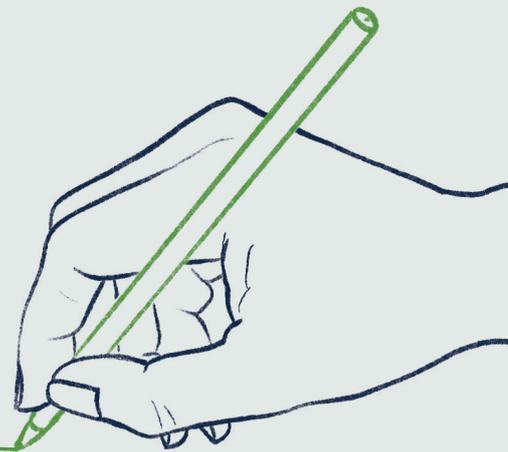


Victorian Inspectorate Annual Plan

2020-21

(As amended January 2021)

*Strengthening
trust in Victoria's
integrity system*



**VICTORIAN
INSPECTORATE**

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NOTICE

The Victorian Inspectorate Annual Plan was amended and republished after the Victorian Budget 2020–21 was announced on 24 November 2020 and the relevant appropriation legislation passed both houses on 8 December 2020. The Victorian Inspectorate had noted in the original plan tabled in Parliament and published on 16 June 2020 that updates to the Annual Plan would be made following the passage of any further appropriation legislation in 2020–21. The amended plan was provided to the Integrity and Oversight Committee of Parliament and republished in January 2021.

1 | Inspector's Forward

The Victorian Inspectorate (VI) is in an exciting phase of its development. The formative years during which we gradually worked out how best to carry out our mandate are behind us. Over the past two years we have taken stock of where we were and set about building for the future using the knowledge that we had acquired about the integrity system in general and our stakeholders in particular.

We established a new vision, aspiration and values. We set strategic priorities for a three year period. We developed a new Operations Model to provide the framework for our daily operations. We restructured the organisation and refreshed the management team. We placed a big emphasis on improving internal governance arrangements and on ensuring that decision-making was informed, done collaboratively and properly recorded. We began work on the necessary task of ensuring that our ICT infrastructure was upgraded and supported in line with the security requirements appropriate to our working environment. We looked at how we performed our work across all areas of our activities and set about making changes not only in the interests of efficiency but with a view to bringing about positive improvements across the integrity system.

The VI plays a critically important role within the integrity system. We are not siloed within a single entity focussed on a particular aspect of integrity work. We can take a system wide view and count our successes

not only in how we assist individual stakeholders to improve how they operate but in how we can apply particular learnings to other stakeholders and to the integrity system in general. We very much seek to take a leadership role within the system.

Within the integrity system there is a broad, and growing, spectrum of integrity, accountability and investigatory bodies entrusted by the Parliament with extensive coercive and intrusive powers, including powers to strip away privileges and other protections that common law judges and Parliaments have built up over centuries. Parliament naturally is concerned that these bodies act properly, responsibly and lawfully. It looks to the VI to be its eyes and ears and to bring to its attention as required matters relating to how these bodies perform their functions and exercise their powers.

The VI sees the importance of its role. That role is a challenging one. A particular challenge for the VI lies in the breadth of its mandate when measured against the smallness of its footprint within the integrity system. Apart from the Public Interest Monitor (PIM), we are the smallest entity within the integrity firmament. Despite being small we must comply with the same sets of corporate requirements as large entities. As we move towards budgetary independence those requirements will escalate without us having the luxury of economies of scale. Meanwhile the complexities of the system within which

we operate increase. The VI is conscious of how an improvement in our resourcing can result in greater improvements across the integrity system as a whole. Government is aware of our resourcing needs. The VI has been supported over the last two years with supplementary and project funding to cover unavoidable operational shortfalls and to support infrastructure improvements. We appreciate that support.¹

Despite all the challenges we have achieved much over the recent period as demonstrated in our annual reports for 2017–18 and 2018–19. Through 2019–20 those achievements have continued while at the same time the operational demands on us have increased, particularly with recent changes to the *Public Interest Disclosures Act 2012*. We will report fully on 2019–20 in the second half of this calendar year, noting the impact of COVID-19 on operational and corporate outputs.

