals. The Ombudsman may for example, form an opinion that an administrative action is ‘unreasonable’ or ‘wrong’ ... where it does not meet the minimum standard established in an international human rights instrument, such as the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.⁴⁹

Finally, in the event that VO officers determine that an ‘administrative action’ was ‘incompatible’ with any right(s) under the Charter, the Policy indicates that it may be open to them to conclude that the action in question ‘appears to have been taken “contrary to law”’ within the meaning of s 23(1)(a) of the *Ombudsman Act 1973* (Vic).⁵⁰

Dealing with Complex Behaviours from Members of the Public policy

The VO’s *Dealing with Complex Behaviours from Members of the Public* policy complements the agency’s *Good practice guide: managing complex complainant behaviour* (*Good practice guide*).⁵¹

The Policy supports the welfare of complainants in a number of ways. Importantly, it provides detailed guidance for VO officers on recognising and managing ‘complex’ and ‘unreasonable’ behaviour, including descriptive definitions of such behaviour and strategies for preventing and de-escalating conflict during their interactions with complainants.⁵²

⁴⁷ VO, *Policy: Human Rights*, Melbourne, July 2015, p. 3; *Ombudsman Act 1973* (Vic) s 13(1)–(2).

⁴⁸ VO, *Policy: Human Rights*, Melbourne, July 2015, p. 4.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, February 2022 (*Good practice guide*); VO, *Policy: Dealing with Complex Behaviours from Members of the Public*, Melbourne, May 2018.

⁵² VO, *Policy: Dealing with Complex Behaviours from Members of the Public*, Melbourne, May 2018, especially pp. 3–7.

Further, the Policy emphasises that effective communication is key to managing difficult behaviour, noting that VO officers are expected to:

- treat complainants politely and with respect, including listening to concerns, explaining decisions, and providing opportunities to discuss or comment on any preliminary findings
- use plain English
- be responsive and timely in their dealings with complainants
- manage expectations about the complaint process and possible outcomes
- not avoid difficult conversations with complainants.⁵³

The Policy also ensures that any strategies that are implemented to manage difficult behaviour are ‘appropriate and proportionate’, by using the ‘least restrictive’ means to effectively respond to the behaviour.⁵⁴ For example, prior to determining to impose formal restrictions on the way in which a complainant can communicate with the agency, the person is ordinarily provided with an opportunity to change their behaviour through a warning or by entering into ‘mutually agreed communication arrangements’.⁵⁵

VO officers are required to consider a range of matters when implementing strategies to manage difficult behaviour, including when determining to restrict a person’s contact with the agency, such as:

- the type and severity of the behaviour engaged in
- the likelihood that a proposed strategy will be effective in minimising or eliminating the behaviour, noting that, in some circumstances, it may be appropriate to use several different strategies
- the person’s ‘personal circumstances’, including any additional needs they have (for example, disability, limited understanding of English or illiteracy), and the extent to which the proposed strategy effectively addresses such matters
- the ‘VO’s legal obligations’, including its obligations under the Charter.⁵⁶

Notably, the Policy provides that an affected person must be informed of the reasons why a behavioural management strategy has been implemented and that they may ‘request a review of a restriction or limitation placed on them’.⁵⁷

53 Ibid., p. 5.

54 Ibid., p. 6.

55 Ibid.

56 Ibid.

57 Ibid.

Investigations policy

The VO's *Investigations* policy (the Policy) sets out the agency's procedures and standard practices with respect to voluntary and compulsory interviews, among other matters.⁵⁸ In accordance with the Policy, VO officers are required to take certain actions, prior to, during and following an interview, in order to support the welfare of interviewees. For example, prior to an interview, VO officers: arrange an interview time in consultation with the interviewee; inform the interviewee of the 'nature of the matter on which they will be questioned' and whether the agency is investigating their conduct; and provide the interviewee with information about the interview process and their 'rights and obligations' (including whether they will be required to give evidence 'under oath or affirmation').⁵⁹

Interviewees are ordinarily permitted to attend an interview with a support person and/or legal practitioner of their choosing, unless the VO believes that the presence of a nominated person may 'compromise the investigation'.⁶⁰ The Policy provides that witnesses who are interviewed voluntarily will generally be provided with immediate access to a copy of the audiovisual recording of the interview, followed by a copy of any transcript that is produced. Similarly, the VO only restricts an interviewee's access to the recording and transcript of a compulsory interview if it is necessary to avoid prejudicing the investigation.⁶¹

On other matters, such as the issue and cancellation of confidentiality notices and 'procedural fairness' in reporting, the Policy supports the welfare of persons involved in the VO's investigations by ensuring that the agency's officers act in strict compliance with their legislative obligations.⁶² For example, the Policy interprets s 25A of the *Ombudsman Act 1973* (Vic) 'broadly' by requiring VO officers to provide 'any person who is subject of an opinion in a draft report that may be adverse to that person ... a reasonable opportunity to respond'.⁶³

6.3.2 VO's witness welfare management procedures and standard practices

The VO's witness welfare management policies are well-integrated into its comprehensive internal procedures. These procedures, which were supplied to the Committee in confidence in the course of the review (see Table 6.2, below), provide VO officers with detailed step-by-step instructions on how they are expected to implement the agency's policies *in practice*.⁶⁴

⁵⁸ VO, *Policy: Investigations*, Melbourne, December 2015, especially pp. 7–8.

⁵⁹ *Ibid.*, pp. 7–8.

⁶⁰ *Ibid.*, p. 8.

⁶¹ *Ibid.*

⁶² *Ibid.*, pp. 9–10.

⁶³ *Ibid.*, p. 10.

⁶⁴ VO, *Submission 9*, 6 April 2022, p. 5.

Table 6.2 VO witness welfare management procedures

Procedure: Complaints and Approaches
Procedure: Enquiries
Procedure: Investigations
Procedure: Public Interest Disclosures
Procedure: Dealing with complex behaviours from members of the public
Business Rule: Responding to threats of suicide, self-harm or threats to others

Source: VO, *Submission 9*, 6 April 2022, p. 5.

The VO's witness welfare management practices are informed by the agency's policies and procedures, as well as its *Good practice guide*, the Commonwealth Ombudsman's *Guidance for complaint handlers on dealing with risks of harm*, and IBAC's *Guidelines for public interest disclosure welfare management*.⁶⁵

The *Good practice guide*, in particular, provides detailed guidance on witness welfare-related matters in complaints-handling, such as identifying and responding to behaviour associated with disability or mental illness, making reasonable adjustments for people with disability, and responding to persons who make threats of suicide.⁶⁶

The VO has also implemented a wide variety of investigation templates, including interview scripts and assessment checklists, to ensure its officers comply with their obligations under applicable legislation, policies and procedures.⁶⁷ These templates were supplied to the Committee in confidence in the course of its review (see Table 6.3, below).

⁶⁵ Ibid., pp. 4–6. See also VO, *Good practice guide*, Melbourne, February 2022; Commonwealth Ombudsman, *Guidance for complaint handlers on dealing with risks of harm*, n.d.; IBAC, *Guidelines for public interest disclosure welfare management*, Melbourne, January 2020.

⁶⁶ VO, *Good practice guide*, Melbourne, February 2022, especially pp. 19–32.

⁶⁷ VO, *Submission 9*, Melbourne, 2022, p. 5.

Table 6.3 VO Investigation Templates

Templates relating to investigations
Short investigation plan
Detailed investigation plan
Templates relating to confidentiality notices
Prescribed form for confidentiality notice
Briefing for summons or confidentiality notice
Information sheet—welfare support services
Templates relating to voluntary and compulsory appearances
Interview scripts
Templates relating to PIDs received by the VO and PIDs assessed as PICs [public interest complaints] by IBAC and referred to the VO
Assessment checklist—assessable disclosure regarding improper conduct
Assessment checklist—assessable disclosure regarding detrimental action
Assessment checklist—referred PIC from IBAC regarding improper conduct
Assessment checklist—referred PIC from IBAC regarding detrimental action

Source: VO, *Submission 9*, 6 April 2022, p. 5.

6.4 Witness welfare: evaluation

The VO's role, experience and culture

The VO has vast, wide-ranging experience, spanning more than four decades, in receiving and handling a high volume of complaints about the public sector, often engaging with vulnerable complainants displaying complex behaviours.⁶⁸ It has therefore, necessarily, sought, gained and applied a deep and sophisticated understanding of the psychological dimensions of its work, demonstrated in its leadership, like other ombudsman bodies, in developing best practice guides for the public sector on complaint handling and complex behaviours.⁶⁹ For example, the VO has observed that its *Good practice guide* 'is based on our experience':

Every year we speak with thousands of people from all walks of life. Almost all of them contact us because they are upset about something a government agency has or has not done. We deal with complex behaviour from members of the public every day ...

The advice in this guide also ...

⁶⁸ VO, *Good practice guide*, Melbourne, February 2022; VO, *Submission 9*, 6 April 2022, pp. 1, 8; Ms Deborah Glass OBE, Ombudsman, VO, public hearing, 16 May 2022, *Transcript of evidence*, pp. 9–10, 12. The VO has described 'complex behaviour' as 'any behaviour you find complex and challenging as a complaint handler ... Some types of behaviour are never acceptable. They include verbal abuse, threats and violence.'—*Good practice guide*, Melbourne, February 2022, p. 5.

⁶⁹ VO, *Good practice guide*, Melbourne, February 2022. See also New South Wales Ombudsman, *Managing unreasonable conduct by a complainant: a manual for frontline staff, supervisors and senior managers*, Sydney, 2021; Commonwealth Ombudsman, *Guidance for complaint handlers on dealing with risks of harm*, n.d.

