

Inquiry into the operation of the *Freedom of Information Act 1982*

Submission

FOI is a crucial part of the beneficial information feedback loop between the government and the people. The Victorian FOI system receives more FOIs than any other jurisdiction but is failing to make decisions within the statutory timeframe, has a growing backlog and high numbers of complaints about delays.

Submission to the Integrity and Oversight Committee

Lilia Anderson

Bill Browne

January 2024

ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. We barrack for ideas, not political parties or candidates. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

OUR PHILOSOPHY

As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

OUR PURPOSE - 'RESEARCH THAT MATTERS'

The Institute publishes research that contributes to a more just, sustainable and peaceful society. Our goal is to gather, interpret and communicate evidence in order to both diagnose the problems we face and propose new solutions to tackle them.

The Institute is wholly independent and not affiliated with any other organisation. Donations to its Research Fund are tax deductible for the donor. Anyone wishing to donate can do so via the website at <https://www.australiainstitute.org.au> or by calling the Institute on 02 6130 0530. Our secure and user-friendly website allows donors to make either one-off or regular monthly donations and we encourage everyone who can to donate in this way as it assists our research in the most significant manner.

Level 1, Endeavour House, 1 Franklin St

Canberra, ACT 2601

Tel: (02) 61300530

Email: mail@australiainstitute.org.au

Website: www.australiainstitute.org.au

ISSN: 1836-9014

Contents

Summary.....	1
Introduction.....	2
Existing work at the Commonwealth level.....	3
Comparing FOI jurisdictions	3
Limitations of comparing FOI data	5
Victorian FOI system.....	6
Increased demand	7
Growing backlog	9
Increased delays	11
High number of complaints	14
Positive results.....	16
What should be done	17
Conclusion	18
Appendix – Public opinion	19

Summary

Victoria receives more freedom of information (FOI) requests than any other Australian jurisdiction and has the second highest rate of FOI requests per capita. It received 48,117 FOI requests in 2022–23, an increase of 41% from 2013–14.

Victoria’s FOI system is struggling to meet the growing number of FOI requests.

- The FOI request backlog has grown, with 6,649 requests carried over in 2022–23 compared to 3,370 carried over in 2016–17.
- Fewer FOI requests are being processed on time: while in 2017–18 just 3% were more than 45 days outside of the allowed time, 13% were more than 45 days outside the allowed time in 2022–23.
- The regulator, the Office of the Victorian Information Commissioner (OVIC), received 651 complaints regarding the fulfillment of FOI requests in 2022–23, most of which relate to decisions being made outside of the allowed statutory timeframe.

While FOI requests and the FOI backlog appear to have peaked in the Commonwealth system (at least for now), there is no evidence that FOI requests or the FOI backlog have peaked in Victoria.

Despite these problems, the Victorian system is admirable on some measures: it grants access to government information to applicants more often than other jurisdictions and a smaller portion of applications are reviewed by the Victorian information commissioner.

Recommendations

The Australia Institute recommends that the Victorian government and parliament:

1. Review FOI requests to determine why the Victorian Government receives so many requests per capita, and if there are distinctive trends in Victorian requests not seen in other jurisdictions.
1. Review FOI decisions to see which information should be proactively disclosed. This could include, but not be limited to, the information proactively disclosed in New South Wales and Queensland.
2. Ensure adequate resourcing for agencies and Ministers to safeguard the quick and fair processing of FOI requests.
3. Work with other Australian jurisdictions to disclose more detailed and consistent data on FOI systems to enable useful analysis within and between jurisdictions.

Introduction

The right of people to know whether a government's deeds match its words, ... [and] to know the information that underlies debate and informs decision-making, is fundamental to democracy.

– Former Senator John Faulkner.¹

The Australia Institute welcomes the opportunity to make a submission to the inquiry into freedom of information laws in Victoria.

Victorians have a right to information, codified in the *Freedom of Information Act 1982*. FOI improves the information flow between the people and the government. Examples of important disclosures made possible by FOI legislation in Victoria include:

- The existence of almost 400 civil claims against the Victorian government for historical child sex abuse in state schools.²
- That Victorian hospitals were \$300 million in deficit before COVID hit.³
- The existence of significant work, health and safety issues at Victoria's juvenile detention centres.⁴
- That Victoria Police had trialled controversial facial recognition software 'Clearview AI' after previously denying the technology had been used.⁵

A robust FOI system exposes the workings of government to the scrutiny of the press and the electorate. Even the anticipation that documents could surface because of an FOI request discourages decision-makers from misrepresenting the facts or making a rushed or politicised decision. When the FOI system is bogged down, evaded or defied, the public

¹ Holmes (2015) 'John Faulkner: A rare champion of transparency', *Sydney Morning Herald*, <https://www.smh.com.au/opinion/john-faulkner-a-rare-champion-of-transparency-20150127-12yq90.html>

² Kolovos (2023) "Tip of the iceberg": hundreds of victims allege sexual abuse at Victorian state schools', *The Guardian*, <https://www.theguardian.com/australia-news/2023/jan/30/victims-allege-sexual-abuse-victoria-government-state-schools>

³ Baxendale (2023) 'FOI documents show Victorian hospitals were \$300m in deficit as Covid hit', *The Australian*, <https://www.theaustralian.com.au/nation/politics/foi-documents-show-victorian-hospitals-were-300m-in-deficit-as-covid-hit/news-story/9a25749589784ee726bcd0f58e854bac>

⁴ Percy (2017) 'Violence in Victoria's youth justice system putting workers' lives at risk: FOI documents', *The ABC*, <https://www.abc.net.au/news/2017-02-07/parkville-malmsbury-unsafe-workplaces-foi-reports/8246976>

⁵ Taylor (2020) 'Victoria police distances itself from controversial facial recognition firm Clearview AI', *The Guardian*, <https://www.theguardian.com/australia-news/2020/jun/19/victoria-police-distances-itself-from-controversial-facial-recognition-firm-clearview-ai>

misses out on key information it could use to assess the government's performance and principles.

EXISTING WORK AT THE COMMONWEALTH LEVEL

This submission builds upon the Australia Institute's previous analysis of the Commonwealth FOI system. Our 2023 report *Nothing to see here* found that the Commonwealth FOI system is dysfunctional and under-resourced.

In particular, the report highlighted that:

- There were considerable delays with the FOI system, both in the processing of requests and the review of FOI complaints.
- The cost to process FOI requests had risen dramatically over the last 15 years.
- The FOI review process is clearly under-resourced.
- The FOI system did not meet community expectations.
- Government ministers and officials were delaying and obfuscating the release of FOI information.⁶

The report consequently urged for widespread reforms to Australia's Commonwealth FOI system, including instituting minimum staffing levels for FOI teams, opening more avenues for redress, closing loopholes, as well as a broader review into public service culture.

