

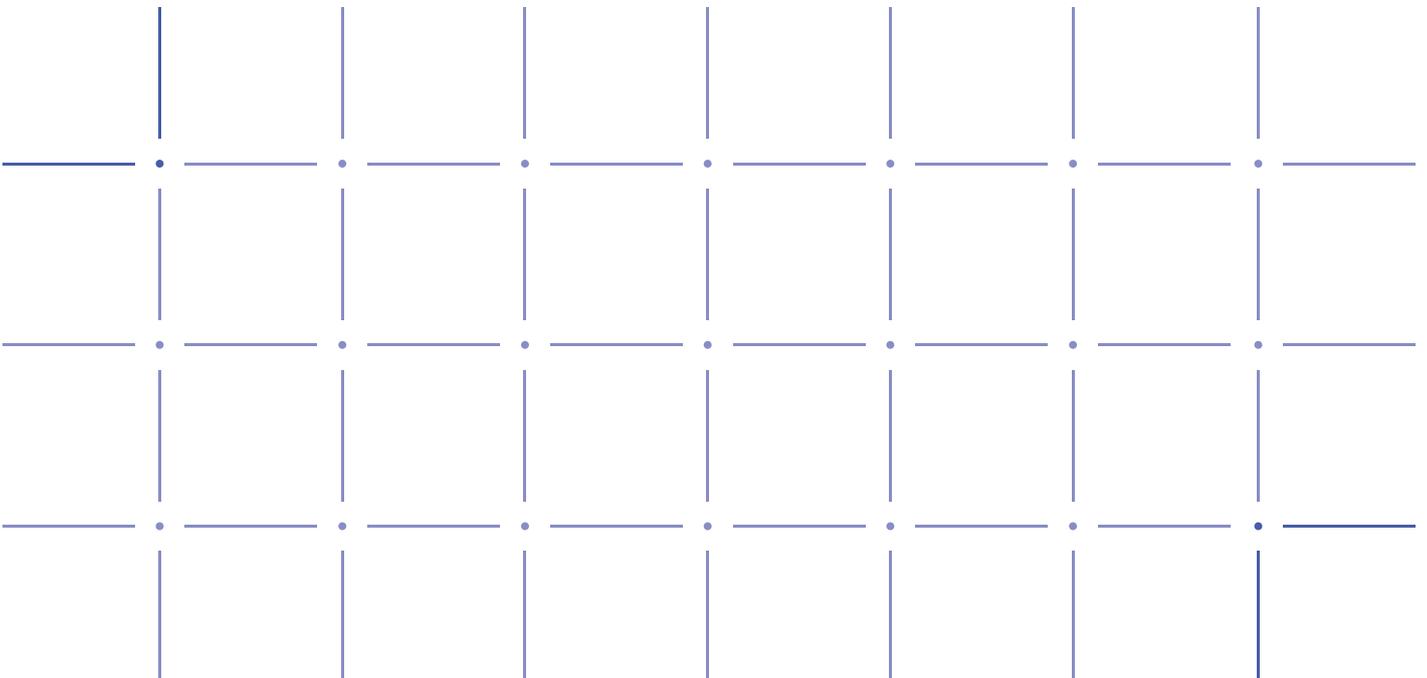


Integrity and Oversight Committee

Appointment of a person to conduct the independent performance audit of the Victorian Ombudsman

Report

November 2023





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About the Committee

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

The Committee comprises eight members of the Parliament of the Victoria ('Parliament') drawn from both Houses of Parliament.

Functions

The Committee is responsible for overseeing the Independent Broad-based Anti-corruption Commission, the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman (VO).

In accordance with s 7(1) of the *PC Act 2003* (Vic), the Committee's functions—as particularly relevant to the independent performance audit of the VO—include:

- monitoring and reviewing the VO's performance of its duties and functions
- reporting to both Houses of Parliament on any matter connected with the VO's performance of its duties and functions
- carrying out other functions conferred on the Committee by or under the *Ombudsman Act 1973* (Vic).

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Recommendation

RECOMMENDATION: That, in accordance with s 24D(1) of the *Ombudsman Act 1973* (Vic), the Legislative Council and Legislative Assembly appoint O'Connor Marsden & Associates Pty Ltd ('O'Connor Marsden'):

- a. to conduct the performance audit of the Victorian Ombudsman
- b. in accordance with the Agreement for the provision of services for the performance audit of the Victorian Ombudsman
- c. at the fixed-fee level of remuneration of \$231,000 (including GST) to be paid upon completion of the following:
 - \$46,200 (including GST) upon Parliament's acceptance of O'Connor Marsden's audit plan, representing 20 per cent of the total fee
 - \$69,300 (including GST) upon Parliament's acceptance of O'Connor Marsden's progress report, representing 30 per cent of the total fee
 - \$115,500 (including GST) upon Parliament's acceptance of the final draft report, representing 50 per cent of the total fee.

