

Investigations
Benchmarking Project
November 2020

Acknowledgment

The Game Management Authority (GMA) acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

The GMA is committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



Published by Game Management Authority November 2020.

©The State of Victoria 2020

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968*.

Authorised by Game Management Authority
535 Bourke Street, Melbourne 3000

DISCLAIMER

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

For more information about Game Management Authority go to www.gma.vic.gov.au

CONTENTS

- Executive Summary..... 2
 - Purpose 2
 - Project Outcomes..... 2
 - Project Participants 2
 - Recommendations 3
 - Overarching Comments 4
- 1 Introduction..... 5
 - 1.1 Project Overview..... 5
 - 1.2 Overview of the GMA..... 5
 - 1.3 GMA's *Compliance Strategy 2020 – 2025* ... 6
 - 1.4 Scope of this Project 6
 - 1.5 Consultations..... 6
 - 1.6 Assumptions and Limitations 7
- 2 Results..... 8
 - 2.1 Definition of Investigation 8
 - 2.2 Definition of 'Serious' Investigation 8
 - 2.3 Triggers for an Investigation 9
 - 2.4 Starting and Finishing an Investigation 10
 - 2.5 Investigation Milestones 10
 - 2.6 Key Performance Indicators (KPIs)..... 11
 - 2.7 Involvement of Legal Teams 11
 - 2.8 Investigations Conducted in 2019-20 12
 - 2.9 Cost of Investigations 12
 - 2.10 Allocation of Resources..... 12
 - 2.11 Successful Outcomes 13
 - 2.12 Time Delays 14
- 3 Observations and Discussion. 15
 - 3.1 Definition of Investigation 15
 - 3.2 Definition of Serious Investigation 16
 - 3.3 Success of Investigations 16
 - 3.4 Performance Indicators 17
 - 3.5 Involving Legal Teams Early 22
 - 3.6 Outcomes 22
- 4 Concluding Comments..... 23
- 5 Appendix A: Written Questions..... 24



EXECUTIVE SUMMARY

Purpose

This project aims to build an in-depth understanding of the processes for investigations undertaken by regulatory organisations and to establish a benchmark for 'best practice' in regulatory performance.

In September 2020, the Game Management Authority (GMA) conducted an online survey to gain information from regulators about their administrative processes, resources, involvement in investigations and the outcomes of serious or significant investigations. This project also involved discussions with survey participants, requests for written responses to questions and clarification of feedback where necessary. The GMA will use the results of the survey to compare, assess and improve its existing processes, practices and procedures.

Project Outcomes

The outcomes of this project indicated that:

- › other than defining when an investigation commences, there was no clear commonality between organisations in the way they define an investigation
- › there was no common term used for investigations pertaining to matters of a serious or complex nature.
- › there was no substantive consistency in the way organisations define when an investigation is concluded, when it has been successful, or how an investigation is monitored, and
- › there are opportunities to learn from other organisations and to develop definitions, principles, practices and Key Performance Indicators (KPIs).

The development of any definitions, principles, practices and KPIs will need to be representative of existing best practices and in line with the GMA's intelligence-led, risk-based and outcome-focussed approach.

Project Participants

More than 100 organisations with regulatory functions were invited to participate in this project. The GMA received 52 (47 per cent) responses from local and international organisations. These organisations represented a wide spectrum of regulatory activities, including money laundering, gaming and liquor, sports integrity, natural resources, building and construction, occupational health and safety, energy, financial services and local councils.

Recommendations

A total of 14 recommendations (hereafter R1 - R14) are made as a result of this project, as detailed below. The column titled 'Section' indicates the section in this report where that recommendation is discussed.

No.	Recommendation	Section
R1	The GMA clearly define the term 'investigation' to ensure improved clarity and transparency	3.1
R2	The GMA define when an investigation starts and finishes, thereby ensuring improved clarity and transparency in relation to monitoring of the timeliness of investigations	3.3.1
R3	The GMA implement a process for capturing the dates on which an investigation is suspended as well as the dates on which these suspensions are lifted	3.3.2
R4	Where additional information and/or evidence is required following the formal conclusion of an investigation, this should be facilitated, and the time taken to do this is recorded	3.3.2
R5	The GMA consider adopting a more formalised process map for investigations that will better facilitate the monitoring and reviewing of assigned response levels to each matter or incident	3.3.3
R6	The GMA establish a set of realistic and measurable KPIs to monitor the performance of the Compliance and Intelligence Division	3.4
R7	The GMA revisit existing governance processes associated with investigations and identify opportunities for improvement	3.4.2
R8	The GMA employ graduated performance indicators for investigations	3.4.3
R9	The GMA continue to embrace the practice of open communication with all relevant parties throughout the investigation process	3.4.4
R10	The GMA establish guidelines for conducting interagency investigations, where appropriate	3.4.5
R11	The GMA invite Victoria Police and natural resource regulators within Victoria to enter into Memorandums of Understanding in relation to incidents that impact on, or occur within, their jurisdiction	3.4.5
R12	The GMA ensure regular case conferences and investigation debriefs are held for all serious/significant investigations	3.4.6
R13	Prosecution Services be involved with all phases of a 'serious/significant' investigation, starting with the first case conference	3.5
R14	Specific investigation performance indicators be established and used to measure the success or outcome of investigations	3.6

Of the 14 recommendations, six are considered to be key recommendations, due to their cross-cutting nature:

- R1** The GMA clearly define the term 'investigation' to ensure improved clarity and transparency
- R6** The GMA establish a set of realistic and measurable KPIs to monitor the performance of the Compliance and Intelligence Division
- R8** The GMA employ graduated performance indicators for investigations
- R11** The GMA invite Victoria Police and natural resource regulators within Victoria to enter into Memorandums of Understanding in relation to incidents that impact on, or occur within, their jurisdiction

R12 The GMA ensure regular case conferences and investigation debriefs are held for all serious/significant investigations

R14 Specific investigation indicators be established and used to measure the success or outcome of investigations

Overarching Comments

The GMA's position within the Victorian regulatory sector provides a unique opportunity to positively influence the use of a holistic approach to game hunting regulation. An important component of this may be the development and implementation of a consistent approach to investigations, including 'serious or significant' investigations.

