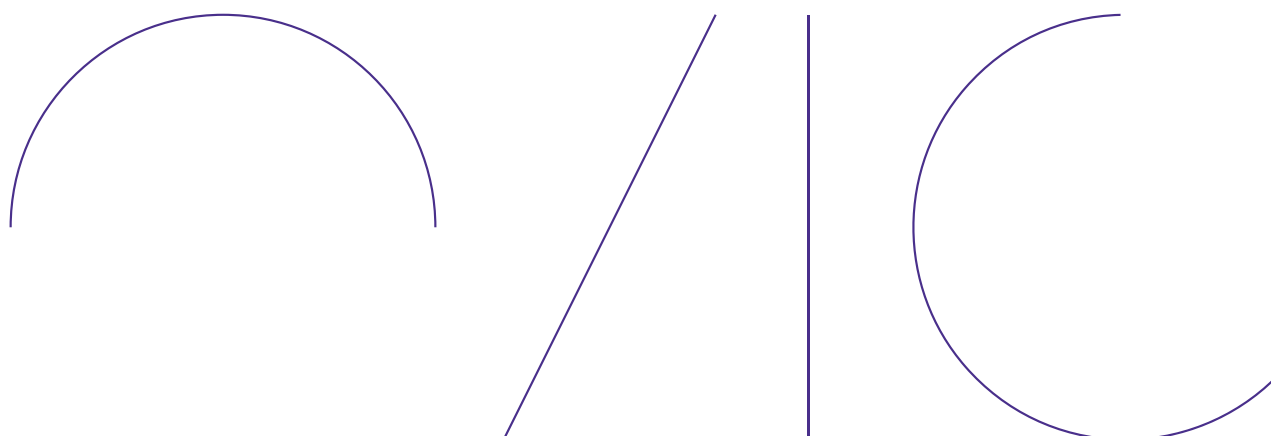




Part IA – Office of the Victorian Information Commissioner

Freedom of Information Guidelines

FREEDOM OF INFORMATION



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References to legislation

All legislative references are to the *Freedom of Information Act 1982* (Vic) (**the Act**) unless otherwise stated.

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Section 6B – Establishment of the Office of the Victorian Information Commissioner

Extract of legislation

6B Establishment of the Office of the Victorian Information Commissioner

- (1) There is to be an Office of the Victorian Information Commissioner.
- (2) The Office of the Victorian Information Commissioner consists of—
 - (a) the Information Commissioner; and
 - (b) the Public Access Deputy Commissioner; and
 - (c) the Privacy and Data Protection Deputy Commissioner appointed under section 8H of the **Privacy and Data Protection Act 2014**; and
 - (d) the staff employed and other persons engaged under section 6Q.
- (3) Except where expressly provided in this Act or the Privacy and Data Protection Act 2014—
 - (a) the Information Commissioner is not subject to the direction or control of the Minister in respect of the performance of the Information Commissioner's duties and functions and the exercise of the Information Commissioner's powers; and
 - (b) the Public Access Deputy Commissioner is not subject to the direction or control of the Minister in respect of the performance of the Deputy Commissioner's duties and functions and the exercise of the Deputy Commissioner's powers.

Guidelines

Establishing the Office of the Victorian Information Commissioner

- 1.1. Section 6B establishes the Office of the Victorian Information Commissioner (**OVIC**) and its staff, including:
 - the Information Commissioner;
 - the Public Access Deputy Commissioner;
 - the Privacy and Data Protection Deputy Commissioner; and
 - OVIC staff.

- 1.2. OVIC is the primary regulator and source of independent advice to the community and to the Victorian government about how the public sector collects, uses, and shares information.
- 1.3. OVIC’s goal is to embed in the Victorian public sector a culture that promotes fair public access to information while ensuring its proper use and protection. OVIC aims to build community trust in the Government’s handling of information.

Bringing together FOI, privacy, and information security functions

- 1.4. OVIC combined and replaced the Office of the Freedom of Information Commissioner and the Commissioner for Privacy and Data Protection to oversee both the Act and the [Privacy and Data Protection Act 2014 \(Vic\)](#).¹ This was a significant change which brought together independent FOI, information privacy, and information security regulatory functions for the first time in Victoria.
- 1.5. As one organisation, OVIC brings these functions and powers together, under the Information Commissioner who is supported by the Public Access Deputy Commissioner and the Privacy and Data Protection Deputy Commissioner.

OVIC’s independence

- 1.6. OVIC is an independent regulator. This means the Victorian Government cannot direct or control OVIC to make certain decisions, act in a certain way, or use its powers in a certain way.
- 1.7. To make sure OVIC has independence from the Government, the Information Commissioner and the Public Access Deputy Commissioner are not subject to the direction or control of the Minister when performing duties and functions, and exercising powers under the Act.²
- 1.8. The ‘Minister’ refers to the Minister responsible for the Act. Under the Premier’s General Orders, the Victorian Attorney General is the Minister responsible for the Act.³

¹ The Commission for Privacy and Data Protection was an independent regulator with oversight over the [Privacy and Data Protection Act 2014 \(Vic\)](#).

² [Freedom of Information Act 1982 \(Vic\)](#), section 6B(3).

³ General Order dated 16 April 2021, [Allocation of responsibility for all Victorian acts of Parliament effective 16 April 2021](#). For information on the Premier’s General Orders, visit: <https://www.vic.gov.au/general-orders>.

Section 6C – Appointment of the Information Commissioner

Extract of legislation

6C Appointment of the Information Commissioner

- (1) The Governor in Council, on the recommendation of the Minister, may appoint an eligible person as the Information Commissioner.
- (2) The following persons are not eligible to be appointed as the Information Commissioner—
 - (a) a person who is a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory;
 - (b) a person who is a member of a council.
- (3) A person may hold office as Information Commissioner for not more than 2 terms (whether consecutive terms or otherwise).

Guidelines

Appointing the Information Commissioner

- 1.1. Section 6C describes how and who may be the Victorian Information Commissioner, and for how long they may hold the role.
- 1.2. To appoint the Information Commissioner, the:
 - Minister must recommend an eligible person to the Governor in Council; and then
 - Governor in Council may appoint that person.⁴
- 1.3. The Governor in Council refers to the Governor acting on the advice of the Executive Council.⁵

⁴ [Freedom of Information Act 1982](#) (Vic), section 6C(1).

⁵ Governor of Victoria, 'Constitutional responsibilities, Executive Council', [The appointment, responsibilities and powers of the Governor of Victoria, the Hon. Linda Dessau AC](#).

Who is an ‘eligible person’?

- 1.4. Only ‘eligible persons’ may be appointed as the Information Commissioner.
- 1.5. The following persons are not eligible and cannot be appointed as the Information Commissioner:
- a Member of Parliament of Victoria or the Commonwealth or another State or Territory; and
 - a member of a council.⁶
- 1.6. A ‘member of a council’ means a member of any municipal Council (including the Melbourne City Council and the Greater Geelong City Council).⁷

Length of term

- 1.7. A person appointed as the Information Commissioner may hold office for a maximum of two terms (whether the person serves the terms back-to-back or not).
- 1.8. One term is a maximum of five years.⁸
- 1.9. This means a person who is appointed as the Information Commissioner may act in that role for a maximum period of 10 years.

More information

[Section 6E – Terms and conditions of appointment of Information Commissioner](#)

⁶ [Freedom of Information Act 1982](#) (Vic), section 6C(2).

⁷ [Local Government Act 2020](#) (Vic), section 3(1).

⁸ [Freedom of Information Act 1982](#) (Vic), section 6E(1) defines how long a term is, which is a maximum of five years.