The VI appreciates the opportunity drawing up this annual plan gives us to put on public record our priorities for 2020–21, our strategy to address COVID-19 impacts, and to show in detail how what we can actually do to oversee the integrity system is very much affected by the resourcing made available to us. Clearly the more we can do the better the outcomes will be for the integrity system and the greater will be the level of assurance we can provide the Parliament and the Victorian community that the system is working as it should.

The VI looks forward to 2020–21 and to implementing this plan.



Eamonn Moran PSM QC
Inspector

¹ The VI welcomed the budget announcement on 24 November 2020 of supplementary funding for the VI until 30 June 2023. This funding will assist the VI to undertake its statutory remit and continue to build evidence to support ongoing funding that will drive improvements and transparency across the integrity system. The VI will be scaling up as quickly as is practicable across the second half of 2020–21, laying the foundation to realise the benefits of that increased investment in 2021–22.

2 | Background

OVERVIEW

The VI was established to provide oversight of other integrity, accountability or investigatory bodies and their officers. The VI is the key oversight body in Victoria's integrity system.

The VI is committed to providing the Parliament and the people of Victoria with independent assurance that these bodies, which collectively constitute Victoria's 'integrity system', act lawfully and properly in the performance of their functions.

The model of integrity oversight adopted by the Victorian Parliament is unique in Australia in how it vests in a single entity (the VI) the oversight of multiple integrity bodies. This allows the VI to take a leadership role within the integrity system and apply learnings from its oversight of any one entity across the board, as appropriate.

VISION

- An integrity system that is robust and trusted

ASPIRATIONS

Public confidence and trust in Victoria's integrity system

- The right checks and balances are in place
- The community knows to come to the VI to protect their rights
- Intrusive and coercive powers are exercised lawfully

A robust Victorian integrity system

- Parliament has confidence in the VI
- The VI is positively influencing the conduct of integrity bodies
- The public sector is being held to account

STRATEGIC PRIORITIES (3 YEARS)

- 1 Build the capability of the VI to proactively manage demand
- 2 Raise public awareness of the role and impact of the VI
- 3 Lead a network focused on improving agency practice

With strategic priorities set on 1 January 2019, we are ready to embark on the second half of our three year strategy. We will continue to work towards building the VI's capability, raising public awareness and building a more formal integrity agency network.

3 | Planned Business Activities

OPERATIONAL FUNCTIONS AND PRIORITIES

The VI has a broad range of legislative functions across 11 integrity, accountability and investigatory bodies. The VI's functions are set out in detail in the VI's key functions table (**Attachment 1**). Within our current budget allocation, we will give priority to mandatory functions and complaints, and apply a risk based model to our monitoring and other legislative functions in accordance with available resources.

Operational Priority One - Mandatory functions

Inspections

The VI will undertake inspections in accordance with legislative requirements. In doing so, the VI will inspect records and report to Parliament and relevant Ministers on controlled operations and the use of surveillance devices by the following bodies:

- Independent Broad-based Anti-corruption Commission (IBAC)
- Victoria Police
- Game Management Authority
- Victorian Fisheries Authority
- Department of Environment, Land, Water and Planning (DELWP)

The VI will also inspect records and report to Parliament and relevant Ministers on IBAC's telephone intercepts and on Victoria Police's telephone intercepts and use of counter-terrorism powers.

In 2018–19, the VI undertook 13 inspections and made six reports on those inspections.

The VI is likely to have a backlog of inspections at the beginning of 2020–21 due to COVID-19. The VI anticipates complying with its legislative obligations, including working on clearing any backlog when inspections can resume.

Public Interest Disclosures and related investigations

The VI has an expanded jurisdiction under the amended *Public Interest Disclosures Act 2012* (PID Act) which came into effect on 31 December 2019.

The VI will do a preliminary assessment of all complaints against the requirements of the PID Act. Complaints that may be disclosures under the PID Act will be assessed and notified to IBAC in accordance with legislative requirements. The VI will determine IBAC and PIM complaints in accordance with legislative requirements.

COVID-19 is not expected to impact the VI's assessment of complaints against the requirements of the PID Act.

As required by section 44(3) of the *Victorian Inspectorate Act 2011* (VI Act), the VI will investigate:

- All disclosures about a PIM, IBAC or IBAC officer that it determines are public interest complaints; and
- All public interest complaints referred by IBAC.