- reflects discussions with organisations whose core business is dealing with vulnerable people—people with mental illness or disability or their families, and people reporting discrimination and simply, people who have difficulty in getting their communication needs met
- draws on the growing body of literature about dealing with complex behaviour ...⁷⁰

Its understanding has also come from the sectors it engages with, oversights and investigates, including the public health, disability, public/community housing, corrections, and child protection sectors, which are often affected by socioeconomic and other forms of disadvantage and related ‘psychosocial’⁷¹ complexities.⁷²

This has been reinforced through extensive experience as a human rights investigator with reference to the Charter, and its familiarity with, and use of, international norms and standards regarding human rights, especially in the domain of human services.⁷³ As the Ombudsman, Ms Deborah Glass OBE, told the Committee at a public hearing:

Last year saw an increase of 12 per cent in the number of jurisdictional complaints received to over 18,000—a record number for the office. Despite the higher workload, some 90 per cent were finalised within 30 days. Our geographical spread also increased; we have taken complaints from almost half of all Victorian postcodes. ...

My staff interact with a variety of people, including complainants, disclosers, witnesses, subjects, public officers and members of the community. The challenges faced by some of these groups necessarily warrant a welfare-centred response, and we have over the years developed a range of policies and guidance to assist staff to deal with people and their challenges, including welfare support. While these documents have been in effect for some time, and continually evolve and improve, your review prompted my office to consolidate key expectations into an overarching policy on supporting welfare and wellbeing of complainants and witnesses ...⁷⁴

In terms of the orientation of the VO, in undertaking enquiries and investigations into administrative actions of government bodies the agency has focused preventively on improving their systems, governance and accountability.⁷⁵ Culturally, the VO has

⁷⁰ VO, *Good practice guide*, Melbourne, February 2022, p. 3.

⁷¹ The American Psychological Association defines ‘psychosocial’ as a term ‘describing the intersection and interaction of social, cultural, and environmental influences on the mind and behavior’—American Psychological Association, *APA dictionary of psychology*, 2022, <<https://dictionary.apa.org/psychosocial>> accessed 7 August 2022.

⁷² See, for example: Joanne Enticott et al., ‘Mental health in Australia: psychological distress reported in six consecutive cross-sectional national surveys from 2001 to 2018’, *Frontiers in Psychiatry*, vol. 13, April 2022, pp. 1, 5–6, 8–9, 11; Anton N Isaacs et al., ‘Lower income levels in Australia are strongly associated with elevated psychological distress: implications for healthcare and other policy areas’, *Frontiers in Psychiatry*, vol. 9, October 2018, pp. 1–2, 4, 7–8; World Health Organization, *Social determinants of mental health*, Geneva, 2014, pp. 6, 8 (‘[M]any common mental disorders are shaped to a great extent by the social, economic, and physical environments in which people live. Social inequalities are associated with increased risk of many common mental disorders.’). See also VO, *Investigation reports*, <<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports>> accessed 9 August 2022 (for a range of reports on matters within these sectors); VO, *Annual report 2021*, Melbourne, 2021, pp. 6–7, 20, 25–26, 33–34, 39, 44, 50–54, 58–59; and VO, *Investigation into complaint handling in the Victorian social housing sector*, Melbourne, July 2022.

⁷³ *Ombudsman Act 1973* (Vic) s 13(1)–(2); VO, *Policy: Human Rights*, Melbourne, July 2015. See also, VO, *Annual report 2021*, Melbourne, 2021, pp. 4 (the VO received 2,770 human rights complaints in 2020/21), 6, 8–10, 12, 20–21, 50–52, 54, 56–59.

⁷⁴ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 9. See also VO, *Submission 9*, 6 April 2022, pp. 1, 5, 8.

⁷⁵ VO, *Annual report 2021*, Melbourne, 2021, p. 12.

emphasised the importance of a cooperative approach to improving the public sector where possible, which is reflected in its use of enquiries before embarking on an investigation, the important role of its Early Resolution Team in addressing emerging complaints proactively, and its engagement with agencies subject to complaints to facilitate resolutions achieved through ‘direct action’.⁷⁶

This preventive and solutions-focused approach, where appropriate, is also seen in the VO’s attitude towards the use of coercive powers it has at its disposal, including summoning witnesses for compulsory questioning and issuing confidentiality notices. As the Ombudsman has said, ‘[w]e have worked very hard in the last eight years ... to ensure the use of coercive powers is exercised with care, restraint and consideration for those affected’.⁷⁷

For example, during 2020/21 in the 44 ‘formal investigations’ that the VO finalised confidentiality notices were issued in 5, summons to produce documents also in 5, and summonses to appear for a compulsory interview in 9.⁷⁸ The Ombudsman remarked, ‘I hope that explains that I use these powers sparingly, judiciously and only when necessary’.⁷⁹ This is consistent with the VO’s *Welfare Policy*.⁸⁰

The VO is also flexible, when possible, regarding conditions in confidentiality notices, so witnesses can seek mental health support from a registered health practitioner provided there would be no prejudice to the integrity of its investigation.⁸¹

The VO is sensitive to the human dimensions of its work and has developed best practice materials and means of communicating effectively with vulnerable persons under stress.⁸²

While the VO recognises the importance of well-developed policies, procedures and practices to help ensure well-informed, consistent and timely management of the welfare of complainants and witnesses, it also appreciates the need for flexibility in attending to persons’ individual needs within a ‘dynamic’ and challenging context:

As a community facing organisation my office is committed to ensuring the welfare of people engaged with our service ...

While ... [its] policies, procedures and guidance ... document VO’s practices regarding welfare management, the issue is broader still. Promoting welfare is more than providing clear information about process or ensuring a witness has access to water and breaks during an interview. It is a dynamic process to be considered during all phases of the exercise of functions and powers, whenever people are involved.

⁷⁶ VO, *Annual report 2021*, Melbourne, 2021, pp. 24, 35; VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 2.

⁷⁷ Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 9.

⁷⁸ *Ibid.*, p. 14.

⁷⁹ *Ibid.*

⁸⁰ VO, *Welfare Policy*, April 2022, p. 5.

⁸¹ *Ibid.*

⁸² See, for example, VO, *Good practice guide*, Melbourne, February 2022; VO, *Annual report 2021*, Melbourne, 2021, pp. 56–59.

No policy or procedure could comprehensively document how to respond to every possible scenario, however, several overarching principles guide practice at the VO:

1. People are at the centre of VO's work and affected parties must remain at the centre of decision-making.
2. Being flexible, thoughtful and responsive to individuals' needs will ... ensure welfare risks are, where reasonably practical, eliminated or reduced.
3. Integrity bodies must exercise their extraordinary powers responsibly and with restraint. Routine use of coercive powers may become unjust and oppressive. ...

The principles we adopt ... are about considering individual needs and vulnerabilities as part of our decision-making—which may involve a balancing act with the needs of an investigation—and having the flexibility to adapt our practices appropriately.⁸³

The spirit of this approach is consistent with the VO's vision statement:

There are four principles that guide our work:

1. ensuring fairness through independent and impartial complaint resolution and encouraging fair and reasonable decision making within the public sector
2. enhancing accountability by independently investigating serious matters and reporting on improper conduct and poor administration
3. fostering continuous improvement by assisting public organisations to learn from complaints and investigations and by investigating systemic issues and identifying solutions
4. protecting human rights by investigating whether an action is incompatible with human rights and making it easier for vulnerable people to complain.⁸⁴

These norms and commitments are also reinforced by its *Strategic Framework 2020–24*.⁸⁵

The VO's policies, procedures and practices

The VO's policies, procedures and practices generally conform to the best practice principles; they are clear, detailed, practically oriented, flexible and well informed by mental health expertise.

The VO's *Welfare Policy*, for example, reflects a good understanding of the impact of investigative processes on witnesses, especially when coercive powers are exercised.⁸⁶ The VO identifies potential welfare risks before any interaction involving the exercise of a coercive power by carrying out operational risk assessments. Any potential risks to a person's health or safety can be identified, documented and eliminated or minimised.

⁸³ VO, *Submission 9*, 6 April 2022, pp. 1, 5, 8.

⁸⁴ VO, *Annual report 2021*, Melbourne, 2021, p. 12.

⁸⁵ VO, *Annual report 2021*, Melbourne, 2021, p. 12; VO, *Strategic Framework 2020–2024*, <<https://www.ombudsman.vic.gov.au/about-us/mission-and-values/strategic-framework>> accessed 8 August 2022.

⁸⁶ VO, *Welfare Policy*, April 2022, p. 5; VO, *Submission 9*, 6 April 2022, pp. 2, 5.

Importantly, attention to these risks is maintained during and after any exercise of coercive power, with welfare concerns escalated as necessary (including notifying welfare support services).⁸⁷

The *Welfare Policy* and the VO's approach also demonstrate a commitment to regular high quality, emotionally sophisticated, plain language communication that is flexible and adapted to individual needs. This approach allows the VO to adjust its communication styles when assisting members of the public, including people with disability. It also enables the VO to inform witnesses of their legal rights and obligations and familiarise them, as appropriate, with the phases of an investigation, including what happens at VO interviews.⁸⁸

The VO's policy prescriptions in these respects conform to Forensicare's view that effective welfare support involves 'doing two things simultaneously: one is assessing and checking in with the welfare of the individual, and at the same time it is familiarising them with the process and the situations that occur'.⁸⁹ It is also consistent with the best practice principle that welfare support must be provided *throughout* the investigation, which includes providing 'regular updates to parties, and where possible and practicable', foreshadowing 'next steps or outcomes'.⁹⁰

In accordance with best practice principles, welfare support should be provided by persons with clinical mental health expertise and experience.⁹¹ This is demonstrated, as noted earlier, by three dimensions of the VO's *Welfare Policy*:

- obtaining an affected person's informed consent before notifying a welfare support provider of a welfare risk, including providing personal information to a registered health practitioner or welfare support service⁹²
- taking urgent action in response to serious, imminent welfare concerns by notifying Victoria Police, and/or other appropriate emergency service providers, of a person's disclosures about harming themselves or suicidal ideation⁹³ (following the Commonwealth Ombudsman's *Guidance for complaint handlers on dealing with risks of harm*,⁹⁴ which is based on best practice mental health standards and guidelines)

⁸⁷ VO, *Welfare Policy*, April 2022, pp. 4–5.