Section 6D – Appointment of Public Access Deputy Commissioner

Extract of legislation

6D Appointment of Public Access Deputy Commissioner

- (1) The Governor in Council may appoint an eligible person as the Public Access Deputy Commissioner.
- (2) A person is not eligible for appointment as the Public Access Deputy Commissioner if the person is—
 - (a) a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (b) a member of a council.
- (3) A person may hold office as Public Access Deputy Commissioner for not more than 2 terms (whether consecutive terms or otherwise).

Guidelines

Appointing the Public Access Deputy Commissioner

- 1.1. The Governor in Council may appoint an eligible person as the Public Access Deputy Commissioner.⁹ Unlike appointing the Information Commissioner, the Governor in Council does not need the Minister’s recommendation to appoint someone as the Public Access Deputy Commissioner.¹⁰
- 1.2. The Governor in Council refers to the Governor acting on the advice of the Executive Council.¹¹

⁹ [Freedom of Information Act 1982](#) (Vic), section 6D(1).

¹⁰ [Freedom of Information Act 1982](#) (Vic), section 6C(1).

¹¹ Governor of Victoria, ‘Constitutional responsibilities, Executive Council’, [The appointment, responsibilities and powers of the Governor of Victoria, the Hon. Linda Dessau AC](#).

Who is an eligible person?

- 1.3. Only 'eligible persons' may be appointed as the Public Access Deputy Commissioner.
- 1.4. The following persons are not eligible to be, and cannot be appointed as, the Public Access Deputy Commissioner:
 - a Member of Parliament of Victoria or the Commonwealth or another State or Territory; and
 - a member of a council.¹²
- 1.5. A 'member of a council' means a member of any municipal Council (including the Melbourne City Council and the Greater Geelong City Council).¹³

Length of term

- 1.6. A person appointed as the Public Access Deputy Commissioner may hold office for a maximum of two terms (whether the person serves the terms back-to-back or not).
- 1.7. One term is a maximum of five years.¹⁴
- 1.8. This means a person appointed as the Public Access Deputy Commissioner may act in that role for a maximum period of 10 years.

More information

[Section 6F – Terms and conditions of appointment of Public Access Deputy Commissioner](#)

¹² [Freedom of Information Act 1982](#) (Vic), section 6D(2).

¹³ [Local Government Act 2020](#) (Vic), section 3(1).

¹⁴ [Freedom of Information Act 1982](#) (Vic), section 6F(1) defines how long a term is, which is a maximum of five years.

Section 6E – Terms and conditions of appointment of Information Commissioner

Extract of legislation

6E Terms and conditions of appointment of Information Commissioner

- (1) The appointment of the Information Commissioner is to be for the period, not exceeding 5 years, set out in the instrument of appointment.
- (2) Subject to this Part, the Information Commissioner holds office on the terms and conditions determined by the Governor in Council.
- (3) Subject to section 6C(3), the Information Commissioner may be reappointed.
- (4) The Information Commissioner is entitled to leave of absence as determined by the Governor in Council.
- (5) The Information Commissioner must not directly or indirectly engage in paid employment outside the duties of the office of Information Commissioner.
- (6) The **Public Administration Act 2004** does not apply to the Information Commissioner in respect of the Office of the Victorian Information Commissioner except as provided for in section 16 of that Act.

Guidelines

Terms and conditions of the Information Commissioner’s appointment

- 1.1. Section 6E outlines the terms and conditions of the Information Commissioner’s appointment. This includes the length of a term, the terms and conditions of the appointment, leaves of absence, the restriction on engaging in other paid employment, and the application of the [Public Administration Act 2004](#) (Vic) (**Public Administration Act**).

Length of one term and reappointment

- 1.2. An eligible person may serve as the Information Commissioner for a maximum of two terms (10 years maximum).¹⁵ The Information Commissioner’s instrument of appointment must outline how long they will serve for in that term (noting one term is a maximum of five years).¹⁶
- 1.3. The Governor in Council may reappoint a person as the Information Commissioner if that person has not served more than two terms.¹⁷

Prohibition on other employment while serving as Information Commissioner

- 1.4. The Information Commissioner must not directly or indirectly engage in paid employment outside of the duties of the Information Commissioner.¹⁸ For example, the Information Commissioner cannot also work for a private business or do any other kind of paid work while that person is serving as the Information Commissioner.
- 1.5. Restricting secondary employment supports and enhances the Information Commissioner’s independence by avoiding conflicts of interest between the Information Commissioner’s statutory role and any other paid work.

The Public Administration Act

- 1.6. The Public Administration Act, apart from section 16, does not apply to the Information Commissioner regarding the Office of the Victorian Information Commissioner (**OVIC**).¹⁹
- 1.7. The purpose of the Public Administration Act is to provide a framework for good governance in the Victorian public sector and for public administration generally in Victoria.²⁰

¹⁵ [Freedom of Information Act 1982](#) (Vic), [section 6C\(3\)](#) and section 6E(1).

¹⁶ [Freedom of Information Act 1982](#) (Vic), section 6E(1).

¹⁷ [Freedom of Information Act 1982](#) (Vic), section 6E(3).

¹⁸ [Freedom of Information Act 1982](#) (Vic), section 6E(5).

¹⁹ [Freedom of Information Act 1982](#) (Vic), section 6E(6).

²⁰ [Public Administration Act 2004](#) (Vic), section 1(a).

- 1.8. The purpose of section 6E(6) is to enhance the Information Commissioner’s independence from the Government by clarifying that the Public Administration Act only applies to the Information Commissioner in relation to employing OVIC staff.
- 1.9. Section 16(1)(i) of the Public Administration Act provides that the Information Commissioner, in relation to OVIC, has the functions of a public service body Head in relation to OVIC employees.
- 1.10. As a public service body Head, the Information Commissioner has all the rights, powers, authorities, and duties of an employer regarding OVIC and OVIC staff.²¹ In exercising these rights, authorities or duties, the Information Commissioner must do so in accordance with:
- the public sector values;
 - any binding code of conduct;
 - the public sector employment principles;
 - standards issued by the Victorian Public Sector Commission; and
 - any other relevant provisions of the PA Act or the regulations.²²
- 1.11. The Information Commissioner is not subject to direction in relation to the exercise of their employer powers noted above regarding any individual; the Information Commissioner must act independently.²³

More information

[Section 6Q – Staff](#)

²¹ [Public Administration Act 2004](#) (Vic), section 20(1).

²² [Public Administration Act 2004](#) (Vic) section 20(3); For more information on the Victorian Public Sector Commission including the Victorian Public Sector Values and Principles, visit the Victorian Public Sector Commission’s [website](#).

²³ [Public Administration Act 2004](#) (Vic) section 15.

Section 6F – Terms and conditions of appointment of Public Access Deputy Commissioner

Extract of legislation

6F Terms and conditions of appointment of Public Access Deputy Commissioner

- (1) The appointment of the Public Access Deputy Commissioner is to be for the period, not exceeding 5 years, set out in the instrument of appointment.
- (2) Subject to this Part, the Public Access Deputy Commissioner holds office on the terms and conditions determined by the Governor in Council.
- (3) Subject to section 6D(3), the Public Access Deputy Commissioner may be reappointed.
- (4) The Public Access Deputy Commissioner is entitled to leave of absence as determined by the Governor in Council.
- (5) The Public Access Deputy Commissioner must not directly or indirectly engage in paid employment outside the duties of the office of Public Access Deputy Commissioner.

