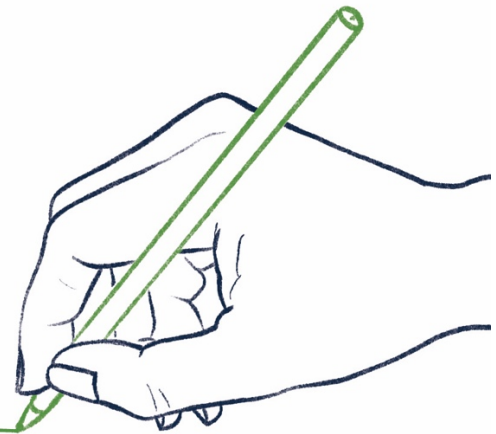


Victorian Inspectorate

Integrity Response Guidelines

*Strengthening
trust in Victoria's
integrity system*



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Purpose of this document

The Victorian Inspectorate (VI) was established to provide oversight of other integrity, accountability or investigatory bodies and their officers. We are committed to providing the Parliament and the people of Victoria with independent assurance that these bodies, which collectively constitute Victoria's 'integrity system', act lawfully and properly in the performance of their functions.

Our oversight comprises compliance activities such as inspections, complaint assessments, investigations and monitoring activities.

This document describes how we provide independent assurance through appropriate responses to non-compliance or other issues identified through those activities. We call these "integrity responses".

Our integrity response guidelines

- The VI has issued these integrity response guidelines (guidelines) to:
 - describe how we address issues
 - provide an outline of our integrity response options
 - provide transparency on how we decide our integrity response.

Our integrity responses aim to prevent issues of a similar kind arising in the future and take account of a range of criteria including readiness to comply, the need for accountability and prevention of harm to individuals and the integrity system.

Where appropriate, we take a cooperative approach, and in our annual report, acknowledge good compliance processes, procedures and activity by agencies.

Our commitment to action

- We are committed to action which:
 - increases public confidence and trust in Victoria's integrity system through having the right checks and balances in place, increasing community awareness of our role in protecting the community's rights, and ensuring intrusive and coercive powers are exercised lawfully.
 - contributes to a robust integrity system, through positively influencing the conduct of integrity bodies, creating parliamentary confidence in the VI and where appropriate, holding the public sector to account.

Limitations

- These guidelines are not exhaustive nor legally binding. We may revise the guidelines from time to time to meet our organisational objectives and priorities.

Our role

Established under the VI Act to provide independent oversight, we have a broad range of functions that differ in respect of each integrity, accountability and investigatory body that we oversee.

The bodies we oversee include IBAC, the Victorian Ombudsman, the Victorian Auditor-General's Office, the Office of the Information Commissioner, the Judicial Commission of Victoria, the Public Interest Monitor, the Chief Examiner and, to a limited extent, the Victoria Police.

Our compliance activities

Our Operations Model at **Appendix A** is a framework for our compliance activities:

- Our oversight starts with two regular sources of information that are used to monitor compliance - coercive power notifications and complaints.
- The complaints we receive include public interest disclosures, which must be investigated if we determine them to be public interest complaints (IBAC or a PIM) or if they are referred to the VI as a public interest complaint.
- We also have a regular integrity program that includes statutory inspections of records and reports to Parliament, and the strategic review of coercive power notifications.
- Complaints and notification reviews can lead to an investigation, or may identify a risk area that is appropriate for a new integrity program or a monitoring project.
- Monitoring projects are a proactive way of monitoring compliance with one of a broad range of issues within our statutory functions.

Priorities for compliance activities

Our monitoring projects, notification reviews and the number of investigations we undertake are limited by our resources, requiring a risk based approach that takes into account our legislative remit, our stakeholders and how we can most effectively contribute to improving Victoria's integrity system.

A general guide to our priorities for compliance activities is set out below:

1. **Functions mandated by statute:**

- a. Inspections and related reports
- b. Assessing public interest disclosures and investigating disclosures determined to be public interest complaints by the VI or referred to the VI.