The outcomes of this project provide a sound platform for the GMA to take the lead in collaborating with other jurisdictions to develop a consistent approach to investigations, including the establishment of common KPIs.

This project has highlighted some opportunities for the GMA to do things differently. The information contained within this report will assist the GMA to fully implement the GMA *Compliance Strategy 2020 – 2025* and also strengthen its innovative and agile approach to investigations.

1 INTRODUCTION

1.1 Project Overview

This project was designed to;

1. develop a greater understanding of the approaches other Australian and international organisations with regulatory functions use in undertaking investigations, and
2. use this information to develop a benchmark of 'best practice' against which to monitor GMA's own performance.

Organisations involved in regulation and/or law enforcement activities were included in the study to ensure that the GMA could develop a broad understanding of the investigative practices, processes and procedures. Some of the agencies approached were unable to participate in all aspects of the study and more than 30 organisations (61 per cent) chose to remain anonymous.

Information was obtained from participating organisations through four distinct phases:

1. Initial contact/discussions
2. Written responses to a series of specific questions
3. Clarification of feedback where necessary, and
4. Review of the draft report.

Due to many of the participants defining some terms associated with investigations differently, and the broad array of practices and policies used, some interpretations have been made. This has been necessary throughout this report to facilitate the synthesis of the information provided. Every effort has been made to ensure that the participating organisations and the information they have provided is accurately represented.

The intended outcomes of this project were to build an in-depth understanding of investigations as undertaken by other regulatory/law enforcement agencies and to use this information to:

- › establish benchmarks against which the GMA can monitor its own performance
- › provide context around GMA's investigative efforts as compared to other regulatory bodies
- › inform the operations of GMA's Compliance and Intelligence Division
- › provide a basis for the future establishment of common definitions, principles and procedures in relation to investigations, including serious/significant matters, and
- › assist the GMA to establish pragmatic and realistic KPIs for all investigations.

1.2 Overview of the GMA

The GMA is an independent statutory authority established to promote sustainability and responsibility in game hunting in Victoria in accordance with the *Game Management Authority Act 2014* (the Act).

The GMA also performs the regulation, investigation and disciplinary functions conferred by or under the Act, the *Wildlife Act 1975* and the *Conservation Forests and Lands Act 1987*.

The GMA's five strategic goals are:

1. Make evidence-based education a cornerstone of our work
2. Understand the ecology and biology of game species and the impact of hunting on these species to achieve sustainability
3. Be respected and recognised as an effective regulator
4. Implement an effect risk-based, intelligence-led compliance strategy, and
5. Increase our capability, capacity and expertise.

1.3 GMA's Compliance Strategy 2020 – 2025

The GMA's *Compliance Strategy 2020 – 2025* articulates the GMA's vision that game hunting in Victoria meets community expectations as a sustainable and well-regulated activity based on science and is conducted in a responsible manner.

The strategy details delivery of our regulatory functions and activities over the next five years and explains how the GMA will successfully tackle the strategic challenges and, in doing so, sets the direction and intent of the GMA's ongoing regulatory effort. The strategy compliments the GMA's *Education Strategy* and *GMA's Research Strategy*.

1.4 Scope of this Project

The purpose of this project was to identify current local, national and international models and approaches of best practice which are geared towards providing high quality, timely and appropriate investigations into incidents. In particular, this project has focused on identifying and exploring definitions for 'serious or significant' investigations.

The issues explored include:

- › providing context for GMA's investigative efforts by exploring the practices and performances of other regulatory bodies that conduct investigations, with particular emphasis on the:
 - › average length of time taken
 - › level of resources used
 - › average cost, and
 - › outcomes.
- › informing the operations of the Compliance and Intelligence Division within the GMA
- › providing a basis for the future establishment of common definitions, principles, procedures and guidance in regard to investigations
- › engaging state, national and international jurisdictions and building partnerships with them to facilitate future collaboration in relation to investigations, and
- › identifying realistic KPIs for possible adoption by the GMA.

1.5 Consultations

A total of 110 organisations, each with regulatory functions, were invited to participate in this project of which 52 (47 per cent) provided responses. The invited organisations represented a cross section of state, national and international regulatory agencies.

Information was provided to each of the agencies to explain the purposes of the project and to source general information regarding their operations and involvement in investigations.

Following the initial engagement process, organisations were asked to complete a written survey about governance, structuring and outcomes of investigations (refer to **Appendix A** for a full list of questions). Participating organisations were also asked to provide any general comments that they felt were pertinent to this project.

To ensure that the report accurately reflected the information and comments provided, participating organisations were, where necessary, asked to clarify their written responses.