Guidelines

Terms and conditions of the Public Access Deputy Commissioner's appointment

- 1.1. Section 6F outlines the terms and conditions of the Public Access Deputy Commissioner's appointment. This includes the length of a term, the terms and conditions of appointment, leaves of absence, and the restriction on engaging in other paid employment.

Length of one term and reappointment

- 1.2. An eligible person may serve as the Public Access Deputy Commissioner for a maximum of two terms (10 years maximum).²⁴ The Public Access Deputy Commissioner's instrument of appointment must outline how long they will serve for in that term (noting one term is a maximum of five years).²⁵
- 1.3. The Governor in Council may reappoint a person as the Public Access Deputy Commissioner if that person has not served more than two terms.²⁶

Prohibition on other employment while serving as Public Access Deputy Commissioner

- 1.4. The Public Access Deputy Commissioner must not directly or indirectly engage in paid employment outside of the duties of the Public Access Deputy Commissioner.²⁷ For example, the Public Access Deputy Commissioner cannot also work for a private business or do any other kind of paid work while that person is serving as the Public Access Deputy Commissioner.
- 1.5. Restricting secondary employment supports and enhances the Public Access Deputy Commissioner's independence by avoiding conflicts of interest between the Public Access Deputy Commissioner's statutory role and any other paid work.

²⁴ [Freedom of Information Act 1982](#) (Vic), [section 6D\(3\)](#) and section 6F(1).

²⁵ [Freedom of Information Act 1982](#) (Vic), section 6F(1).

²⁶ [Freedom of Information Act 1982](#) (Vic), section 6F(3).

²⁷ [Freedom of Information Act 1982](#) (Vic), section 6F(5).

Section 6G – Functions of the Information Commissioner

Extract of legislation

6G Functions of the Information Commissioner

- (1) The Information Commissioner has the following functions—
 - (a) the functions set out in section 6I;
 - (b) any other functions conferred on the Information Commissioner by or under this Act;
 - (c) the functions conferred on the Information Commissioner by or under the **Privacy and Data Protection Act 2014** or any other Act.
- (2) The Information Commissioner must perform functions and exercise powers under this or any other Act with as little formality and technicality as possible.

Guidelines

The Information Commissioner’s functions

- 1.1. The Information Commissioner’s functions include those outlined in [section 6I](#) and any other functions conferred on the Information Commissioner by or under the Act.²⁸ The Information Commissioner also has the functions conferred on them by or under the [Privacy and Data Protection Act 2014](#) (Vic)²⁹ or any other Act.

Performing functions with as little formality and technicality as possible

- 1.2. The Information Commissioner and the Public Access Deputy Commissioner must perform their functions and exercise their powers with as little formality and technicality as possible.³⁰

²⁸ [Freedom of Information Act 1982](#) (Vic) sections 6G(1)(a) and 6G(1)(b).

²⁹ For example, the Information Commissioner’s privacy and information security functions are outlined in section 8A of the [Privacy and Data Protection Act 2014](#) (Vic).

³⁰ [Freedom of Information Act 1982](#) (Vic) section 6G(2) and [section 6H](#).

- 1.3. While the Information Commissioner has a general obligation to reduce formality and technicality when performing their role generally, they also have specific obligations to avoid technicality and formality in conducting reviews and handling complaints.³¹
- 1.4. The purpose of the requirement to perform functions and exercise powers with as little formality and technicality as possible is to ensure the Information Commissioner can act informally and flexibly under the Act, where appropriate. The Information Commissioner may use their resources more efficiently and effectively to increase the public's access to rights, benefits, and services under the Act by reducing strict adherence to formal processes and procedures which may not be appropriate in every instance.³²
- 1.1. Reducing formality and technicality may involve:
 - using plain language;
 - developing informal processes or procedures to increase access to services and benefits; and
 - adopting flexible procedures to best fit the circumstances.

For example, in relation to conducting reviews in accordance with Part VI, the Office of the Victorian Information Commissioner (OVIC)³³ attempts to informally resolve the review before proceeding to a formal review process and OVIC review decision.

The decision to attempt informal resolution is discretionary. Not all review applications will be suitable for informal resolution.

Informal resolution involves identifying what the applicant is seeking or trying to achieve with their freedom of information request and liaising with both the applicant and the agency to try and find a resolution that works for both parties.

More specifically, the informal resolution process involves finding and presenting resolution options to both parties for their consideration, including:

³¹ [Freedom of Information Act 1982](#) (Vic) [section 49H\(1\)](#) and [section 61I\(3\)](#).

³² The requirement to act with as little formality and technicality is a common requirement for civil and administrative tribunals to facilitate access to justice by conducting matters quickly and efficiently. For example, the Victorian Civil and Administrative Tribunal has a fair hearing obligation, which includes the requirement to conduct hearings with as little formality and technicality, speed and a proper consideration of the matters before it permit; Victorian Civil and Administrative Tribunal, 'Our fair hearing obligation', [What VCAT does](#).

³³ [Section 6I](#) sets out the functions of the Information Commissioner and the Public Access Deputy Commissioner. Under Part VI, both the Information Commissioner and the Public Access Deputy Commissioner are responsible for conducting reviews of decisions made by agencies and Ministers. The Information Commissioner may delegate review functions to these staff under [section 6R](#). This example collectively refers to the Information Commissioner, the Public Access Deputy Commissioner and staff as the OVIC unless otherwise stated.

- providing a preliminary view to a party on the merits of a review application supported by a published de-identified decision made by the Information Commissioner or Public Access Deputy Commissioner, or OVIC guidance material;
- providing the parties with an opportunity to respond to a preliminary view and provide any further information;
- providing the parties with an opportunity to narrow the scope of the review, clarify a request or provide further information regarding the basis for making a decision;
- providing an applicant with information about other options to obtain access to the information they seek;
- inviting an agency or Minister to disclose a document or make a fresh decision to disclose more documents or information to an applicant; and
- reviewing the document and establishing the information an applicant seeks is not in the document; or
- when it is likely the Information Commissioner or Public Access Deputy Commissioner will make the same decision as the agency, OVIC encourages an applicant to reconsider their application and provide them with the opportunity to discontinue their application.

Positive outcomes of informal resolution include:

- the efficient resolution of a review application with both parties agreeing with the outcome;
- narrowing the scope of a review application and reducing the time required to finalise the review;
- an agency making a fresh FOI decision or releasing more documents under or outside of the Act; and
- an applicant gaining a better understanding of the matter or receiving advice about other ways to access the information they are seeking.

More information

[Section 6I – Freedom of information functions](#)

[Section 6H – Functions of the Public Access Deputy Commissioner](#)

Section 6H – Functions of the Public Access Deputy Commissioner

Extract of legislation

6H Functions of the Public Access Deputy Commissioner

- (1) The Public Access Deputy Commissioner has the functions set out in section 6I(2) and any function conferred on the Information Commissioner under this Act other than—
 - (a) a function conferred on the Information Commissioner by or under the **Privacy and Data Protection Act 2014** or any other Act; or
 - (b) a function of the Information Commissioner referred to in section 6I(1); or
 - (c) a function of the Information Commissioner referred to in section 6R; or
 - (d) issuing directions under section 6S; or
 - (e) a function of the Information Commissioner referred to in section 63G.
- (2) The Public Access Deputy Commissioner must perform functions and exercise powers under this or any other Act with as little formality and technicality as possible.

Guidelines

The Public Access Deputy Commissioner’s functions

- 1.1. The Public Access Deputy Commissioner has the same freedom of information (**FOI**) functions that the Information Commissioner has under the Act.³⁴

See [section 6I](#) for information about the Information Commissioner’s and Public Access Deputy Commissioner’s FOI functions.