Our submission to the Senate inquiry into freedom of information laws expanded on this analysis by presenting the South Australian FOI review process as a model that could be adopted federally. In comparison to the Commonwealth FOI review process, the SA system has a shorter average turnaround for reviews, and far fewer reviews take longer than 16 months to complete. The submission also made several recommendations to improve FOI culture, resourcing and process.⁷

COMPARING FOI JURISDICTIONS

This submission compares the operation of the Victorian FOI system with other Australian jurisdictions, including states, territories, and the Commonwealth. Where only limited data is available, the Commonwealth FOI system is used as the main point of comparison.

The Commonwealth FOI system provides a useful point of comparison to Victoria's. Both jurisdictions operate under FOI Acts which set out a right to request government-held

⁶ Browne (2023) *Nothing to see here*, <https://australiainstitute.org.au/report/nothing-to-see-here/>

⁷ Browne and Shields (2023) *Senate inquiry into freedom of information laws*, p 1, <https://australiainstitute.org.au/report/submission-freedom-of-information-inquiry/>

information from public agencies and Ministers: the *Freedom of Information Act 1982* (Vic)⁸ and the *Freedom of Information Act 1982* (Cth).⁹ In both cases, certain exemptions apply – for example, to protect the public interest or to protect commercially valuable information.¹⁰

The jurisdictions are also similar in the volume of requests received, and between them they receive more FOI requests than the rest of Australia put together.¹¹

Similar statutory timeframes apply for the time taken to process an FOI request in Victoria and in the Commonwealth. In both jurisdictions, an agency or Minister must decide on an FOI request within 30 days of receipt, bar any extensions.¹²

If an applicant is unhappy with the outcome of an FOI request made by an agency or minister, a review may be requested from an independent information commissioner: the Office of the Victorian Information Commissioner (OVIC) or the Office of the Australian Information Commissioner (OAIC). If an applicant is unhappy with this review decision, they can apply to an administrative tribunal for review: the Victorian Civil and Administrative Tribunal (VCAT) and the Administrative Appeals Tribunal (AAT).¹³

Other states and territories have similar FOI laws in place which are administered by an equivalent Information Commissioner or Ombudsman.¹⁴ This enables comparison between different jurisdictions. However, it is important to note that there are differences between FOI systems in different states and territories. For example, the statutory timeframe to make a FOI decision differs between Australian states and territories. Where some states

⁸ OVIC (2020) *Overview of the Freedom of Information Act 1982 and the responsibilities of all Victorian public sector officers*, <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/practice-notes/overview-of-the-foi-act-and-the-responsibilities-of-victorian-public-sector-officers/>

⁹ OAIC (n.d.) *Freedom of Information*, <https://www.oaic.gov.au/freedom-of-information>

¹⁰ For a full list of exemptions see OVIC (2020) *Overview of the Freedom of Information Act 1982 and the responsibilities of all Victorian public sector officers*, p 2; OAIC (n.d.) *What is freedom of information?*, <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/what-is-freedom-of-information>

¹¹ Information and Privacy Commission NSW (2022) *Dashboard and metrics on the public's use of FOI laws*, <https://www.ipc.nsw.gov.au/information-access/open-government-open-data/dashboard>

¹² OVIC (2020) *Overview of the Freedom of Information Act 1982 and the responsibilities of all Victorian public sector officers*, p 1; OAIC (n.d.) *When to expect a decision*, <https://www.oaic.gov.au/freedom-of-information/how-to-access-government-information/make-a-freedom-of-information-request/when-to-expect-a-decision>

¹³ OVIC (n.d.) *The FOI review process*, <https://ovic.vic.gov.au/freedom-of-information/for-the-public/foi-reviews>; OAIC (n.d.) *What decisions can the Administrative Appeals Tribunal review?*, <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/what-decisions-can-the-administrative-appeals-tribunal-review>

¹⁴ OAIC (n.d.) *Freedom of Information in other jurisdictions*, <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-legislation-and-determinations/other-foi-jurisdictions>

and territories stipulate a period of 30 days,¹⁵ others stipulate 45 days.¹⁶ This means that some states or territories have a longer timeframe in which to process a request, and correspondingly may appear relatively more efficient than others. These differences therefore limit comparison.

LIMITATIONS OF COMPARING FOI DATA

This submission compares FOI data between Australian jurisdictions to give a picture of how Victoria performs compared to its peers. However, it must be stressed that this data cannot give the full picture. Examples include:

A jurisdiction may receive many FOI requests either because it holds back a lot of information that should have been disclosed proactively *or* because its responsiveness to FOI requests encourages citizens to make more requests.

A jurisdiction may see few requests for FOI decisions to be reviewed requests either because its FOI processes are exemplary and need no review *or* because its information commission is so bogged down with existing reviews that requesting a new one is pointless.

Even measures like how long it takes FOI decisions to be made can be deceptive – for example, if an agency that had previously been slow to resolve FOI requests started clearing its backlog, the average length of time a completed FOI request had been outstanding would increase in the short-term (because lots of the old FOI requests would go from not completed to completed).

To try to overcome these limitations, this submission features both Victorian data over time and comparisons between jurisdictions. Where Victoria's performance is poor relative both to its peers and its own prior performance, it suggests there is a real problem that needs to be addressed.

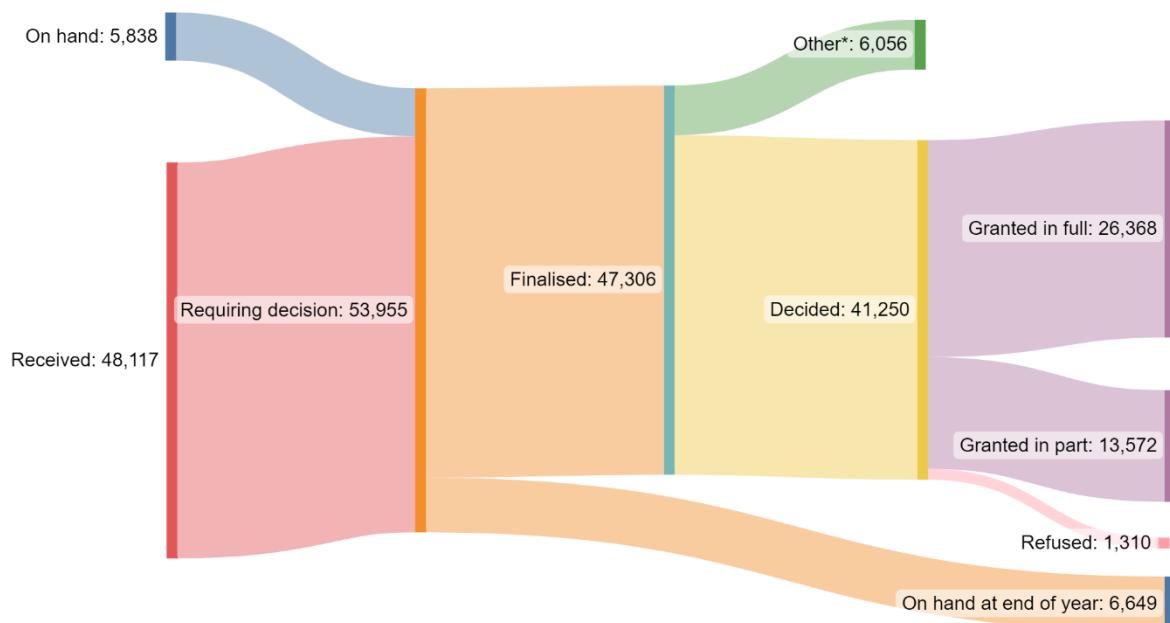
¹⁵ For example, Victoria.

