



Formal Review into Victorian Government  
Bodies' Engagement with Construction  
Companies And Construction Unions

# Interim report

August 2024

# **Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions**

## *INTERIM REPORT*

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### Acknowledgement

*The Formal Review acknowledges the traditional Aboriginal owners of country throughout Victoria and recognises their continuing connection to land, sea, culture and community. The Review pays its respects to Elders past, present and emerging.*

# Table of Contents

1. Executive summary .....	2
2. Introduction .....	8
3. Statutory roles and responsibilities .....	10
Industrial Relations .....	10
Occupational Health and Safety .....	13
Criminal activity .....	14
Other relevant bodies .....	15
4. Management and oversight of Victorian construction projects .....	19
Powers to remove personnel from worksites .....	22
5. Selection of health and safety representatives, right-of-entry permit holders and union delegates .....	24
6. Complaints and whistleblower protections .....	27
7. Initial observations and areas for further inquiry .....	32
Integrity .....	33
Complaints .....	34
Procurement and contracting .....	35
The regulatory scheme .....	36
8. Next steps toward the final report .....	37
Appendix A: Establishing Instrument .....	38
Appendix B: Key Agencies and responsibilities .....	42
Acronyms and Abbreviations .....	46

# 1. Executive summary

The industrial relations and occupational health and safety systems relating to Victorian Government construction projects are overseen by a range of different Commonwealth and state legislation, policies and regulators.

On 20 July 2024, the Premier announced that the Victorian Government would establish a Formal Review (the Review) to strengthen the power of Victorian Government bodies who are engaged with construction companies and construction unions to respond to allegations of criminal or other unlawful conduct in the Victorian construction sector.

The establishing instrument for the Review requires this interim report to be submitted to the Premier by 29 August 2024 and the final Report by 29 November 2024.

This report provides an overview of:

- the statutory roles and responsibilities of Victorian and Commonwealth agencies in relation to the matters contained in the terms of reference (Section 3)
- the arrangements for the management and oversight of construction projects in Victoria (Section 4)
- the laws relating to the selection of health and safety representatives, right-of-entry permit holders and union delegates in or on Victorian worksites (Section 5)
- current protections for whistleblowers and complainants available under various laws (Section 6).

It also provides:

- initial observations and potential opportunities for more detailed examination to inform the recommendations in the final report (Section 7)
- an outline of the next steps in the process of completing the final report (Section 8).

The interim report has been informed by discussions with, and submissions from, relevant Victorian Government bodies as well as with stakeholders from across the construction sector, who have engaged with the Review on a confidential basis.

This report uses the term ‘Victorian Government construction projects’ to describe the various government-funded construction projects that are the focus of the Review. While this term can relate to a wide range of construction led by government bodies to deliver projects in areas such as education, health and housing, it appears the bulk of the issues raised relate to large transport projects funded by the Victorian Government and led by Victorian Government bodies.

The Review focuses on the matters outlined in its Establishing Instrument; however, it clearly operates within a wider context of public discussion regarding government bodies’ engagement with construction companies and construction unions. There is activity underway in a several areas overlapping the Review’s purview. In particular the Review notes that:

- In recent weeks the Commonwealth Government has commenced action to appoint an administrator to the Construction, Forestry and Maritime Employees Union (CFMEU). With immediate effect on 23 August, the Commonwealth Attorney General placed the

Construction and General Division of the CFMEU and all its branches into administration, appointing Mr Mark Irving KC as the administrator.

- Victoria Police has confirmed it is undertaking investigations into related, potentially criminal matters.
- On 28 August 2024, the Victorian Government announced that it would introduce new laws to allow organised crime groups to be banned from entering Victorian Government worksites.
- The Victorian Government has also initiated a separate review into the role of employee representatives.

In addition to this work, the Review has identified further opportunities to strengthen the power of Victorian Government bodies to respond to allegations of criminal or other unlawful conduct in the Victorian construction sector.

## Overview of statutory roles & responsibilities

Oversight of, and responsibility for, regulation of government construction projects is spread across many organisations. The power and ability to review and monitor compliance varies considerably, as do the availability and effectiveness of avenues of complaint and redress.

The key areas for consideration relevant to the Review include:

- industrial relations laws, including their application to registered organisations (i.e. unions and employer associations)
- occupational health and safety laws
- criminal laws and activity
- other relevant bodies and agencies, such as integrity bodies and other regulators.

A range of bodies are responsible for different aspects of oversight and regulation. For example, Victoria Police and the Australian Federal Police are responsible for enforcing the criminal law; WorkSafe is the state regulator of workplace health and safety; Comcare is the Commonwealth regulator of workplace health and safety; and the Fair Work Commission and the Fair Work Ombudsman are the regulators for registered organisations, and industrial relations. Other bodies are also responsible for overseeing compliance with government policy requirements.

The roles and powers of the bodies relevant to these areas are articulated within Commonwealth and Victorian legislation, as well as contractual terms, government policies, ministerial directions and guidance materials. They are relevant to the Victorian construction industry and workplaces in varying aspects with respect to their coverage and the functions and powers they have to ensure compliance with the law.

The interim report provides an overview of areas of overlap in responsibility between Commonwealth and state bodies, between those responsible for policing criminal activity, integrity, industrial relations and OHS, and between government and employers.

These matters are discussed further at **Section 3**.

## Management and oversight of construction projects

Construction projects delivered by the Victorian Government vary in scale from the 'Big Build' projects, such as the West Gate Tunnel Project and North-East Link Project, through to smaller scale infrastructure such as schools, police stations and facility upgrades. Responsibility for the delivery of government-funded projects sits with different government bodies depending on scope and cost.

The arrangements for the delivery of construction projects can be categorised into three levels:

1. The structure and accountabilities established by the state with respect to ministers, departmental secretaries and government delivery agencies.
2. The contracting models used by the government delivery agencies to engage private sector construction contractors on delivery projects, which document the agreed allocation of risk and responsibility and embed state government policy requirements.
3. The arrangements and structures put in place by the private sector construction contractors in terms of sub-contractors, suppliers, operators and work packages.

Construction workers on Victorian Government-funded construction sites are not employed directly by the state.

To deliver most state construction projects, departments and delivery agencies procure a head contractor to perform the works. These head contractors do not necessarily have a large, directly employed workforce themselves, and typically engage sub-contractors and/or labour hire firms to undertake the construction works – and these may in turn contract out work packages or services. Contracting arrangements can therefore mean upward of a thousand different employers on a major project, with many layers of sub-contracting.

Employers hold much of the responsibility under legislation for their workers' employment, health and safety. These contracting arrangements mean the direct employers of staff can be several layers removed from the companies engaged by government.

This report provides a preliminary description of the complexity of contractual arrangements and the allocation of responsibility between government and the private sector in commissioning projects and contractors. This complexity creates challenges to the raising of, and response to, complaints and allegations.

The report outlines the procurement arrangements for construction projects, including those that relate to workplace relations and health and safety matters and how compliance is monitored.

The report also describes the various policy requirements the Victorian Government builds into contracts to promote local jobs and materials in the delivery of major projects.

These matters are further discussed in **Section 4**.

## Health and safety representatives, right-of-entry permit holder and union delegates

Multiple intersecting roles support the employment, health and safety of workers in Victoria. The balance struck in the industrial relations system relies on employee representatives being advocates for their colleagues and using the rights they are granted to protect workers' safety and conditions, but not to unreasonably impede delivery of the work.

Intersecting federal and state schemes support the right-of-entry permit scheme and the Victorian *Occupational Health and Safety Act 2004* (Vic) provides for the election of Health and Safety Representatives (HSRs). Union delegates are appointed or elected by their colleagues.

The Review notes the Victorian Government has committed to conduct a separate review to consider whether the powers, functions and support provided to authorised representatives of registered employee organisations (ARREOs) and HSRs in all sectors under the *Occupational Health and Safety Act* remain effective and fit-for-purpose to deliver improved health and safety outcomes for all workers.

This report provides an overview of the law relating to the selection of health and safety representatives, right-of-entry permit holders and union delegates Victorian worksites.

Further information will be sought regarding how these selection processes work in practice to inform the final report.

These roles are discussed in **Section 5**

## Protections for whistleblowers and complainants

The Review's terms of reference require it to inquire into and report on protections for whistleblowers and complainants. While various Victorian and Commonwealth agencies can receive complaints regarding behaviour in construction industry workplaces, there appears to be no consistent approach to responding to these complaints, referring them to appropriate agencies, or to protecting those who make a complaint.

Different approaches exist between jurisdictions, and between agencies for different types of complaints. Complaints relating to physical assaults or threats to kill are clearly criminal matters and should be made to Victoria Police, but other unlawful behaviour, including bullying, coercion, anti-competitive business practices and so on should be directed to other organisations.

Protections for whistleblowers similarly vary for different types of complaint under various acts.

The Review has heard there is significant reluctance to make complaints from within the industry, both because of fear of reprisal and because people lack confidence that anything will be done. Even if people wish to make a complaint, they are not certain as to who they should make it to.

This report provides an initial overview of the Review’s understanding of current settings for the protection of whistleblowers and complainants under relevant laws. It also reflects initial inquiry into the current challenges in reporting.

Further investigation will be directed to whether there are better ways to encourage complaints and reporting from those who observe unlawful behaviour and misconduct in the industry, and to protect complainants from reprisals.

Whistleblowers and complainants are discussed at **Section 6**.

## Initial observations and areas for further inquiry

The arrangements around government construction are complex. Much of the legislation governing industrial relations, and some regarding occupational health and safety (OHS), is a Commonwealth responsibility. However, there appear to be opportunities for the Victorian Government to improve government bodies’ contracting and procurement oversight, integrity arrangements and complaints pathways.

There is not a simple ‘one-stop shop’ for any allegation related to government-funded construction projects. The state or federal agency that is appropriate to respond to a complaint will depend on the nature of the allegation, the relevant jurisdiction and applicable thresholds for receiving complaints. Each has different degrees of protection for whistleblowers and complainants.