⁸⁸ VO, *Welfare Policy*, April 2022, p. 4. See also VO, *Good practice guide*, Melbourne, February 2022, pp. 10–29 (which also gives guidance on effective communication with persons with autism, who have a mental illness, who have an acquired brain injury (ABI), or who have an intellectual disability); VO, *Policy: Dealing with Complex Behaviours from Members of the Public*, Melbourne, May 2018.

⁸⁹ Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, p. 3.

⁹⁰ VO, *Welfare Policy*, April 2022, p. 4. See also VO, *Service Delivery Charter*, Melbourne, n.d., <<https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/service-delivery-charter>> accessed 23 August 2022.

⁹¹ See the discussion in Section 2.4 in Chapter 2 of this report.

⁹² VO, *Welfare Policy*, April 2022, p. 5.

⁹³ VO, *Welfare Policy*, April 2022, p. 4; VO, *Good practice guide*, Melbourne, February 2022, pp. 30–32.

⁹⁴ Commonwealth Ombudsman, *Guidance for complaint handlers on dealing with risks of harm*, n.d. See also General Practice Mental Health Standards Collaboration, *Suicide prevention and first aid: a resource for GPs*, Melbourne, July 2016.

- taking action in response to a medical incident during an interaction, including by using their information-sharing powers to help affected persons get appropriate medical care.⁹⁵

The VO's *Investigations* policy is also complementary to the VO's attention to witness welfare concerns. For example, interviewees are usually allowed to attend an interview with a support person and/or legal practitioner, unless the VO considers that their presence may undermine an investigation.⁹⁶

The VO is committed to 'continuous improvement and is always looking for ways to improve' its management of welfare.⁹⁷ It has, for example:

- Refined the *Guide to dealing with Complex Behaviour* (and associated policy, procedure and case management system) subsequent to lessons learned by VO as a respondent in VCAT discrimination proceedings.
- Rolled out Mental Health First Aid training for all staff to assist [them to] identify and respond to welfare concerns and other signs of distress.
- Engaged Dr Grant Lester, Forensic Psychologist to present to staff on understanding complainant conduct.
- Proactively reviewed procedures to ensure focus on welfare ... The [VO's] welfare risk assessment tool ... resulted from this work.
- Made changes to the information provided before, during and after interviews with witnesses and subjects in response to the VI's *Integrity Report: Monitoring Project on VO interviews* in 2019.
- Made additional changes to procedures and guidance following the VI's review of another matter.⁹⁸

The VO's occupational health and safety practices and initiatives also strengthen the skill and capacity of their staff in ways that provide a good culture for effective complainant and witness welfare management. For example, the agency has Mental Health First Aid Peer Support Officers, holds mental health and wellbeing workshops, participates in Mental Health Week, and has a weekly EAP counselling service on site.⁹⁹

In the spirit of continuous improvement, the Committee considers that the VO can enhance witnesses' access to the VO's EAP service for welfare support. Consistent with the best practice principles of the need for proactive welfare support to address mental health risks and treatment needs, the Committee recommends that the VO ensure that all persons served with a confidentiality notice or summons to appear can directly access the services of the agency's EAP provider, without a VO referral.

⁹⁵ VO, *Submission 9*, 6 April 2022, p. 3; *Ombudsman Act 1973* (Vic) s 26FC.

⁹⁶ VO, *Policy: Investigations*, Melbourne, December 2015, p. 8.

⁹⁷ VO, *Submission 9*, 6 April 2022, p. 6 (see also p. 4).

⁹⁸ *Ibid.*, p. 6 (see also pp. 7–8). See also VI, *Integrity report: monitoring project on Victorian Ombudsman interviews*, Melbourne, June 2019.

⁹⁹ VO, *Annual report 2021*, Melbourne, p. 82.

RECOMMENDATION 11: That the Victorian Ombudsman (VO) ensure that persons who are served with a confidentiality notice or summons to appear can directly access welfare support services provided by the VO's Employee Assistance Program provider, without the need for a referral by the VO.

6.5 Other performance matters

6.5.1 Digital innovation

Data collection, analysis, sharing and reporting

The VO is to be commended for its innovation in improving its data collection, analysis, display, sharing, and reporting, especially with regard to complaint handling. The VO is undertaking a 'digital transformation project', part of which has involved the use and integration of the Microsoft Power BI business intelligence system.¹⁰⁰ Microsoft Power BI is

a business intelligence platform that provides nontechnical business users with tools for aggregating, analyzing, visualizing and sharing data ... and can help connect disparate data sets, transform and clean the data into a data model and create charts or graphs to provide visuals of the data. All of this can be shared with other Power BI users within the organization.¹⁰¹

The VO has used the Power BI system to more efficiently collect, analyse, display, share and report on data from a range of sources within the agency, some of which, previously, it had to carry out through more time-consuming manual methods.¹⁰²

The agency has stated that its use of Power BI has enabled it to gain 'valuable insights into the community we serve and complaint themes and trends'.¹⁰³ The VO has integrated data from the Power BI system into its workflows in its 'Resolve' case management system.¹⁰⁴ The system has also enhanced consistency in complaint-handling and investigations and facilitated more precise monitoring and measurement of the performance of the agency with respect to key indicators.¹⁰⁵ The agency has also reported that its enhanced data collection and analysis capacity

¹⁰⁰ VO, *Annual report 2021*, Melbourne, 2021, p. 74. For an account of the capabilities and uses of Microsoft Power BI, see Jesse Scardina and Lauren Horwitz, 'Definition: Microsoft Power BI', *TechTarget*, December 2018, <<https://www.techtarget.com/searchcontentmanagement/definition/Microsoft-Power-BI>> accessed 2 August 2022.

¹⁰¹ Jesse Scardina and Lauren Horwitz, 'Definition: Microsoft Power BI', *TechTarget*, December 2018, <<https://www.techtarget.com/searchcontentmanagement/definition/Microsoft-Power-BI>> accessed 2 August 2022

¹⁰² VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 1-2.

¹⁰³ *Ibid.*, p. 1.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, pp. 1-2.

has already helped it identify ‘issues that lend themselves to systemic investigations’, an example being the VO’s Business Support Fund investigation.¹⁰⁶

The benefits of better collection of data about complaints, complainants and complaint handling are well known,¹⁰⁷ and the VO’s use of a new digital platform provides opportunities for it to better understand the subject matter of complaints (and therefore help identify the commonest deficiencies in the public sector) and use relevant data to improve its handling of complaints.¹⁰⁸ As the VO has explained, these developments can help it ‘provide a transparent and accurate overview’ of its work.¹⁰⁹

The Committee notes that the VO fell just short of the 60% complaint service satisfaction performance target for 2020/21, achieving a score of 57%.¹¹⁰ In this regard, it is relevant that in 2020/21, driven by the impacts of COVID-19, the VO received 9,068 online complaints, a 38% increase on the preceding financial year.¹¹¹ The VO gave the following explanation of its complaint service satisfaction result:

VO has experienced a significant increase in the use of its online complaints form due to COVID. While the complainants who choose to contact VO via phone continue to report similar satisfaction levels to previous years, online complainants are less satisfied, leading to the overall reduced satisfaction compared to FY2019–20. In FY2021–22, VO has made significant investment in the development of SMS and webchat solutions to meet the expectations of online complainants. The complainant satisfaction surveys in FY2022–23 and beyond will evaluate the success of these improvement measures.¹¹²

The webchat function used by the VO provides automatic responses to FAQs ‘before being escalated to a Complaints Officer’.¹¹³ The VO will also sample a number of users’ experience with the webchat function in order ‘to assess its effectiveness, long-term viability and value’.¹¹⁴

While greater use by complainants of the VO’s online complaints service is a positive development in terms of efficiency (enhancements to the online complaints form means it only takes seven minutes on average to complete)¹¹⁵ and flexibility, in order to reduce user dissatisfaction the agency should ensure it has the capacity to meet this extra demand.

¹⁰⁶ VO, *Annual report 2021*, Melbourne, 2021, p. 9 (see also p. 29). See also VO, *Investigation into the Department of Jobs, Precincts and Regions’ administration of the Business Support Fund*, Melbourne, April 2021.

¹⁰⁷ See, for example, Parliament of Victoria, Independent Broad-based Anti-corruption Commission Committee (IBAC Committee), *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, pp. 135–137.

¹⁰⁸ VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, pp. 1–2.

¹⁰⁹ *Ibid.*, p. 2.

¹¹⁰ VO, *Annual report 2021*, Melbourne, 2021, p. 84.

¹¹¹ *Ibid.*, p. 4.

¹¹² VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 3. See also VO, *Annual report 2021*, Melbourne, 2021, p. 84.

¹¹³ VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 5.

¹¹⁴ *Ibid.*

¹¹⁵ VO, *Annual report 2021*, Melbourne, 2021, pp. 9, 18.

The Committee acknowledges that the VO has identified these shortcomings transparently and is working to respond to them. The Committee nevertheless considers that there is an opportunity for the VO to use its improved data collection and analysis capacity to better understand and respond to dissatisfaction with its online complaint services, including '[c]ommunication of outcomes', '[f]ollow up' and updating complainants.¹¹⁶ The Committee also recommends that the VO undertake UX (user experience) and focus group testing of its online complaint services, which will provide further information and data, which it can use to help improve the experience of complainants.