¹⁶ For example, in WA an agency is required to deal with an access application as soon as is practicable; and in any event within 45 days after the application is received (exceptions apply). Office of the Information Commissioner (2019) *How long should it take to deal with an access application?*, <https://www.oic.wa.gov.au/en-au/FTP030>

Victorian FOI system

The FOI system's flows are described in OVIC's most recent annual report. In 2022–23, there were 48,117 FOI requests received and 5,838 outstanding requests carried over from the previous financial year – adding to a total of 53,955 FOI requests over the 2022–23 financial year.¹⁷ Of these requests, 26,368 were granted in full, 13,572 were granted in part, and 1,310 were refused.¹⁸ An additional 6,056 FOI requests, classified as 'other', were either withdrawn, not proceeded with, the FOI Act did not apply, no documents were found or the request was handled outside of the FOI Act.¹⁹ Fully 6,649 requests were not finalised by the end of the year.²⁰

Figure 1: Sankey diagram of FOI requests in 2022–23



Source: OVIC (2023) *OVIC 2022–23 Annual Report*

Note: Other* requests were either withdrawn, not proceeded with, the FOI Act did not apply, no documents were found or the request was handled outside of the FOI Act.²¹

¹⁷ OVIC (2023) *OVIC 2022–23 Annual Report*, p 108–10, <https://ovic.vic.gov.au/wp-content/uploads/2023/10/Ovic-Annual-Report-2022-23-Digital.pdf>

¹⁸ OVIC (2023) *OVIC 2022–23 Annual Report*, p 113

¹⁹ As per personal communication with OVIC, 13 November 2023

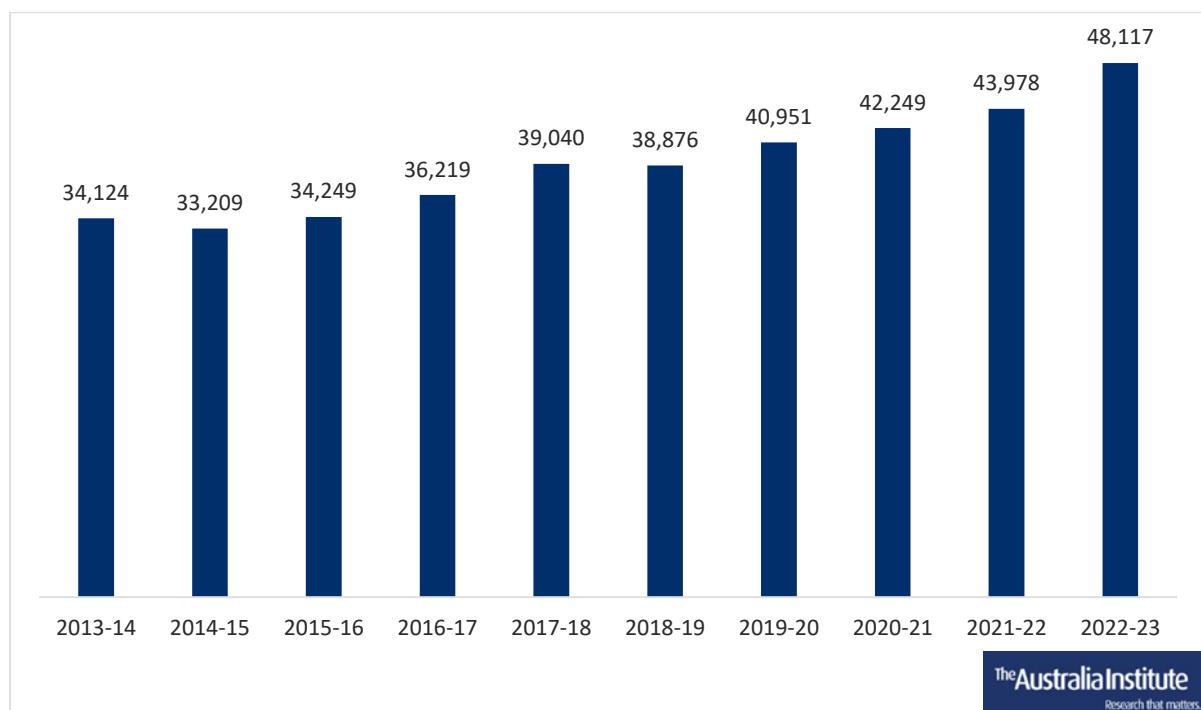
²⁰ OVIC (2023) *OVIC 2022–23 Annual Report*, p 109

²¹ As per personal communication with OVIC, 13 November 2023

INCREASED DEMAND

Over the last ten years, there has been a significant increase in the number of FOI requests received by government Ministers and agencies in Victoria. As shown in Figure 2 below, the number of FOI requests received in Victoria increased from 34,124 in 2013–14 to 48,117 in 2022–23.²² This represents a 41% increase in the number of FOI requests sent to Victorian agencies over the last ten years.²³ This upward trend has been relatively consistent, with the number of requests only slightly declining between the years 2013–14 to 2014–15 and 2017–18 to 2018–19.