In 2018–19, the VI commenced one new investigation under the former *Protected Disclosure Act 2012* which is still ongoing.

In 2019–20, the VI commenced four new investigations under the PID Act. While in 2020–21 to date the VI has not formally commenced any new investigations, it is anticipated that one will shortly be commenced.

The VI's investigations have been delayed due to COVID-19. To help mitigate delays when all investigative steps can resume, the VI will direct any spare resources towards these investigations.

Operational Priority Two - Responding to complaints and notifications

Complaints

The VI can receive complaints about:

- IBAC and IBAC personnel
- Victorian Ombudsman (VO) officers
- Office of the Victorian Information Commissioner (OVIC) officers
- Victorian Auditor-General's Office (VAGO) officers
- Chief Examiner or Examiners.

The VI will give priority to complaints as it has a statutory function to receive complaints and must properly consider and respond to every complaint. The VI's assessment of a complaint may result in:

- A PID Act notification or another form of referral to an entity with the appropriate jurisdiction
- Engagement with the agency to discuss identified issues or risks
- Feedback to the agencies on how it handled the complainant's matter
- An Integrity Response, including other planned oversight projects

- A preliminary inquiry or an investigation.

In 2018–19, the VI received 86 complaints.

The VI's assessment of complaints has been delayed due to COVID-19. To mitigate the impact of delays, the VI will keep communicating with complainants to ensure they are kept up to date on the progress of their complaint.

Investigations (not arising from public interest disclosures)

The VI can investigate a complaint and also initiate own motion investigations.

The VI can conduct a preliminary inquiry to determine whether or not to investigate and will typically request information from a body or individuals.

During an investigation, the VI may consider that a matter warrants conducting an inquiry which empowers the VI to examine witnesses and compel the production of information.

The VI will only commence a preliminary inquiry or an investigation where it is appropriate and if it has sufficient resources. Priority will be given to public interest complaint investigations as they are mandatory under the VI Act.

In 2018–19, the VI continued one preliminary inquiry and three investigations. Of these, the VI completed one investigation.

In 2019–20, the VI commenced one new preliminary inquiry and in 2020–21 as at December 2020 no further preliminary inquiries have been commenced.

The VI's investigations and preliminary inquiries have been delayed due to COVID-19. To mitigate delays when all investigative steps can resume, the VI will direct available resources towards them.

Coercive Power Monitoring

The VI has a legislative requirement to monitor the exercise of coercive powers by:

- IBAC
- VO
- OVIC
- VAGO
- Chief Examiner or Examiners
- Judicial Commission of Victoria

These bodies are required to notify the VI when they exercise coercive powers and the VI has a discretion to review the notifications. Since 1 January 2020, where the VI exercises that discretion we are required to assess a number of criteria that increase the time taken for each review.

In 2018–19, the VI received 1091 coercive power notifications, mostly from IBAC, the VO and the Chief Examiner. The VI conducted preliminary reviews of 266 and reviews of 466.

COVID-19 has impacted the review work significantly as most of it cannot be done remotely. This will result in a larger falling short of this benchmark. The VI will monitor the agencies that infrequently exercise coercive powers through self-reporting questionnaires covering relevant legislative requirements.

The VI will also design and implement a model to support its new role from 1 July 2021 overseeing the exercise of coercive powers by the Wage Inspectorate Victoria and its officers.

See section 6 for the integrity program on coercive powers that is resource dependent.

Operational Priority Three – Other monitoring and review functions

The VI has further legislative requirements to monitor:

- IBAC's compliance with the *Independent Broad-based Anti-corruption Commission Act 2011* and other laws, and its interaction with other bodies
- VAGO's compliance with certain provisions of the *Audit Act 1994*
- VO and OVIC's compliance with procedural fairness
- Chief Examiner and Victoria Police's compliance with the *Major Crime (Investigative Powers) Act 2004*.

The VI also has legislative requirements to:

- Assess the effectiveness and appropriateness of IBAC's policies and procedures
- Oversee IBAC's performance of its PID Act functions
- Review IBAC, VO and the Judicial Commission's PID procedures.

During 2018–19, the VI prioritised the completion of three monitoring projects and corresponded with bodies on other issues according to risk. Significant monitoring projects are resource intensive and the VI has not been resourced to undertake further monitoring projects since 2018–19.