- 1.2. However, there are some functions of the Information Commissioner that the Public Access Deputy Commissioner does not have. The Public Access Deputy Commissioner cannot:

³⁴ [Freedom of Information Act 1982](#) (Vic), section 6H(1).

- perform a function under the [Privacy or Data Protection Act 2014](#) (Vic), which means the Public Access Deputy Commissioner may only perform FOI functions;
- employ staff or engage contractors under [section 6Q](#);
- develop or review Professional Standards under [section 6U](#) or [section 6X](#);
- prepare reports under [section 64](#), [section 64A](#) or [section 65AB](#);
- provide advice, at the request of the Minister, about the operation and administration of the Act;
- investigate public interest complaints that relate to conduct relevant to the functions of the Information Commissioner;³⁵ or
- commence proceedings for an offence under the Act without authorisation from the Information Commissioner in accordance with [section 63G\(1\)\(c\)](#).

Performing functions with as little formality and technicality as possible

- 1.3. The Public Access Deputy Commissioner must perform their functions and exercise their powers with as little formality and technicality as possible.³⁶ The Information Commissioner has the same obligation in [section 6G](#).
- 1.4. Reducing formality and technicality in section 6H applies generally to the Public Access Deputy Commissioner’s functions and powers. There are also specific obligations to avoid technicality and formality in conducting reviews ([section 49H\(1\)](#)) and handling complaints ([section 61\(3\)](#)).
- 1.5. The purpose of section 6H is to make sure the Public Access Deputy Commissioner acts informally and flexibly under the Act, where appropriate. The Public Access Deputy Commissioner may use their resources more efficiently and effectively to increase the public’s access to rights, benefits, and services under the Act by reducing strict adherence to formal processes and procedures which may not be appropriate in every instance.³⁷
- 1.6. Reducing formality and technicality may involve:

³⁵ [Freedom of Information Act 1982](#) (Vic) sections 6H(1) and 6I(1).

³⁶ [Freedom of Information Act 1982](#) (Vic) section 6H(2).

³⁷ The requirement to act with as little formality and technicality is a common requirement for civil and administrative tribunals to facilitate access to justice by conducting matters quickly and efficiently. For example, the Victorian Civil and Administrative Tribunal has a fair hearing obligation, which includes the requirement to conduct hearings with as little formality and technicality, speed and a proper consideration of the matters before it permit; Victorian Civil and Administrative Tribunal, ‘Our fair hearing obligation’, [What VCAT does](#).

- using plain language;
- developing less formal processes or procedures to increase access to services and benefits; and
- being flexible in procedures to best fit the circumstances.

For example, in relation to conducting reviews in accordance with Part VI, the Office of the Victorian Information Commissioner (**OVIC**)³⁸ attempts to informally resolve the review before proceeding to a formal review process and OVIC review decision.

The decision to attempt informal resolution is discretionary. Not all review applications will be suitable for informal resolution.

Informal resolution involves identifying what the applicant is seeking or trying to achieve with their freedom of information request, and liaising with both the applicant and the agency to try and find a resolution that works for both parties.

More specifically, the informal resolution process involves finding and presenting resolution options to both parties for their consideration, including:

- providing a preliminary view to a party on the merits of a review application supported by a published de-identified OVIC review decision, or OVIC guidance material;
- providing the parties with an opportunity to respond to a preliminary view and provide any further information;
- providing the parties with an opportunity to narrow the scope of the review, clarify a request, or provide further information regarding the basis for making a decision;
- providing an applicant with information about other options to obtain access to the information they seek;
- inviting an agency or Minister to disclose a document or make a fresh FOI decision to disclose more documents or information to an applicant; and
- reviewing the document and establishing the information an applicant seeks is not in the document; or

³⁸ [Section 6I](#) sets out the functions of the Information Commissioner and the Public Access Deputy Commissioner. Under Part VI, both the Information Commissioner and the Public Access Deputy Commissioner are responsible for conducting reviews of decisions made by agencies and Ministers. The Information Commissioner may delegate review functions to these staff under [section 6R](#). This example collectively refers to the Information Commissioner, the Public Access Deputy Commissioner and staff as the OVIC unless otherwise stated.

- when it is likely the Information Commissioner or Public Access Deputy Commissioner will make the same review decision as the agency, OVIC encourages an applicant to reconsider their application and provide them with the opportunity to discontinue their application.

Positive outcomes of informal resolution include:

- the efficient resolution of a review application with both parties agreeing with the outcome;
- narrowing the scope of a review application and reducing the time required to finalise the review;
- an agency making a fresh FOI decision or releasing more documents under or outside of the Act; and
- an applicant gaining a better understanding of the matter or receiving advice about other ways to obtain the information they seek.

More information

[Section 6I – Freedom of information functions](#)

[Section 6G – Functions of the Information Commissioner](#)

Section 6I – Freedom of information functions

Extract of legislation

6I Freedom of information functions

- (1) The Information Commissioner has the following functions—
 - (a) to employ staff and engage contractors under section 6Q;
 - (b) to develop and review professional standards in accordance with Part IB;
 - (c) to make reports in accordance with Division 3 of Part VII;
 - (d) to provide advice, at the request of the Minister, about the operation and administration of this Act;
 - (e) to conduct investigations under Part VIB;
 - (f) investigate public interest complaints that relate to conduct relevant to the functions of the Information Commissioner.
- (2) The Information Commissioner and the Public Access Deputy Commissioner each have the following functions—
 - (a) to promote understanding and acceptance by agencies and the public of this Act and the object of this Act;
 - (b) to provide advice, education and guidance to agencies and the public in relation to compliance with the professional standards;
 - (c) to monitor compliance with professional standards;
 - (d) in accordance with Division 1 of Part VI, to conduct reviews of decisions by agencies and Ministers on requests;
 - (e) in accordance with Part VIA, to receive and handle complaints;
 - (f) to provide advice, education and guidance to agencies and the public in relation to the Information Commissioner's functions.

Guidelines

Purpose of section 6I

- 1.1. Section 6I outlines the Information Commissioner's and Public Access Deputy Commissioner's freedom of information (**FOI**) functions. The section also clarifies the functions that can only be exercised by the Information Commissioner.

FOI functions that both the Information Commissioner and the Public Access Deputy Commissioner have

1.2. The Information Commissioner and Public Access Deputy Commissioner each have the following FOI functions:

- to promote understanding and acceptance by agencies and the public of this Act and the object of the Act;
- to provide advice, education and guidance to agencies and the public in relation to compliance with the Professional Standards;
- to monitor compliance with Professional Standards;
- to conduct reviews of decisions by agencies and Ministers on requests;
- to receive and handle complaints; and
- to provide advice, education and guidance to agencies and the public regarding the Information Commissioner's functions.³⁹

FOI functions only the Information Commissioner has

1.3. In addition to the functions outlined above, the Information Commissioner also has the function to:

- employ staff or engage contractors under [section 6Q](#);
- develop or review Professional Standards under [section 6U](#) or [section 6X](#);
- prepare reports under [section 64](#), [section 64A](#) or [section 65AB](#);
- provide advice, at the request of the Minister, about the operation and administration of the Act;
- conduct investigations under Part VIB;

³⁹ [Freedom of Information Act 1982](#) (Vic), section 6I(2).