Providing a pathway for people to lodge complaints to the ‘right’ agency for an effective response is challenging, particularly when the state government bodies that deliver construction projects do not directly employ construction workers. Government bodies also do not always have oversight of engagement of sub-contractors.

Notwithstanding these challenges and noting the significant role of the Commonwealth in terms of workplace matters, the Review has identified some potential opportunities for Victorian Government bodies, which will be further examined in preparing the final report.

### **Themes the Review will consider further (Section 7).**

#### *Integrity*

- If there are opportunities to expand the remit of the state’s integrity agencies to bolster the protections against misconduct and corruption in Victorian Government construction projects.
- Understanding practices in relation to the selection of health and safety representatives, right-of-entry permit holders and union delegates on Victorian Government construction projects.

#### *Complaints*

- How to encourage complaints from those who observe unlawful conduct on Victorian Government construction projects, and how to protect complainants from reprisals.



- Whether there is an opportunity to create a complaints scheme across Victorian Government construction projects that provides a single gateway for complaints of unlawful behaviour.
- What the model for such a complaints scheme should be

#### *Procurement and contracting*

- If oversight of compliance with procurement and contractual requirements can be strengthened, particularly in relation to sub-contractual arrangements.
- Whether information gathered about complaints and other conduct is being shared, and if it could be used to better monitor contractors' compliance with procurement and contractual policies.

#### *The regulatory scheme*

- Whether the network of state and federal bodies that operate in this area is working together effectively
- What opportunities there are to improve collaboration between entities and whether more needs to be done to facilitate cooperation and information sharing.

## Next steps

The Review is seeking further comment on the above or any other matters relevant to the terms of reference by **Friday, 27 September**.

The Review will seek to accommodate people's choices as to how they wish to participate in the Review, including holding meetings and receiving submissions on a confidential basis.

Updates will be published on the Review website at [rvqbec.vic.gov.au](http://rvqbec.vic.gov.au)

## 2. Introduction

A series of media reports from July 2024 focussed on allegations of criminal activity involving the Construction, Forestry and Maritime Employees Union (CFMEU), including intimidation and coercion and anti-competitive behaviour on Victorian Government construction project worksites. The Premier subsequently referred several matters to Victoria Police and the Independent Broad-based Anti-corruption Commission (IBAC).

Noting the power to regulate registered organisation (including trade union) activity rests with the Commonwealth, on 15 July 2024 the Premier announced that the Victorian Government would establish an independent Review to consider recommendations to strengthen the power of Victorian Government bodies who are engaged with or have oversight of construction companies and construction unions to respond to allegations of criminal or other unlawful conduct in the Victorian construction sector.

On 20 July 2024 the Premier established the Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions.

The Premier has asked the Review to investigate and recommend ways to amend any gaps or limitations in the current powers of Victorian Government bodies and their interaction with the powers of the Commonwealth.

The Review has also been established to consider how government can establish clear processes and protections for whistleblowers and complainants with allegations of criminal or unlawful practices, including coercion, bullying or intimidatory conduct.

This interim report sets out a series of initial observations based on discussions and submissions received from a wide range of individuals and organisations involved in Victorian Government construction processes and other relevant bodies conducted in the weeks since the Review was established. It also outlines areas for further inquiry in informing the final report and the next steps in consultation.

### Scope of the Review

The terms of reference set out within the Review's establishing instrument require the Review to inquire into, report on and make any recommendations it considers appropriate in relation to the below:

- The current roles, responsibilities and powers of the Commonwealth and the Victorian Government to investigate or respond to allegations of criminal or other unlawful conduct in the Victorian construction sector, including but not limited to:
  - any coercive, bullying or intimidatory practices or conduct
  - the power of the Victorian Infrastructure Delivery Authority to direct the removal of individuals engaging in criminal or other unlawful conduct from Victorian worksites; and
  - protections for whistleblowers and complainants
- The effectiveness of the matters noted above and any legal or procedural deficiencies in the Victorian regulatory regime, having regard to the roles, responsibilities and powers of any relevant Commonwealth bodies, including as they may relate to criminal or other unlawful conduct or practices of a systemic nature in the Victorian construction sector

- The role of Victorian Government bodies managing construction projects (“Project Bodies”) in relation to:
  - workplace relations, operations and practices, and health and safety matters applying under both Victorian and Commonwealth law and practices; and
  - the apportionment of responsibility and oversight for these matters between parties to contracts delivering construction projects; and
  - law and practices applicable to the selection of health and safety representatives, right-of-entry permit holders and union delegates in or on Victorian worksites.

The establishing instrument is included in full at Appendix A.

## Approach to the Review

This report uses the term ‘Victorian Government construction’ to describe the various construction projects that are the focus of the Review. This can relate to a wide range of construction works, such as in education, health and housing, however, complaints have largely centred on the large transport projects funded by the state government and commissioned by state government bodies.

This interim report provides:

- an overview of the statutory roles and responsibilities of Victorian and Commonwealth agencies in relation to the matters contained in the terms of reference, including those relating to the selection of employee representatives
- an overview of the arrangements for the delivery and oversight of construction projects in Victoria
- initial observations about the effectiveness of the arrangements to respond to allegations
- an outline of potential areas for more detailed examination to inform the recommendations in the final report
- an outline of next steps in the process of completing the final report.

In the time available, the Review has:

- assessed the legislative framework for workplace relations, operations and practices, and health and safety matters applying under both Victorian and Commonwealth law
- considered documentation and undertaken preliminary analysis of the arrangements for the delivery of construction projects by Victorian Government bodies
- examined the current roles, responsibilities and powers of the Commonwealth and the Victorian Government to investigate or respond to allegations of criminal and other unlawful conduct
- undertaken preliminary assessment of the effectiveness of current roles, responsibilities and powers of the Commonwealth and the Victorian Government to investigate or respond to allegations of criminal or other unlawful conduct and any legal or procedural deficiencies in the Victorian regulatory framework
- consulted representatives of state government bodies, integrity bodies and others within the industry who provided submissions and information on a confidential basis.

### 3. Statutory roles and responsibilities

This section sets out the legal and regulatory system within which unions, construction companies, and the Victorian Government bodies that engage with them work and examines the roles and responsibilities of a wide range of Commonwealth and Victorian bodies in relation to the terms of reference.

Departments and delivery agencies also have their own policies and procedures. These may include additional requirements, related to the type of works the department or agency undertakes, for example specific safety requirements or procurement rules.

#### Industrial Relations

##### Background

Australia has traditionally operated a dual state and federal industrial relations system.

Limited by constitutional law, federal awards covering employee minimum terms and conditions were the result of arbitration of industrial disputes by the federal tribunal that existed beyond the limits of any one state. Each of the states regulated the remaining employees who were not covered by federal awards. Over time Australia saw continued growth in the scope of employees covered by federal awards.

In the early 1990s the Commonwealth used its constitutional powers to make laws to give effect to International Labour Organisation termination of employment conventions to enact the unfair dismissal laws which covered many Australian employees.

The major shift came in 2006 when the Commonwealth used the corporations power in the Constitution to underpin its national industrial relations law-making powers. The federal laws were able to cover many more employees if they were employed by an incorporated body, irrespective of their location and the existence of an industrial dispute.

This left a diminished role for the states to make laws, because of the constitutional principle that federal laws override state laws where there is an inconsistency or because the federal laws are otherwise intended to exclusively cover the subject matter field.

By that stage, Victoria had already transferred its industrial relations powers (in 1996) to the Commonwealth, shifting virtually all its employees into the federally regulated system.

Most employees are regulated by federal laws, primarily the *Fair Work Act 2009* (Cth), but the states, including Victoria, retain powers to make workplace laws in some areas including health and safety, discrimination, and workers' compensation.

As a result, and despite the shift to the prominence of the federal system, the rights and obligations of private and public sector employers and employees and their industrial associations, remain regulated by a variety of means including federal and state legislation and regulations, Commonwealth workplace agreements, federal awards, employment agreements, common law and policies including those enacted by the executive governments.

## The Fair Work Act 2009 (Cth)

The *Fair Work Act 2009* regulates the terms and conditions of employment of most employees and employers. Its provisions set out the major features of Australian industrial arrangements, including:

### *Enterprise bargaining*

Enterprise agreements are made at workplace level between employers and employees. In a highly unionised industry, the relevant union will be the bargaining representative of the employees. On major projects it is common for the head contractor to have an enterprise agreement for the project with its own employees and for each of the subcontractors it uses on the project to have their own enterprise agreement with employees they engage on the project.

### *Union right of entry into workplaces*

The *Fair Work Act* requires union officials to hold valid entry permits issued by the Commission to enter workplaces. The Commission may revoke or suspend the entry permits in certain circumstances such as where the official engages in conduct contrary to their responsibilities as a permit holder.

Union officials may also hold work health and safety entry permits under state or federal occupational health and safety legislation. Holders of these permits must also hold a corresponding entry permit under the *Fair Work Act* or applicable state legislation.

Note, however, that this does not apply to health and safety representatives employed within a workplace who do not require an entry permit.

### *Appointment of union delegates*

A worker who is elected or appointed to represent union members in their workplace has certain protections and rights under the *Fair Work Act*, including protection from discrimination and the ability to undertake their role as a delegate without unreasonable interference by the employer.

A workplace delegate is entitled to represent the industrial interests of members of the organisation who work in a particular enterprise, and any other persons eligible to be such members, including in disputes with their employer. In doing so they are entitled to reasonable communication with those members in relation to their industrial interests, reasonable access to the workplace and workplace facilities where the enterprise is being carried on, and (except in a small business) reasonable access to paid time, during normal working hours, for the purposes of related training.

### *Freedom of association*

The *Fair Work Act* protects workers and some contractors against discrimination, coercion, undue influence and misrepresentation associated with union membership, industrial action or participation in industrial activities. Significant civil penalties can be imposed for breaches of these protections.