Within the new budget allocation, the VI's oversight will be primarily through identifying issues in complaints and notifications received by the VI. We will correspond on other issues according to risk, as resources allow.

See section 6 for the types of monitoring projects that are resource dependent and reliant on building up new staff capability. Before commencing any monitoring projects, the VI will give priority to mitigating investigation delays caused by COVID-19.

OPERATIONAL FRAMEWORK AND GOVERNANCE

The VI has developed an Operations Model (**Attachment 2**) as a conceptual framework for the entirety of the VI's operational effort across its varied jurisdiction.

In practice, the Operations Model underpins the VI's internal governance structures for operational activities. The internal Integrity Operations Management Committee (IOMC) ensures that operational decision-making is consistent, fully informed by risk assessments and legal advice, and properly documented.

Most importantly, the IOMC structure ensures that decisions to initiate new work are carefully considered, and that progress on existing work is monitored for resource short-falls or delays.

The Model represents:

- The VI's focus on productive, influential "Integrity Responses" that support its vision of a robust integrity system in Victoria. Integrity Responses include liaison and engagement methods, education programs, making reports and/or recommendations, or conducting further/different oversight activity.

Within its new budget allocation, the VI may commence delivering education programs. See section 6 for resource dependent activities and priorities.

- The receipt of complaints and agency notifications of their exercise of coercive powers as key information and intelligence. These are inflows that the VI responds to reactively, and also uses proactively, to initiate oversight activities according to risk.

Within its new budget allocation, the VI will respond reactively to issues identified through complaints and disclosures but still anticipates some delays in delivering outcomes due to the impact of COVID-19. The VI will undertake an increased number of risk based reviews of coercive power notifications. The VI will not undertake to proactively initiate oversight activities that provide deeper oversight of issues through monitoring projects but may have resources to commence a proactive integrity program. See section 6 for resource dependent activities and priorities.

- Investigative activity as proportionate and purposive: the VI's preliminary inquiries, investigations and inquiries are directed toward effective Integrity Responses.

Within its new budget allocation, the VI will continue to prioritise public interest complaint investigations.

- Monitoring projects as strategically targeted and finite activities with well-defined objectives. In contrast, Integrity Programs are regular, ongoing oversight activities that deliver recurrent outputs, such as the VI's inspections activities and monitoring of coercive powers.

As new resources come on board in the latter half of this financial year, risk based reviews of coercive power notifications will increase accordingly. The VI will not undertake to deliver monitoring projects. See section 6 for resource dependent activities and priorities.

CORPORATE / GOVERNANCE PRIORITIES

Core Business

The small corporate, governance and strategy unit (1 FTE ongoing) at the VI will lead the delivery of all standard corporate functions with support acquired from a suitable government department. This includes all functions such as human resources, budget, finance and procurement, facilities and security management, information and records management and ICT management. Within the capability of its footprint the VI will also support the delivery of governance compliance requirements including the Financial Management Compliance Framework, the Victorian Protective Data Security Standards as well as the audit and risk management requirements. An important focus for the unit is supporting staff engagement at the VI to maintain the strong *People Matter Survey* results.

Within its current budget allocation, the VI will meet compliance obligations in a manner that is appropriate for its size and footprint.

In addition to core business corporate functions, there are three key priorities to deliver in 2020–21 that will support operational activities. The VI will undertake these projects with resourcing provided through non-recurrent project funding.

Corporate Priority One - Budget independence transition

Due to the size of the VI's corporate function, transitioning into "budget independence" from 1 July 2020 (in accordance with the proposed sections 90A and 90B of the VI Act introduced by the *Integrity and*

Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019), has required considerable preparatory work. For the 2020–21 financial year, the VI will access corporate support from a suitable government department through a contracted services arrangement. The VI will design, cost and at the appropriate time seek funding for a model of budget independence suitable for an organisation of the VI's size, funding, statutory remit and specialist requirements (security and ICT).

Corporate Priority Two - Implement new case management system (CMS)

Across 2019–20 the VI undertook a comprehensive capital program to replace 'end of life' specialised ICT and security infrastructure. The VI has undertaken significant work on the CMS with system implementation scheduled for completion in the 2020–21 financial year. Due to COVID-19 delays, a small number of capital projects (including the CMS project) will push into the 2020–21 financial year.