- investigate public interest complaints that relate to conduct relevant to the functions of the Information Commissioner;⁴⁰ and
 - commence proceedings for an offence under the Act in accordance with [section 63G](#).
- 1.4. While only the Information Commissioner may perform the functions outlined above,⁴¹ the Information Commissioner may delegate to the Public Access Deputy Commissioner the power to undertake an investigation under Part VIB.⁴²

Education and guidance

- 1.5. A key function of the Information Commissioner and Public Access Deputy Commissioner is to provide education and guidance to agencies subject to the Act and to the public, to promote understanding of the Act and of the Commissioners' functions.⁴³
- 1.6. Increased awareness and understanding of the Act and access to information help to make the Victorian Government more transparent, accessible, and accountable.
- 1.7. The Office of the Victorian Information Commissioner's (**OVIC**) goal is to embed best practice information management and access to information in the Victorian public sector.
- 1.8. In establishing OVIC, Parliament expanded the Information Commissioner and Public Access Deputy Commissioner's education function to include guidance for the public, recognising the important role an informed and empowered public has in keeping the Victorian Government accountable.⁴⁴

Professional Standards

- 1.9. Only the Information Commissioner has the power to develop [Professional Standards](#) in accordance with Part IB. However, both the Information Commissioner and the Public Access Deputy Commissioner have the function to:

⁴⁰ [Freedom of Information Act 1982](#) (Vic), section 6I(1); For information on the investigation of public interest complaints, refer to Division 3 of Part VIB.

⁴¹ [Section 6H](#) specifically excludes the functions in section 6I(1) from the Public Access Deputy Commissioner's functions.

⁴² [Freedom of Information Act 1982](#) (Vic), [section 6R\(2\)](#).

⁴³ [Freedom of Information Act 1982](#) (Vic), sections 6I(2)(a) and 6I(2)(f); the second reading speech for the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 notes education is a critical part of an information regulator's mandate: Victoria, [Parliamentary Debates](#), Legislative Assembly, 23 June 2016, 2870 (The Hon. Martin Pakula).

⁴⁴ Victoria, [Parliamentary Debates](#), Legislative Assembly, 23 June 2016, 2870 (The Hon. Martin Pakula).

- provide education and guidance to agencies and the public regarding how to meet obligations in the Professional Standards; and
- monitor compliance with the Professional Standards.⁴⁵

1.10. This education function, like the general education function noted above, applies to both agencies and the public, recognising that increased awareness and understanding of the Professional Standards helps to make the Victorian Government more transparent, accessible, and accountable.

More information

Division 1, Part VI – Review by Information Commissioner

Part VIA – Complaints

[FOI resources for agencies](#)

[FOI resources for the public](#)

[Agency FOI Information Service](#)

⁴⁵ [Freedom of Information Act 1982](#) (Vic), section 6(2)(b).

Section 6J – Performance of concurrent functions

Extract of legislation

6J Performance of concurrent functions

If a function may be performed by the Information Commissioner and the Public Access Deputy Commissioner, that function may be performed by—

- (a) the Information Commissioner;
- (b) the Public Access Deputy Commissioner; or
- (c) the Information Commissioner and the Public Access Deputy Commissioner.

Guidelines

Performing functions separately or together

- 1.1. Section 6J clarifies who may perform functions under the Act where both the Information Commissioner and Public Access Deputy Commissioner may perform the same function.
- 1.2. It outlines that either the Information Commissioner or the Public Access Deputy Commissioner may perform that function, or they may both perform that function.

For example, the Information Commissioner and the Public Access Deputy Commissioner each have the function under section 6I(2)(d) to conduct reviews of decisions made by agencies and Ministers on requests, in accordance with Division 1 of Part VI.

This means either or both Commissioners may conduct a review of an agency or Minister's decision on a request and may make an OVIC review decision under section 49P.

Section 6K – General powers of Information Commissioner and Public Access Deputy Commissioner

Extract of legislation

6K General powers of Information Commissioner and Public Access Deputy Commissioner

- (1) The Information Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Information Commissioner's functions.
- (2) The Public Access Deputy Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Deputy Commissioner's functions.

Guidelines

Power to do all things that are necessary or convenient

- 1.1. The Information Commissioner and Public Access Deputy Commissioner have the power to do 'all things necessary or convenient to be done for or in connection with' their functions. This power helps to ensure the Commissioners can properly administer their functions under the Act by giving them the power to do what they need to perform their roles.
- 1.2. [Northern Land Council v Quall](#) [2020] HCA 33 considered a similar provision in section 203BK(1) of the [Native Title Act 1993](#) (Cth) regarding the powers of representative bodies to 'do all things necessary or convenient to be done for in connection with the performance of its functions'. In that case, Chief Justice Kiefel, Justice Gageler, and Justice Keane note:

The power conferred on a representative body by s 203BK(1) in the familiar terms of a power "to do all things necessary or convenient to be done for or in connection with the performance of its functions", though "broad", is "strictly ancillary", authorising "the provision of subsidiary means of carrying into effect what is enacted in the statute itself" and encompassing "what is incidental to the execution of its specific provisions". The power does "not support the doing of a

thing which departs from the scheme of the enactment by which the power is conferred".⁴⁶

- 1.3. This means the Information Commissioner and Public Access Deputy Commissioner may use the power in section 6K to do what they need to carry out their functions under the Act, provided their actions relate to a function under the Act. In practice, this may mean adopting flexibility in carrying out FOI functions.⁴⁷

For example, in carrying out their FOI education functions under section 6I(2)(a), the Information Commissioner and Public Access Deputy Commissioner may decide how best to promote understanding and acceptance by agencies and the public of the Act and its object.

In support of this function, the Office of the Victorian Information Commissioner publishes a suite of guidance materials for agencies and the public, provides free training on the Act to agencies, hosts regular events on a variety of FOI topics, and engages with agencies subject to the Act.

⁴⁶ At [33], citing *Palmer v Australian Electoral Commission* (2019) 93 ALJR 947 at 955 [44]; 372 ALR 102 at 112; *Shanahan v Scott* (1957) 96 CLR 245 at 250; *Palmer v Australian Electoral Commission* (2019) 93 ALJR 947 at 958 [65]; 372 ALR 102 at 115, citing *Morton v Union Steamship Co of New Zealand Ltd* (1951) 83 CLR 402 at 410.

⁴⁷ [Freedom of Information Act 1982](#) (Vic), section 6K.

Section 6L – Remuneration

Extract of legislation

6L Remuneration

- (1) The Information Commissioner is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.
- (2) The Public Access Deputy Commissioner is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.

Guidelines

Remuneration of the Information Commissioner and Public Access Deputy Commissioner

- 1.1. The Governor in Council determines the amount of remuneration and allowances for the Information Commissioner and for the Public Access Deputy Commissioner.
- 1.2. The Office of the Victorian Information Commissioner publishes the total remuneration received by the Information Commissioner in its [Annual Reports](#).⁴⁸

⁴⁸ See, for example, page 12 of OVIC's [2020-21 Annual Report](#).

Section 6M – Vacancy and resignation of Information Commissioner or Public Access Deputy Commissioner

Extract of legislation

6M Vacancy and resignation of Information Commissioner or Public Access Deputy Commissioner

- (1) The Information Commissioner ceases to hold office if the Information Commissioner—
 - (a) resigns by notice in writing delivered to the Minister; or
 - (b) becomes an insolvent under administration; or
 - (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
 - (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or
 - (e) nominates for election as a member of a council; or
 - (f) is removed from office under section 6N.
- (2) The Public Access Deputy Commissioner ceases to hold office if the Deputy Commissioner—
 - (a) resigns by notice in writing delivered to the Minister; or
 - (b) becomes an insolvent under administration; or
 - (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
 - (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or
 - (e) nominates for election as a member of a council; or
 - (f) is removed from office under section 6O.
- (3) A resignation under subsection (1)(a) or (2)(a) takes effect on—
 - (a) the day on which it is received by the Minister; or
 - (b) if a later day is specified in the notice, on that day.