1.6 Assumptions and Limitations

There are a number of assumptions and limitations that have influenced the way in which this project was undertaken. Firstly, some organisations, including WorkSafe Victoria, Victoria Police, the Australian Criminal

Intelligence Commission and the Australian Federal Police, were only able to participate in the initial phase. The absence of phase two information from these organisations is considered a limitation of this project.

A second limitation is associated with the term 'serious investigation'. Notably only one regulator uses this term. As such, assumptions

have been made to equate the terms and activities of other regulators to the term 'serious investigation'. Every effort has been made to ensure that this process has not misrepresented organisations or the data they provided.

2 RESULTS

This section contains a summary of information collected through this project.

2.1 Definition of Investigation

Of the organisations that participated in this project, 25 per cent reported having a definition for the term 'investigation'. Responses included:

"...is the process of seeking information relevant to an alleged, apparent or potential breach of the law, involving possible judicial proceedings. It is a search for truth, in the interests of justice and in accordance with the specifications of the law"

"...is the search for the truth, in the interests of justice and within accordance to the specifications of the law"

"...is a probative search for the truth behind a given incident that used evidence of facts to determine what has occurred, how it occurred, who, if anyone is responsible and whether it could or should have been prevented"

"...involves obtaining, managing and evaluating evidence to determine whether a contravention of federal workplace

laws has occurred. (Organisation) has adopted a nationally consistent process that identifies uniform points of escalation and management intervention during an investigation. Inspectors must ensure that the evidence obtained during an investigation is critically evaluated both before a matter is completed (investigative evaluation) and before any recommendation to litigate is made (evidential evaluation)"

"...to gather sufficient evidence, having determined the details facts of an incident/ circumstances, including the impact on all victims and associated culpabilities (organisations and individuals) to support a breach of specific legislation with a view to civil or criminal prosecution..."

"...is the act or process of examining something to determine the truth"

"...is a response to identified breaches of the law and involves a range of different action to deter and punish offenders, and rehabilitate damage to the environment"

"...taking a line of inquiry which requires dedicated focus being above an offence of strict liability".

2.2 Definition of 'Serious' Investigation

Of the organisations that participated in this project, one reported using the concept of 'serious investigation'. Of the other organisations, the closest was that of a 'significant' incident/matter, which was defined as:

"...an accident or event that exposed employees or members of the public to serious risk of injury or resulted in multiple or unusual causes of death or injury in circumstances that are likely to be of major interest to the public or the Government. ..."

"...the nature of the breach will also determine significance. Significant harm to a patient or a pattern of adverse outcomes could also be considered significant..."

“...the matter has attracted, or is likely to attract media attention; the investigation has suspected (legislation) contraventions; the matter has attracted, or is likely to attract, political attention; e.g. Questions of Notice in Senate Estimates, questions in Parliament, Ministerial enquiries, correspondence from members of Federal, State or Territory parliaments...”

- “...likely to lead to prosecution.”

Organisations also referred to a ‘major incident’, which was defined as:

“...a significant event which demands a response beyond the routine, resulting from uncontrolled developments in the course of the operation of any establishment or transient work activity.”

Where organisations did differentiate in the level or type of investigative response, a more concerted or intensive effort appeared to be taken in cases where the:

- › actual or potential harm was severe, including work-related injuries / fatalities
- › incident was of ‘special/ significant public interest’
- › subject of the incident was the subject of a prevention, compliance and/or enforcement priority
- › nature of the non-compliance was more than administrative, and/or
- › application of a compliance-based response was unlikely to lead to resolution.

2.3 Triggers for an Investigation

The decision by regulators to initiate the strongest form of investigative action available to them tended to be based on one of three triggers:

- › The occurrence of an incident, including the existence of an immediate threat, actual or potential death or serious injury, attracted substantial public interest or pressure
- › Repeated incidents of non-compliant activities at the same or different locations under the control of the same operator
- › Continued offending, which when combined, exceeded a certain monetary value.

While the terminology associated with what triggered a ‘serious investigation’ differed between organisations, the fundamentals of these triggers remained fairly constant, including:

- › severity or scope of incident
- › perceptions of risk
- › public, media or parliamentary interest and scrutiny.

2.4 Starting and Finishing an Investigation

When asked when an organisation was considered to have initiated an investigation, one third of the participating organisations were unable to provide a response. Of those that did respond, all stated that the decision to investigate was considered to be the commencement of the investigation.

When asked when an investigation was considered to have been concluded, the level of agreement between respondents was much lower. Responses included:

- "...when all lines of inquiry have been exhausted"
- "...when objectives have been met and an enforcement decision has been made"
- "...the continuing use of resources is not justified"
- "...the recommendation (to conclude) is endorsed by the relevant manager and/or legal team"
- "...brief of evidence is submitted to and/or accepted by the DPP (Director of Public Prosecutions)"
- "...a warning letter is issued"
- "...the matter is listed before a court, or a similar justice outcome is enacted", and

"...the matter is discontinued or settled by consent, or in a contested matter, heard by the Court (as investigative activity may continue after filing)".

In summary, the elements determining the conclusion of an investigation were related to governance, procedural and outcome issues.

2.5 Investigation Milestones

When asked about how they tracked the progress of an investigation, more than 80 per cent of the respondents stated that they did not track the progress of an investigation.