Corporate Priority Three - Information and records management update

In 2020–21, the VI is scheduled to complete a project to review and update the VI's information and records management systems, policies and processes to ensure that the VI's management of classified information, data migration between systems, and records management compliance obligations continue to be delivered at a high standard.

Corporate Priority Four - Full and independent base review

In the 2020–21 budget outcome the VI was provided funding for an independent base review which will analyse the VI's statutory remit, operating model and associated costs. This review will be completed by the end of the 2020–21 financial year and will inform the ongoing model for budget independence and provide an independent evidentiary basis for future VI funding submissions.

4 | Budget / Financial Position

Due to COVID-19, the annual appropriation was delayed. Under the *Appropriation (Parliament) (Interim) Act 2020*, the VI was allocated a total output budget of \$2.159 million for July to 31 December 2020.

It was noted that the budget position will be updated in the annual plan following the passage of any further appropriation legislation in 2020–21.

On 24 November 2020 the VI received confirmation of the following total output funding of \$6.605 million for the 2020–21 financial year in the *Victorian Budget 2020–21*:

Recurrent base operating funding	\$2,851,110
Fixed term operating and project funding	\$2,718,790
Capital Asset Charge	\$79,000
Depreciation	\$956,700

(The *Appropriation (Parliament 2020–21) Act 2020* was passed on 8 December 2020.)

5 | Performance Measures

Following the 2020–21 budget outcome the VI has introduced the following new performance measures:

Performance Measure	Unit of Measure	2020–21 Target
Quantity		
Recommendations of the VI accepted by agencies	Per cent	75%
Reasons for decisions provided for complaint outcomes	Per cent	100%
Quality		
Improvements to the integrity system	Number	5

(For further information please refer to page 395 of the Victorian Budget 2020–21: Service Delivery, Budget Paper No. 3)

6 | Resource Dependent Operational Activities

When this plan was published in June 2020, the VI's planned business activities outlined in section 3 reflected the budget allocation at that time and the anticipated inflow of complaints, disclosures and coercive power notifications. The plan noted that any remaining resourcing (if available) would be directed towards mitigating COVID-19 related delays to inspections, preliminary inquiries and investigations. In light of the VI's increased budget outlined in Part 4, resources may become available as new staff commence in the first half of 2021. Any available resources will be directed towards the delivery of the integrity activities outlined below, with priority given to the Integrity Program and Education. The VI will continue to take a risk based approach, noting that a more urgent activity may arise from an issue identified during the 2020–21 financial year.

Identified Monitoring Projects

Monitoring projects are strategically targeted and finite activities with well-defined objectives, methodology and deliverables. These targeted monitoring projects arise from identified concerns and include reviews of high risk notifications such as public hearings.

The VI also undertakes targeted monitoring projects that may, for example, review bodies' policies and procedures on a specific power and how they are implemented.

Through application of the Operations Model, the VI has identified four monitoring projects across four integrity agencies that could add value to the integrity system:

- One project arising from multiple complaints about an agency's use of statutory powers.
- Two targeted projects to address:
 - specific issues in relation to an agency's review activities; and
 - an agency's management of conflicts of interest.
- One project proactively monitoring an agency's compliance with statutory requirements, including permitted dissemination of restricted information, as well as its policies and procedures.

Integrity Program – Coercive Powers Multi Agency Project

The VI's integrity programs are ongoing, regular programs to assess compliance or inspect records; results are generally delivered in regular reports. The planned integrity programs in section 3 include: (1) mandatory inspections of, and reports about, records relating to the use of law enforcement powers; and (2) a program of notification reviews to monitor the use of coercive powers and review compliance with certain provisions. The second program does not include a regular reporting component.

As bodies must notify the VI when they exercise a coercive power, notifications are an important source of information for monitoring how bodies exercise their coercive power. Over 1000 coercive power notifications are received each year which require regular and consistent reviews. The VI has identified that there are benefits in

producing regular and consistent multiple agency reports on these reviews. These benefits include enabling agencies to see what issues are identified about other agencies and apply the learnings. The VI currently reviews high-risk notifications per agency however conducting reviews across agencies and producing multi agency reports would provide a preventative benefit across the integrity system.