## The Fair Work Commission

The Fair Work Commission is the national workplace tribunal with a range of powers including:

- making and varying modern awards and determining the minimum wage
- conciliating general protections and unfair dismissal claims and arbitrating unfair dismissal claims
- resolving disputes under enterprise agreements and national employment standards
- making stop bullying and sexual harassment orders
- approving, varying and terminating enterprise agreements.

The Fair Work Commission has the power to resolve disputes about entry permits, as well as the power to issue and revoke entry permits. The Commission also has powers in connection with the taking of industrial action, including making orders in relation to protected industrial action and the power to make orders stopping certain unprotected industrial action.

In a role which is separate and independent from providing administrative support to the tribunal arm of the Fair Work Commission, the General Manager of the Fair Work Commission regulates registered organisations, which are union and employer associations under the *Fair Work (Registered Organisations) Act 2009 (Cth)*. *The Fair Work (Registered Organisations) Act* provides for the registration of organisations, their rules and election requirements and reporting and governance obligations. The legislative scheme also sets out the duties of officers and employees in relation to the financial management of registered organisations.

The Registered Organisations Services Branch of the Fair Work Commission receives, assesses and publishes a range of documents that registered organisations are required to lodge, and can conduct inquiries and investigations into compliance with a registered organisation's rules regarding finances, financial administration and financial reporting obligations.

## The Fair Work Ombudsman

The Fair Work Ombudsman is the national body that provides education, assistance, advice and guidance to employers, employees and organisations and promotes and monitors compliance with workplace laws.

The Ombudsman's powers include assessing complaints or suspected breaches of workplace laws, awards and enterprise agreements. It investigates the complaints or alleged contraventions. It can take court action to seek to enforce contraventions of those laws and agreements in the federal court system including asking the courts to impose civil penalties against parties who have breached the laws.

The Ombudsman engages inspectors to discharge its functions. The inspectors have powers to enter workplaces and interview people and compel production of documents. The inspectors can investigate, amongst other things, freedom of association breaches and right of entry by unions.

## Occupational Health and Safety

Responsibility for occupational health and safety is shared across Commonwealth and state legislation.

### WorkSafe Victoria

WorkSafe Victoria regulates health, safety, and wellbeing at Victorian workplaces under the *Occupational Health and Safety Act 2004* (Vic). Relevantly for the Review, WorkSafe's functions include:

- monitoring and enforcing compliance with the *Occupational Health and Safety Act*, including an employers' duty to protect the health and safety of employees while at work by ensuring they provide and maintain a working environment that is safe and without risks to health. Behaviours or conduct that can create unsafe working conditions include bullying, harassment, discrimination, hindrance, obstruction, intimidation, or coercion
- receiving and acting on complaints about health and safety concerns
- inspecting worksites to assess health and safety conditions and give advice, guidance or direction on what an employer needs to do to provide and maintain a safe workplace
- educating and working with employers to ensure safe conditions for workers in their employ and / or on their site
- outlining and supporting the role of and protections for Health and Safety Representatives (HSRs) and
- enforcing the provisions related to authorised representatives of registered employee organisations (ARREOs).

The role of HSRs and ARREOs on Victorian construction sites is discussed further at Section 5.

The Review notes the Victorian Government is currently considering options for the development of Occupational Health and Safety Amendment (Psychological Health) Regulations to clarify the existing employer duty set out in section 21 of the *Occupational Health and Safety Act* concerning the management of workplace psychosocial hazards, including the impact of bullying, sexual harassment and occupational violence or aggression.

The proposed regulations will strengthen the occupational health and safety framework and recognise that hazards that pose a risk to psychological health are no less harmful to workers' safety and wellbeing than physical hazards.

### Comcare

Comcare is responsible for the national workers' compensation insurance scheme and the national occupational health and safety scheme. Both schemes apply to the Commonwealth Government, its agencies and their employees as well as some licensed private sector employers operating nationally. Those private sector employees therefore cease to be covered by the state occupational health and safety and workers compensation schemes. Some Victorian Government infrastructure projects are delivered by private sector businesses operating nationally and regulated and insured by Comcare.

For these businesses, the *Work Health and Safety Act 2011* (Cth) is the primary legislation that regulates work health and safety. It covers duties to ensure health and safety and eliminate or minimise risks in the workplace; rights and obligations relating to consultation, representation and the cessation of work; rights, obligations, powers and functions of health and safety representatives; right of entry of union officials; powers of Comcare, the Fair Work Commission and inspectors; and the enforcement regime.

Comcare inspectors' powers and functions are broad and include:

- providing information and advice about compliance with the *Work Health and Safety Act*
- assisting in the resolution of disputes relating to health and safety issues at workplaces, access to a workplace and the exercise of rights of entry
- issuing notices requiring compliance with the Act
- investigating contraventions of the Act.

Where work sites also have employers that are regulated by state laws, the state regulator's inspectors also have jurisdiction to investigate safety for employers under the state scheme that operates on those sites.

## Criminal activity

### Victoria Police

Victoria Police is responsible for preventing, responding to and investigating crime, and collecting evidence to support a prosecution.

The Commissioner of Police has a broad discretion to direct police resources to meet Victoria Police's role to '...serve the Victorian community and uphold the law so as to promote a safe, secure and orderly society'.<sup>1</sup> While some conduct may be technically criminal, it may not result in a criminal charge. This may include complaints of bullying, harassment and intimidation, which may be more effectively dealt with as a health and safety, or a workplace issue.

Victoria Police is also responsible for applications for declarations and control orders under the *Criminal Organisations Control Act 2012* (Vic). On 28 August, the state government announced that it was amending the *Criminal Organisations Control Act*. *The Criminal Organisations Control Amendment Bill 2024* includes a power to ban members of 'prescribed organisations' from entering 'prescribed Victorian Government worksites'. The government stated that this new law will ensure '... these sites are free from the influence of outlaw gangs and criminal groups'<sup>2</sup>.

### Australian Federal Police

The Australian Federal Police (AFP) is the national policing agency, responsible for enforcing Commonwealth criminal law. This includes enforcing criminal offences under the *Fair Work (Registered Organisations) Act 2009*, complementing the regulatory role of the Fair Work

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<sup>1</sup> Victoria Police, *Keeping You Safe. Strategy 2023-2028*

<sup>2</sup> Premier of Victoria, 28 August 2024, *Tougher Laws to Combat Organised and Serious Crime*



Commission under that Act. The AFP, with state police forces, also combats transnational serious and organised crime.

## Other relevant bodies (State)

### Independent Broad-based Anti-Corruption Commission

The Independent Broad-based Anti-Corruption Commission (IBAC) investigates and takes complaints about police misconduct and corruption in the public sector. Its remit is governed by the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic).

IBAC's remit to investigate corruption in the Victorian public sector covers employees, contractors, volunteers and secondees in state government departments and agencies; and statutory authorities<sup>3</sup>. It has broad investigative powers, including the ability to require answers to questions put in an examination and to use covert surveillance.

IBAC's investigations can result in criminal charges; and can address systemic problems through public reports that make recommendations to address corruption.

IBAC also manages and investigates public interest disclosures under Victoria's *Public Interest Disclosures Act 2012* (Vic). This Act creates a system where any person who makes a disclosure of suspected improper conduct in relation to the public sector will have that disclosure treated confidentially and will be protected from reprisals. This is discussed below, at Section 6.

### Victorian Auditor General's Office

The Auditor General is an independent officer of the Victorian Parliament, who provides assurance to Parliament and the Victorian community about how effectively public sector agencies provide services and use public money.

The *Audit Act 1994* (Vic) establishes the Auditor-General's mandate and the Victorian Auditor-General's Office (VAGO) and provides the legal basis for its powers. The *Constitution Act 1975* (Vic) establishes the role of the Auditor-General and gives complete discretion in how the functions and powers of the role are performed and exercised.

As with the other integrity bodies, VAGO's focus is 'public bodies', which includes Government departments, State controlled entities and local government<sup>4</sup>. VAGO's role is to conduct performance audits, assurance reviews and financial audits of the public sector, and the outcomes of these are made publicly available.

Unlike IBAC and the Victorian Ombudsman, VAGO's powers in relation to its performance audits or assurance reviews can extend to 'associated entities' with 'follow the dollar' powers. This definition covers a contracted service provider or subcontractor, a body that has entered a partnership or joint venture with a public body and a third-party contractor<sup>5</sup>.

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<sup>3</sup> *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) s6

<sup>4</sup> *Audit Act 1994*, (Vic) s3

<sup>5</sup> *Audit Act 1994*, s3

These powers enable VAGO to audit community sector and for-profit organisations contracted to provide government services, as well as how government grant recipients use their funds. However, VAGO can only use the powers to consider matters related to the use of the specified public funds by the associated entity. In its final report VAGO's recommendations can only be directed to a public body, not to an associated entity.

## Victorian Ombudsman

The Victorian Ombudsman receives and investigates complaints about actions or decisions made by Victorian public organisations. The *Ombudsman Act 1973 (Vic)* establishes that the principal functions of the Victorian Ombudsman include resolving complaints about administrative action taken by an authority and enquiring into or investigating administrative action of an authority<sup>6</sup>. Complaints that involve corrupt conduct must be referred to IBAC, and the Victorian Ombudsman will only consider these complaints if they are referred back to it by IBAC<sup>7</sup>.

An 'authority' under the *Ombudsman Act* includes a department and a public body, and a 'public body' is a body that is performing a public function on behalf of the state or an authority<sup>8</sup>. Although a 'public body' is not exhaustively defined in the *Ombudsman Act*, the Victorian Ombudsman can investigate most Victorian public organisations, their employees and contractors.

The Victorian Ombudsman's main tool is its ability to table a report in Parliament, shining light on the matters that have been investigated and making recommendations to avoid issues in the future, and to help other public organisations to improve their performance.