Of the organisations that use milestones, the milestones differed considerably, were monitored in different ways and occurred at different points throughout the investigation. Some of the milestones identified by participating organisations included:

- "...all critical decisions made during the progress of an investigation are the milestones used...."
- "...briefings ... include, but are not limited to, daily briefings to the Executive by the Director, bi-weekly progress reports, parliamentary briefings as required, and media advice as directed"

"...matters regularly returned to the Committee for progress updates and decision. In depth investigations would generally be reviewed each three months...."

"...the (Organisation) requires all investigations to be reviewed whenever significant information comes to light that affects the course of the investigation, and in any case within three weeks of the decision to investigate and at intervals not exceeding two months after that...."

"...investigation plans are used to track the progress of investigations. Each plan is customised to the investigation and therefore the 'milestones' will differ from job to job...."

"...all critical decisions are individually recorded with the identity of the decision-maker, reasons for the decision and when the decision was made"

While most 'monitoring' of investigations occurred via regular updates, some organisations embraced formal investigation plans and specific milestones. One organisation indicated that it was in the process of developing a strategy for tracking the progress of its investigations.

2.6 Key Performance Indicators (KPIs)

When asked about the KPIs used to measure the success of an investigation, or an investigation team/unit, just under 20 per cent of respondents were able to identify specific measures. While there was considerable variation between organisations, the KPIs identified were generally associated with the finalisation of an investigation within a particular timeframe, for example:

“...60 per cent of investigations are to be completed within six months”

“...80 per cent of in-depth investigations are concluded and progressed to litigation within 12 months”.

“...90 per cent of investigations are to be completed within 12 months”, and

“...100 per cent of investigation reports that are recommending prosecution must be completed with 12 months”.

Other KPIs identified were associated with a range of different measures including:

“...85 per cent of investigations commenced and completed within criteria i.e. commence within two hours and completed within 12 weeks”

“...initial planning completed with 48 hours (measured locally)”

“...90 per cent of investigations completed within five months (measured via data entered in recording system measured down to officer level)”, and

“...fatalities that are not recommended for prosecution must be sent to head office within three months of the event”.

2.7 Involvement of Legal Teams

During the initial consultations conducted with participating organisations, it became apparent that the stage at which a legal team was involved in an investigation may influence the total time taken to complete an investigation. When asked at what stage of an investigation they involved, or sought the involvement of, their legal team, just over one third of respondents stated that they involve their internal legal teams at the earliest possible time, including the planning phase. Others, however, did not engage legal teams until investigations had been concluded.

An analysis of the information provided by responding organisations suggested that the amount of time spent collecting additional information following the ‘conclusion’ of an investigation was reduced by approximately 50 per cent when legal teams were involved early in an investigation.

2.8 Investigations Conducted in 2019-20

By identifying the number of investigations undertaken during the 2019-20 financial year, a proxy for investigation 'maturity and experience' was established. This information provides a context for GMA to benchmark against.

While 86 per cent of participating organisations were unable to provide information in relation to the number of investigations they had conducted in 2019-20, of those that could, there was considerable variation in the results. The greatest number of investigations reported to have been undertaken in 2019-20 was 976 and the lowest number reported was three investigations. Sixty-seven per cent of organisations indicated that they either did not know how many investigations they had undertaken, or they had not undertaken any, in the 2019-20 financial year.

The mean value for all organisations was 252 investigations in 2019-20. Importantly, not many of these investigations could be equated to a 'serious investigation', with many being more appropriately classified as 'standard investigations'.

2.9 Cost of Investigations

During initial interviews, cost appeared to be a key driver associated with investigation 'performance'.

Fewer than 10 per cent of participating organisations were able to provide dollar estimates of the costs associated with conducting investigations. Of the organisations that did maintain or provide cost-related records, the total expenditure on investigations in 2019-20 ranged from \$2.3m for 757 investigations at a mean cost of \$3,039, to \$150,000 for 167 investigations at a mean cost of \$898 per investigation.

While there were a number of inconsistencies associated with how organisations recorded the 'costs' provided, the results suggests that the cost associated with undertaking an investigation and the number of calendar days required to complete the investigation increased as the complexity of an investigation increased.

2.10 Allocation of Resources

During initial interviews with participating organisations, it became apparent that the allocation of resources to investigations may also help to provide an insight into the complexity or seriousness of investigations, and therefore help to contextualise the experiences of other organisations.

When asked about the number of inspectors or investigators involved in each investigation during 2019-20, 72 per cent of respondents were unable to provide this data as they did not maintain these types of records. Of those that did provide this data:

- › 73 per cent indicated that they only allocated one or two inspectors, investigators or authorised officers to each investigation
- › 13 per cent involved three inspectors, investigators or authorised officers, and
- › 14 per cent involved teams of between 17 and 19 inspectors, investigators or authorised officers.

An analysis to determine the efficiency or effectiveness of the different sizes of teams, including the roles and responsibilities of the various team members, was outside the scope of this project.

2.11 Successful Outcomes

An important part of this project was to develop an understanding of how participating organisations determined that their investigations have been successful.