Figure 2: Number of FOI requests received from 2013–14 to 2022–23, Victoria



Source: OVIC (2023) *OVIC 2022–23 Annual Report*

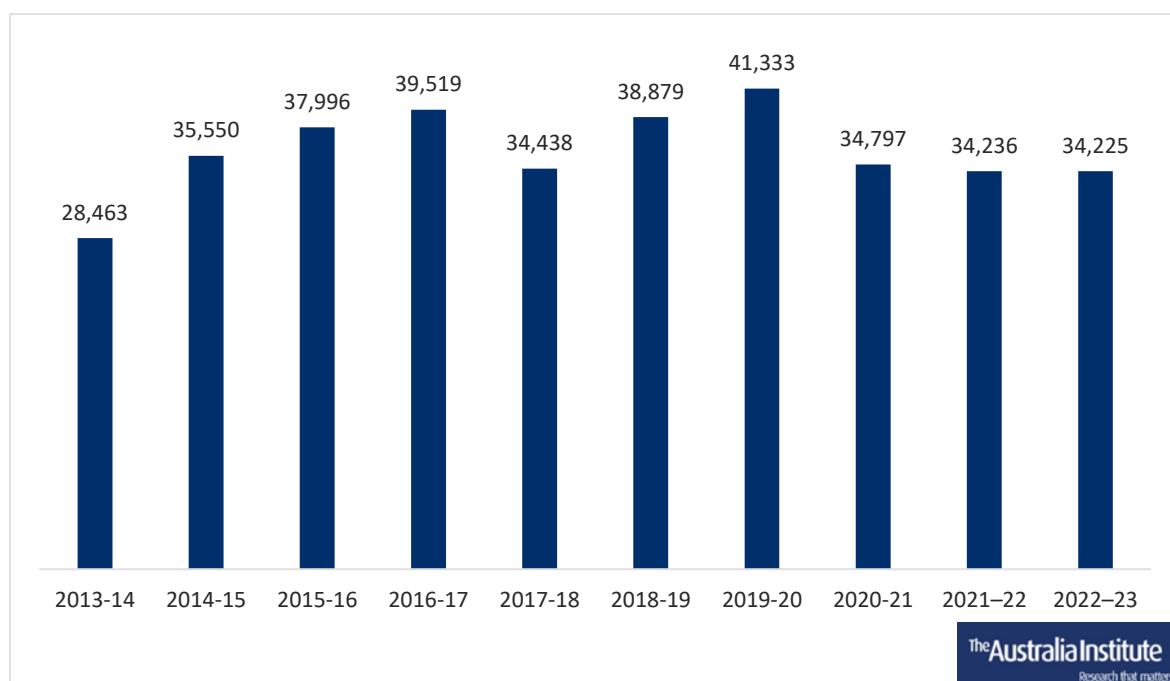
Commonwealth FOI requests followed a very different pattern, as shown in Figure 3 below. Commonwealth government agencies and Ministers experienced a 20% increase in the number of FOI requests received over the ten years, from 28,463 requests in 2013–14 to 34,225 in 2022–23.²⁴ However, Commonwealth requests peaked in 2019–20 and as of 2022–23 were actually lower than in 2014–15.

²² OVIC (2023) *OVIC 2022–23 Annual Report*, p 108

²³ Author's calculations from OVIC data; OVIC (2023) *OVIC 2022–23 Annual Report*, p 108

²⁴ OAIC annual reports, 2015–16 to 2022–23

Figure 3: Number of FOI requests received from 2013–14 to 2022–23, Commonwealth



Source: OAIC annual reports, 2015–16 to 2022–23

In contrast, the Victorian system continues to experience a marked increase in the number of FOI requests received, with the number of FOIs requested increasing by 9% in the last year alone, from 43,978 in 2021–22 to 48,117 in 2022–23.²⁵

This year-on-year increase in the number of FOI requests received means that Victoria received the most FOI requests of any jurisdiction in Australia in 2021–22 (the last year for which data is available). As shown in Table 1 below, Victorian agencies received 9,742 more FOI requests than Commonwealth agencies, and 20,189 more than New South Wales agencies – despite being significantly smaller in terms of population.²⁶ In addition, Victoria exceeds all other jurisdictions bar WA on the number of formal applications received per capita.²⁷

²⁵ Author's calculations from OVIC annual reports, 2015–16 to 2022–23

²⁶ NSW population as at 30 June 2022 was 8.17 million, whereas Victoria's population as at 30 June 2022 was 6.6 million. See ABS (2022) *National, state and territory population*, <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release>

²⁷ Information and Privacy Commission NSW (2022) *Dashboard and metrics on the public's use of FOI laws*, <https://www.ipc.nsw.gov.au/information-access/open-government-open-data/dashboard>

Table 1: Number of FOI requests received by jurisdiction, 2021–22

Jurisdiction	FOI requests	Formal applications per 1,000 people
Commonwealth	34,236	1.3
Victoria	43,978	6.6
New South Wales	23,789	2.9
Queensland	16,909	3.2
Western Australia	21,169	7.6
South Australia	10,057	5.5
Tasmania	1,957	3.4
Northern Territory	1,627	6.5

Source: Information and Privacy Commission NSW (2022) *Dashboard and metrics on the public's use of FOI laws*, <https://www.ipc.nsw.gov.au/information-access/open-government-open-data/dashboard>

GROWING BACKLOG

There is a growing backlog in the number of FOI requests received by Victorian agencies. Backlogs represent FOI requests not finalised by the end of the financial year in which they were received. A backlog grows when the number of requests received exceeds the number finalised.

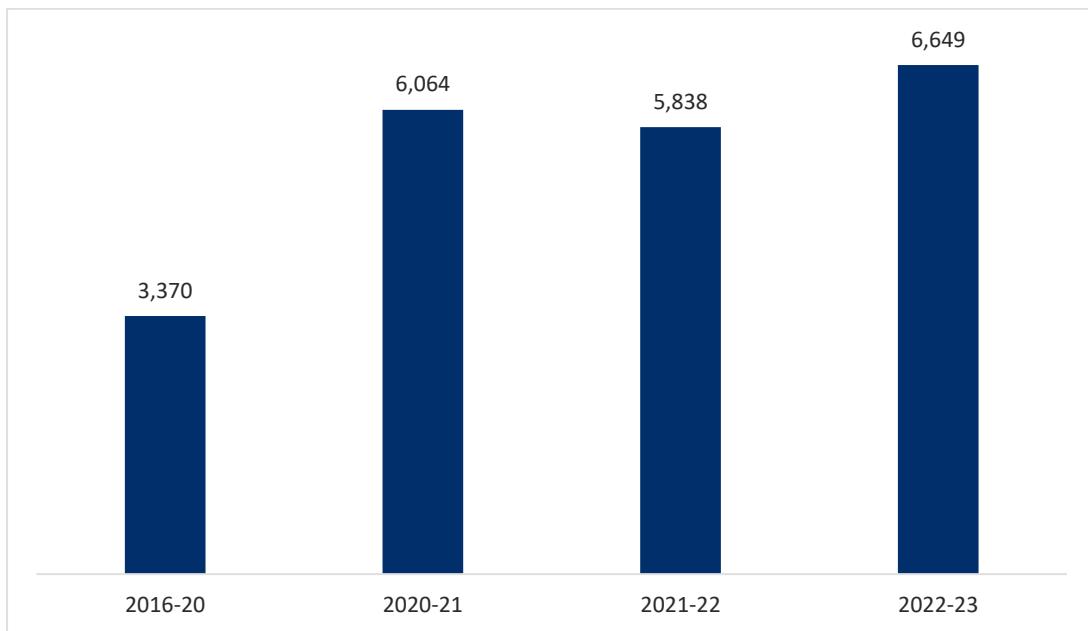
As Figure 4 shows, 6,649 FOI requests were not finalised by the end of the 2022–23 year in Victoria.²⁸ This was an increase of 811 on the 2021–22 backlog (5,838) and an increase of 585 on the 2020–21 backlog (6,064).²⁹ While annual data is not available for earlier years, the average backlog for the years 2016–17 to 2019–2020 was 3,370.³⁰