Guidelines

Vacancy and resignation of the Information Commissioner or Public Access Deputy Commissioner

- 1.1. Section 6M outlines the procedure for the resignation and vacancy of the Information Commissioner and for the Public Access Deputy Commissioner.
- 1.2. The Information Commissioner and/or the Public Access Deputy Commissioner will stop holding office if either:
 - resigns by notice in writing to the Minister;
 - becomes an insolvent under administration;
 - is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence;
 - nominates for election for the Parliament of Victoria, or of the Commonwealth, or of another State or a Territory of the Commonwealth;
 - nominates for election as a member of a council; or
 - is removed from office.
- 1.3. If the Information Commissioner or the Public Access Deputy Commissioner resigns from their position, that resignation will take effect on:
 - the day on which the resignation is received by the Minister; or
 - if a later day is specified in the resignation notice, on that day.⁴⁹

⁴⁹ [Freedom of Information Act 1982](#) (Vic), section 6M(3).

Section 6N – Suspension of Information Commissioner and removal from office

Extract of legislation

6N Suspension of Information Commissioner and removal from office

- (1) The Governor in Council, on the advice of the Minister, may suspend the Information Commissioner from office on any ground on which the Governor in Council is satisfied that the Commissioner is unfit to hold office.
- (2) The Minister must cause a full statement of the grounds of suspension to be presented to each House of Parliament within 7 sitting days of that House after the suspension.
- (3) The Information Commissioner must be removed from office by the Governor in Council if each House of Parliament, within 20 sitting days after the day on which the statement is presented to it, declares by resolution that the Commissioner ought to be removed from office.
- (4) The Governor in Council must remove the suspension and restore the Information Commissioner to office unless each House makes a declaration of the kind specified in subsection (3) within the time specified in that subsection.
- (5) If the Information Commissioner is suspended from office under subsection (1), the Information Commissioner is taken not to be the Information Commissioner during the period of suspension.

Guidelines

Purpose and effect of section 6N

- 1.1. The Information Commissioner may be suspended and removed from office. Section 6N outlines a formal process when and how this may occur.
- 1.2. The formal process for suspending and removing the Information Commissioner (requiring resolution of Parliament) strengthens the Information Commissioner's independence, protects against arbitrary dismissal, and reflects the importance of the Information Commissioner's role in the integrity system.
- 1.3. This process means the Information Commissioner may properly perform their functions under the Act without fear of political interference or retribution.

The process for removing the Information Commissioner from office

1.4. The Information Commissioner may only be removed from office if:

- the Governor in Council, on the advice of the Minister, suspends the Information Commissioner from office on any ground on which the Governor in Council is satisfied that the Information Commissioner is unfit to hold office;⁵⁰
- the Minister presents a statement of the grounds of suspension to each House of Parliament within seven sitting days after the suspension;⁵¹ and
- each House of Parliament declares by resolution that the Information Commissioner should be removed from office, within 20 sitting days after the day on which the Minister presents the statement.⁵²

1.5. If removed from office, the person will no longer be the Information Commissioner.⁵³

Grounds for suspension

1.6. The Governor in Council may suspend the Information Commissioner on any ground, provided the Governor in Council is satisfied the Information Commissioner is unfit to hold office.⁵⁴

1.7. Unlike section 6O, which outlines specific grounds for suspending or removing the Public Access Deputy Commissioner from office, section 6N does not list specific grounds for removal.

1.8. The term ‘any ground’ suggests there is a level of discretion and flexibility in deciding whether to suspend the Information Commissioner, which may or may not be limited to misconduct, neglect of duty or inability to perform the duties of the office as outlined in [section 6O](#), regarding the suspension and removal of the Public Access Deputy Commissioner.

⁵⁰ [Freedom of Information Act 1982](#) (Vic), section 6N(1).

⁵¹ [Freedom of Information Act 1982](#) (Vic), section 6N(2).

⁵² [Freedom of Information Act 1982](#) (Vic), section 6N(3).

⁵³ [Freedom of Information Act 1982](#) (Vic), section 6M.

⁵⁴ [Freedom of Information Act 1982](#) (Vic), section 6N(1).

What happens if the Information Commissioner is not removed by Parliament?

- 1.9. Parliament has 20 sittings days from when the Governor in Council presents a statement with the grounds of suspension to decide whether or not to remove the Information Commissioner.⁵⁵
- 1.10. If Parliament decides the Information Commissioner should not be removed from office, then the Governor in Council must remove the suspension and restore the Information Commissioner to office.⁵⁶ If restored to office, the person will return to the position of Information Commissioner.

Effect of suspending the Information Commissioner

- 1.11. While the Information Commissioner is suspended, they are taken not to be the Information Commissioner for the period of the suspension.⁵⁷
- 1.12. During the suspension period, the Governor in Council may, on the recommendation of the Minister, temporarily appoint an acting Information Commissioner.⁵⁸
- 1.13. If the Governor in Council removes the suspension, the person will be restored to the position of Information Commissioner.⁵⁹ Conversely, if they are removed from office, the person will cease to hold the office of the Information Commissioner and they cannot exercise any powers under the Act.⁶⁰

More information

[Section 6O – Suspension of Public Access Deputy Commissioner and removal from office](#)

[Section 6P – Acting Information Commissioner and Public Access Deputy Commissioner](#)

⁵⁵ [Freedom of Information Act 1982](#) (Vic), section 6N(3).

⁵⁶ [Freedom of Information Act 1982](#) (Vic), section 6N(4).

⁵⁷ [Freedom of Information Act 1982](#) (Vic), section 6N(5).

⁵⁸ [Freedom of Information Act 1982](#) (Vic), section 6P.

⁵⁹ [Freedom of Information Act 1982](#) (Vic), section 6N(4).

⁶⁰ [Freedom of Information Act 1982](#) (Vic), section 6M(1)(f).

Section 6O – Suspension of Public Access Deputy Commissioner and removal from office

Extract of legislation

6O Suspension of Public Access Deputy Commissioner and removal from office

- (1) The Governor in Council, on the recommendation of the Minister, may suspend or remove the Public Access Deputy Commissioner from office on any of the following grounds—
 - (a) misconduct;
 - (b) neglect of duty;
 - (c) inability to perform the duties of the office;
 - (d) any other ground on which the Governor in Council is satisfied that the Public Access Deputy Commissioner should not hold office.
- (2) If the Public Access Deputy Commissioner is removed from office, the Minister must cause a full statement of the grounds for removal to be presented to each House of Parliament within 10 sitting days of that House after the removal.

Guidelines

Suspending and removing the Public Access Deputy Commissioner from office

- 1.1. The Public Access Deputy Commissioner may be suspended and removed from office. Section 6O outlines a formal process when and how this may occur.
- 1.2. Unlike suspending and removing the Information Commissioner from office in [section 6N](#), Parliament does not decide to remove the Public Access Deputy Commissioner. Instead, the Governor in Council, on the recommendation of the Minister, may suspend or remove the Public Access Deputy Commissioner on any of the following grounds:
 - misconduct;
 - neglect of duty;
 - inability to perform the duties of the office; or

- any other ground on which the Governor in Council is satisfied that the Public Access Deputy Commissioner should not hold office.⁶¹
- 1.3. The term ‘any other ground’ suggests there is a level of discretion and flexibility, which may not be limited to misconduct, neglect of duty or inability to perform the duties of the office.
 - 1.4. If the Public Access Deputy Commissioner is removed from office, the Minister must present a statement of the grounds for removal to each House of Parliament within 10 sitting days of that House after the removal.⁶²
 - 1.5. If there is vacancy in the office of Public Access Deputy Commissioner, the Governor in Council may temporarily appoint an acting Public Access Deputy Commissioner.