More than 63 per cent of organisations were unable to identify or define how they determined if an investigation had been successful. For those that did define 'success', a range of different constructs were identified. These included when:

- "...a brief of evidence was provided to the DPP"
- "...any enforcement action is completed and/or brief of evidence is provided to the DPP"
- "...there is a successful prosecution, improvements by duty holders, changes in behaviour by the sector, or just claims for victims"
- "...typically, when the biosecurity risk or harm has been mitigated and the individual associated with the harm has either been adequately 're-educated' or specifically deterred from further offending"
- "...the investigation has been professionally managed and the appropriate outcome has been achieved. The outcome could range from "closed due to no contravention identified" through to successful litigation with penalties imposed and anything between"

"...a sanction in the form of a successful prosecution or the issue of an enforcement action but also remediating the problem – fixing or making good"

"...several ways, including the behaviour has ceased, a brief of evidence and investigative process were appropriate and could support a prosecution. New case law to support or clarify the legislation being used may have been created. Witnesses or complainants have been supported through the investigation process"

"...enforcement action taken. No reoffending. Significant positive media coverage. Non-compliance rectified"

"...successful enforcement action resulting in change in behaviours of those we regulate", or

"...a warning letter is issued which involves the recipient being contacted and advised of their obligations and consequences for any future breaches".

Given that prosecutions and court decisions were identified as a critical component of a 'successful' outcome, it was important to identify when organisations considered that prosecutions had both commenced and concluded.

When asked about when a prosecution is deemed to have started, participating organisations identified four key markers. These included when:

- "...a court date is listed"
- "...a brief of evidence is accepted, and the respondent has been notified that the matter will proceed"
- "...charges are issued and served on the defendant", or
- "...a prosecution notice is signed and lodged with the court".

Organisations identified four different markers relating to investigations.

The first two were binary in the sense that they determined when a:

- "... prosecution had been commenced", and
- "... prosecution had been concluded when the court case was completed".

The second two were variable markers, including when:

- "...a file is closed", and
- "...all court action has concluded, including appeals".

Of the organisations that had undertaken prosecutions in 2019-20, the number of prosecutions undertaken ranged from zero to 200.

When considering the outcomes from all prosecutions, 82 per cent resulted in a court-imposed conviction, sanction, fine or some other form of penalty.

2.12 Time Delays

The timeliness of investigations was considered by a majority of the participating organisations to be an important aspect of successful investigations.

It was also highlighted that a range of different factors, including time delays that were outside of the control of the inspector, investigator or authorised officer or investigative team, often influenced the total time an investigation took.

When asked about the amount of time that lapsed between 'briefs of evidence' being provided to legal advisors and the commencement of prosecutions in 2019-20, 84 per cent of participating organisations were unable to respond, as they did not have that data. Of those that were able to respond, these organisations experienced delays of between 42 and 700 calendar days. This suggests that in at least some instances, particularly where an investigation is not deemed

to have been completed until the prosecution has been completed, that the length of the prosecution may be protracted due to the demands on the legal system in general, rather than the efficiency or effectiveness of investigators, inspectors, authorised officers.

For those that were able to provide this information, it was identified that prosecutions took between two and 18 months.

3 OBSERVATIONS AND DISCUSSION

The general inconsistency in responses from participating organisations, particularly Australian regulators, provided both a challenge and an opportunity for this project. The challenges were predominantly associated with the capacity for this project to establish a firm baseline from which to measure GMA's current and future performances. The opportunities were associated with being able to establish a platform on which the GMA can build and set the standards within the natural resource regulator sector.

By drawing on the experiences of other natural resource regulators including international counterparts, this project has provided the GMA with a platform on which to be able to collaborate with other jurisdictions in relation to the identifying and establishing the current state of consistent:

- › definitions
- › processes
- › performance indicators
- › mechanisms for working together (i.e. memorandums of agreement for investigations).

3.1 Definition of Investigation

Approximately 25 per cent of organisations reported having a definition for the term 'investigation'.

Based on the information collected through this project, including the triggers used by other organisations to commence an investigation, the GMA should put in place a definition of what constitutes an investigation.

Two suggestions are offered in relation to achieving clarity and transparency:

Firstly, to adopt an actual definition, for example:

'An investigation is a search for truth, in the interests of justice and in accordance with the specification of the law.'

Secondly, to use the definition as a basis for a set of criteria against which an incident or situation may be measured to determine whether an investigation is warranted.

In determining when to commence an investigation, the GMA take an escalating approach and consider:

- › has an offence occurred within the legislative framework on which the GMA operates?
- › the nature and seriousness of the non-compliance, based on its actual or potential impacts
- › the actual or potential risk of harm caused by the incident
- › the characteristics of the person(s) in control of the activity
- › public interest and community expectation about the action taken to provide specific or general deterrence
- › statutory time limits.

By adopting this two-staged approach, this could increase clarity as to what an investigation is and when an investigation should be initiated.

When considering the establishment of such a framework it will be important to ensure that the definition of each level of inquiry is clear and transparent.

R1

It is recommended that the GMA clearly defines the term 'investigation'

3.2 Definition of Serious Investigation

While the term 'serious investigation' was not widely used, the idea of being able to escalate a response to matters as they became, or were recognised, as more serious was clearly evident. The intention of this approach is to enable decision makers the appropriate flexibility to downgrade or upgrade a response to an incident as further information became available. The merit of this approach is demonstrated by two of the participating organisations indicating that they were undergoing changes at the time of this project that would enable them to adopt a similar approach to their investigations.

3.3 Success of Investigations

A number of different aspects were identified as contributing to a successful investigation. All required careful monitoring of an investigation, the establishment of realistic performance indicators, the capture of appropriate data and the establishment of sound governance systems.

3.3.1 STARTING AND FINISHING AN INVESTIGATION

In line with increased clarity around what and when an investigation should be undertaken, it is recommended that consideration be given to defining when an investigation commenced and when it concludes. This is important from a simple governance perspective and may also be important from the perspective of the timeliness of investigations.