## The Labour Hire Authority

The Labour Hire Authority regulates the supply and use of labour hire services by administering the licensing scheme established by the *Labour Hire Licensing Act 2018 (Vic)*. This scheme applies across all industries and requires all providers of labour hire services to be licensed. To obtain a licence, providers must be 'fit and proper' people and demonstrate compliance with relevant workplace laws. As at June 2024, there were 720 licensed labour hire operators in the construction industry.

It is an offence to provide or advertise labour hire services without a licence; and to enter an arrangement for the provision of labour with an unlicensed provider. All licensed providers are included in a public register, and the Labour Hire Authority can impose conditions on a licence and terminate a provider's licence.

The Labour Hire Authority has a broad remit to consider compliance with other schemes. An applicant for a licence must declare that they are compliant with all the relevant state and federal laws listed in s23 of the *Labour Hire Licensing Act*. This includes laws relating to taxation, occupational health and safety, workplace laws and migration laws. For the Labour Hire Authority to grant a licence, it must be satisfied that the applicant complies with each of

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<sup>6</sup> *Ombudsman Act 1973 (Vic)* s13.

<sup>7</sup> *Ombudsman Act 1973* s16E

<sup>8</sup> *Ombudsman Act 1973* s2(1).

those laws. The Labour Hire Authority is not limited to considering formal findings from the various courts or regulators that enforce those laws but is able to make its own assessment of an applicant's compliance. Similarly, the Authority can cancel a labour hire licence if it is no longer satisfied that the licensee is compliant with those laws, and can make its own assessment of that compliance, rather than relying on a formal finding from another court or regulator.

The Labour Hire Authority's remit is defined in relation to the provision of labour hire, which requires a provider to supply workers to a host, and, to perform work 'in and as part of a business or undertaking of the host'<sup>9</sup>. Although this is a general definition, it has been clarified via the *Labour Hire Licensing Regulations 2018* (Vic) in relation to three industries: commercial cleaning, horticulture and meat processing<sup>10</sup>. For those industries, there is a specific list of activities that will be 'work' within the scope of the Act. This provides a clear and comprehensive jurisdiction for the Authority in relation to these three industries, which have been identified as industries of particular concern<sup>11</sup>.

## Other relevant bodies (Commonwealth)

### The Australian Securities and Investment Commission

The Australian Securities and Investment Commission (ASIC) oversees compliance with the *Corporations Act 2001* (Cth). The *Corporations Act* is the primary legislation that sets out the legal framework for companies operating in Australia. Broadly, it governs the formation, operation and regulation of companies, financial products and services and the duties of company officers and directors. In doing so, it establishes rules and regulations to ensure fair and transparent business practices, protects shareholders' rights and the integrity of the corporate sector.

ASIC may receive complaints of criminal and unlawful conduct about entities or directors of those entities. This includes companies within the construction industry.

### Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (ACCC) regulates Australian business practices under the *Competition and Consumer Act 2010* (Cth).

The *Competition and Consumer Act* regulates competition, consumer protection and fair trading in the marketplace. It contains provisions dealing with, among other things: cartel activity (e.g. price fixing, bid rigging and controlling output), anti-competitive agreements, the imposition of minimum resale prices, exclusive dealing and boycotts.

The ACCC has a unit dedicated to construction industry oversight and has conducted previous investigations into trade union practices in the construction and transport industries. It has also

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<sup>9</sup> *Labour Hire Licensing Act 2018* (Vic), s7

<sup>10</sup> *Labour Hire Licensing Regulations 2018* (Vic), r5.

<sup>11</sup> *Victorian Inquiry into the Labour Hire Industry and Insecure Work*, Final Report, August 2016.

brought proceedings in the Federal Court alleging that a union engaged in boycott conduct in breach of the *Competition and Consumer Act*<sup>12</sup>.

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<sup>12</sup> *Australian Competition and Consumer Commission v J Hutchinson Pty Ltd & Anor* [2024] FCAFC 18.

## 4. Management and oversight of Victorian construction projects

### State government project delivery

Large-scale projects can involve the establishment of an administrative office, such as the Victorian Infrastructure Delivery Authority (VIDA), established by the Premier under s11 of the *Public Administration Act 2004* (Vic), or a statutory authority such as the Suburban Rail Loop Authority (SRLA), established under its own legislation.

Administrative offices are accountable to the departmental Secretary and ultimately to the relevant portfolio minister. The SRLA is accountable directly to the Minister for the Suburban Rail Loop.

The Secretary of the Department of Transport and Planning is responsible for the general conduct and the effective, efficient and economic management of the department and any administrative office in relation to the Department (s 13 *Public Administration Act*).

The administrative office or statutory authority has overall responsibility for project delivery including project plans, budgets, safety and risk management.

The relationship between the Departments and the Administrative Office is generally documented through a series of Memorandum of Understandings (MOU)s and other agreements.

### Contracting models

Contracting models vary, reflecting the characteristics, complexity and duration of different projects. A 'design and construct' model involves the engagement of a contractor to deliver a project on a fixed-price basis, with pre-determined processes for variations, by a fixed date.

Public Private Partnerships typically involve a long-term contract with a private consortium to build, operate and finance a project over the long-term with rights of ownership and/or annual income streams.

Also used are more collaborative forms of contract such as 'alliances' which involve a greater sharing of risk and information between the state delivery bodies and the parties engaged for project construction and/or operation.

In addition to legislative and regulatory obligations, other requirements are imposed on suppliers through contracts. In addition to agreed project deliverables, these generally also include commitment to compliance with all workplace laws, requirements to meet certain criteria in relation to industrial relations management and obligations to consult and report on defined industrial relations issues, incidents and risks.

For construction projects valued at \$350,000 or more, the *Occupational Health and Safety Regulations 2017* (Vic) deem the owner of the property to be the principal contractor for the project unless the owner appoints another person to be the principal contractor.

The principal contractor is responsible for OHS obligations at the site of the construction<sup>13</sup>

In addition, the principal contractor and sub-contractors have obligations as employers under the OHS Act to:

- provide a working environment that is safe and without risks to health (s21)
- monitor the conditions at any workplace under its management and control (s22).

These obligations are reinforced through the delivery contracts.

## Procurement

Victorian infrastructure investment and procurement legislation, policies and guidance collectively set out processes, requirements and guidance on the way Government should procure public construction and infrastructure projects.

The Victorian Government commissions and procures construction and infrastructure projects under the *Project Development and Construction Management Act 1994* (Vic). This Act, one of the primary mechanisms under which construction is procured, allows the relevant minister to set standards and issue directions in relation to public construction.

There are *Ministerial Directions and Instructions for Public Construction Procurement* in place for public construction in Victoria that contain both mandatory instructions and non-mandatory guidelines. These set out processes, rules and requirements required by Government (through departments and delivery agencies) for the procurement of public construction and infrastructure. This includes steps to ensure the minimisation of risks around worker safety and treatment by requiring contractors to have rigorous management of OHS and industrial relations (IR) matters.

The tendering requirements in the ministerial direction and instructions require agencies to ensure that any supplier engaged to perform works or construction services satisfies the mandatory evaluation criteria, including OHS and IR requirements.

To reinforce this, Victorian Government construction contracts also contain specific legal requirements in relation to OHS and industrial relations that contractors need to comply with. Contractors on government projects are required to adopt and implement appropriate processes to manage risks, for example preparation of monthly health and safety reports, and ensuring all necessary training is provided.

In some contracts, additional incentives are included, for example payments linked to performance against key performance indicators (KPIs) for OHS. For example, in alliance procurement models, KPIs related to safety are common.

## Related policies

The OHS and IR criteria and requirements that contractors (and consultants) are required to meet also need to be demonstrated for registration on the Construction Supplier Register (CSR). The CSR is a mechanism that streamlines the procurement / tendering process for

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<sup>13</sup> OHS Regulations 2017 (Vic) R 333, 334.

contractors (and consultants) interested in bidding for government work through a select tender process.

Suppliers must show that they comply with relevant policies, including relating to OHS and IR, before they are able to tender for certain packages of work. Once contracts are entered into, the policies are enforced through the contractual arrangements between the commissioning bodies and the suppliers that contract with them.

Victorian Government policies such as the Victorian Fair Jobs Code and Local Jobs First also apply to the delivery of major projects in Victoria. To give contractual effect to these government policies, agencies must include them in their tender documentation and contracts. Agencies must also annually report on, or attest to, their compliance with these requirements.

The Fair Jobs Code, administered by the Department of Jobs, Skills, Industry and Regions (DJSIR) enables the Victorian Government through its construction contracts to:

- promote secure employment and fair labour standards
- ensure compliance with employment, workplace and industrial laws.

The Code requires agencies to ensure suppliers hold a Fair Jobs Code pre-assessment certificate when tendering for contracts that meet value thresholds. Agencies must ensure:

- public construction tender documents comply with the policy
- head contractors and subcontractors delivering work hold a pre-assessment certificate where works meet certain value thresholds
- head contractors and subcontractors prepare and submit a Fair Jobs Code Plan or Plan Addendum where works meet certain value thresholds
- commitments made in Fair Jobs Code Plans or Plan Addenda are monitored and reported to DJSIR as part of their annual attestation process.

Enshrined in legislation under the *Local Jobs First Act 2003 (Vic)*, the Local Jobs First Policy consists of the Victorian Industry Participation Policy (VIPPP) and the Major Project Skills Guarantee (MPSG). Local Jobs First ensures that small and medium enterprises in Victoria are provided an opportunity to compete for Victorian Government contracts.

The MPSG ensures that at least 10 per cent of the total estimated labour hours worked on construction projects valued at or over \$20 million is undertaken by apprentices, trainees and cadets.

## Employment arrangements of contractors

A key factor to consider when assessing how Victorian Government bodies can better respond to allegations of criminal or other unlawful conduct is the allocation of responsibility for IR and OHS between the government as the commissioning body, the head contractor and other employers on a project.