Further, the Committee recommends that the VO explore the potential to use its new data collection and analysis systems (including Power BI), in conjunction with its Resolve case management system, to identify, record, analyse and act on welfare risks with respect to complainants and witnesses engaging with the agency. In doing so, the Committee recognises the importance of complying with applicable laws, and of protecting the privacy, safety, health and wellbeing of complainants and witnesses.

RECOMMENDATION 12: That the Victorian Ombudsman undertake UX (user experience) and focus group testing on its online complaint services (including use of SMS and webchat) and apply any lessons learnt to improve those services and enhance complainant satisfaction.

RECOMMENDATION 13: That the Victorian Ombudsman inquire into the potential for using its improved data collection, analysis, sharing and reporting capacity (including the Power BI platform) to identify, record, analyse and act on welfare risks with respect to complainants and witnesses engaging with the agency, while complying with applicable laws and protecting the privacy, safety, health and wellbeing of those persons.

Social media

In its report on the education and prevention functions of Victoria's integrity agencies, tabled in April 2022, the Committee highlighted the benefits of agencies using social media skilfully to increase public awareness and understanding of their roles and the kinds of matters they can deal with.¹¹⁷ As the Transnational Research Institute on Corruption, Australian National University, submitted to the Committee's inquiry into corruption prevention and education:

¹¹⁶ The VO received scores at the lower end for satisfaction for the VO's overall handling of complaints received by any means (that is, not just online complaints), specifically 59% for '[c]ommunication of outcomes', 53% for '[f]ollow up' and 51% for '[u]pdated' (VO, *Annual report 2021*, Melbourne, 2021, p. 86). This 'complainant satisfaction research' was carried out by EY Sweeney, whom the VO had commissioned (VO, *Annual report 2021*, Melbourne, 2021, p. 86). For a discussion of the VO's Annual Plan 2020–21 'outcomes', see its *Annual report 2021*, Melbourne, 2021, p. 9: 'Complainant satisfaction survey outcomes are reported as part of the VO's annual report. Complainant satisfaction and feedback with VO's services measured and analysed on a quarterly basis with appropriate changes made to ensure VO is responsive to complainant needs and community expectations.'

¹¹⁷ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, pp. 63–64, 128.

Effectively using social media can be a means of providing information, building dialogue and improving community standing. There is also the potential for social media accounts to provide preventative or deterrence effects and to operate as an alternative reporting mechanism for suspected corruption.¹¹⁸

It is therefore encouraging that the VO increased its social media followers by 47% during 2020/21.¹¹⁹ The agency has attributed this growth to its engagement of a full-time Digital Content Producer in February 2021, which has ensured ‘a greater and more diverse online presence’.¹²⁰ One initiative has been to create accessible and engaging content, such as complainant video stories.¹²¹

These improvements have meant, for example, that the VO is making younger people more aware of the agency, which has been reflected in an increase in the number of younger complainants.¹²² Consistent with best practice principles,¹²³ the VO has ‘also used social media to call for submissions to assist investigations and advise people of their rights to make complaints.’¹²⁴

6.5.2 Improvements to the legal framework

Disclosure of information by the Ombudsman in the public interest

The VO has argued that s 26FC(1) of the *Ombudsman Act 1973* (Vic) is too ‘restrictive’ in that it only permits the Ombudsman to disclose to the public information relating ‘to the commencement or progress of an “own motion” investigation or an “own motion” enquiry or complaints review’.¹²⁵ The VO has asserted that the narrowness of s 26FC(1) is inconsistent ‘with the Ombudsman’s broad public interest obligations’,¹²⁶ giving the following example in support:

[I]n terms of witness welfare, a broader discretion to release information in the public interest would assist in situations where the Ombudsman has information to exonerate a person who has been publicly named in an adverse manner but the Ombudsman has not tabled a report in Parliament.¹²⁷

The Committee recommends that the Victorian Government examine the merits of the proposed legislative amendment.

¹¹⁸ Quoted in *ibid.*, p. 63.

¹¹⁹ VO, *Annual report 2021*, Melbourne, 2021, p. 66.

¹²⁰ VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 5.

¹²¹ VO, *Annual report 2021*, Melbourne, 2021, p. 67.

¹²² VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 5.

¹²³ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria’s integrity agencies*, Melbourne, April 2022, p. 63.

¹²⁴ VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 5.

¹²⁵ *Ibid.*, pp. 3–4.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*, p. 4.

RECOMMENDATION 14: That the Victorian Government examine whether amendment of s 26FC(1) *Ombudsman Act 1973* (Vic) is warranted to permit the Victorian Ombudsman (VO) to make, in the public interest, broader disclosures to the public of information received or obtained in the course of the VO's performance of duties or functions or the exercise of powers under the Act.

Investigation by the VO of improper conduct

The VO has drawn the Committee's attention to deficiencies in Victoria's public interest disclosure regime.¹²⁸ It has explained the nature of these deficiencies, and the consequences for the investigation of improper conduct in Victoria, as follows:

While IBAC is the 'clearing house' responsible for determining whether disclosures are 'public interest complaints', its investigative threshold is very high. If the public interest complaint does not amount to serious or systemic corruption, IBAC will most likely refer it to the Ombudsman to investigate. Approximately 70 per cent of all public interest complaint allegations are referred to the Ombudsman.

Due to a technical error/oversight in the legislation, however, the Ombudsman is not able to investigate all categories of improper conduct as defined in section 4(1) of the *Public Interest Disclosure[s] Act 2012* (Vic) (particularly the kind of conduct described in section 4(1)(c)).

The gap in jurisdiction results in a wholly unsatisfactory scenario whereby a whistleblower can make a public interest complaint that, unless it meets the high threshold of serious or systemic corruption, would not be investigated.¹²⁹

Section 4(1)(c)–(d) of the *PID Act 2012* (Vic) includes, within the definition of improper conduct, a person's conduct that:

- (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
- (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining ... [a benefit] ... that the person or associate would not otherwise have obtained; or ... conspiracy or attempt to engage in ... [such conduct].

Under the Act, benefits improperly obtained in this way include licences, permits, approvals, authorities and other entitlements under legislation and regulations; appointments to public office; financial benefits and real or personal property; and 'any other direct or indirect monetary or proprietary gain'.¹³⁰

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ *PID Act 2012* (Vic) s 4(1)(c).

The Committee considers that the Victorian Government should examine the merits of the VO's proposal that appropriate legislative amendments be made to ensure that the agency can investigate all kinds of improper conduct, as defined in the *PID Act 2012* (Vic), upon referral from IBAC.

RECOMMENDATION 15: That the Victorian Government examine the merits of legislative amendments authorising the Victorian Ombudsman (VO) to investigate all kinds of improper conduct, as defined in the *Public Interest Disclosures Act 2012* (Vic), alleged in public interest complaints referred to the VO by the Independent Broad-based Anti-corruption Commission.

Alternative dispute resolution for public interest complaints

The VO considers that pt IIIAC of the *Ombudsman Act 1973* (Vic) should be amended so the agency can try to 'resolve public interest complaints by alternative dispute resolution including conciliation and mediation'.¹³¹

In the VO's view this would ensure the agency has at its disposal 'a full suite of modern Ombudsman tools',¹³² and is consistent with its approach of early, informal and proportionate resolution of complaints where that is appropriate.¹³³ This spirit is evident, for example, in the VO's 'early resolution' approach to complaints:

When we receive a complaint, we might make enquiries to try to resolve it informally, without needing to start an investigation. This usually involves asking for an explanation about an organisation's actions. We may also suggest a resolution. We might make proposals if we consider the organisation's actions appear to have been unfair or unreasonable and when there is a practical outcome that can be achieved ... Early resolution is an approach to assessing complaints which prioritises identifying and resolving them at the first possible opportunity, preventing small issues from growing into larger ones. Some complaints are solved within hours or days when making organisations aware. We work collaboratively with organisations—often on the phone—and make assessments about the prospects of resolving matters.¹³⁴

Importantly, under s 13G(4) of the *Ombudsman Act 1973* (Vic), participation 'by a party in alternative dispute resolution is voluntary and any party may withdraw ... at any time'.

The Committee considers that the Victorian Government should examine the merits of the VO's proposed legislative amendment.

¹³¹ VO, Response to Integrity and Oversight Committee questions on notice, 10 June 2022, p. 4.

¹³² Ibid.

¹³³ VO, *Annual report 2021*, Melbourne, 2021, p. 24. See also VO, *Submission 9*, 6 April 2022, p. 5; VO, *Welfare Policy*, April 2022, pp. 3–5; Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 16 May 2022, *Transcript of evidence*, pp. 9–10, 14.

¹³⁴ VO, *Annual report 2021*, Melbourne, 2021, p. 24.

RECOMMENDATION 16: That the Victorian Government examine the merits of amending pt IIIAC of the *Ombudsman Act 1973* (Vic) to give the Victorian Ombudsman a discretion to attempt to resolve public interest complaints by alternative dispute resolution (including conciliation and mediation).

6.6 Conclusion

The VO has extensive experience, spanning more than forty years, as a community-facing, high-volume complaint-handler and investigator.¹³⁵ Through its daily engagement with a wide range of people, including people experiencing socioeconomic or other forms of disadvantage and vulnerability, the VO has developed a deep and sophisticated understanding of the psychological dimensions of its work, which has contributed to its development of policies, procedures and practices for complainant and witness welfare management that generally meet the best practice guidelines—that welfare support be appropriate and effective, provided proactively, and delivered by persons with clinical expertise and experience.