²⁸ OVIC (2023) *OAIC Annual report 2022–23*, p 109

²⁹ OVIC (2023) *OAIC Annual report 2022–23*, p 109; OVIC (2022) *The state of freedom of information in Victoria 2019–2021*, p 13, <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/the-state-of-freedom-of-information-in-victoria-a-special-look-at-foi-in-victoria-from-2019-to-2021>

³⁰ OVIC (2022) *The state of freedom of information in Victoria 2019–2021*, p 13

Figure 4: FOI request backlog, Victoria, 2016–17 to 2022–23



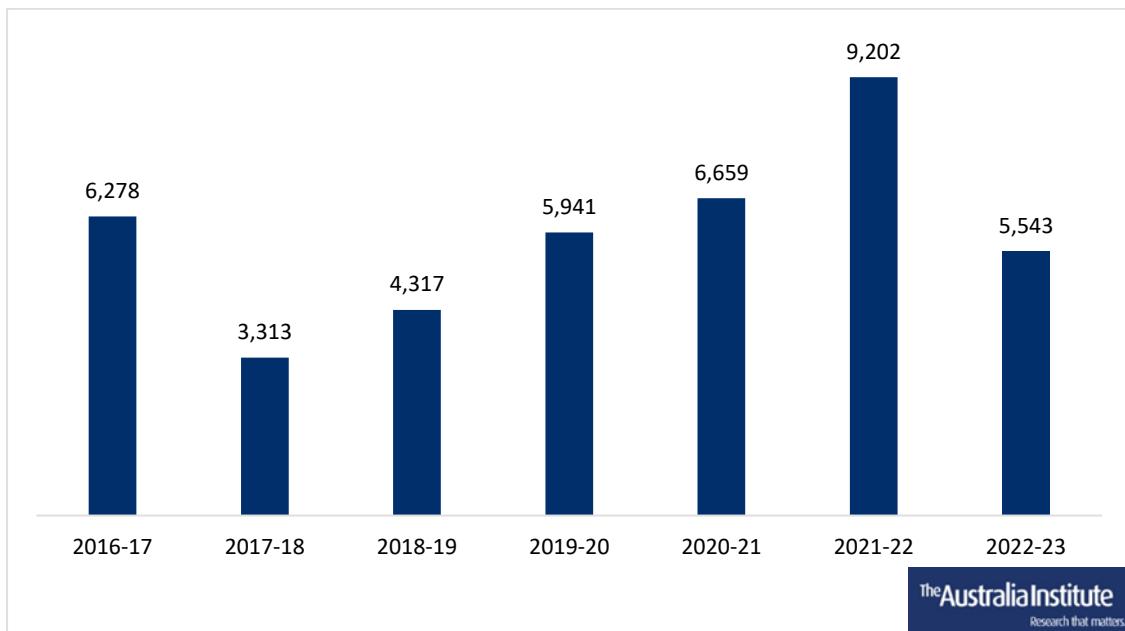
Source: OVIC annual reports, 2020–21 to 2022–23

As shown in Figure 5 below, the Commonwealth FOI system has been struggling with significant backlogs over several years, and as of 2021–22 was significantly higher than the Victorian FOI backlog (at 9,202 compared to 5,838). However, the existing Commonwealth backlog appears to have significantly improved as of 2022–23, with only 5,543 FOIs unresolved at the end of that financial year. This constitutes a remarkable 40% year-on-year decrease in the number of outstanding FOIs and is likely related to two factors. First, there was a 19% increase in the number of requests finalised in 2022–23 and a 169% increase in the number of FOI applications that were withdrawn.³¹ Second, the number of new FOI requests received remained relatively stable.³² This meant that the number of requests out exceeded those requests in, and so the backlog was reduced. In turn, this means that while the Victorian FOI system would have once compared favourably with that of the Commonwealth FOI system along this metric, it now appears relatively worse off.

³¹ OAIC highlights that “the reason for the large increase in the number of FOI requests withdrawn in 2022–23...was the very large increase in the number of requests made to Home Affairs that were withdrawn during the year”. It is unclear whether this recent improvement indicates a permanent decrease in the Commonwealth FOI backlog. See OAIC (2023) *OAIC Annual report 2022–23*, p 145

³² OAIC (2023) *OAIC Annual report 2022–23*, p 138

Figure 5: FOI request backlog, Commonwealth, 2016–17 to 2022–23



Source: OAIC annual reports, 2015–16 to 2022–23

INCREASED DELAYS

Victorian agencies are required by section 21 of the FOI Act to resolve a request within 30 days of it being lodged, unless the agency is granted an extension.³³ An applicant may grant one or more extensions of up to 30 days at a time, or the timeframe may otherwise be extended where third party consultation is required.³⁴ If a request is resolved outside of this timeframe, it is classified as being resolved outside of section 21.³⁵ These requests are then broken down into those resolved in 45 days or less, and those that took more than 45 days to process.³⁶

Figure 6 shows the relative proportion of FOI requests in Victoria processed within the requirements of section 21 compared to the proportion processed outside the requirements of section 21. The data shows that the share of FOI requests resolved within the statutory timeframe has fallen slightly from 82% in 2017–18 to 79% in 2022–23.³⁷ This represents a

³³ OVIC (2019) *Timeframes and extensions of time when processing an access request*, <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/practice-notes/timeframes-and-extensions-of-time-when-processing-an-access-request/>

³⁴ OVIC (2019) *Timeframes and extensions of time when processing an access request*

³⁵ There are limited exceptions to how calendar days are calculated, including for unreasonably large FOI requests (where the processing period is suspended). See OVIC (2023) *Annual Report 2022–23*, p 112