The arrangements put in place by private sector construction entities vary in terms of scale and complexity. A straightforward project might involve dozens of sub-contractors, whereas large scale transport projects may involve thousands of sub-contractors, representing small to medium enterprises (SMEs), individuals, labour hire firms and consultants, many of whom may be engaged under multiple layers of contracts.

## Compliance monitoring

Compliance with the ministerial directions and instructions is primarily monitored through annual reporting or an annual attestation process.

In the case of Local Jobs First, and as prescribed in the *Local Jobs First Act*, each agency must include in its report of operations, under Part 7 of the *Financial Management Act 1994* (Vic), a report on the agency's compliance with the Local Jobs First Policy in the financial year to which the report of operations relates.

In the case of the Fair Jobs Code, from 1 September 2024, public bodies mandated under the Victorian Government Purchasing Board's goods and services policies and agencies listed in Schedule 1 to the Fair Jobs Code will be required to complete annual attestation and reporting.

For both policies, departments and agencies must assess and report any compliance issues as part of the report or attestation. This is supported by comprehensive guidance for departments and agencies.

Generally, government measures whether objectives of procurement-related policies are met via monitoring and reporting of contractual obligations.

Under the Fair Jobs Code, decisions about awarding a pre-assessment certificate, and whether a business or supplier has complied with all applicable employment, industrial relations and health and safety obligations, are based on adverse rulings made by independent bodies, such as a court or the Fair Work Ombudsman. These adverse rulings may be used by the Fair Jobs Code Unit in DJSIR when it is determining whether to reassess or renew a pre-assessment certificate. The Fair Jobs Code Unit may also receive and investigate complaints about a pre-assessment certificate holder. The Local Jobs First Commissioner has an advocacy role under the Fair Jobs Code.

The *Local Jobs First Act* includes a compliance framework to help deliver the best outcomes for local industry and workers. The Local Jobs First Commissioner is responsible for overseeing and enforcing compliance under the Act and has power to investigate non-compliance with the Local Jobs First Policy where the Commissioner has reasonable grounds to believe non-compliance has occurred, including where the matter has been raised by way of a written complaint.

If there is a reported breach, the Commissioner will review the available evidence and either proceed with an investigation or determine that the evidence provided is insufficient to justify an investigation.

More discussion of complaints handling is at Section 6.

## Powers to remove personnel from worksites

The Review has been asked to consider if VIDA has the power to direct the removal of individuals engaging in criminal or other unlawful conduct from Victorian worksites.

VIDA has broad contractual powers in transport project contracts to direct the removal of personnel from VIDA work sites. However, the Review understands these have rarely (if ever) been used in respect of on-site personnel.

The extent of VIDA's powers varies across contracts with:



- some contracts providing VIDA with a general power to direct the removal of individuals who are considered 'unsatisfactory'
- other contracts providing VIDA with a more limited power to direct the removal of individuals in certain circumstances, for example:
  - where VIDA forms the opinion that the individual is not appropriately skilled, qualified or experienced;
  - where VIDA forms the opinion that the individual is incompetent, negligent, dishonest or guilty of misconduct; or
  - for safety reasons.

Notwithstanding these broad contractual powers, there are significant practical challenges in VIDA exercising them to direct the removal of individuals engaging in criminal or unlawful conduct, the key one being that VIDA's ability to obtain and use information around who may be engaging in criminal or unlawful conduct is limited.

There may also be issues regarding the interaction of such contractual powers with the right of entry powers given to persons under the *Fair Work Act 2009* (Cth). For example, a person may not refuse entry onto premises by a Fair Work entry permit holder who is entitled to enter the premises under the *Fair Work Act*.

There is, and it is noted this would apply in any workplace context, also legal risk in removing people from the workplace without due process.

Some of the practical limitations in obtaining the necessary information include:

- relying on contractors to know whether people onsite are engaging in criminal or unlawful conduct
- The willingness of those contractors to share that information if they do have such knowledge
- a lack of legal basis for Victoria Police to share information regarding such conduct with the employer or VIDA.

Outside of contractual provisions, VIDA from time to time engages with head contractors in relation to the performance of management personnel which has on occasion led to the head contractor taking decisions to change personnel.

## 5. Selection of health and safety representatives, right-of-entry permit holders and union delegates

The terms of reference for the Review require it to inquire into, report on and make any recommendations it considers appropriate in relation to, the law and practices applicable to the selection of health and safety representatives, right-of-entry permit holders and union delegates in or on Victorian worksites.

While the law regarding these roles appears relatively clear, further investigation is required to understand the practices for their selection.

Employee representatives on construction sites have significant powers, aimed at ensuring the health and safety of workers. It is important that these powers are used for the purpose of keeping workers safe and are not 'weaponised' to achieve other ends.

The Review notes the Victorian Government has committed to conduct a separate review to consider whether the powers, functions and support provided to Authorised Representatives of registered employee organisations (ARREOs) and Health and Safety Representatives (HSRs) in all sectors under the OHS Act remain effective and fit-for-purpose to deliver improved health and safety outcomes for all workers.

Noting that this Review is also considering similar matters as they relate to the construction sector, further consideration will be required at the relevant time about how the findings of this Review are considered by the ARREOs and HSRs Review.

A course of inquiry for the final report of the Review will be to explore the practices applicable to the selection of health and safety representatives, right-of-entry permit holders and union delegates in or on Victorian worksites.

The current legal framework is outlined below.

### Health and Safety Representatives

Under the *Occupational Health and Safety Act 2004* (Vic) each workplace in Victoria is required to enable Designated Working Groups (DWG)s. These are groups of employees that perform similar jobs or have similar occupational health and safety concerns. Each DWG is required to have a HSR to represent it on health and safety matters, elected by members of the DWG. Employers do not appoint HSRs.

Any member of a DWG can nominate to be elected as an HSR, unless disqualified under Part 7 of the *Occupational Health and Safety Act*. Members of the DWG decide how to run the election. If they cannot reach agreement on this, they can request a WorkSafe inspector to conduct the election. The DWG may also vote to appoint another person, such as someone from the union, to conduct the election.

Under the *Occupational Health and Safety Act*, HSRs can seek assistance from a suitable person when necessary, including a union official, without a Fair Work Commission or ARREO permit.

The *Fair Work Act 2009* (Cth) was recently amended to remove the requirement for union officials to hold a Fair Work entry permit when entering a workplace to assist an HSR pursuant to a state OHS legislation.

It is prohibited under the *Occupational Health and Safety Act* to coerce any individual attempting to establish a DWG, negotiate under a DWG, or vary agreements under a DWG. Coercion includes intimidating someone into a particular representative being appointed, or into being or not being represented in DWG negotiations.

### Right-of-entry permit holders

ARREOs can enter Victorian workplaces to make inquiries about suspected contraventions of the *Occupational Health and Safety Act*. They are permitted by the Act to exercise certain powers such as inspecting plant and substances, observing work, and consulting with employees and employers. They are employees of a union and are usually organisers or officials.

Under the *Fair Work Act*, to exercise a right under state OHS law, union officials must hold an entry permit, which is issued by the Fair Work Commission if it is satisfied they are a fit and proper person. Several factors must be considered by the Commission to determine if the official is a fit and proper person. For example, whether the person has received appropriate training about the responsibilities of a permit holder and whether they have even been convicted of an offence under an industrial law or have committed offences under certain other state, territory or Commonwealth laws.

The Commission may revoke or suspend the entry permits in certain circumstances such as where the official engages in conduct contrary to their responsibilities as a permit holder. Once on workplace premises, the *Fair Work Act* regulates the circumstances and manner in which union officials may enter and remain in the workplaces.

They must also hold an entry permit issued by the Victorian Magistrates' Court, which is separate from the entry permit issued by the Fair Work Commission. The *Occupational Health and Safety Act* sets out the matters the Magistrate's Court must be satisfied with, and will have regard to, when considering granting an entry permit to an individual. WorkSafe or an employer can apply to the Magistrates' Court to have the permit of an ARREO revoked for a period of up to 5 years.

The application can be made on the grounds that the ARREO '*intentionally hindered or obstructed an employee; acted unreasonably or not for the purpose of exercising a power; or intentionally used or disclosed, for a purpose not reasonably connected with the exercise of a power, information that was acquired from any employer or employee.*'

The offence under s91(b) of the *Occupational Health and Safety Act* 'intentionally intimidating or threatening any employer or employee' is not grounds for revocation under this section, although such conduct may meet the revocation and disqualification requirements of one of the other available grounds under section 85(1) of the Act.

## Union delegates

A union delegate is an employee elected by other union members in the workplace to be an onsite representative of the union. Employers cannot appoint union delegates.

Delegates have the right to represent the industrial and health and safety interests of employees in their workplace.

## 6. Complaints and whistleblower protections

The Review's terms of reference require it to inquire into and report on protections for whistleblowers and complainants. Each of the Victorian and Commonwealth agencies described in Section 3 can receive complaints from members of the public, but there is no consistent approach to protections for those who make a complaint. Different approaches exist between jurisdictions, and between agencies, which increases the complexity of this landscape.

This Review is aware of cases where there have been attempts to complain about conduct on a building site but the complainants have struggled to find a body that is able to address their problem. One person described approaching 10 entities over two years, including state and federal bodies and major contractors, and being unable to find anyone who could deal with the issue they were raising.

Some complaints are clearly about criminal conduct and should be made to Victoria Police. Complaints of physical assaults or threats to kill are criminal matters. While Victoria Police is actively investigating an allegation, its investigation will have primacy, which may prevent other bodies from speaking to witnesses or collecting evidence. This is necessary to preserve the evidence for a potential criminal hearing.

For a criminal offence to be proven, police need evidence, which will usually require a witness. A witness needs to be identified, and to give their evidence in court, which limits the ability to keep that witness's identity secret.

There are some limited provisions that allow a witness's identity to remain secret<sup>14</sup>, and the court can make a suppression order protecting a witness's identity<sup>15</sup>, which will prevent the media from publishing their details. These provisions, like the witness protection scheme, which can be used to give a person and their family at significant risk a new identity to protect them from reprisals for their cooperation, are mainly relevant to serious and major crime. They are not generally available as part of whistle blower protections.