R2

It is recommended that the GMA defines when an investigation starts and finishes, thereby ensuring improved clarity and transparency in relation to monitoring of the timeliness of investigations

3.3.2 SUSPENDING AN INVESTIGATION

Many organisations sought to clarify the timeframes that they reported for investigations. In doing so, it became apparent that there were times where an investigation needed to be temporarily suspended, such as when the police are undertaking their own independent investigation. As these periods of suspension will impact on the 'timeliness' of an investigation, it is recommended that the capacity to record the date on which a suspension is imposed and lifted should be developed.

R3

It is recommended that the GMA implement a process for capturing the dates on which an investigation is suspended as well as the dates on which these suspensions are lifted

Delays in the court system may require the collection of additional information and/or evidence between a brief of evidence being submitted for prosecution and the commencement of the court case. There should be flexibility to allow for this and to ensure the accurate recording of the time taken to complete all aspects of an investigation. The time taken to collect this additional information should also be recorded.

R4

It is recommended that where additional information and/or evidence is required following the formal conclusion of an investigation, that this should be facilitated, and the time taken to do this is recorded

3.3.3 RECLASSIFICATION OF INVESTIGATIONS

The initial assessment process for matters for investigation was considered by all participating organisations as an important first step in the investigation process. The low number of investigations being either escalated or de-escalated suggests that either the processes used by organisations in their initial classification are very good, or that there is a lack of monitoring associated with investigations once they have been classified.

Discussions with participating organisations suggests that it is a combination of the two that has resulted in very few investigations being reclassified, a situation most agreed was not ideal. Despite this situation, processes have been developed by some organisations that map out a sound strategy for the initial classification of a response to a matter, as well as opportunities to either escalate or de-escalate this response through the process.

A closer examination of these processes may be beneficial to the GMA and afford it the opportunity to formally monitor and revise each investigation.

R5	It is recommended that the GMA considers adopting a more formalised process map for investigations that will better facilitate the monitoring and reviewing of assigned response levels to each matter or incident
-----------	--

3.4 Performance Indicators

While some participating organisations reported that they did not have formal performance indicators for their investigations, others did have formal performance indicators. Of those that did, most of these organisations were either not recording the type of information they needed to report against their performance indicators or were simply not achieving their targets.

Discussions with participating organisations emphasised the importance of establishing performance indicators that are in line with the priorities of the organisation, and realistic and measurable.

R6	It is recommended that the GMA establish a set of realistic and measurable KPIs to monitor the performance of the Compliance and Intelligence Division
-----------	--

3.4.1 BENCHMARK VS CONTEXT

One of the primary purposes for undertaking this project was to enable the establishment of a 'benchmark' against which the GMA could measure its own performance.

The type of information available from participating organisations, coupled with the diversity of definitions and protocols for data collection, has meant that it is not practicable to establish a benchmark. Instead, Tables 1 and 2 below have been developed to provide a context against which the GMA can view its own performance while also helping to guide the development of realistic, appropriate, and meaningful performance indicators.

Table 1 highlights that the involvement in participating organisations in investigations varies considerably, with very few undertaking 'serious' investigations. Similarly, the number of calendar days taken to complete investigations also varies considerably, with a single Australian based organisation reporting that it had taken them on average 120 days per investigation, using small teams of investigators, at a cost of \$1.5m.

Table 1: General Context and Resource Allocation*

	Number of investigations	Days to complete investigation	Average cost per investigation**	Number of investigators
	Total	Total	Total	Total
Australian organisations	3–976	1–245	\$4,500	1–19
International	4–111	10–64	BAU***	2–160

*Many participating organisations did not maintain records of this type. Information is therefore provided as a range to provide context

** Only four organisations maintained records in relation to cost

*** BAU = Business as Usual

Table 2 highlights the involvement of legal teams in the investigation process, the number of prosecutions undertaken and their outcomes. As shown in this table, Australian based organisations do not tend to be involved in high volume prosecutions. When they are involved, though, the average time taken for an investigation to be completed was reported as 153 days. The total time to complete both the investigation and the prosecution was reported as more than a year.

Table 2: Involvement of Legal and Prosecutions in 2019-20*

	Involvement of legal team	Brief of evidence for prosecution	Prosecutions started	Court imposed sanctions	Average days to complete prosecution
Australian organisations	10% at the beginning	1–95	0–95	0-95**	153
International	As required – varies with complexity	0–21	0–200	0-16**	NR***

*Many participating organisations did not maintain records of this type. Information is therefore provided as a range to provide context

** A majority of organisations did not maintain records to prosecutions or court-imposed outcomes

*** NR = No Records

3.4.2 GOVERNANCE

During this project it became apparent that the governance processes established to support the investigation process was as important as the investigation itself. Anecdotal evidence provided by participating organisations identified opportunities and provided justification for the implementation of solid governance processes including, but not limited to;

- › regular case conferencing / progress meetings
- › establishment of investigation specific milestones
- › awareness and use of Key Performance Indicators
- › using each investigation as a learning opportunity to improve subsequent investigations. For example, using a monthly debrief session to present completed investigations and talked about what worked, what didn't, what could have been improved, what could be done differently, what should definitely be done again,
- › quality assured record keeping – including educating investigators as to why they are recording different information and how this information is used
- › educating investigators as to how to appropriately use data systems.