Education

The VI may respond to issues with a spectrum of appropriate activities such as stakeholder engagement, education programs and/or the provision of integrity resources such as published practice or guidance notes or reference materials.

The VI recognises that a fundamental part of effective oversight is education and communication which are also preventative strategies. Developing an education strategy as a key tool in supporting compliance recognises the recommendations from the report tabled in November 2017 by the former Accountability and Oversight Committee of the Parliament – *Inquiry into Education, Training and Communications Initiatives of Victorian Oversight Agencies*.

ATTACHMENT 1 | VICTORIAN INSPECTORATE'S KEY FUNCTIONS

										
For each agency, the Victorian Inspectorate has these different functions:										
Receives and assesses complaints about conduct of IBAC & IBAC personnel Investigates conduct Investigates a public interest complaint (PIC) about IBAC or an IBAC officer	Receives and assesses complaints about conduct of VO officers Investigates conduct	Receives and assesses complaints about conduct of OVIC officers Investigates conduct	Receives and assesses complaints about conduct of VAGO officers Investigates conduct	Receives and assesses complaints about conduct of the Chief Examiner or Examiners Investigates the conduct of the Chief Examiner and Examiners		Investigates PICs about a PIM				
Monitors the exercise of coercive powers	Monitors the exercise of coercive powers	Monitors the exercise of coercive powers	Monitors the exercise of coercive powers	Monitors the exercise of coercive powers	Monitors the exercise of coercive powers					
	Monitors compliance with procedural fairness	Monitors compliance with procedural fairness								
Assesses the effectiveness and appropriateness of policies and procedures				Assesses the effectiveness and appropriateness of policies and procedures						
Monitors compliance with the IBAC Act and other laws			Monitors compliance with sections 30 to 37, 39, 43 to 46, 50(1) and 51 of the <i>Audit Act 1994</i>	Monitors compliance with the <i>Major Crime (Investigative Powers) Act 2004</i>			Monitors compliance with the <i>Major Crime (Investigative Powers) Act 2004</i>			
Reviews Public Interest Disclosure (PID) procedures	Reviews PID procedures				Reviews PID procedures					
Oversees IBAC's performance of its PID Act functions Receives & assesses PIDs about IBAC and IBAC officers						Receives & assesses PIDs about a PIM				
Monitors interaction with other integrity bodies										
Inspects records on telephone intercepts, use of surveillance devices and on controlled operations						Inspects records relating to order/warrant applications	Inspects records on telephone intercepts, use of surveillance devices and on controlled operations	Inspects records on use of surveillance devices and on controlled operations	Inspects records on use of surveillance devices and on controlled operations	Inspects records on use of surveillance devices and on controlled operations
							Inspects records on use of counter-terrorism powers			

The VI must consider whether any disclosure received by it relating to any public body or public officer is a PID that must be notified to the appropriate entity.

The VI must also investigate any PIC referred to it by IBAC relating to the conduct of any public body or public officer.

Integrity Responses

The VI is empowered to make recommendations and issue reports.