Complaints may be about conduct that may be of a criminal nature but are unlikely to result in a criminal charge. This will include complaints of bullying, harassment and intimidation, which may be more effectively dealt with as a health and safety, or a workplace issue. Complaints may also be about other behaviours in the workplace or market, such as breaches of the rules governing registered organisations or allegations of anti-competitive conduct. The Review focuses on complaints of this nature, and the availability of whistleblower protections for complainants.

Whistleblower protections, in general terms, are a set of laws that make it an offence or provide avenues for reparations when certain kinds of actions are taken against a person who has reported misconduct or made a complaint against an employer.

The provisions are usually focussed on reprisals such as loss of employment, demotion or harassment. The protections do not operate unless and until there is some action taken against the complainant that could be a reprisal for their complaint. However, the existence

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<sup>14</sup> See, for example, Part 4 – Protection of Criminal Intelligence, *Criminal Organisations Control Act 2012* (Vic).

<sup>15</sup> *Open Courts Act 2013* (Vic)

of these laws provides comfort to those who may be considering complaining and deters those who may be the subjects of those reports from punishing the person who complains.

## Federal schemes

In matters covered by Commonwealth industrial relations bodies, complaints to the Fair Work Commission and the Fair Work Ombudsman do attract whistleblower protections – but only if they fall within the specific definitions of a ‘protected disclosure’<sup>16</sup>.

To be protected, a disclosure must be about the conduct of an organisation registered under the *Fair Work (Registered Organisations) Act*. These are associations of employees (i.e. unions) and associations of employers.

To be a ‘protected disclosure’, the complaint must be made by a person with a connection to a registered organisation, such as a member, employee or a contracted supplier to the organisation. The disclosure must be made to the Fair Work Commission or the Fair Work Ombudsman. The disclosure must relate to ‘disclosable conduct’, by the registered organisation, or its office holders or employees, which is conduct that is a breach of the *Fair Work Act*, the *Fair Work (Registered Organisations) Act*, or the *Competition and Consumer Act*. Conduct that is an offence against the law of the Commonwealth is also disclosable conduct.

If a disclosure is made directly to a registered organisation, rather than to the Fair Work Commission or Fair Work Ombudsman, the person making the disclosure is still protected from reprisals or threatened reprisals. Any reprisal that occurs because a person *could* make a disclosure that would be protected will also be covered by the whistleblower provisions<sup>17</sup>.

If a disclosure meets all these requirements, then the person who made the disclosure is protected from reprisals. A reprisal can include being dismissed, harassment or intimidation of a person, or damage to a person’s property or reputation.

The protection consists of a right to bring a civil action against the person who took the reprisal. This action can be taken by the complainant or by the Fair Work Ombudsman, or the General Manager in the Fair Work Commission. If the case is made out, the court can make a variety of orders, including compensation for the complainant, reinstatement of the complainant to their original position or an equivalent position, or an order requiring the respondent to apologise for the reprisal.

It is also a criminal offence to take, or to threaten to take, a reprisal, and the person who took the reprisal can be prosecuted, with a maximum penalty of two years imprisonment.

Given the specific requirements that must be met, it may be difficult for a complainant to know if their complaint will qualify as a ‘protected disclosure’ when they are considering whether they will raise an issue, and who to raise that issue with.

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<sup>16</sup> See Chapter 11, Part 4A – Protection for whistleblowers, *Fair Work (Registered Organisations) Act 2009 (Cth)*.

<sup>17</sup> *Fair Work (Registered Organisations) Act 2009 (Cth)*, s337BA.

### *Australian Securities and Investments Commission (ASIC)*

Under the *Corporations Act* people may make a complaint or protected disclosure. The organisation being complained about must be a company or an incorporated association or other body corporate that is a trading or financial incorporation, including organisations that trade in services. There must be reasonable grounds to suspect that the disclosure being made about the company or organisation concerns misconduct, an improper situation, or breaches the law.

Protection is available to current and former employees, officers, contractors, suppliers, and their relatives, as well as associates of the company or incorporated association. The *Corporations Act* provides for civil and criminal penalties against those who breach the whistleblower protections.

### *State schemes*

In Victoria, there is a coordinated whistleblower protection regime that applies to complaints about improper conduct in relation to the public sector.

### *Public Interest Disclosures*

The *Public Interest Disclosures Act 2012* (Vic) creates a system where any person who makes a disclosure of suspected improper conduct in relation to the public sector will have that disclosure treated confidentially and will be protected from reprisals.

Within some government agencies, there is a public interest disclosure coordinator to receive these disclosures, and all disclosures are reported to IBAC. Any person can also make a disclosure directly to IBAC.

IBAC assesses all disclosures and determines whether they are public interest complaints. If a public interest disclosure meets this threshold, it is treated as a complaint under the IBAC Act. If IBAC is not the appropriate body to investigate the public interest complaint, it can refer the complaint to the appropriate body. IBAC can then request information about the handling of that complaint or review the investigation. Regardless of whether the disclosure is found to be a public interest complaint, the person is covered by the whistleblower protections in the *Public Interest Disclosures Act*.

The system ensures that disclosures are not simply referred on and not followed up, and that they do not fall into gaps between the responsibilities of agencies.

### *Occupational Health and Safety.*

Complaints to WorkSafe are not covered by any whistleblower protections, as the *Occupational Health and Safety Act* does not contain these provisions. However, employees are entitled to raise concerns or make complaints about health and safety issues in their workplace. This includes reporting unsafe practices, hazards, or breaches of the *Occupational Health and Safety Act* to their employer or to HSRs. The *Occupational Health and Safety Act* also provides protections against discrimination or victimisation for employees who exercise

their rights, including to raise concerns or make complaints. Moreover, under the general protections provisions in the *Fair Work Act* (Cth) it is unlawful for employers to dismiss an employee because they made complaints about health and safety, and a dismissal in these circumstances may give rise to an application for a remedy for an unfair dismissal.

### *Labour Hire Authority*

The Labour Hire Authority receives complaints from labour hire businesses, workers and members of the public. It has a clear process to make a complaint via its 'report a problem' tool on its website. Complaints can be made about unlicensed labour hire providers, mistreated labour hire workers or other forms of misconduct.

Whistleblower protections apply to complaints made to the Labour Hire Authority. A civil penalty may apply to any person who, among other things, terminates the employment of any person or subjects them to any detriment because that person provides or intends to provide information under the *Labour Hire Licensing Act*<sup>18</sup>.

### *Complaints about Victorian Government construction projects*

Complaint handling information relevant to Victorian construction projects is clearly laid out on publicly available websites, including for Victoria's Big Build and VIDA. This information appears to be targeted at the public rather than workers and businesses.

While most large private sector construction organisations have a complaints/whistleblower policy, there is no consistent set of policies and practices applicable to complaints handling within the construction industry. Complaints made to organisations supplying construction services to the Victorian Government are handled according to the organisation's local procedures and policies.

All suppliers of construction services to Victorian Government construction projects will hold a Pre-Assessment Certificate and will be bound by the Fair Jobs Code. The Fair Jobs Code sets out a process for making a complaint about a supplier or business bound by the Fair Jobs Code, including who may make a complaint to the Fair Jobs Code Unit in DJSIR, and how that unit will handle it<sup>19</sup>. These complaints may be used by the Fair Jobs Code Unit when it is determining whether to reassess or renew a Pre-Assessment Certificate.

Decisions about a Pre-Assessment Certificate, and whether a business or supplier has complied with all applicable employment, industrial relations and health and safety obligations, will be based on adverse rulings made by independent bodies, such as a court or the Fair Work Ombudsman. A complainant may be referred on to one of these bodies by the Fair Jobs Code Unit, but the Fair Jobs Code Unit will not directly forward that complaint on to another body. While an individual complaint could ultimately contribute to an adverse ruling, a complaint about a supplier's conduct by, for example, a subcontractor, will not lead directly to that supplier's Pre-Assessment Certificate being revoked.

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<sup>18</sup> *Labour Hire Licensing Act 2018*, (Vic) s86(2).

<sup>19</sup> Fair Jobs Code, cl 11.



There are no whistleblower protections built into the Fair Jobs Code, but if a complainant is referred to, for example, the Fair Work Commission, the whistleblower protections described above may then apply to that complaint.

## 7. Initial observations and areas for further inquiry

The terms of reference for the Review require an inquiry into the current roles, responsibilities and powers of the Commonwealth and Victorian governments to respond to allegations of criminal or other unlawful conduct in the Victorian construction sector.

Initial lines of inquiry for this interim report therefore focussed on the following areas:

- The regulatory system, comprised of government bodies and agencies, as it relates to industrial relations and occupational health and safety
- The roles of police and other relevant state and federal bodies including state integrity bodies
- The way government procures construction services, and the policies that it promotes through those procurement processes.

These areas are inter-related, and each has a role in addressing the conduct in Victorian Government construction sites that has led to this Review.

Without limiting the scope of the review, four broad themes have emerged that cut across each of these areas, which the Review plans to consider further to inform the final report:

### *Integrity*

- whether there is an opportunity to extend the state's integrity controls so that allegations of corrupt behaviour in Victorian Government construction projects can be effectively examined by state integrity agencies.
- practices in relation to the selection of health and safety representatives, right-of-entry permit holders and union delegates on Victorian Government construction projects.

### *Complaints*

- if there is an opportunity to create a complaints scheme across Victorian Government construction projects that would provide all those working with these projects a single gateway to raise complaints of unlawful behaviour, and that could direct complaints to the appropriate regulator.
- how any complaints scheme could best protect those who make complaints from reprisals.

### *Procurement and contracting*

- if oversight of procurement and contractual requirements can be strengthened, particularly in relation to sub-contractual arrangements.
- whether information gathered about complaints and other conduct is being shared, and if it could be used to better monitor contractors' compliance with procurement and contractual policies.