The outcomes of this project suggest that there would be a great deal of benefit in revisiting GMA's existing investigation governance processes and considering at least some of the above opportunities to add value to what we do.

R7

It is recommended that the GMA revisit existing governance processes associated with investigations and identify opportunities for improvement

The outcomes of this project, including discussions within the GMA, particularly emphasises the importance of the accurate collection and maintenance of data and information. One of the most critical aspects to ensuring improved accuracy and data quality is to ensure all GMA Authorised Officers who are entering data into GMA's Intelligence Case Management System (ICMS), have a clear understanding of how to use this system, what the data protocols are and how the information is used.

By adopting this type of approach, the GMA will be ensuring that they are positioning themselves to deliver improved investigative services, better quality data and information, as well as supporting the delivery of the GMA *Compliance Strategy 2020 – 2025*, which is also a demonstration of the lawful and appropriate use of sensitive law enforcement data.

3.4.3 POSSIBLE INDICATORS

The use of performance indicators by other organisations, as well as the collection of data to support these indicators, was not as sophisticated as anticipated. Despite this, the outcomes of this project have suggested that the use of graduated indicators would be most informative and provide the best opportunities for monitoring investigations as well as for identifying areas for potential improvement.

R8

It is recommended that the GMA employ graduated performance indicators for investigations

The following provide some suggestions as to how graduated performance indicators may work for the GMA:

- › Timeliness of response
- › Case conferences
- › Timeliness of completion
- › Successful prosecutions
- › Compliments and criticisms.

By adopting realistic, achievable and measurable indicators, the GMA will ensure that it is able to accurately measure what they do, identify areas for improvement, justify requests for resourcing challenges and support the delivery of GMA's approach to compliance as articulated in the *GMA Compliance Strategy 2020 – 2025*.

3.4.4 COMMUNICATION

Data collected through this project highlighted the importance of maintaining open communication with all relevant and related parties to an investigation. In addition to the notions of courtesy and respect, participating organisations indicated that by keeping parties informed and talking to them about the matters at hand (where appropriate), a much more collegiate and collaborative approach can be taken. This type of approach not only reduces the level of stress placed on and experienced by different parties, but also is more likely to achieve the best possible outcome for all concerned.

R9

It is recommended that the GMA continue to embrace the practice of open communication with all relevant parties throughout the investigation process

Examples of relevant parties may include:

- › Those alleged to have breached relevant laws or associated regulations
- › The individual or individuals who was injured or exposed to an incident
- › Witnesses to the incident under investigation as well as other affected parties
- › Any other agencies or organisations that may be directly or indirectly involved with the incident under investigation or the individuals affected by it.

3.4.5 INTERAGENCY INVESTIGATIONS

Experience shows that there will be circumstances when GMA Authorised Officers will be required to work with representatives from other organisations and/or jurisdictions. This experience is not unique to the GMA or the Australian context. International organisations reported that they regularly conduct interagency or joint agency investigations.

There may be merit in developing relevant guidelines, policies and/or procedures for working with other organisations. Consideration should be given to:

- › How to manage competing priorities
- › Ensuring that high standards and consistency of investigations are maintained
- › Determine who the lead agency is
- › Strategies for ensuring a positive and collaborative environment.

R10

It is recommended that the GMA establish guidelines for conducting interagency investigations, where appropriate

In developing these guidelines, it is also suggested that a Memorandum of Understanding (MOU) may be useful. This MOU could include aspects such as:

- › Objectives
- › Lead agency and decision-making responsibilities
- › Operation management
- › Administrative arrangements.

The outcomes of this project suggest that developing an overarching MOU with each natural resource regulator in Victoria as soon as possible may have merit and help to clearly establish GMA's intent to work and collaborate with them on matters impacting on or occurring within their jurisdiction.

R11

It is recommended that the GMA invite Victoria Police and natural resource regulators within Victoria to enter into Memorandums of Understanding in relation to incidents that impact on, or occur within, their jurisdiction

3.4.6 CASE CONFERENCING

Whether an investigation involves multiple agencies or just one agency, a key influencer to ensure a well conducted and constructed investigation was regular discussions and consistent communication. The involvement of other investigators, the opportunity to talk through the approach that had been taken and the findings to date, as well as the opportunity to share ideas in relation to the next steps, were all considered to be 'best practice'.

Participating organisations also supported the notion of establishing the initial case conference as quickly as possible after a matter had been referred for investigation and ensuring that regular case conferences take place throughout the life of an investigation (refer to section 3.4.3 Possible Indicators on page 20). While not specifically recommended by, or discussed with, participating organisations, investigation debrief sessions that involved all relevant GMA Authorised Officers involved in the investigation was identified as an opportunity. This would allow for review of the investigation process, learning from each investigation and also addressing the education and support needs of staff.

R12

It is recommended that regular case conferences and investigation debriefs are held for all serious/significant investigations

It is suggested that timeframes for case conferences and debriefs include:

- › For the first case conference to occur within the first three days for 'serious' investigations
- › For subsequent case conferences to occur every four to six weeks
- › For debriefs to occur within four weeks of the investigation being concluded.

3.5 Involving Legal Teams Early

Information collected through this project has strongly suggested that involving legal teams as early as possible in an investigation process improves the timeliness of the investigation, ensures that the best possible outcomes are achieved and that the costs associated with an investigation are minimised.