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Appointment of a person to conduct the independent performance audit of the Victorian Ombudsman

1.1 Legislative requirements

Appointed under s 3 of the *Ombudsman Act 1973 (Vic)* ('*VO Act 1973 (Vic)*'), the Victorian Ombudsman (VO) is an independent officer of the Parliament of Victoria. They manage complaints regarding the administrative actions of Victorian government authorities—including government departments, statutory bodies, local governments and private entities performing functions on behalf of the government.¹

The *VO Act 1973 (Vic)* requires an independent performance auditor to be appointed at least once every four years to conduct an independent performance audit of the VO. The Committee is responsible under this Act for recommending, to both Houses of Parliament, the appointment of a suitably qualified person to undertake the performance audit.

Section 24D of the *VO Act 1973 (Vic)* provides, in part, that:

- (1) A suitably qualified person may be appointed by resolution of the Legislative Council and Legislative Assembly, on the recommendation of the Committee, as an independent performance auditor of the VO, other than the following—
 - (a) the Auditor-General
 - (b) any other Victorian Auditor-General's Office officer, within the meaning of s 3(1) of the *Audit Act 1994 (Vic)*
 - (c) a person engaged by the Auditor-General under s 7 of the *Audit Act 1994 (Vic)* to assist in the performance of a function under that Act
 - (d) a person to whom the Auditor-General has delegated a power or function under s 8 of the *Audit Act 1994 (Vic)*.
- (2) The Independent performance auditor—
 - (a) is appointed on such terms and conditions and is entitled to such remuneration as are determined by the Committee
 - (b) in conducting the audit, must comply with directions as to the audit given by the Committee.

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.

- (3) Remuneration payable under the appointment is paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.
- (4) The independent performance auditor must conduct a performance audit at least once every four years to determine if the VO is achieving its objectives effectively, economically and efficiently and in compliance with the *VO Act 1973* (Vic).
- (5) Subject to any directions given by the Committee, the independent performance auditor may exercise any powers of the Auditor-General under pt 7 of the *Audit Act 1994* (Vic) to the extent necessary to conduct the audit as if a reference in that part to the Auditor-General includes a reference to the independent performance auditor.
- (6) The independent performance auditor may apply additional auditing and assurance standards applied by the Auditor-General under s 78(2) of the *Audit Act 1994* (Vic) while undertaking the performance audit of the VO.

Section 24E(4) of the *VO Act 1973* (Vic) provides that the independent performance auditor must transmit their report to each House of Parliament within 7 sitting days of completing the report.

Under s 24E(2)(a) of the *VO Act 1973* (Vic), the independent performance auditor may include any information and recommendations it considers relevant.

1.2 Evaluation process

The independent performance audit is the first occasion on which the VO has been audited in accordance with s 24D of the *VO Act 1973* (Vic). On 1 May 2023, the Committee resolved to establish an Audit Subcommittee ('the Subcommittee') to assist with the tender evaluation process and day-to-day carriage of the performance audit.

The Committee Secretariat, in consultation with Parliament's Department of Parliamentary Services and a third-party technical expert, Ms Julianna Demetrius, prepared the request for tender, probity and evaluation documents, audit specification, proposed terms and conditions, and other related documents, required to appoint an independent performance auditor.

On 2 October 2023, the Committee resolved to conduct a select tender process to appoint an independent performance auditor to undertake the performance audit of the VO in 2024.

The request for tender was released on 4 October 2023 via Tenderlink and closed on 1 November 2023. On 10 November 2023, the Subcommittee assessed the submissions in accordance with the evaluation criteria outlined in the request for proposals. The Subcommittee short-listed candidates and conducted interviews as appropriate. The Secretariat conducted reference checks and made further enquiries on behalf of the Subcommittee.

1.3 Performance auditor's responsibilities

As specified in the request for tender, the independent performance auditor's statutory objective is to determine whether the VO is achieving its objectives effectively, economically and efficiently and in compliance with the *VO Act 1973* (Vic).

The auditor is to review the VO's performance during the three-year period ending 30 June 2023. The auditor is to make findings and recommendations with respect to the audit specification (see Appendix A) in accordance with ss 24D–24E of the *VO Act 1973* (Vic), taking into account the impact of the COVID-19 pandemic during the 2020/21, 2021/22 and 2022/23 periods.