The VO’s culture also reflects its understanding of the impact of coercive powers, including summonses and confidentiality notices, and for that reason uses them judiciously, and only when warranted during its investigations. The agency’s approach to witness welfare management is well informed by mental health expertise (for example, in relation to mental health emergencies) and is accompanied by effective communication with witnesses throughout investigations.

The VO is committed to continuous improvement of its witness welfare management, which it has demonstrated in response to the VI’s oversight of how the agency conducts its interviews and the information it provides them. In the spirit of continuous improvement, the Committee has recommended that the VO improve the access of persons, in particular circumstances, to the welfare support services of its EAP provider.

With regard to other performance matters, the Committee commends the VO on its digital innovation with respect to data collection, analysis, sharing and reporting, and has recommended that the agency develop and use this enhanced capacity to identify, respond to and learn from complainant and witness welfare risks. The Committee also welcomes improved use of social media to raise awareness and understanding of the role of the VO and even assist in its conduct of investigations.

The VO has brought to the Committee’s attention a number of recommended legislative amendments it considers will strengthen both the integrity system and the agency’s exercise of its investigative and alternative dispute resolution functions. The Committee has recommended that these proposals be examined by the Victorian Government.

¹³⁵ VO, *Submission 9*, 6 April 2022, p. 1.

7 Conclusion

7.1 The Integrity and Oversight Committee's monitoring and review of witness welfare management

The Integrity and Oversight Committee (IOC) has a longstanding interest in integrity agencies' witness welfare management, going back to its very establishment in 2019.

As a parliamentary institution, the Committee sets the parameters of its inquiries and reviews, and procedures for seeking, assessing and using evidence, in accordance with the Victorian Constitution, parliamentary law and custom and the *Parliamentary Committees Act 2003 (Vic)* ('*PC Act 2003 (Vic)*').¹

In conducting this review of witness welfare management, the IOC was, and is, aware of ongoing integrity agency investigations, and conscientiously complied with the restrictions on the Committee's powers under ss 7(2) of the *PC Act 2003 (Vic)* and 26H(2) of the *Ombudsman Act 1973 (Vic)*. For this reason, also, the Committee took a cautious approach in its call for, receipt, assessment, use and reporting of written and oral evidence. It consistently reinforced to witnesses, agencies and members of the public alike that, both as a fundamental principle and as a requirement of the *PC Act 2003 (Vic)*,² confidential evidence must remain confidential. Confidential evidence must not be distributed to anyone, or published, quoted, paraphrased or cited in any committee report. Similarly, it has never been the case that a parliamentary committee allow anyone, let alone a body subject to a parliamentary review, access to confidential evidence or sections of a committee's draft report.

Having initiated this review of witness welfare management as an exercise of its monitoring and review functions, the IOC focused on whether the agencies' policies, procedures and practices meet best practice principles, and did not trespass into individual matters subject to ongoing agency investigations or legal proceedings.

Through its work during this review, the IOC identified three best practice principles for witness welfare management: the need for welfare support to be clearly explained, provided throughout the entire investigation, and provided by persons with clinical expertise and experience. The need for mental health expertise and experience to inform the design and application of witness welfare management policies, procedures and practices (including the identification and management of mental health risks) is the golden thread running through the Committee's review and report on the agencies' performance.³

1 *Constitution Act 1975 (Vic)* s 19; *Parliamentary Committees Act 2003 (Vic)* ('*PC Act 2003 (Vic)*') ss 4, 27–28, 37(2), 50. See, further, the discussion in Section 1.3.1 in Chapter 1 in this report.

2 *PC Act 2003 (Vic)* s 37(2).

3 The best practice principles are discussed in depth in Chapter 2 in this report.

In undertaking this review, the IOC received submissions, held hearings, sought answers to questions on notice from the agencies, and undertook research. The IOC thanks the integrity agencies and other witnesses and stakeholders for their submissions, testimony and answers to questions on notice.

In what follows, the Committee summarises the performance of the integrity agencies and recommendations for improvements, both in the witness welfare domain and in other aspects of their invaluable roles in Victoria's integrity system.

7.2 Performance of the integrity agencies

7.2.1 IBAC

IBAC's approach to witness welfare management is comprehensive and robust. The agency's policies, procedures and practices reflect its serious commitment to identifying potential risks to the health, safety and welfare of persons involved in its investigations and documenting and implementing measures to remove or minimise such risks.

IBAC's power to hold public examinations is extraordinary. While it is an important and necessary power to enable the agency to perform its anti-corruption and police misconduct functions, it is clear from the evidence received by the Committee during the review that the public examination process places a significant welfare burden on those subjected to it.

Similarly, while the Committee recognises that IBAC's power to issue strict confidentiality notices is crucial to maintaining the integrity of its highly sensitive investigations, it is clear from the evidence received by the Committee during the review that such notices have the potential to take a heavy emotional toll on recipients, including engendering feelings of isolation.

IBAC has taken significant steps to ensure that witnesses are supported throughout the public examination process, including implementing the findings of a 2019 independent expert review of its policies, procedures and practices regarding its coercive information-gathering powers. In particular, IBAC has introduced an independent specialist welfare support service for witnesses provided through its Employee Assistance Program (EAP) provider, Converge. Further, it requires its officers to perform operational risk assessments for public examinations (including individual welfare risk assessments), using a risk assessment matrix tool, to ensure that potential risks are identified, assessed and managed in a considered and systematic way. Finally, it ensures that specialist risk treatments are implemented for those considered at high risk, such as facilitating the presence of an on-site counsellor during the examination, and implementing other measures in consultation with Converge or a witness's treating health practitioner, where appropriate.

However, IBAC investigators face significant barriers to obtaining accurate and relevant welfare information to inform their individual risk assessments, including their lack of clinical expertise and experience. Additionally, the nature of their interactions

with examinees inhibits trust and the kind of rapport-building necessary to conduct meaningful welfare assessments.

The policies and procedures provided by IBAC to the Committee in confidence during the review do not provide specific guidance on assessment of mandatory criteria for holding a public examination under s 117(1) of the *IBAC Act 2011* (Vic), including guidance on what may constitute ‘unreasonable damage to a person’s reputation, safety or wellbeing’.⁴ Nor do they provide specific guidance on decision-making regarding requests received under s 117(3A)(a) of the Act for part of a public examination to be held in private.

Considering the seriousness of the potential welfare ramifications of being subject to a strict confidentiality notice or IBAC’s public examination process, the Committee has made a number of recommendations. These recommendations are designed to enhance public trust in IBAC’s decision-making processes regarding the exercise of its powers with respect to public examinations and confidentiality notices, and to ensure that the agency’s witness welfare management practices reflect best practice.

Regarding other performance matters during 2020/21, the Committee notes positive developments in IBAC’s 2021 People Matter survey results for its workplace culture, specifically with respect to sexual harassment, discrimination, bullying and workplace aggression. The Committee also acknowledges the work that IBAC has done to improve the timeliness of its assessment of complaints and notifications, including the successful rollout of a new triaging and allocation system. However, the Committee considers that IBAC’s performance reporting on the timeliness of its assessment of complaints and notifications, including the agency’s Budget Paper No. 3 (BP3) timeliness measures more broadly, do not adequately reflect the nature and complexity of its workload, nor its productivity. The Committee encourages IBAC, in conjunction with the Government, to work towards establishing BP3 measures which, having regard to the complexity of its work, better reflect the agency’s productivity.

7.2.2 OVIC

The Committee welcomes the Office of the Victorian Information Commissioner’s (OVIC) proactive approach to improving its management of witness welfare, demonstrated prior to and during the Committee’s review. OVIC is encouraged to further its working relationships with the VI, while also drawing on best practice principles, in refining its witness welfare-related resources and practices. These improvements will be vital in ensuring that OVIC’s engagement with witnesses is sound, particularly prior to using any of its coercive powers.

In terms of OVIC’s performance of its legislative functions, 2020/21 was a positive year for the agency. In the FOI (Freedom of Information) space, OVIC supported Victoria’s agencies and ministers with the largest number of FOI applications received to date.⁵

⁴ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 117(1)(c) (emphasis added).

⁵ Mr Sven Bluemmel, Information Commissioner, Office of the Victorian Information Commissioner, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 9.

OVIC similarly performed well in respect of its privacy and data security functions. As noted in Chapter 4, for example, the impact of COVID-19 has changed the regulatory landscape of FOI, privacy and data security for both OVIC and its stakeholders. Despite these changes, OVIC continued to develop and refine various tools for agencies, stakeholders and the public alike, such as its Information Security Incident Notification Scheme, Privacy Officers Toolkit and FOI file-sharing platform.

OVIC's approach to actively seeking to improve its systems and performance, both in respect of its legislative functions and its witness welfare methodology, provides assurance to the Committee that it will continue its strong performance into 2021/22.

7.2.3 VI

It is clear the VI is committed to improving not only the standard of witness welfare management in the integrity agencies it oversees, but also in its own agency, by leading 'by example'.⁶ The VI is to be commended for its commitment, and for developing, implementing and applying a wide range of policies, procedures, templates and standard practices for its management of witness welfare, especially for witnesses subject to coercive processes.

The agency's *Witness Welfare Policy* is well-intentioned and conscientious, and the VI generally does well in describing its function, jurisdiction and powers; the rights and obligations of witnesses; the procedures and processes of investigations and the exercise of coercive powers; the various kinds of interviews and examinations; and the welfare supports it can provide.

However, this report has demonstrated that witness welfare management, and especially mental health risk (including suicide risk) assessment and management, are complex and dynamic, even for professionals in healthcare settings with mental health expertise and experience. It is not surprising, then, that witness welfare management presents still greater challenges for an integrity agency presently lacking that expertise and experience.