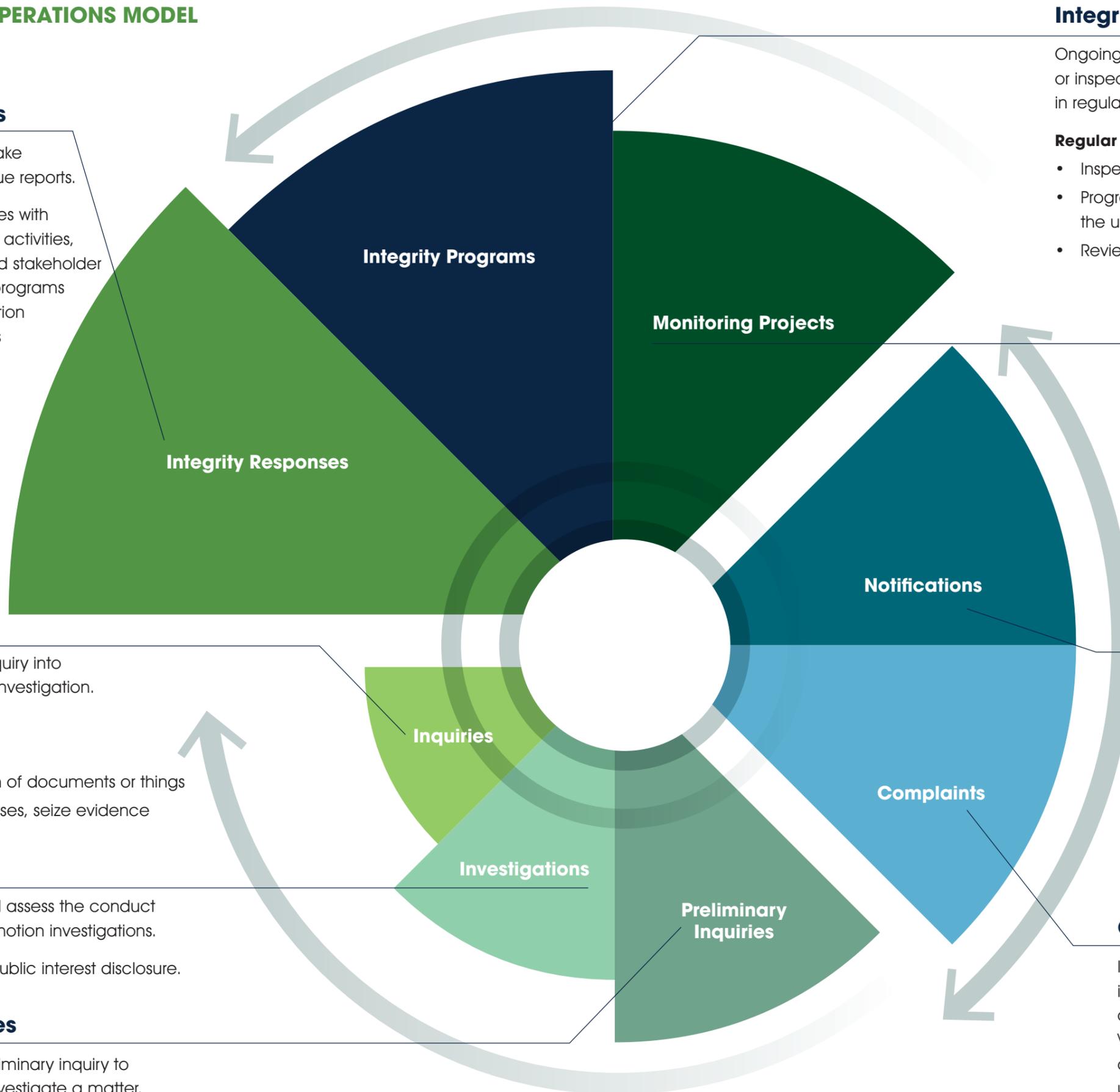
The VI may respond to issues with a spectrum of appropriate activities, such as informal liaison and stakeholder engagement, education programs and resources, or the initiation of further oversight projects or programs.

Integrity Programs

Ongoing, regular programs to assess compliance or inspect records; results are generally delivered in regular reports.

Regular Integrity Programs:

- Inspections of law enforcement powers
- Program of notification reviews to monitor the use of coercive powers
- Reviewing compliance with certain provisions



Integrity Responses

Monitoring Projects

Monitoring Projects

Strategically targeted and finite activities with well-defined objectives, methodology and deliverables.

Targeted monitoring projects:

- Projects arising from identified concerns
- Reviews of high risk notifications eg. Public hearings

Notifications

Notifications

The VI receives information via notifications from oversight entities where they:

- Use a coercive power
- Are required to notify the VI of other information

Complaints

Complaints

Individuals can complain or provide information to the VI about the conduct of officers of bodies it oversees. The VI also receives complaints about the activities of IBAC and certain disclosures under the PID Act.

Inquiries

The VI may conduct an inquiry into a matter arising out of an investigation.

The VI is empowered to:

- Examine witnesses
- Compel the production of documents or things
- Enter and search premises, seize evidence

Inquiries

Investigations

The VI may investigate and assess the conduct of officers, including own motion investigations.

The VI must investigate a public interest disclosure.

Investigations

Preliminary Inquiries

The VI may conduct a preliminary inquiry to determine whether it will investigate a matter.

Preliminary Inquiries



vic.gov.au/vicinspectorate