The performance auditor's responsibilities, for the mutual benefit of Parliament and the auditor, include (among other things):

- providing the services required by Parliament in the manner set out in the audit specification
- not being involved in a position that may or does give rise to an actual, potential or perceived conflict of interest with their duty to independently perform the services in accordance with the *VO Act 1973* (Vic)
- complying with s 24D(1) of the *VO Act 1973* (Vic), which requires that a person appointed by Parliament as a performance auditor must not be engaged by the Auditor-General to assist the Auditor-General under s 7 of the *Audit Act 1994* (Vic), or a person who holds a delegation from the Auditor-General under s 8 of the *Audit Act 1994* (Vic), or a person engaged by the VO to provide services
- undertaking the audit and providing evidence that it has been conducted in accordance with the relevant Australian auditing and assurance standards, including those applied by the Auditor-General under s 78(2) of the *Audit Act 1994* (Vic)
- demonstrating a commitment and ability to work in collaboration with Parliament over the term of any agreed contractual period to continuously seek improvements in value, efficiency and productivity in connection with providing the services
- evidencing a preparedness to work with Parliament to continually identify opportunities for improvement in the quality and level of service provided to Parliament.

1.4 Time line and key deliverables

The Committee has specified that the independent performance auditor is to provide the following project deliverables in the inaugural performance audit of the VO:

- (a) specify the performance criteria and the qualitative and quantitative measures against which the VO has been assessed
- (b) provide an independent assessment of the VO's performance and set out the evidence supporting the audit's findings and recommendations

- (c) provide an overall opinion on whether the VO has complied with the *VO Act 1973* (Vic)
- (d) provide an overall opinion on whether the VO is achieving its objectives effectively, economically and efficiently.

The Committee has mandated the following time line in respect of the performance audit and key project deliverables:

- (a) December 2023—Contract service delivery commences
- (b) January 2024
 - (i) Audit plan submitted for the Committee’s approval
 - (ii) Audit fieldwork commences
- (c) April 2024—Progress report submitted
- (d) June 2024
 - (i) First draft audit report submitted
 - (ii) Procedural fairness process under s 24E(3) of the *VO Act 1973* complied with
 - (iii) Final audit report submitted
- (e) July 2024—Final audit report tabled in Parliament.

1.5 Recommended appointment

The Committee resolved on 27 November 2023 to recommend the appointment of O’Connor Marsden & Associates Pty Ltd (‘O’Connor Marsden’) to conduct the performance audit of the VO.

In accordance with the request for tender and evaluation process, the Committee considers that O’Connor Marsden has the requisite experience in auditing, and has demonstrated a sound understanding of audit approaches relevant to successfully undertaking the performance audit of the VO.

The Committee recommends that O’Connor Marsden be appointed for the purpose of undertaking the performance audit of the VO at the fixed total fees tendered for the audit’s three key project deliverables, as outlined in the recommendation below.

1.6 Recommendation

The Committee's recommendation is as follows:

RECOMMENDATION: That, in accordance with s 24D(1) of the *Ombudsman Act 1973* (Vic), the Legislative Council and Legislative Assembly appoint O'Connor Marsden & Associates Pty Ltd ('O'Connor Marsden'):

- a. to conduct the performance audit of the Victorian Ombudsman
- b. in accordance with the Agreement for the provision of services for the performance audit of the Victorian Ombudsman
- c. at the fixed-fee level of remuneration of \$231,000 (including GST) to be paid upon completion of the following:
 - \$46,200 (including GST) upon Parliament's acceptance of O'Connor Marsden's audit plan, representing 20 per cent of the total fee
 - \$69,300 (including GST) upon Parliament's acceptance of O'Connor Marsden's progress report, representing 30 per cent of the total fee
 - \$115,500 (including GST) upon Parliament's acceptance of the final draft report, representing 50 per cent of the total fee.

**Adopted by the Integrity and Oversight Committee
Parliament of Victoria, East Melbourne
27 November 2023**

Appendix A

Audit specification— independent performance audit of the Victorian Ombudsman 2024

Audit Specification—Independent performance audit of the Victorian Ombudsman 2024

1. Audit objective

To assess whether in carrying out its statutory functions and related activities, the Victorian Ombudsman and the Office of the Ombudsman are meeting the objectives of the *Ombudsman Act 1973* (Vic) (**Ombudsman Act**).

The objectives of the Ombudsman Act are—

- (a) to provide a timely, efficient, effective, flexible and independent means of resolving complaints about administrative action of authorities; and
- (b) to provide for the identification, investigation, exposure and prevention of maladministration; and
- (c) to assist in the identification, investigation, exposure and prevention of improper conduct and corrupt conduct; and
- (d) to assist in improving the quality of administration and complaint handling practices and procedures of authorities; and
- (e) to facilitate the education of the Victorian community and the public sector about matters relating to the functions of the Ombudsman.