For these reasons, the Committee has recommended that the VI's policies, procedures, templates and practices be reviewed by an external, independent person or body with psychological expertise and experience, particularly for the development of an appropriate risk assessment matrix. More generally, such a review would help ensure the agency's approach conforms to best practice principles.

In a similar spirit, the Committee has recommended that the VI inquire into the feasibility of creating an in-house position for a mental health professional to provide expert advice on the use and updating of the agency's enhanced witness welfare management tools, including by providing regular staff training. Further, the Committee has recommended the VI improve its data holdings and analysis capacity with respect

⁶ VI, Response to Integrity and Oversight Committee questions, 6 April 2022, p. 5.

to identifying, recording and responding to welfare risks to which complainants and witnesses are exposed.

Finally, regarding witness welfare management, the Committee has recommended the agency inquire into the feasibility of engaging an external and independent mental health provider on a fee-for-service basis for witnesses at greatest risk of serious harm.

On other performance matters during 2020/21, the Committee notes positive developments resulting from the agency's introduction of a new, more effective and efficient telephony system and enhancements to its case management system. However, timeliness in complaint handling remains a concern. The Committee has therefore recommended that the Victorian Government, following consultation with the VI, introduce a BP3 timeliness performance measure for the agency's assessment of complaints.

7.2.4 VO

The VO has vast experience, spanning more than forty years, as a community-facing, high-volume complaint-handler and investigator.⁷ Through its daily engagement with a wide range of people, including people experiencing socioeconomic or other forms of disadvantage and vulnerability, the VO has developed and applied a sound and sophisticated understanding of the psychological dimensions of its work. This experience has enabled it to develop policies, procedures and practices for complainant and witness welfare management that generally meet the best practice guidelines—that welfare support be appropriate and effective, provided proactively, and delivered by persons with clinical expertise and experience.

Also consistent with best practice principles, the VO's culture reflects its understanding of the impact of coercive powers, including summonses and confidentiality notices, and for that reason uses them judiciously.

The agency's approach to witness welfare management is also well informed by mental health expertise (for example, in relation to mental health incidents) and is accompanied by effective communication with witnesses throughout investigations.

In the spirit of continuous improvement, the Committee has recommended that the VO improve the access of persons, in particular circumstances, to the welfare support services of its EAP provider.

Regarding other performance matters, the Committee commends the VO on its digital innovation with respect to data collection, analysis, sharing and reporting, and recommends the agency develop and use this enhanced capacity to identify, respond to and learn from complainant and witness welfare risks.

⁷ VO, *Submission 9*, 6 April 2022, p. 1.

The VO has drawn the Committee's attention to a number of recommended legislative amendments it considers will strengthen both the integrity system and the agency's exercise of its investigative and alternative dispute resolution functions. The Committee has recommended that the merits of these proposals be examined by the Victorian Government.

**Adopted by the Integrity and Oversight Committee
Parliament of Victoria, East Melbourne
26 September 2022**

Appendix A

Submissions and public hearings

A.1 Submissions

1	Confidential
2	Mr Phil Nolan
3	Information and Privacy Commission NSW
4	Office of the Victorian Information Commissioner
5	Independent Commission Against Corruption South Australia
6	Forensicare
7	New South Wales Independent Commission Against Corruption
8	Ombudsman South Australia
9	Victorian Ombudsman
10	Confidential
11	Victorian Equal Opportunity and Human Rights Commission
12	Commonwealth Ombudsman
13	Confidential
14	Confidential
15	Confidential
16	Confidential
17	Confidential
18	Confidential
19	Confidential
20	Confidential
21	Confidential
22	City of Casey
23	Confidential
24	Australian Commission for Law Enforcement Integrity
25	Confidential
26	Confidential
27	Victorian Ambulance Union
28	Australian Psychological Society
29, 29A (supplementary)	Independent Broad-based Anti-corruption Commission

A.2 Public hearings

Monday 9 May 2022

55 St Andrews Place, East Melbourne

Name	Position	Organisation
Mr Eammon Moran PSM QC	Inspector	Victorian Inspectorate
Ms Cathy Cato	Executive Director, Legal and Integrity	Victorian Inspectorate
Ms Alison Lister	General Manager Integrity Operations	Victorian Inspectorate
Ms Kathryn Phillips	Director Budget Independence & Strategy	Victorian Inspectorate
Mr Sven Bluemmel	Information Commissioner	Office of the Victorian Information Commissioner
Ms Joanne Kummrow	Public Access Deputy Commissioner	Office of the Victorian Information Commissioner
Mr Annan Boag	Assistant Commissioner, Privacy and Assurance	Office of the Victorian Information Commissioner
Hon Robert Redlich AM QC	Commissioner	Independent Broad-based Anti-corruption Commission
Mr David Wolf	Deputy Commissioner	Independent Broad-based Anti-corruption Commission
Ms Marlo Baragwanath	Chief Executive Officer	Independent Broad-based Anti-corruption Commission
Mr Glenn Ockerby	Director Corporate Services	Independent Broad-based Anti-corruption Commission

Monday 16 May 2022

55 St Andrews Place, East Melbourne and via Zoom

Name	Position	Organisation
Dr Danny Sullivan	Executive Director Clinical Services	Forensicare
Dist Prof Jim Ogloff	Executive Director of Psychological Services and Research	Forensicare
Ms Deborah Glass OBE	Ombudsman	Victorian Ombudsman
Ms Megan Philpot	Deputy Ombudsman	Victorian Ombudsman
Dr Marija Maher	Chief Operating Officer	Victorian Ombudsman

Extract of proceedings

The Committee divided on the following question during consideration of this report. Questions agreed to without division are not recorded in this extract.

Committee meeting—26 August 2022

Report adoption

Mr Dustin Halse MP moved that the Committee adopts the entire report on its Inquiry into the Performance of the Victorian Integrity Agencies 2020/21: Focus on Witness Welfare.

The Committee divided.

Ayes	Noes
Mr Gary Maas MP	Mr Brad Rowswell MP
Mr Stuart Grimley MLC	Hon Kim Wells MP
Mr Dustin Halse MP	
Mr Jackson Taylor MP	
Ms Vicki Ward MP	

Resolved in the affirmative.

Minority report



Integrity and Oversight Committee

Victorian Parliamentary Inquiry into the
Performance of Victorian Integrity Agencies 2020/21:
Focus on Witness Welfare

Minority Report

Brad Rowsell MP, Deputy Chair
The Hon. Kim Wells MP

30 September 2022

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Summary

Opposition members of the Committee make the following Minority Report recommendations:

Recommendation 1: When undertaking a call for submissions, this Committee should fully disclose how the submission could be received and treated. This should include information relating to a submission being received as public, confidential or partially confidential as well as advice about the possibility of presenting to the Committee in a public or private hearing.

Recommendation 2: A short public statement, accompanying every confidential or partially confidential submission, should be included on the Committee website that articulates the reason why the Committee has determined confidentiality.

Recommendation 3: If this Committee states that it will hear from individuals and a determination is then made not to do so, this decision of the Committee – and the members who favoured that outcome – will be published on the Committee website.

Recommendation 4: Undertake a review of the legal framework that restricts the Committee from inquiring about and questioning a witness that may be the subject of a confidentiality notice issued by an integrity agency.

Recommendation 5: Integrity agency leaders should be afforded the opportunity to meet or present to the IOC when they so request, in any instance. The facilitation of this meeting should be the obligation and responsibility of the Committee Chair and Secretariat and must be undertaken as a matter of priority.

Recommendation 6: Committee members must be required to disclose, at the earliest opportunity, any interference in Committee business that they become aware of – or are party to – by the PPO or any other politically aligned individual or body.



Brad Rowsell MP, Deputy Chair
Member for Sandringham



The Hon. Kim Wells MP
Member for Rowville

1. Introduction

1.1 Rationale for the review into witness welfare and this Minority Report

The *Victorian Parliamentary Inquiry into the Performance of Victorian Integrity Agencies 2020/21: Focus on Witness Welfare* was prompted by the tragic death of former Councillor and Mayor of the City of Casey Amanda Stapleton on 18 January 2022.

This fact has been widely acknowledged in confidential submissions made to the inquiry along with broad ranging public commentary.¹ Following this avoidable and devastating situation, the Integrity and Oversight Committee (IOC) had a critical responsibility to listen to witnesses and make recommendations to Government to ensure that such events never occurred again.

The Committee failed to call any witnesses through its public hearing process that were directly and personally involved in the subject matter of the inquiry, including direct family members, friends and colleagues. The Committee also failed to engage in comprehensive dialogue with the Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC), the Hon. Robert Redlich AM QC, at his request.

The Labor Government dominated Committee fundamentally abrogated its responsibilities to witnesses, the integrity bodies it oversees, the Parliament, and the people of Victoria. For these failures, the Opposition members of this Committee are compelled to oppose the adoption of the Committee Report and table this Minority Report.

¹ <https://www.theaustralian.com.au/nation/ibac-blamed-for-mayors-death/news-story/d49b062359bf5db3802b25f113bca044>; <https://www.theaustralian.com.au/nation/friends-demand-answers-over-watchdogs-conduct/news-story/752065a0bf148a15417508cf1b9b2349>; <https://www.heraldsun.com.au/news/victoria/urgent-talks-ordered-over-ibac-after-former-mayor-amanda-stapledons-death/news-story/f1b5e12eb169cf59a07ab0d7fbe4523b>.

2. Witnesses

2.1 Assurance that witnesses would be heard

On 18 March 2022, the Committee publicly called for group and individual submissions about the management of witness welfare by Victoria's integrity agencies. The Committee were insistent that witnesses could give evidence according to their wishes: be it public, private, written or verbal.