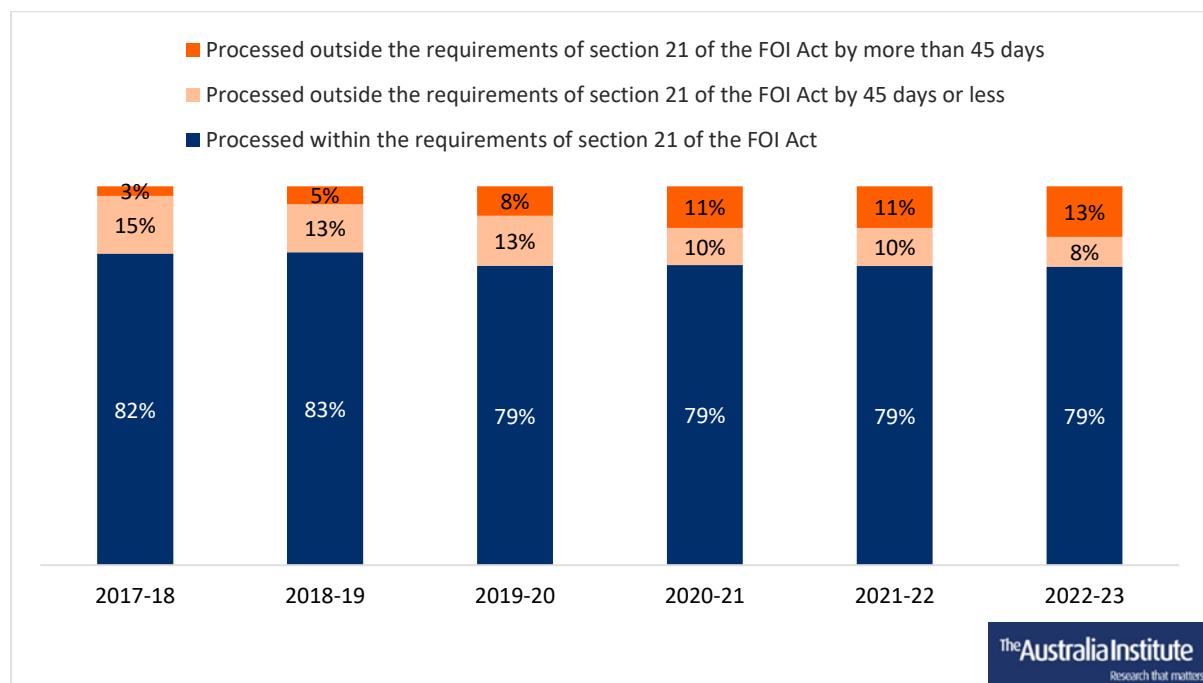
³⁶ OVIC (2023) *Annual Report 2022–23*, p 112

³⁷ OVIC annual reports, 2017–18 to 2022–23

decrease of 3.5 percentage points over six years.³⁸ Meanwhile, the total portion of requests processed outside of the statutory timeframe rose from 18% in 2017–18 to 21% in 2022–23.³⁹ Of this, the portion of requests processed outside of the statutory timeframe but in 45 days or less fell from 15% in 2017–18 to 8% in 2022–23. In contrast, the proportion of FOI requests processed outside the statutory timeframe, but that took longer than 45 days to process, increased from 3% in 2017–18 to 13% in 2022–23.⁴⁰ This is equal to a 10 percentage point increase in the proportion of requests taking over 45 days to process over the six-year period.

What this indicates is that declines in the proportions of the former two categories – those FOI requests processed within the statutory timeframe, and with short delays – were made up by growth in the proportion of requests taking over 45 days to process. In sum, a greater portion of FOI requests are taking long periods to process, and as a result, a smaller proportion of requests are being processed within the statutory timeframe or with short delays of 45 days or less.

Figure 6: Timeliness of FOI processing, Victoria



Source: OVIC (2020) *The state of freedom of information in Victoria 2014–2019*; OVIC (2022) *The state of freedom of information in Victoria 2019–2021*

Note: Comparison with pre-2017 data is not possible due to amendments made to section 21 in 2017 which altered the required processing period from 45 days to 30 days.

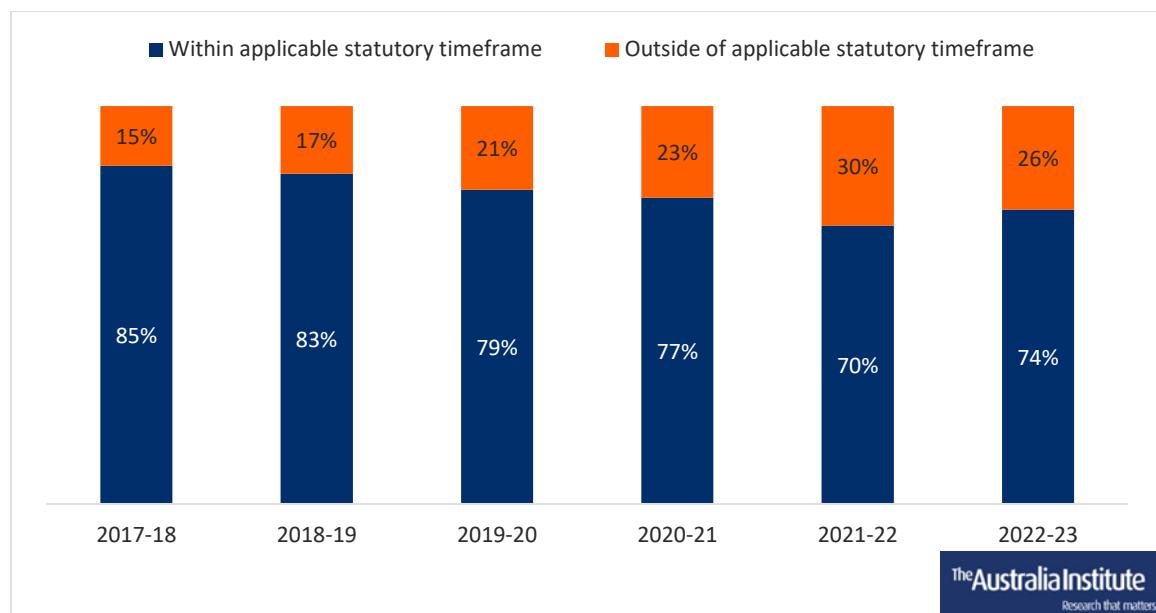
³⁸ Author's calculations from OVIC data. The share of FOI requests resolved within the statutory timeframe declined from 82.3% in 2017–18 to 78.8% in 2022–23, a difference of 3.5%.

³⁹ OVIC annual reports, 2017–18 to 2022–23

⁴⁰ OVIC annual reports, 2017–18 to 2022–23

The Commonwealth FOI Act operates in a similar way to the Victorian FOI Act in terms of the statutory timeframe. Commonwealth agencies and Ministers, similar to Victorian agencies and Ministers, have 30 days to make a decision under the FOI Act.⁴¹ However, the timeliness of FOI processing is measured differently between the jurisdictions, and as a result there is no comparable breakdown of requests processed outside of the applicable statutory timeframe available.⁴² Regardless, it is possible to compare the proportion of FOI requests processed within and outside of the statutory timeframe in the Commonwealth system with the same statistics for the Victorian system.

Figure 7: Timeliness of FOI processing, Commonwealth



Source: OAIC annual reports, 2017–18 to 2022–23

Figure 7 above shows the relative portion of Commonwealth FOI requests processed within and outside of the applicable statutory timeframe. There has been a general decline in the portion of FOI requests processed within the statutory timeframe over the six years depicted. In 2017–18, 85% of FOI requests were processed in the statutory timeframe. By 2022–23, that figure had declined by 11% to 74% of FOI requests. In comparison, 79% of requests were processed within the statutory timeframe in Victoria in 2022–23. This indicates that the Victorian system is operating moderately better than the Commonwealth system in terms of processing FOIs within the applicable statutory timeframe.