For more information on appointing an acting Public Access Deputy Commissioner, see [section 6P – Acting Information Commissioner and Public Access Deputy Commissioner](#)

⁶¹ [Freedom of Information Act 1982](#) (Vic), section 6O(1)(a)-(d).

⁶² [Freedom of Information Act 1982](#) (Vic), section 6O(2).

Section 6P – Acting Information Commissioner and Public Access Deputy Commissioner

Extract of legislation

6P Acting Information Commissioner and Public Access Deputy Commissioner

- (1) The Governor in Council, on the recommendation of the Minister, may appoint an eligible person to act as the Information Commissioner—
 - (a) during a vacancy in the office of the Information Commissioner; or
 - (b) during any period, or all periods, when the Information Commissioner is absent from duty or from the State or, for another reason, cannot perform the functions of the office.
- (2) The Governor in Council, on the recommendation of the Minister, may appoint an eligible person to act as the Public Access Deputy Commissioner—
 - (a) during a vacancy in the office of the Public Access Deputy Commissioner; or
 - (b) during any period, or all periods, when the Public Access Deputy Commissioner is absent from duty or from the State or, for another reason, cannot perform the functions of the office.
- (3) A person is not eligible for appointment to act as the Information Commissioner or the Public Access Deputy Commissioner if the person is—
 - (a) a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (b) a member of a council.
- (4) An appointment under subsection (1) or (2) is for the period, not exceeding 12 months, set out in the instrument of appointment.
- (5) The Governor in Council, on the recommendation of the Minister, may at any time remove the acting Information Commissioner or the acting Public Access Deputy Commissioner from office.
- (6) While a person is acting in the office of the Information Commissioner or the Public Access Deputy Commissioner, the person—
 - (a) has, and may exercise, all the powers and must perform all the duties of that office under this Act and any other Act; and
 - (b) is entitled to be paid the remuneration and allowances that the Information Commissioner or Public Access Deputy Commissioner would have been entitled to for performing those duties.

Guidelines

Governor in Council may appoint acting Commissioners

- 1.1. The Governor in Council, on the recommendation of the Minister, may temporarily appoint an acting Information Commissioner and an acting Public Access Deputy Commissioner for a maximum of 12 months.⁶³ This is where the Information Commissioner or Public Access Deputy Commissioner:
 - office is vacant;
 - is absent from duty;
 - is absent from the State; or
 - for another reason, cannot perform their functions.⁶⁴
- 1.2. Only 'eligible persons' may be appointed as an acting Commissioner. A person is not eligible for appointment if they are:
 - a Member of Parliament of Victoria, the Commonwealth, or another State or Territory; or
 - a member of a council.⁶⁵
- 1.3. A 'member of a council' means a member of any municipal Council (including the Melbourne City Council and the Greater Geelong City Council).⁶⁶

Powers, duties, and remuneration of acting Commissioners

- 1.4. An acting Information Commissioner or acting Public Access Deputy Commissioner performs the same functions and exercises the same powers as the Information Commissioner or Public Access Deputy Commissioner.⁶⁷

⁶³ [Freedom of Information Act 1982](#) (Vic), section 6P(4).

⁶⁴ [Freedom of Information Act 1982](#) (Vic), sections 6P(1) and 6P(2).

⁶⁵ [Freedom of Information Act 1982](#) (Vic), section 6P(3); for the definition of 'a council', see [section 5](#).

⁶⁶ [Local Government Act 2020](#) (Vic), section 3(1).

⁶⁷ [Freedom of Information Act 1982](#) (Vic), section 6P(6)(a).

- 1.5. An acting Commissioner will receive the same remuneration and allowances that the Information Commissioner or Public Access Deputy Commissioner would normally be paid.⁶⁸
- 1.6. A difference with an acting position is that the acting Commissioner position is temporary, to fill a vacancy or absence where the Commissioner is unable to perform their functions.
- 1.7. Further, an acting Commissioner may be removed more easily than the substantive office holder (particularly in the case of the Information Commissioner).

Removing an acting Information Commissioner or acting Public Access Deputy Commissioner

- 1.8. The Governor in Council, on the recommendation of the Minister, may remove the acting Information Commissioner or the acting Public Access Deputy Commissioner at any time during their period of appointment.⁶⁹

More information

[Section 6C – Appointment of the Information Commissioner](#)

[Section 6D – Appointment of Public Access Deputy Commissioner](#)

[Section 6N – Suspension of Information Commissioner and removal from office](#)

[Section 6O – Suspension of Public Access Deputy Commissioner and removal from office](#)

[Section 6L – Remuneration](#)

⁶⁸ [Freedom of Information Act 1982](#) (Vic), section 6P(6)(b).

⁶⁹ [Freedom of Information Act 1982](#) (Vic), section 6P(5).

Section 6Q – Staff

Extract of legislation

6Q Staff

The Information Commissioner may—

- (a) employ under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the purposes of the Information Commissioner's functions under this Act or the **Privacy and Data Protection Act 2014**; and
- (b) engage any contractor, agent or other person to assist the Information Commissioner in the performance of the Information Commissioner's functions under this Act or the **Privacy and Data Protection Act 2014**.

Guidelines

Staff, contractors, agents and other persons

- 1.1. The Information Commissioner has the function to employ staff and engage contractors.⁷⁰ Section 6Q gives the Information Commissioner the power to carry out this function. It ensures the Information Commissioner has the necessary staff and other resources to administer the Act.

More information

[Office of the Victorian Information Commissioner Annual Reports](#)

[Office of the Victorian Information Commissioner organisational structure](#)

⁷⁰ [Freedom of Information Act 1982](#) (Vic), section 6(1)(a).

Section 6R – Delegation

Extract of legislation

6R Delegation

- (1) The Information Commissioner may by instrument delegate to the Public Access Deputy Commissioner or any member of staff any of the Information Commissioner's functions and powers under this Act except—
 - (a) the power to employ staff and engage contractors or other persons under section 6Q; or
 - (b) the power to make a fresh decision under section 49P on a review under Part VI; or
 - (c) the power to make recommendations under section 61L in relation to a complaint under Part VIA; or
 - (d) the power to prepare a report under Part VII; or
 - (e) this power of delegation.
- (2) The Information Commissioner may by instrument delegate only to the Public Access Deputy Commissioner the power to undertake an investigation.
- (3) The Information Commissioner may by instrument delegate to the Public Access Deputy Commissioner or any member of staff a function or power conferred on the Information Commissioner by or under any other Act except—
 - (a) a function or power conferred on the Information Commissioner by or under the **Privacy and Data Protection Act 2014**; or
 - (b) a function or power relating to information privacy, protective data security or law enforcement data security conferred on the Information Commissioner by or under any other Act.
- (4) With the written consent of the Information Commissioner, the Public Access Deputy Commissioner may by instrument delegate to any member of staff any of the Deputy Commissioner's functions and powers (including any power delegated to the Deputy Commissioner under subsection (1)) except—
 - (a) the power to make a fresh decision under section 49P on a review under Part VI; or
 - (b) the power to make recommendations under section 61L in relation to a complaint under Part VIA; or
 - (c) this power of delegation.

Guidelines

Delegating functions and powers

- 1.1. Delegation promotes the effective and efficient discharge of the Information Commissioner's functions and use of powers by giving the Information Commissioner the power to authorise other persons to exercise those functions or powers. Delegation also allows the Information Commissioner to focus more on strategic management of the Office of the Victorian Information Commissioner (OVIC).