### *The regulatory scheme*

- whether the network of state and federal bodies is working together effectively in investigating and responding to allegations of criminal or other unlawful conduct on Victorian Government construction sites.

- opportunities to improve collaboration between regulators, integrity bodies and enforcement agencies and whether more needs to be done to facilitate cooperation and information sharing.

## Integrity

Victoria's integrity agencies can investigate and expose misconduct and corruption in public office. These agencies, however, cannot investigate the sub-contractual arrangements in place between private sector providers on major government construction and infrastructure projects.

As set out in Section 4, the Victorian Government manages many of these major capital projects through VIDA, which contracts them to head contractors. Head contractors in turn typically contract parts of the work to sub-contractors, who may themselves contract parts of the work out to other sub-contractors and so on. This creates chains of contracts between private companies and individuals, most of which have no direct link to a government entity or a public officer.

IBAC's ability to investigate corrupt conduct under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) is confined to conduct involving public officers and public bodies. Similarly, VAGO can only make recommendations to public bodies. As such, Victoria's integrity agencies do not have a role in investigating allegations of corrupt behaviour between private bodies, unions and private individuals<sup>20</sup> of the kind that has led to this review.

The Review acknowledges that any reform in this area would give rise to challenging legal questions, and that potentially expanding any integrity agency's remit would create more competing priorities for that agency's existing resources. However, the Review considers that the question merits further discussion.

Another issue raised in media reports is the integrity of processes in the selection of worker representatives. Noting a related State Government review is underway in this area, this Review's terms of reference require inquiry into both the laws and practices in relation to the selection of health and safety representatives, right-of-entry permit holders and union delegates in or on Victorian Government construction projects.

For its final report, the Review will consider:

- If there are opportunities to expand the remit of the state's integrity agencies to bolster the protections against misconduct and corruption in Victorian Government construction projects.
- The practices in relation to the selection of health and safety representatives, right-of-entry permit holders and union delegates on Victorian Government construction projects.

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<sup>20</sup> The Age, 'The footballer, the underworld and the union deal that exposes construction's dark secrets', 20 July 2024 ([theage.com.au](https://www.theage.com.au)).

## Complaints

The Review is required to report on the roles, responsibilities and powers of the Commonwealth and State Government entities to investigate and respond to allegations of criminal or other unlawful conduct. Complaints provide a window into long-standing, systemic and emerging problems in any system. Reforms to improve communication between regulatory agencies, or to strengthen their powers, will only be effective if the people who see unlawful behaviour can complain about it and alert the regulatory agencies to that behaviour.

To feel confident to complain, people need to know where they can complain, that their complaint will reach the right place, and that there is a body with sufficient power to follow up complaints to ensure they have been dealt with appropriately.

Currently, there is no one body responsible for ensuring there is a culture within Victorian Government construction projects that supports the raising and addressing of complaints. The current landscape is confusing, with multiple state and federal entities responsible for investigating complaints about different types of conduct.

The Review's final report will explore potential models to provide a single doorway for complaints on Victorian Government construction sites, and options for a complaints scheme. Any complaints scheme should:

- allow any worker, subcontractor or supplier (including prospective suppliers) to complain to a central clearly identified point
- enable complaints to be made anonymously
- allow for local resolution of a complaint where appropriate
- facilitate referral of a complaint to an appropriate body.

There are several potential models for a complaints scheme, including but not limited to the following:

### *A head contractor-based complaints scheme*

Under occupational health and safety laws, it is the 'occupier' who is responsible for a safe work site and in the case of a large construction site, the occupier is the head contractor. An occupier could also be made responsible for establishing and maintaining an effective complaints scheme that covered every party with a connection to the worksite. This would have broader reach than a head contractor's existing complaints policies, which may only apply to that contractor's employees. The scheme would be available to others connected to the worksite including subcontractors and suppliers, past, present and prospective.

Head contractors could be required to establish a broad complaints scheme of this nature as part of the requirements for a major tender, and the contract for a project could require that complaints scheme to be effectively maintained for the life of the project. The head contractor would then be responsible for promoting a culture that encouraged complaints, for resolving the issues raised where possible, developing or strengthening policies to protect complainants from reprisals and for referral of any complaints unable to be dealt with locally to the appropriate bodies.

### *A complaints oversight panel*

A head contractor-based complaint system could work with a complaints oversight panel. A panel could involve all relevant parties supporting a construction project, including the state delivery agency and the unions represented on the project. Its role would be overseeing and, where possible, resolving, complaints received by the head contractor's complaints scheme.

A panel could still escalate complaints to the appropriate regulator and in all cases individual workers or suppliers could always complain directly to police or a regulatory body if they preferred. However, a cooperative pathway to resolve complaints could place responsibility on all the parties on a construction project to play a part in addressing the issues that are leading to complaints and encourage collaborative solutions.

### *A state-run complaints scheme*

There may be an opportunity to create a complaints scheme across all Victorian Government construction projects that would provide all those working with these projects a single gateway to raise complaints of unlawful behaviour, and that could direct complaints to the appropriate regulator.

If government wanted to provide legal protections for a person who made a complaint, then it could enact a version of the Public Interest Disclosure scheme that applied to major government construction projects. A legislated projected disclosure scheme would give the government visibility of complaints across all its major construction sites, allowing it to detect trends in complaints, and identify emerging problems. This may also support government's oversight of compliance with companies' contractual obligations.

Uniform whistleblower protections could apply to complaints made under the scheme. As with the Protected Interest Disclosures scheme, any complaint made under the scheme, even if it is found to be outside the scope of the scheme, could attract defined whistleblower protections. This would both reassure those considering complaining and deter those who may take action against them.

For its final report, the review will consider:

- how to encourage complaints from those who observe unlawful conduct on Victorian Government construction projects, and how to protect complainants from reprisals.
- whether there is an opportunity to create a complaints scheme across Victorian Government construction projects that provides a single gateway for complaints of unlawful behaviour
- what the model for such a complaints scheme should be.

## Procurement and contracting

The Victorian Government uses its procurement and contracting mechanisms to promote various policy objectives such as social procurement and compliance with IR and OHS laws. Policies are enforced through pre-conditions for tendering, and monitoring and reporting of compliance with contractual obligations. In its final report the Review intends to consider the

efficacy of the implementation of these policies down the chain of sub-contractors and whether the ability of Victorian Government bodies to respond to allegations of unlawful conduct in the Victorian construction sector can be improved through strengthened oversight of compliance with procurement and contractual requirements.

The Review is also interested in exploring whether and how information gathered about complaints or unlawful conduct on worksites is being used and shared, and whether it could be used to support the monitoring of contractors' compliance with the Victorian Government's policies. There may be evidence available that could, for example, corroborate attestations of compliance with occupational health and safety, industrial relations and requirements of the Fair Jobs Code.

The Review will also consider whether procurement policies or contractual relationships could be used to require head contractors on Victorian Government construction projects to establish a complaints system for Victorian Government construction projects.

For its final report, the review will consider:

- whether oversight of compliance with procurement and contractual requirements can be strengthened, particularly in relation to sub-contracting arrangements
- opportunities to strengthen collaboration and information sharing to support the monitoring of compliance with policies and contractual terms.

## The regulatory scheme

The questions that the Review has been asked to consider sit at the intersection of several systems, involving state and federal law enforcement, integrity and regulatory agencies. Overlaid on this landscape is the Victorian Government's model for the delivery of construction projects, including the policies it imposes through procurement and contractual agreements.

Ideally, in an area where there are multiple players, the different entities will collaborate and, where their jurisdictions overlap, will work together to address issues. The Review has heard that there is cooperation between regulators and other entities in relation to issues that arise on Victorian Government construction sites, but in the time available, the Review has not been able to fully investigate the arrangements between police, regulators and other bodies.

While no one agency can address all the issues that have led to this Review, between them they should have the necessary powers and tools to tackle individual problems that arise. However, addressing individual problems from separate silos may miss the opportunity to take coordinated action on systemic problems that cut across multiple areas of regulatory responsibility.

For its final report, the Review will consider whether the state and federal entities that operate in this area are maximising opportunities to collaborate. The Review will also explore whether there are barriers to that collaboration, including whether information can be effectively shared, and whether there are opportunities to reduce those barriers.

For its final report, the Review will consider:

- whether the state and federal entities that operate in this area are working together effectively
- any barriers to collaboration and information sharing between entities.

## 8. Next steps toward the final report

Until the final report is delivered to the Premier in November, as per the terms of reference, the Review will seek to accommodate people's choice as to how they wish to participate in the Review, including receiving submissions on a confidential basis.

The Review welcomes submissions from any party on the potential areas of inquiry outlined in this interim report, or any other matters in the terms of reference, **by 27 September 2024**. All submissions will be treated as confidential.

Updates will be published on the Review website at [rvqbec.vic.gov.au](https://rvqbec.vic.gov.au).

# Appendix A: Establishing Instrument

## Inquiries Act 2014

### APPOINTMENT OF A FORMAL REVIEW INTO VICTORIAN GOVERNMENT BODIES' ENGAGEMENT WITH CONSTRUCTION COMPANIES AND CONSTRUCTION UNIONS

#### Establishing Instrument

I, Jacinta Allan, the Premier of Victoria, appoint Gregory Wilson to constitute a Formal Review to inquire into and report on the terms of reference specified in this instrument under section 93(1) of the *Inquiries Act 2014*.

This instrument comes into effect on the date it is executed.

#### 1. Background

On 15 July 2024, I announced that the Victorian Government would establish an independent review to strengthen the power of Victorian Government bodies who are engaged with construction companies and construction unions to respond to allegations of criminal or other unlawful conduct in the Victorian construction sector. The announcement followed allegations in the media of criminal activity involving the Construction Forestry and Maritime Employees Union ("Union") and allegations of criminal associations within the Union.