⁴¹ Extensions to the 30 day period can apply. See OAIC (n.d.) *When to expect a decision*, <https://www.oaic.gov.au/freedom-of-information/how-to-access-government-information/make-a-freedom-of-information-request/when-to-expect-a-decision>

⁴² Requests are instead broken down by various response times ranging from 30 days over the applicable statutory time period to more than 90 days over the applicable statutory time period. See OAIC (2023) *Annual Report 2022–23*, p 155, https://www.oaic.gov.au/__data/assets/pdf_file/0029/94295/OAIC_Annual-Report-2022-23.pdf

Other jurisdictions use different timeframes for reporting how far outside of the statutory timeframe FOI decisions are made. Table 2 below shows how many decisions in each jurisdiction are made within the statutory timeframes. Only the Commonwealth and South Australia measure worse in terms of the percentage of FOI requests processed within the statutory timeframe.

Table 2: Percentage of FOI requests processed within the statutory timeframe, 2021–22

Jurisdiction	Decisions made within statutory timeframe
Commonwealth	70%
Victoria	79%
New South Wales	99%
Queensland	N/A
Western Australia	88%
South Australia	53%
Tasmania	83%
Northern Territory	97%

Source: Information and Privacy Commission NSW (2022) *Dashboard and metrics on the public's use of FOI laws*, <https://www.ipc.nsw.gov.au/information-access/open-government-open-data/dashboard>

HIGH NUMBER OF COMPLAINTS

High numbers of complaints are being received regarding delays in the operation of the Victorian FOI system. For context, applicants can register a complaint with OVIC regarding the handling of an FOI request by an agency or Minister.⁴³ Common complaints include those regarding delays or the inadequacy of an agency's document search.⁴⁴ Notably, they differ from reviews, which are requested when an applicant is unhappy with a decision made by an agency or Minister regarding the outcome of an FOI request.

In 2022–23, 651 complaints were made to OVIC regarding the fulfilment of FOI requests.⁴⁵ Of these, 452 complaints, or 69%, concerned “agency delays in making FOI decisions within statutory or agreed timeframes”.⁴⁶ In other words, delays in the FOI system in Victoria are driving high numbers of complaints.

The number of complaints registered with OVIC over the period 2014–15 to 2022–23 is depicted in Figure 8, below. The long-term trend is towards higher numbers of complaints. However, it is important to note that the number of complaints received by OVIC declined from 2021–22 to 2022–23. It is unclear why this has occurred, especially as the proportion

⁴³ OVIC (2023) *Annual Report 2022–23*, p 79

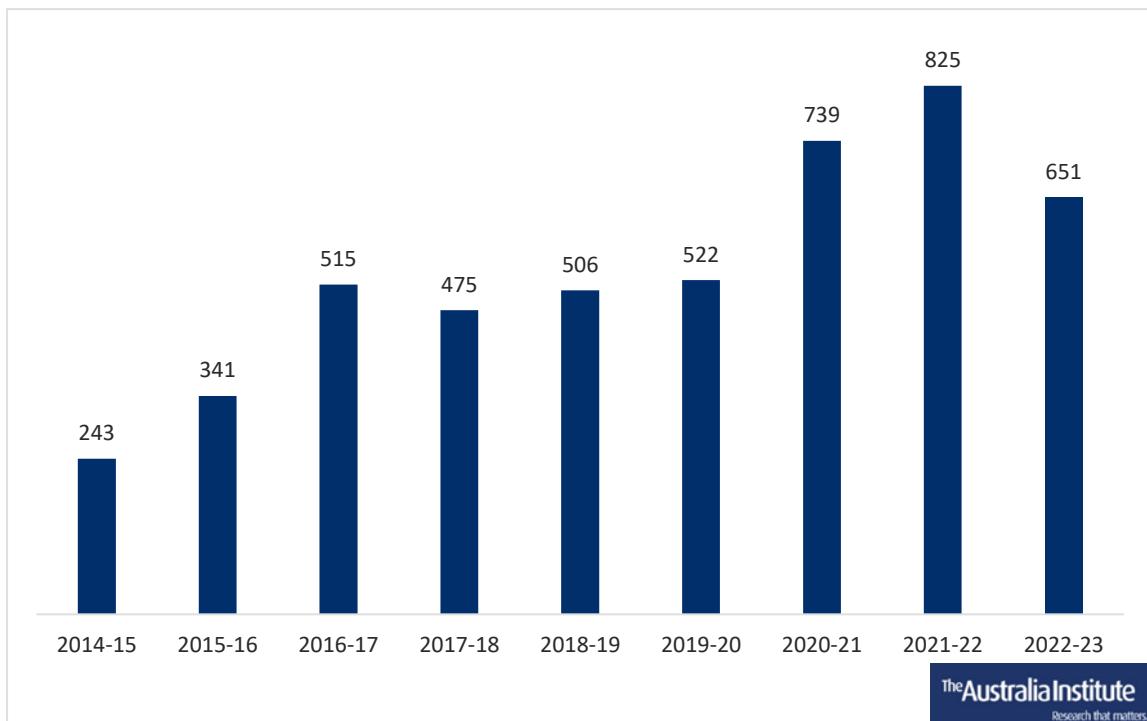
⁴⁴ OVIC (2023) *Annual Report 2022–23*, p 79

⁴⁵ OVIC (2023) *Annual Report 2022–23*, p 85

⁴⁶ OVIC (2023) *Annual Report 2022–23*, p 81

of longer-term (over 45 day) delays have continued to grow this financial year. OVIC itself attributes the decrease to “improvements in the timeliness and decision making of certain agencies”, as well as “agencies more effectively communicating and updating applicants about delays in decision making”.⁴⁷ One additional reason may be that higher numbers of complaints were associated with the COVID-19 pandemic. It is unclear whether the 2022–23 figures represent a temporary or permanent reversal of the long-term trend towards higher numbers of complaints.

Figure 8: Number of complaints, Victoria, 2014–15 to 2022–23



Source: OVIC annual reports, 2021–22 to 2022–23; OVIC (2020) *The state of freedom of information in Victoria 2014–2019*; OVIC (2022) *The state of freedom of information in Victoria 2019–2021*

⁴⁷ OVIC (2023) *Annual Report 2022–23*, p 81

POSITIVE RESULTS

Despite Victoria receiving the most FOI requests of any jurisdiction in Australia, and the second highest per capita, Victoria's FOI performance appears good on measures of the amount of information granted and the satisfaction of applicants with the result:

- Across all Australian jurisdictions, Victoria consistently has the highest or among the highest percentage of decisions where access is granted in full or in part. In 2022–23, in 97% of decisions access was granted in full or in part.⁴⁸
- Across all Australian jurisdictions, Victoria consistently has the lowest or among the lowest percentage of decisions that are reviewed by the information commissioner or ombudsman (as applicable). In 2022–23, only 1.2% of FOI requests were reviewed by OVIC (with only Western Australia better, on 1.0%).⁴⁹

These positive results suggest that poor performance in the Victorian FOI system described above is not a deliberate feature of the system's design or implementation but a result of the high volume of and large increase in FOI requests. This contrasts with the Commonwealth freedom of information system where, for example, former Commonwealth administrations failed to appoint a Freedom of Information Commissioner to deal with FOI reviews.⁵⁰

⁴⁸ Information and Privacy Commission NSW (2022) *Dashboard and metrics on the public's use of FOI laws*

⁴⁹ Information and Privacy Commission NSW (2022) *Dashboard and metrics on the public's use of FOI laws*

⁵⁰ Browne (2023) *Nothing to see here*, p 11–12

What should be done

Improving FOI data disclosures

A recurring theme in the Australia Institute’s analysis of FOI data is that the data is too limited to reveal why some jurisdictions see such variation in the nature and volume of FOI requests, review requests, complaints and decisions.