While this may require a cultural change for both the investigation and legal teams, initial discussions with Prosecution Services, a business unit with the Department of Jobs, Precincts and Regions (DJPR) indicated that they were quite amenable to be involved in 'serious' investigations from the beginning, including the planning phase and all case conferences. By engaging Prosecution Services in all phases of a 'serious' investigation it is envisaged that they would have the opportunity to provide direction, guidance and advice throughout an investigation, rather than only at the conclusion. This would ensure that relevant issues were being explored, and appropriate information was being collated, sequentially throughout the investigation, thereby minimising the need to collect additional information after the investigation has been concluded.

R13

It is recommended that Prosecution Services be involved with all phases of a 'serious/significant' investigation, starting with the first case conference

3.6 Outcomes

Throughout this project the critical questions of 'what constitutes a successful investigation' has been considered. Following discussions with participating organisations, as well as key internal stakeholders, it became apparent that there are two levels of outcomes that need to be considered:

1. Outcomes from a general organisational perspective
2. Outcomes from a specific investigation perspective.

Both of these levels should be accommodated through KPIs. The establishment of specific indicators will encourage appropriate planning and risk management strategies to be implemented from the initiation of an investigation.

For example, the regularity with which contact is made with relevant parties will necessarily vary depending on the circumstances associated with any given matter. The actions and performance of the investigating team will then be guided and measured in accordance with the standards established for the specific investigation.

R14

It is recommended that specific investigation indicators be established and used to measure the success or outcome of investigations

4 CONCLUDING COMMENTS

This project has highlighted the opportunity for the GMA and other organisations within Victoria and, more broadly, Australia to collaborate and establish a more uniform set of definitions and measures in relation to investigations.

This project has also highlighted some opportunities for the GMA to improve the way it operates. While the information collected throughout this project identified a number of challenges, it also identified some important practices and processes that the GMA could embrace. In particular, using a collaborative approach during an investigation and recognising the harm that an adversarial approach can cause.

The information contained in this report will assist the GMA to meet its obligations under the *GMA Compliance Strategy 2020 - 2025* and develop a more innovative and agile approach to investigations.

As a result of this project and the GMA implementing the recommendations contained within this report, this will provide the Victorian community with every confidence that the GMA is a modern, highly effective and capable regulator.

5 APPENDIX A: WRITTEN QUESTIONS

The following are the list of questions participating organisations were asked to complete.

SECTION 1: DEFINITIONS AND ADMINISTRATIVE INFORMATION

1. Does your Organisation have a definition for the term "investigation"?
2. If yes, please provide this definition
3. Does your Organisation define the term "serious/significant investigation"?
4. If yes, please provide this definition
5. What are the key indicators used by your Organisation that are used to trigger/commence an investigation?
6. How does your Organisation determine when an investigation commences?
7. How does your Organisation determine when an investigation concludes?
8. Does your Organisation use 'milestones' to track the progress of an investigation?
9. If yes, what are they, how are they measured and at what point do they occur in the investigation process?

10. Does your Organisation have key performance indicators associated with investigations?
11. If yes, what are they, how are they measured and at what point do they occur in the investigation process?
12. When does your Organisation first seek to involve a legal team in an investigation process?

SECTION 2: INVOLVEMENT WITH INVESTIGATIONS

13. How many investigations did your Organisation conduct/undertake in the 2019-2020 financial year?
14. Of these, what proportion (%) were classified as being an investigation upon commencement?
15. What proportion (%) of investigations commenced in the 2019-2020 financial year were reclassified to a serious/significant investigation after commencement?
16. What proportion (%) of serious/significant investigations commenced in the 2019-2020 financial year were reclassified/de-escalated to 'non-serious' investigations during the investigation process?

SECTION 3: RESOURCE RELATED INFORMATION

17. On average, approximately how many calendar days did your Organisation devote to each investigation (from commencement to completion) in the 2019-2020 financial year?
18. On average, approximately how many calendar days did your Organisation devote to each serious/significant investigation (from commencement to completion) in the 2019-2020 financial year?
19. What was the total cost of all investigations in the 2019-2020 financial year?
20. What was the average cost of each investigation in the 2019-2020 financial year?
21. On average, how many Authorised Officers/ Investigators/Inspectors of your Organisation were involved in each investigation in the 2019-2020 financial year?

SECTION 4: OUTCOMES OF SERIOUS/SIGNIFICANT INVESTIGATIONS

22. How does your Organisation determine that there has been a 'successful outcome' associated with an investigation?
23. When is a prosecution deemed to have commenced?
24. When is a prosecution deemed to have been concluded?
25. Does the Director/Office of Public Prosecutions (DPP/OPP) conduct prosecutions on behalf of your Organisation?
26. If yes, how many briefs of evidence were provided to the DPP/OPP in the 2019-2020 financial year as a result of investigations conducted by your Organisation?
27. How many prosecutions did your Organisation commence and/or were commenced on behalf of your Organisation in the 2019-2020 financial year?
28. How many prosecutions resulted in a court-imposed conviction/sanction/ fine/ other penalty in the 2019-2020 financial year?
29. On average, how many calendar days lapsed between briefs of evidence being provided to legal advisors and the commencement of prosecution action in the 2019-2020 financial year?
30. On average, how many calendar days did prosecutions take in the 2019-2020 financial year?
31. Please provide any further information which you may deem relevant to this project, i.e., investigation milestones, whether other regulatory tools like enforceable undertakings, etc., are available, etc

SECTION 5: ADDITIONAL COMMENTS

32. Please provide the name of your Organisation.