There were six reasons listed for which a person or group could send a submission. The first listed reason was to understand the experiences of witnesses:

“We invite submissions from the public to this important and timely review,” said then Committee Chair, the Hon. Harriet Shing MP.

The Committee is calling for submissions from the public addressing the following matters: (1) The experiences of witnesses and others involved in Victorian integrity agency investigations (including any matters relating to health, safety, wellbeing and reputation).²

The primacy of this position gave legitimacy to those who have experienced witness welfare issues with Victorian integrity agencies.

The media release also specifically stated the Committee's intention to ‘hear’ from individuals on witness welfare:

“The Committee is keen to hear (emphasis added) from interested groups and individuals on witness welfare, so we can make constructive recommendations for any necessary improvements as part of the Committee's review of the integrity agencies' performance,” Ms Shing said.³

This media release created a false and empty promise that the Committee wanted to consider witnesses' first-hand experience by giving members of the public an assurance that they would be heard.

This was, disappointingly, not the case.

Recommendation 1: When undertaking a call for submissions, this Committee should fully disclose how the submission could be received and treated. This should include information relating to a submission being received as public, confidential or partially confidential as well as advice about the possibility of presenting to the Committee in a public or private hearing.

² Integrity and Oversight Committee, *Media Release: Call for Submissions – Victorian integrity agencies' management of witness welfare during investigation*, Melbourne, 18 March 2022, <https://www.parliament.vic.gov.au/images/stories/committees/IOC/Inquiry_into_the_Education_and_Prevention_Functions_of_Victorias_Integrity_Agencies/Media/202220318_Media_Release_IOC_integrity_witness_welfare_review_call_for_submissions.pdf> accessed 11 July 2022.

³ Ibid.

2.2 Submissions received

The Committee received 29 submissions (and one supplementary submission) to this inquiry, 14 of which were accepted as wholly confidential and six of which were accepted as partly confidential.

The 29 submissions were submitted from a range of individuals – many with direct knowledge of and personal connection to matters relating to witness welfare – and organisations. However, all submissions by individuals (but one) were considered wholly confidential as the majority of Committee members determined that they did not provide thematic information about witness welfare that could be separated from specific information.⁴

A full list of public submissions is provided at <https://new.parliament.vic.gov.au/get-involved/inquiries/performance-of-victorian-integrity-agencies-202021/submissions>.

Recommendation 2: A short public statement, accompanying every confidential or partially confidential submission, should be included on the Committee website that articulates the reason why the Committee has determined confidentiality.

2.3 Public hearings

The Committee only held 2 hours and 40 minutes of public hearings over 9 May 2022 and 16 May 2022.

During these public hearings, the Committee heard from the four integrity agencies and Forensicare. Forensicare is a Victorian mental healthcare provider who state in their public submission that “we do not directly support witnesses involved in integrity agency investigations” and “our experience in providing psychological and welfare support to witnesses is limited to working alongside our staff in preparing them and supporting them through court related processes”.⁵

Although it is understood Forensicare have professional experience in witness welfare in court-related processes, they possessed no experience with witness welfare with respect to investigations conducted by Victorian integrity agencies. It is a serious concern that public hearings were granted to Forensicare who had a lack of direct involvement with witnesses involved with these investigations, while the witnesses themselves were denied such opportunities.

There were seven members of the public who requested to present to the Committee at a hearing, of which four were witnesses brought before integrity agencies and three were those who have close relationships to former witnesses. The Committee did not hear from any of these individuals, publicly or privately.

⁴ Integrity and Oversight Committee, Parliament of Victoria, *Chair’s Statement: Harriet Shing MP*, 16 May 2022, <https://www.parliament.vic.gov.au/images/stories/committees/IOC/Witness_Welfare/Chairs_statement_witness_welfare_review_16_May_2022.pdf> accessed 11 July 2022

⁵ Forensicare, *Submission 6*, 4 April 2022.

On 6 June 2022, the Committee agreed to suspend further public hearings. This motion was not unanimously agreed to by the Committee, with both Mr Rowsell and Mr Wells voting against it. The motion read as follows:

That the Committee agrees that hearings, in relation to the Committee’s Inquiry into the Performance of Victorian Integrity Agencies 2020/21: Focus on Witness Welfare, are now concluded, and that the Committee Secretariat is authorised to prepare the draft report.

The Committee also authorise the Secretariat to:

- Publish the submissions on the IOC’s website
- Write to submitters advising them on what basis their submission has been accepted and that they will not be invited to a hearing.

Disappointingly, this motion – proposed and agreed to by Labor Government MPs – effectively gagged witnesses or those directly supporting them from being heard.⁶

The Committee rejected the pleas of several individuals to attend a hearing and thereby failed to fulfil its own commitment to ‘hear’ from individuals on witness welfare.⁷

Recommendation 3: If this Committee states that it will hear from individuals and a determination is then made not to do so, this decision of the Committee – and the members who favoured that outcome – will be published on the Committee website.

2.4 Confidentiality

Confidentiality was claimed several times by Labor Government members of the Committee during this inquiry and used as a weapon against transparency in a multitude of instances.

For example, it was not disclosed by the Committee – at any stage prior to the closure of the inquiry – that witnesses would only be invited to present at a Committee hearing if their submission referenced general and not specific matters.

Further, there was no mention in the Committee’s call for submissions that confidentiality would be observed and enforced during this inquiry. The only reference to confidentiality, prior to it being used as a weapon by Labor Government members of the Committee, was on “the impact of confidentiality obligations on (witness) welfare”, not the imposition of confidentiality on witnesses.⁸

Witnesses who made submissions to this inquiry did so in the hope that the issues contained within their submissions would be considered by the Committee and specifically referenced in the Committee’s

⁶ <https://www.theaustralian.com.au/nation/politics/victorian-ibacflip-witnesses-now-gagged/news-story/b9a9da15c1f73ac0eaa6bd3559b3dcfc>

⁷ Integrity and Oversight Committee, *Media Release: Call for Submissions – Victorian integrity agencies’ management of witness welfare during investigation*, Melbourne, 18 March 2022, <https://www.parliament.vic.gov.au/images/stories/committees/IOC/Inquiry_into_the_Education_and_Prevention_Functions_of_Victorias_Integrity_Agencies/Media/202220318_Media_Release_IOC_integrity_witness_welfare_review_call_for_submissions.pdf> accessed 11 July 2022.

⁸ Ibid.

findings. They did not expect their submissions to be considered ‘wholly confidential’ by the Committee and therefore not referenced at all.

If the Committee had expressed such a view about confidentiality prior to the receipt of submissions, witnesses would almost certainly have provided their views in a different form; in order to have the opportunity to be heard. The Committee’s failure to make this clarification and subsequent refusal to hear witnesses tends in favour of a conclusion that there was an *intention* to deny witnesses such opportunities.

Recommendation 4: Undertake a review of the legal framework that restricts the Committee from inquiring about and questioning a witness that may be the subject of a confidentiality notice issued by an integrity agency.

2.5 Disclosure of confidential information within the law

The Committee Report makes the following claim:

... the Committee emphasises that, under the law – specifically, the *PC Act 2003* (Vic) – confidential material in wholly or partly confidential submissions cannot be provided to anyone, or published, quoted, paraphrased or cited in any Committee report.⁹

The *Parliamentary Committees Act 2003* (Vic) does impose restrictions on the disclosure of information by the Committee. Section 7(2)(g) prevents the Committee from disclosing 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:

- “prejudice any criminal proceedings or criminal investigations”;
- “prejudice an investigation being conducted by the Ombudsman, the IBAC or the Victorian Inspectorate”; or
- “contravene any secrecy or confidentiality provision in any relevant Act”.¹⁰

Where there was any possibility that any of the evidence provided by witnesses related to an ongoing criminal investigation or proceeding, such evidence should have absolutely been excluded from any perspectives obtained from confidential submissions.

⁹ Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2020/21*, Melbourne, October 2022, p. 11.

¹⁰*PC Act 2003* (Vic) Section 7(2)(g)

However, it is not obvious that drawing general information from a submission by a witness relating to an ongoing investigation, would necessarily prejudice the outcomes of an investigation if that information solely related to witnesses' welfare. The Committee was not tasked with, nor did it need to, comment on any information contained in submissions that were directly or indirectly related to the substance or performance of those investigations. Rather, the information relevant to this inquiry was exclusively the treatment of witnesses, information about which could not seriously be deemed prejudicial to any investigation.

Similarly, to the knowledge of those preparing this minority report, with no suggestions made by the Committee to the contrary, there is no reason to believe that drawing general perspectives from the confidential submissions would have contravened secrecy or confidentiality provisions in other legislation.

This is not to say that confidential submissions ought to have been quoted, cited or published by the Committee in its report. Rather, the purpose of receiving confidential submissions—to obtain the perspectives of the parties—was entirely undermined by a refusal to even draw general observations from, identify common threads throughout, or ascertain similarities in the experiences expressed in those submissions.

This repeated assertion by the Labor Government dominated Committee, and a refusal to obtain necessary advice if there was genuine concern, exhibits behaviour that may more likely amount to a false pretence utilised to evade proper consideration of the evidence contained within the submissions.

3. IBAC

3.1 Public hearing

IBAC appeared before the Committee on 9 May 2022. During this 40-minute public hearing, there were a number of unresolved issues raised.

At the outset of the public hearing, the Chair stated that:

... for the purpose of this particular review we are not focused on individual matters. We are talking only about systemic frameworks and processes that exist for integrity agencies. Nor are we straying into the territory of matters which have not yet been resolved or are the subject of legal consideration or contemplation in any way, shape or form.¹¹

As a consequence of this limitation, the Commissioner stated he would have to:

...reassess the issues I wanted to address that I thought would be of assistance to the Committee.¹²

During the Commissioner's opening statement, the Chair interrupted three times to which the Commissioner finally protested the Chair's assessment of his opening statement:

No, I am speaking in sufficiently general terms, Madam Chair, to simply say I am not dealing here with theoretical options. These are real choices that the Commission makes.¹³

As previously established, there are only three reasons for the Committee to not disclose information. Therefore, the Chair's wide and sweeping limitations on discussion has no standing nor genuine basis in law.