In response to these allegations, and in addition to the announcement of an independent

review, I wrote to the:

- Chief Commissioner of Victoria Police referring the allegations for investigation;
- Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC) referring the allegations for investigation;
- National Executive of the Australian Labor Party to immediately suspend the Union's construction division from the Victorian Labor Party. The National Executive has now taken this action; and
- Commonwealth Minister for Employment and Workplace Relations, the Honourable Tony Burke MP, requesting the Commonwealth Government



exercise its powers under the Fair Work Act 2009 to review – and if necessary, terminate – Union enterprise bargaining agreements on Victorian construction sites to prevent criminal activity. Minister Burke has confirmed the Fair Work Ombudsman will review all enterprise agreements made by the Victorian branch of the Union’s construction division that apply to Victorian “Big Build” projects.

## 2. Terms of reference

Having regard to the background set out above, you are required to inquire into, report on and make any recommendations you consider appropriate in relation to the following terms of reference

- (1) The current roles, responsibilities and powers of the Commonwealth and the Victorian Government to investigate or respond to allegations of criminal or other unlawful conduct in the Victorian construction sector, including but not limited to:
  - a. any coercive, bullying or intimidatory practices or conduct;
  - b. the power of the Victorian Infrastructure Delivery Authority to direct the removal of individuals engaging in criminal or other unlawful conduct from Victorian worksites; and
  - c. protections for whistleblowers and complainants;
- (2) The effectiveness of the matters in (a) and any legal or procedural deficiencies in the Victorian regulatory regime, having regard to the roles, responsibilities and powers of any relevant Commonwealth bodies, including as they may relate to criminal or other unlawful conduct or practices of a systemic nature in the Victorian construction sector;
- (3) The role of Victorian Government bodies managing construction projects (“Project bodies”) in relation to:
  - (1) workplace relations, operations and practices, and health and safety matters applying under both Victorian and Commonwealth law and practices; and
  - (2) the apportionment of responsibility and oversight for these matters between parties to contracts delivering construction projects; and
- (4) Law and practices applicable to the selection of health and safety representatives,

right-of-entry permit holders and union delegates in or on Victorian worksites.

### **3. Conduct of the Review**

Without limiting the scope of your review or the scope of any recommendations arising out of your review that you may consider appropriate, you are directed in the conduct of the inquiry of your review to:

- (1) Conduct your inquiry in accordance with this instrument, the *Inquiries Act 2014*, and  
all other relevant laws.
- (2) Otherwise conduct your inquiry as you consider appropriate, subject to the matters set out in section 99 of the *Inquiries Act 2014*. This may include but is not limited to obtaining information, documents, evidence and written submissions, conducting consultations and adopting any informal and flexible procedures and practices;
- (3) Provide an accessible and supportive forum for participants to participate in your inquiry, including accommodating their choices as to how they wish to participate in your inquiry to the extent it is practicable to do so and without limitation on the powers of the Formal Review set out in the *Inquiries Act 2014*; and
- (4) Have regard to the desirability of conducting your inquiry and producing your report without unnecessary cost or delay.

### **4. Reporting**

You are required to deliver a report of your inquiry to me in accordance with the following

timetable:

- (1) an Interim Report by 29 August 2024 in respect of any interim findings and recommendations; and
- (2) a Final Report by 29 November 2024 in respect of your final findings and recommendations.

### **5. Recommendations**

Your report may contain any recommendations, consistent with the terms of reference, that you consider appropriate arising out of your inquiry, including, but not limited to, recommendations about:

- (1) Existing limitations in Victoria’s legislative powers over certain workplace relations and related matters, and their interaction with Commonwealth law — for example the operation of matters subject to the *Occupational Health and Safety Act 2004* or the *Victorian Crimes Act 1958*, and those matters regulated by the *Fair Work Act 2009* (Cth) or the *Crimes Act 1914* (Cth);
- (2) The establishment of clear processes and protections for whistleblowers and complainants who notify any Victorian Government bodies of any allegations of criminal or other unlawful conduct in the Victorian construction sector; and
- (3) The operation of Commonwealth law as applying to registered organisations.

## **6. Exercise of powers**

You may exercise the powers of a Formal Review in accordance with the *Inquiries Act 2014*. You may enter into agreements or arrangements for the provision of services to support your inquiry, including, without limitation, any agreements or arrangements with one or more Australian legal practitioners for the provision of legal services.

## **7. Expenses and Financial Obligations**

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to a maximum amount to be approved by the Premier (in consultation with the Treasurer) in conducting your review.

**Dated: 20 / 7 / 2024**

## Appendix B: Key Agencies and responsibilities

Agency	Responsible for
<b>Industrial Relations</b>	
Fair Work Commission	<p>The independent national workplace relations tribunal. Operates under the <i>Fair Work Act 2009 (Cth)</i> and the <i>Fair Work (Registered Organisations) Act 2009 (Cth)</i>.</p> <p>Resolves workplace disputes, including with unions.</p> <p>Approves Enterprise Bargaining Agreements.</p> <p>Regulates unions through the Registered Organisations Service Branch.</p>
Fair Work Ombudsman	<p>Monitors compliance with Commonwealth workplace laws.</p> <p>Investigates breaches of the <i>Fair Work Act 2009 (Cth)</i>.</p> <p>Enforces the <i>Fair Work Act 2009 (Cth)</i>.</p> <p>Educates and assists employees and employers to understand rights and obligations.</p>
<b>Occupational Health and Safety</b>	
WorkSafe	<p>Responsible for regulating health, safety, and wellbeing at Victorian workplaces under the <i>Occupational Health and Safety Act 2004 (Vic)</i>.</p> <p>Takes complaints about health and safety risks on Victorian worksites.</p>
<b>Criminal Activity</b>	
Victoria Police	<p>Investigation and enforcement of the <i>Crimes Act 1958 (Vic)</i>.</p> <p>Includes offences against the person (threats, assaults); and secret commissions.</p>

<b>Agency</b>	<b>Responsible for</b>
Australian Federal Police (AFP)	The AFP is the national policing agency, responsible for investigating and enforcing Commonwealth criminal law.
<b>Other Related Bodies (State)</b>	
Independent Broad-Based Anti-corruption Commission (IBAC)	Investigations into allegations of serious or systemic public sector corrupt conduct.
Victorian Auditor General's Office (VAGO)	Audits public sector entities to ensure that entities are transparent and accountable.  Can also audit non-government organisations contracted to provide government services – but can only make recommendations to a public body.
Victorian Ombudsman	Investigates complaints about actions or decisions made by Victorian public organisations.  A 'public organisation' includes government departments and organisations but does not include a private organisation.
Labour Hire Authority	Regulates the supply and use of labour hire services by administering the licensing scheme established by the <i>Labour Hire Licensing Act 2018</i> (Vic).  Ensures all providers of labour hire services are licensed.
<b>Other Related Bodies (Commonwealth)</b>	
The Australian Securities and Investment Commission (ASIC)	Administers the <i>Corporations Act 2001</i> (Cth).  May receive complaints of criminal and unlawful conduct about entities or their directors.
Australian Competition and Consumer Commission (ACCC)	Regulates Australian business practices under the <i>Competition and Consumer Act 2010</i> (Vic).  Investigates anti-competitive activities such as cartel activity, anti-competitive agreements and boycotts.  Has a unit dedicated to construction industry oversight.

<b>Victorian Government bodies</b>	<b>Responsible for</b>
Department of Treasury and Finance	Ministerial Directions and Instructions for public construction procurement.
Department of Transport and Planning	The Secretary of the Department of Transport and Planning is the responsible Department Head for transport construction projects, reporting to the Minister for Transport Infrastructure.
Department of Jobs, Skills, Industry and Regions (DJSIR)	Fair Jobs Code. Uses Victorian Government purchasing power to promote secure employment and fair labour standards. Ensures compliance with employment, workplace and industrial laws.
Victorian Infrastructure Delivery Authority	Delivers state transport and health infrastructure programs. Manages Victoria's Social Procurement Framework
Suburban Rail Loop Authority	Plans, procures and manages any development, non-transport infrastructure, transport infrastructure or services for the Suburban Rail Loop program.
Development Victoria	Delivers a range of large-scale government facilities and precincts and residential construction projects
Transport for Victoria	Constructs and maintains public transport and roads infrastructure
VicTrack	Develops and manages non-operational transport infrastructure and supports access to transport related infrastructure and assets.
Local Jobs First Commissioner	Local Jobs First Policy Uses Victorian Government purchasing power to help develop local industries and create jobs and boost economic activity across Victoria. Comprises: <ul style="list-style-type: none"> <li>• Victorian Industry Participation Policy</li> </ul>

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|  | <ul style="list-style-type: none"><li>• Major Projects Skills Guarantee</li></ul> |
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## Acronyms and Abbreviations

Acronym	Explanation
AFP	Australian Federal Police
ARREO	Authorised Representatives of Registered Employee Organisations
ASIC	The Australian Securities and Investment Commission
CFMEU	Construction, Forestry and Maritime Employees Union
CSR	Construction Supplier Register
Cth	Commonwealth
DJSIR	Department of Jobs, Skills, Industry and Regions
DWG	Designated working group
EBA	Enterprise bargaining agreement
FJC	Fair Jobs Code
FW	Fair Work
FW Act	Fair Work Act
FWC	Fair Work Commission
FWC entry permit	Fair Work Commission entry permit
HSR	Health and Safety Representative
IBAC	Independent Broad-based Anti-corruption Commission
IR	Industrial relations
LHA	Labour Hire Authority
MOU	Memorandum of understanding
MPSG	Major Projects Skills Guarantee
OHS	Occupational Health and Safety
ROSB	Registered Organisations Services Branch (of the Fair Work Commission)



SMEs	Small to medium enterprises
SRLA	Suburban Rail Loop Authority
TOR	Terms of reference
VAGO	Victorian Auditor-General's Office
VIDA	Victorian Infrastructure Delivery Authority
VIPP	Victorian Industry Participation Authority