Functions and powers the Information Commissioner may and may not delegate

- 1.2. There are certain functions and powers the Information Commissioner and the Public Access Deputy Commissioner may and may not delegate.⁷¹ This limit on delegation reflects Parliament's intention that only the Information Commissioner and/or the Public Access Deputy Commissioner should be able to exercise those powers.⁷²
- 1.3. The Information Commissioner may delegate any of their functions and powers to the Public Access Deputy Commissioner and to other OVIC staff except the power to:
 - employ staff and engage contractors and other persons under [section 6Q](#);
 - make a fresh decision under [section 49P](#) on a review;⁷³
 - make recommendations under [section 61L](#) regarding a complaint;
 - prepare a report under Part VII; or
 - delegate functions and powers under section 6R.

⁷¹ Outlined in section 6R.

⁷² [Freedom of Information Act 1982](#) (Vic), section 6R(4).

⁷³ In effect, this means the Information Commissioner cannot delegate the power to make a decision under section 49P on a review to OVIC staff or contractors. The Public Access Deputy Commissioner already has the statutory function to conduct reviews in accordance with Part VI, this includes the power to make a decision under section 49P.

Delegating the power to undertake an investigation

- 1.4. The Information Commissioner may delegate the power to undertake an investigation to the Public Access Deputy Commissioner only.⁷⁴ The Information Commissioner may not delegate this power to OVIC staff.
- 1.5. Limiting the ability to delegate the Information Commissioner's powers in Part VIB and Part VIC reflects the seriousness of those powers and ensures only the Information Commissioner or Public Access Deputy may exercise them.

Delegating functions and powers relating to privacy and information security

- 1.6. The Information Commissioner may not delegate a function or power:
 - conferred under the [Privacy and Data Protection Act 2014](#) (Vic) (PDP Act); or
 - relating to information privacy, protective data security or law enforcement data security conferred on the Information Commissioner by or under any other Act.⁷⁵
- 1.7. While the Information Commissioner may perform functions and exercise powers under both the Act and the PDP Act, the Public Access Deputy Commissioner may only perform functions and exercise powers under the Act. The Public Access Deputy Commissioner cannot perform privacy or information security functions.⁷⁶

The Public Access Deputy Commissioner may delegate functions and powers

- 1.8. The Public Access Deputy Commissioner may delegate to OVIC staff any of their functions and powers (including any power delegated under section 6R(1)), except the power to:
 - make a fresh decision under section 49P on a review;
 - make recommendations under section 61L regarding a complaint; or
 - delegate functions or powers under section 6R.⁷⁷

⁷⁴ [Freedom of Information Act 1982](#) (Vic), section 6R(2).

⁷⁵ [Freedom of Information Act 1982](#) (Vic), section 6R(3).

⁷⁶ [Freedom of Information Act 1982](#) (Vic), section 6H(1)(a).

⁷⁷ [Freedom of Information Act 1982](#) (Vic), sections 6R(4)(a) to (c).

For example, certain OVIC staff can handle FOI complaints made under section 61A(1).

- 1.9. The Public Access Deputy Commissioner may not delegate the power to undertake an investigation, which the Information Commissioner can delegate to the Deputy Commissioner.⁷⁸
- 1.10. The Public Access Deputy Commissioner can only delegate functions or powers with the Information Commissioner's written consent.⁷⁹
- 1.11. Any delegation made under section 6R may be subject to specified conditions or limitations.⁸⁰

More information

All current delegations made under the FOI Act and the [Privacy and Data Protection Act 2014](#) (Vic) are available [here](#).

⁷⁸ Section 6R(4) makes clear that the Public Access Deputy Commissioner may only sub-delegate functions and powers under section 6R(1) rather than section 6R(2). Section 6R(2) permits the Information Commissioner to delegate the power to conduct investigations to the Public Access Deputy Commissioner only.

⁷⁹ [Freedom of Information Act 1982](#) (Vic), section 6R(4).

⁸⁰ [Interpretation of Legislation Act 1984](#) (Vic), section 42A(1)(b).

Section 6S – Directions

Extract of legislation

6S Directions

The Information Commissioner may issue directions to the Public Access Deputy Commissioner or to any member of staff in relation to the performance of functions under this Act other than in relation to the following—

- (a) the review of a decision under section 49P;
- (b) the consideration of a complaint under section 61L.

Guidelines

The Information Commissioner may issue directions

- 1.1. The Information Commissioner may issue directions to the Public Access Deputy Commissioner or to any Office of the Victorian Information Commissioner (**OVIC**) staff regarding how the Public Access Deputy Commissioner or OVIC staff perform their functions.⁸¹
- 1.2. A direction requires the Public Access Deputy Commissioner or OVIC staff member to act in a certain way when performing functions or exercising powers under the Act, provided the direction is lawful.
- 1.3. A direction may be required where the Information Commissioner delegates a function to the Public Access Deputy Commissioner or OVIC staff, and wants to clarify, direct or guide how the person performs that function.

When the Information Commissioner cannot issue a direction

- 1.4. The Information Commissioner cannot issue a direction to the Public Access Deputy Commissioner in relation to:
 - a review of a decision made under [section 49P](#); or
 - the consideration of a complaint [under section 61L](#).

⁸¹ [Freedom of Information Act 1982](#) (Vic), section 6S.

More information

[Section 6G – Functions of the Information Commissioner](#)

[Section 6H – Functions of the Public Access Deputy Commissioner](#)

[Section 6I – Freedom of information functions](#)

[Section 6R – Delegation](#)

[Section 49P – Decision on review](#)

[Section 61L – Outcome of complaint](#)

Section 6T – Validity of acts and decisions

Extract of legislation

6T Validity of acts and decisions

An act or decision of the Information Commissioner, Public Access Deputy Commissioner or acting Information Commissioner or acting Public Access Deputy Commissioner is not invalid only because—

- (a) of a defect or irregularity in or in connection with the appointment of the Information Commissioner, Public Access Deputy Commissioner or acting Information Commissioner or acting Public Access Deputy Commissioner; or
- (b) in the case of an acting Information Commissioner or acting Public Access Deputy Commissioner, that the occasion for so acting had not arisen or had ceased.

Guidelines

Validity of acts and decisions

- 1.1. Section 6T clarifies the validity of an act or decision of the Information Commissioner or the Public Access Deputy Commissioner (and an acting Information Commissioner or acting Deputy Commissioner) if there are issues with how or when the person was appointed.
- 1.2. There may be other reasons why an act or decision is invalid; the purpose of section 6T is to overcome any procedural and technical argument, ensuring any issue with the appointment alone does not give rise to invalidity of any acts and decisions.
- 1.3. An act or decision of the Information Commissioner or Public Access Deputy Commissioner (including acting Commissioners) will not be invalid:
 - if there is an issue with how the Information Commissioner⁸² was appointed (for example, the appointment process was not followed properly);⁸³ or

⁸² Or Public Access Deputy Commissioner, acting Information Commissioner, or acting Public Access Deputy Commissioner.

⁸³ [Freedom of Information Act 1982](#) (Vic), section 6T(a).

- for an acting Information Commissioner,⁸⁴ where a vacancy or absence in the position had not started or had expired.⁸⁵

More information

[Section 6C – Appointment of the Information Commissioner](#)

[Section 6D – Appointment of Public Access Deputy Commissioner](#)

[Section 6P – Acting Information Commissioner and Public Access Deputy Commissioner](#)

⁸⁴ Or acting Public Access Deputy Commissioner.

⁸⁵ [Freedom of Information Act 1982](#) (Vic), section 6T(b).

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