2. Audit specification

The audit will be conducted in accordance with the Australian Auditing and Assurance Standards Board's Australian Standards (ASBA Standards) on Assurance Engagements, namely:

- 3100 Compliance Engagements; and
- 3500 Performance Engagements.

In accordance with ss 24D–24E of the Ombudsman Act, the auditor is required to review the Victorian Ombudsman's performance during the three-year period ending on 30 June 2023 and make findings and recommendations with respect to the following specification. In conducting the review, the impact of the COVID-19 pandemic during the 2020-21, 2021-22 and 2022-23 reporting periods will be given due consideration.

In assessing whether and how the Victorian Ombudsman has met the objectives of the Ombudsman Act, the audit specification will focus on performance across four domains:

1. performance of principal and other statutory functions
2. corporate governance and planning
3. business processes and performance improvement
4. workforce suitability and capability

The auditor will have regard to the performance indicators outlined in each of the four domains as outlined in section 2.1 below.

2.1 Indicators of performance

Performance of principal and other statutory functions

- complaints about administrative action of authorities are resolved in a flexible, fair and independent way

- authorities are assisted to improve the quality of their administration and complaint handling practices and procedures
- serious maladministration is identified, investigated and exposed
- improper and corrupt conduct is identified, investigated and exposed
- strategies for preventing maladministration, improper and corrupt conduct are identified
- systemic problems in public administration and related solutions are identified
- investigations are undertaken when actions or decisions are identified as incompatible with human rights
- responsibilities under the *Public Interest Disclosures Act 2012* (Vic) are effectively performed
- information, education and training to the Victorian community and public sector which promotes fair and reasonable decision making and prevention of improper and corrupt conduct is regularly delivered
- the majority of recommendations made are adopted by relevant authorities
- referrals to the Independent Broad-based Anti-corruption Commission (IBAC), Victorian Inspectorate and Information Commissioner are made in accordance with statutory requirements
- active engagement occurs with diverse groups within the Victorian community (including Aboriginal people, people from culturally and linguistically diverse communities, people living in regional and remote communities) to help increase their knowledge of, and access to, the Victorian Ombudsman
- the Victorian Ombudsman's own complaint handling systems are accessible and responsive to the needs of people with disability
- information about the performance of its legislative functions and outcomes achieved for the Victorian community are published

Corporate governance and planning

- adequate processes are in place for making sound and impartial decisions about operational priorities and a method for evidencing such decision-making exists
- compliance with all statutory reporting obligations is met
- robust systems are in place for identifying and managing internal and external risks across relevant domains
- stakeholders/relevant parties involved in the execution of functions are effectively managed (including persons of interest and witnesses in hearings and investigations)
- strategic planning processes (including, for example, those related to the VO's annual plan) are robust and responsive to the external environment and include measures for assessing whether the Victorian Ombudsman has attained (and how it will maintain) the confidence of the public
- good practice initiatives (including investigations, research and projects) undertaken by like bodies nationally and internationally are identified and considered for adoption
- internal business plans and staff work plans demonstrate how strategic objectives will be met and are well understood by staff
- evidence-based submissions are made to support budget bids
- performance against strategic goals is monitored, measured and publicly reported on

Business processes and performance

- structured and evidence-based processes are in place for prioritising work against its statutory objectives

- staff participate in suitable induction processes when they join the office or change roles
- staff receive regular on-the-job supervision and participate in periodic performance management processes
- a clear policy and procedural framework exists to guide staff in the performance of their work to ensure quality and productivity
- technology systems are used to support the work of staff and promote business efficiency
- business processes are regularly reviewed to improve performance and related changes are made to operations when appropriate
- planning is undertaken to ensure capability building for future needs
- intelligence capability exists to enable staff to detect trends in complaints and inform operational activities, as well as to assist authorities to learn from their complaints
- adequate processes are used to measure and manage the costs of performing statutory functions, including how potential savings are identified, costs and waste are reduced

Workforce suitability and capability

- effective systems for ensuring the probity, integrity and suitability of staff are in place
- existence of a strong integrity culture which is regularly promoted and reinforced
- strategies are implemented to promote staff wellbeing, safety and resilience and related measures to assess their success (e.g., regular culture surveys)
- effective communication channels exist between staff, management and the executive to report and address staff concerns
- sound systems, policies and procedures for handling complaints and public interest disclosures by staff as well as other internal grievances are in place
- fair, equitable and inclusive staff recruitment processes are utilised
- effective staff retention, succession and transition planning occurs, including a comprehensive staff training programme, on-the-job learning, rotation and professional development and leadership opportunities being offered
- key workforce gaps are identified and addressed through targeting recruitment and training
- appropriate internal controls exist for engaging and managing external contractors, including compliance with the Victorian Public Sector Commission's Guidance for managers engaging contractors and consultants.

Integrity and Oversight Committee

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