This was acknowledged by the Commissioner on several further occasions during the public hearing as well as in written form to Committee members after the hearing:

With respect to the continued ruling of the Chair that questions cannot be asked about that matter as it arises within a current investigation, there is nothing in the statute governing the Committee's inquiry that precludes members of the committee asking and IBAC answering questions unless the disclosure of information concerning the witness's welfare would prejudice any IBAC investigation. Whether it would in fact do so, must be a matter for IBAC, not the Chair of the committee.¹⁴

The Commissioner correctly asserted that IBAC is responsible to interpret, more so than the Chair, any breach of information pertaining to an ongoing investigation. Despite this petitioning, the Chair denied the IBAC Commissioner the opportunity to determine what may prejudice or contravene an ongoing investigation.

Throughout the 40-minute public hearing, there were many instances of disruption from the Chair which caused the understandable frustration felt by the Commissioner and Opposition members. For example:

¹¹ Harriet Shing, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 17.

¹² Hon. Robert Redlich AM QC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 17.

¹³ *Ibid.*, p. 19.

¹⁴ Letter from Hon. Robert Redlich AM QC to Integrity and Oversight Committee members as published in <https://www.heraldsun.com.au/news/victoria/ibac-commissioner-robert-redlich-hits-out-at-being-gagged-in-parliamentary-probe/news-story/1e30b43302dce6a67dd0271644a6e09f>

Mr Rowswell: Thank you, Chair. Commissioner, if things are going as well as some may say in the witness welfare space, why then are there known cases of suicidal ideation and also people committing suicide—

The Chair: Mr Rowswell, I am going to have to pull you up again with the same general reminder to all committee members, and indeed witnesses, that we are not to stray into the subject matter of individual matters, individual inquiries or indeed matters that are still on foot.¹⁵

Further comments from the Chair's disruption include:

Mr Rowswell: Yes, thanks, Chair. Commissioner, you referenced Sandon and Watts in your opening remarks. Conscious of your guidance, Chair, as well, there has been a broadly reported circumstance where some witnesses have had their evidence heard in public and others in private, and I am keen to understand whether in relation to those witnesses—

The Chair: No, not in relation to those—just generally, please, Mr Rowswell.

Mr Rowswell: of which I am sure there are many—the evidence has been heard in private based on a decision that IBAC has made, or has it been instigated or can it be instigated in some cases by the legal representation of the witness?¹⁶

The Commissioner's attempt to answer questions were also interrupted constantly and overbearingly redirected by the rulings of the Chair. In one such example:

Comm. Redlich: ... Let us take the public examination of factional branch stacking. Because that is in the public domain does not mean—

The Chair: This has not yet been finalised, Commissioner.

Comm. Redlich: No, no. But I am speaking theoretically here, not about individuals.

The Chair: You have talked about a specific matter, and I would ask that you come back again to refer to general performance matters and not to specific investigations that are the subject of your remit.¹⁷

The most abrupt display of the Chair's questionable guidance was when the Chair shut down the public hearing for several minutes. Such a display caused public shock and frustration at the suppressive decision of the Chair.¹⁸

Mr Wells: Thanks, Commissioner. My questions are along the line that Mr Rowswell was asking but in a different way. I was interested in your answers to the Committee, especially 20.4—the examination can be held without causing unreasonable damage to a person's reputation. Is that the reason why Daniel Andrews was grilled in private rather than in public?

The Chair: Sorry, again, again, again—can we cut the feed, please.

Hearing suspended.¹⁹

¹⁵ Harriet Shing MP & Brad Rowswell MP, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 21.

¹⁶ *Ibid.*, p. 22.

¹⁷ Harriet Shing MP & Hon. Robert Redlich AM QC, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 22.

¹⁸ <https://www.theaustralian.com.au/nation/inquiry-livestream-stopped-over-daniel-andrews-query/news-story/bbdaf75b5fedc41c8520fdbbab3ba9f8>; <https://www.heraldsun.com.au/news/victoria/daniel-andrews-accused-of-a-disgraceful-coverup-by-quietly-shelving-a-parliamentary-inquiry-into-the-states-corruption-watchdog/news-story/acd710ef052473c1e31a03479993cda6>.

¹⁹ Harriet Shing MP & Hon. Kim Wells MP, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 24.

Although the Commissioner indicated a strong willingness to respond to both Mr Rowswell and Mr Wells' questions, the Chair did not afford this opportunity. As the record shows, this did not afford procedural fairness to the Commissioner nor respect the independence of the Commissioner, his agency or individual members of the Committee who should be able to ask any question to assist their individual input to the Committee's inquiry.

This calculated decision of the Chair was, in our view, an exercise of misguided authority that consequently raised broader concerns about the Chair's handlings of the public inquiry.

3.2 The Commissioner's request to be further heard

The Commissioner further expressed how he valued the opportunity to converse with the Committee, considering the public attention given to this inquiry and its focus on witness welfare. When matters were raised in relation to allegations of IBAC's witness welfare system, the Commissioner expressed his desire to clarify public allegations with the Committee:

As I have previously raised with the Chair and attempted to raise with the Committee at the hearing on Monday, 9 May, IBAC must have the opportunity to address the Committee, either in public or in private, on the matter which directly led to the Committee's decision of 9 February to hold an inquiry with a focus on witness welfare.²⁰

Given the Commissioner is best placed to determine what may or may not contravene an inappropriate disclosure of information relating to an ongoing investigation, and not the Committee Chair, it is reasonable to assert that the Committee should have allowed the Commissioner to address the matters which he deemed acceptable.

When Mr Wells asked the Commissioner if he would agree to future discussions, the Chair was quick to shut down this matter, although the Chair had previously indicated that opportunity would exist:

The Chair: We may yet have time if you have questions on notice or indeed that we come back. I note that the Commissioner has indicated that he would be happy to return to this particular forum for the purposes of answering further questions, and that might then provide you with another opportunity, Mr Wells.

Mr Wells: Can I just seek clarification on that?

The Chair: Yes.

Mr Wells: Is the Commissioner happy to come back in regard strictly to the-

The Chair: I would like to consider that with Committee if we can.

Mr Wells: witness welfare and then other matters that the Commissioner may wish to discuss?

The Chair: Let us resolve that as a Committee, and I look forward to being able to provide a form of words around that way in which you might be able to return to provide additional materials to this Committee.²¹

²⁰ Letter from Hon. Robert Redlich AM QC to Integrity and Oversight Committee members as published in <https://www.heraldsun.com.au/news/victoria/ibac-commissioner-robert-redlich-hits-out-at-being-gagged-in-parliamentary-probe/news-story/1e30b43302dce6a67dd0271644a6e09f>

²¹ Hon. Kim Wells & Harriet Shing, public hearing, Melbourne, 9 May 2022, *Transcript of evidence*, p. 25.

Despite the Commissioner's expressed desire in his letter to the Committee, Labor Government members of the Committee ensured that there was no further meeting, public or private, relating to this inquiry. It is clear that it was never the Chair's intention to engage IBAC in a further public or private hearing, opting for an invitation to provide a supplementary written submission only and avoiding the opportunity for direct engagement with Committee members.

It was deeply disappointing and damaging for Labor Government members of the Committee to act in this way. These actions undermined the stated purpose of the inquiry and damaged the important role of the IOC, on behalf of the Parliament, to hold integrity agencies accountable and seek the truth.

Recommendation 5: Integrity agency leaders should be afforded the opportunity to meet or present to the IOC when they so request, in any instance. The facilitation of this meeting should be the obligation and responsibility of the Committee Chair and Secretariat and must be undertaken as a matter of priority.

4. Conclusion

The stated intent of this inquiry and the process that ensued, including hearings, do not match. The recommendations contained within the Committee Report have been unreservedly affected by the limitations placed upon the inquiry process by Labor Government members of the Committee.

From the outset, Opposition members of the Committee envisaged an inquiry that carefully considered all evidence and achieved a balanced understanding from analysis and dialogue with both Victoria's integrity agencies and the witnesses that appeared before them. It is, sadly, a missed opportunity to not have gained a deeper understanding of witness' experiences through this process and therefore be in a position to provide recommendations in the Committee Report that ensure their welfare.

The Committee did not hear from witnesses about their welfare during their involvement with Victorian integrity agencies. The Committee refused to acquiesce to a request for a private meeting with Commissioner Redlich in response to public allegations about individual matters.

The Committee failed to understand that the multiplicity of individual submissions with similar experiences may be representative of systemic issues that need to be addressed if the welfare of witnesses in investigations by Victorian integrity agencies is to be safeguarded.

The Committee failed to achieve the expectations it set out for itself, but more importantly, it failed to fulfil its obligations to both the Parliament and people of Victoria.

Throughout the course of this inquiry, Opposition members have become aware of Labor Government members being directed by operatives within the Premier's Private Office (PPO). Opposition members of this Committee believe that the work of the IOC should be removed from party politics, as the work of this Committee is undertaken on behalf of the Victorian Parliament and people. Members of the Committee have an obligation to the Parliament and not the PPO.

Integrity is essential to the operation of this Committee. It is the view of Opposition members that Labor Government members of this Committee did not act with integrity during the course of this inquiry.

<p>Recommendation 6: Committee members must be required to disclose, at the earliest opportunity, any interference in Committee business that they become aware of – or are party to – by the PPO or any other politically aligned individual or body.</p>