Addressing the high volume of FOI requests

A system of “push” access, or proactive disclosure – as described in The Australia Institute’s submission to the Senate inquiry into freedom of information laws – could obviate the need for FOI requests by making the information available upfront.

New South Wales and Queensland have both enacted “push” models of access legislation. Such models place “a greater emphasis on, and require proactive and informal release, [aim] to make formal access requests a last resort, and [elevate] the importance of proactive and informal release to provide greater access to information.”⁵¹

Recommendations

The Australia Institute recommends that the Victorian government and parliament:

1. Review FOI requests to determine why the Victorian Government receives so many requests per capita, and if there are distinctive trends in Victorian requests not seen in other jurisdictions.
2. Review FOI decisions to see which information should be proactively disclosed. This could include, but not be limited to, the information proactively disclosed in New South Wales and Queensland.
3. Ensure adequate resourcing for agencies and Ministers to safeguard the quick and fair processing of FOI requests.
4. Work with other Australian jurisdictions to disclose more detailed and consistent data on FOI systems to enable useful analysis within and between jurisdictions.

The Australia Institute has identified potential changes to the Commonwealth FOI system in our report, *Nothing to see here*, and our submission to the Senate inquiry into freedom of information laws. Some or all of these changes may also be applicable to Victoria.

⁵¹ OVIC (2021) *Enhancing Victoria’s FOI culture to be open by design*, <https://ovic.vic.gov.au/about-us/documents-and-publications-we-produce/research-and-reports/enhancing-victorias-foi-culture-to-be-open-by-design/>

Conclusion

Victoria receives more FOI requests than any other jurisdiction and has the second highest number of FOI requests per capita. This number has increased more than 40% since 2013–14. There is evidence that the Victorian FOI system is struggling to keep pace with this growing number of requests – including a growing FOI request backlog, more frequent delays and more complaints, most of which relate to delays.

Despite these problems, the Victorian system is performing well on some measures: it grants access to government information to applicants more often than other jurisdictions and a smaller portion of decisions are reviewed by the Victorian information commissioner.

These positive results suggest that poor performance in the Victorian FOI system is not a deliberate feature of the system’s design or implementation but a result of the high volume of and large increase in FOI requests.

A question we were unable to answer with the data available is why Victoria receives so many FOI requests. Does it fail to make government information available by other means, forcing citizens to use FOIs instead? Or does its readiness to grant access encourage more FOI requests, whereas other jurisdictions discourage them? Or is there a particular interest in Victorian decision making (for example, the administration of the COVID pandemic) not found in other jurisdictions?

Diagnosing why Victoria receives so many FOI requests would help address this problem. So too would working with other jurisdictions to disclose more detailed and consistent data on FOI systems, to allow for more detailed comparative analysis. Solutions to one jurisdiction’s FOI failures may already be implemented in other jurisdictions. Proactive disclosure of more government information may obviate the need for some FOI requests. While these measures may help improve FOI processing, in their absence agencies and Ministers must be adequately resourced to process FOI requests quickly and fairly.

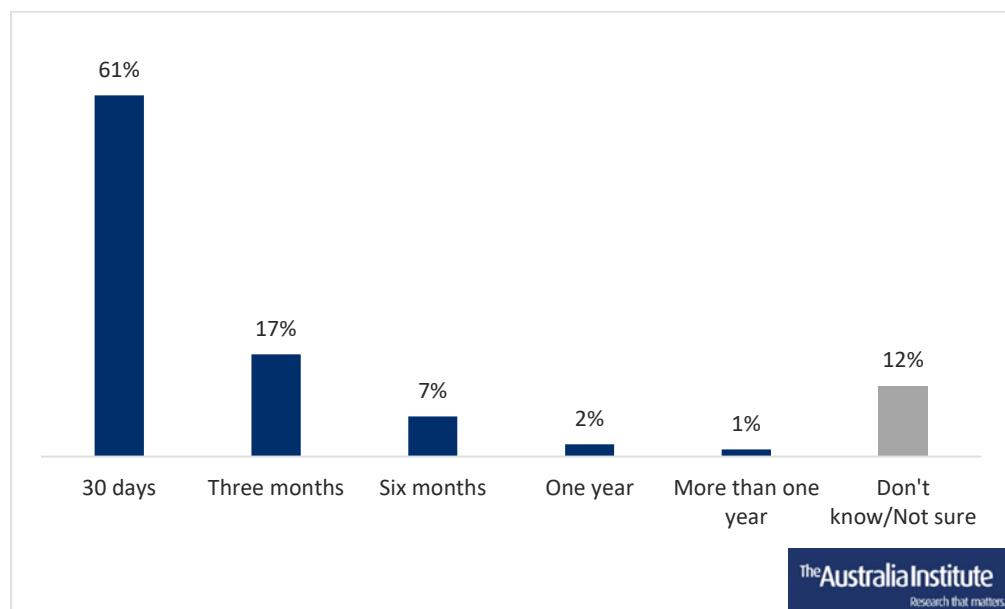
Appendix - Public opinion

For *Nothing to see here*, the Australia Institute conducted polling research on public opinions regarding the freedom of information system.⁵² We present a section of the polling data from that report only including results for Victoria, below.

The first question, about the maximum time someone should have to wait for an FOI decision, did not specify a jurisdiction (although it would have been clear to respondents that the poll was a national one). The second question asked specifically about the national FOI system.

- Three in five Victorians (61%) say that 30 days is the maximum time anyone should have to wait before their FOI request is decided.
- Only 3% say the maximum time should be one year or more than one year.

Figure 9: Nominated maximum waiting period for an FOI decision (Victorians)



Source: Browne (2023) *Nothing to see here*, pp. 16–18,
<https://australiainstitute.org.au/report/nothing-to-see-here/>

- Only one in five Victorians (19%) say they are “very confident” that Australia’s freedom of information system gives Australians access to all the government information that they are entitled to.
- Half of Victorians (50%) are “very” or “somewhat” confident that Australia’s freedom of information system gives Australians access to all the government information that they are entitled to.

⁵² Long methodology statement and full results published in Browne (2023) *Nothing to see here*, pp. 16–18