2. **Receiving and responding to complaints** (on issues set out in section 43 of the VI Act)

3. **Monitoring the exercise of coercive powers** through reviewing notifications received from bodies exercising powers (according to resources, risk and public interest)

4. **Investigations** (according to resources, risk and public interest):

- a. Investigation of complaints (including preliminary inquiries and inquiries)
- b. Own motion investigations (including preliminary inquiries and inquiries)

5. **Education resources** (usually as an integrity response)

6. **Monitoring projects and integrity programs** to oversight various governance frameworks, including reviews of policies, procedures and their implementation. Our broad statutory functions for monitoring are summarised in **Appendix B**. These "proactive" projects and programs follow a methodology and supplement the "reactive" monitoring that occurs through complaint and notification reviews.

Our approach to integrity responses

Range of responses to compliance activities

As a small integrity body with many bodies to oversight, we focus our resources where we can influence improvements to the integrity system.

Each compliance activity will result in an integrity response, from 'no further action' through to recommendations and reports. For example, our inspection function requires reports to be tabled in the parliament and / or provided to the relevant Minister in accordance with a statutory timetable. All other reports are issued or published as the VI considers appropriate and in accordance with Part 7 of the VI Act.

Although we are empowered to make recommendations and issue reports, they are not our primary goal. We frequently respond to non-compliance and other issues with a range of other integrity responses that may influence improvements, such as feedback through informal liaison and stakeholder engagement, letters and guidance.

Our response framework

How to respond to non-compliance and other issues is a key challenge for all regulatory and integrity bodies, including the VI. Our response framework is designed to help us achieve our vision of an integrity system that is robust and trusted.

To achieve this, we must respond in a way that will lead to improvement. We seek to positively influence behaviour within the integrity system and we recognise the importance of a range of integrity responses that are reflective of the circumstances they seek to address.

We consider the welfare of persons affected by our actions and ensure compliance with procedural fairness requirements and the *Charter of Human Rights and Responsibilities Act 2006*.

Working with integrity, accountability and investigatory bodies

We aim to engage thoughtfully with oversight bodies, taking into account their different operating models and objectives. We seek to understand these bodies to help guide our compliance activity priorities and our integrity responses.

We recognise the importance of continuing to build relationships with the bodies we oversee and ensuring they can approach us with ease and confidence. We also need to be consistent in our responses and in how we use our statutory tools.

Willingness to comply

Most parties will comply willingly with the statutory requirements placed on them. Private engagement/guidance may be appropriate where a party is willing to comply.

Where issues are systemic, with relevance to other bodies, it may be more appropriate for us to publish information, guidance and education material.

Sometimes issues are particularly serious, or there is resistance to feedback, and further incentives are required to deter future non-compliant action. In these situations, recommendations and / or reports may be appropriate as they deliver accountability.

Public reporting ensures our position is communicated to all stakeholders. It guides bodies exercising similar powers or undertaking similar functions, and informs the public of their rights when interacting with integrity, accountability and investigatory bodies. We communicate transparently and in accordance with procedural fairness requirements before publishing any adverse comments, whether in public reports or in our annual report.

Under Part 7 of the VI Act, we may, if satisfied that any conduct should be the subject of any further investigatory or enforcement action, make a recommendation to that effect to a number of entities, including the Chief Commissioner of Police or the Director of Public Prosecutions, and share all relevant information. For example, where there is serious misconduct, it may be appropriate to refer the conduct to an enforcement agency with a recommendation for an investigation or enforcement action. The choice of tool will depend on the seriousness of the non-compliance, and on the impact and potential harm on individuals, the community and the integrity system. Considerations include the nature of the matter, the public interest and systemic factors.

Choosing our integrity responses

We use a range of statutory and informal tools to ensure the bodies we oversight comply with statutory obligations.

We are empowered under Part 7 of the VI Act to make recommendations, require reports from oversight bodies about action taken in response to recommendations, and publish reports. Recommendations and reports can be private or public.

We also have our more flexible informal tools such as feedback letters, compliance warning letters and general guidance material.

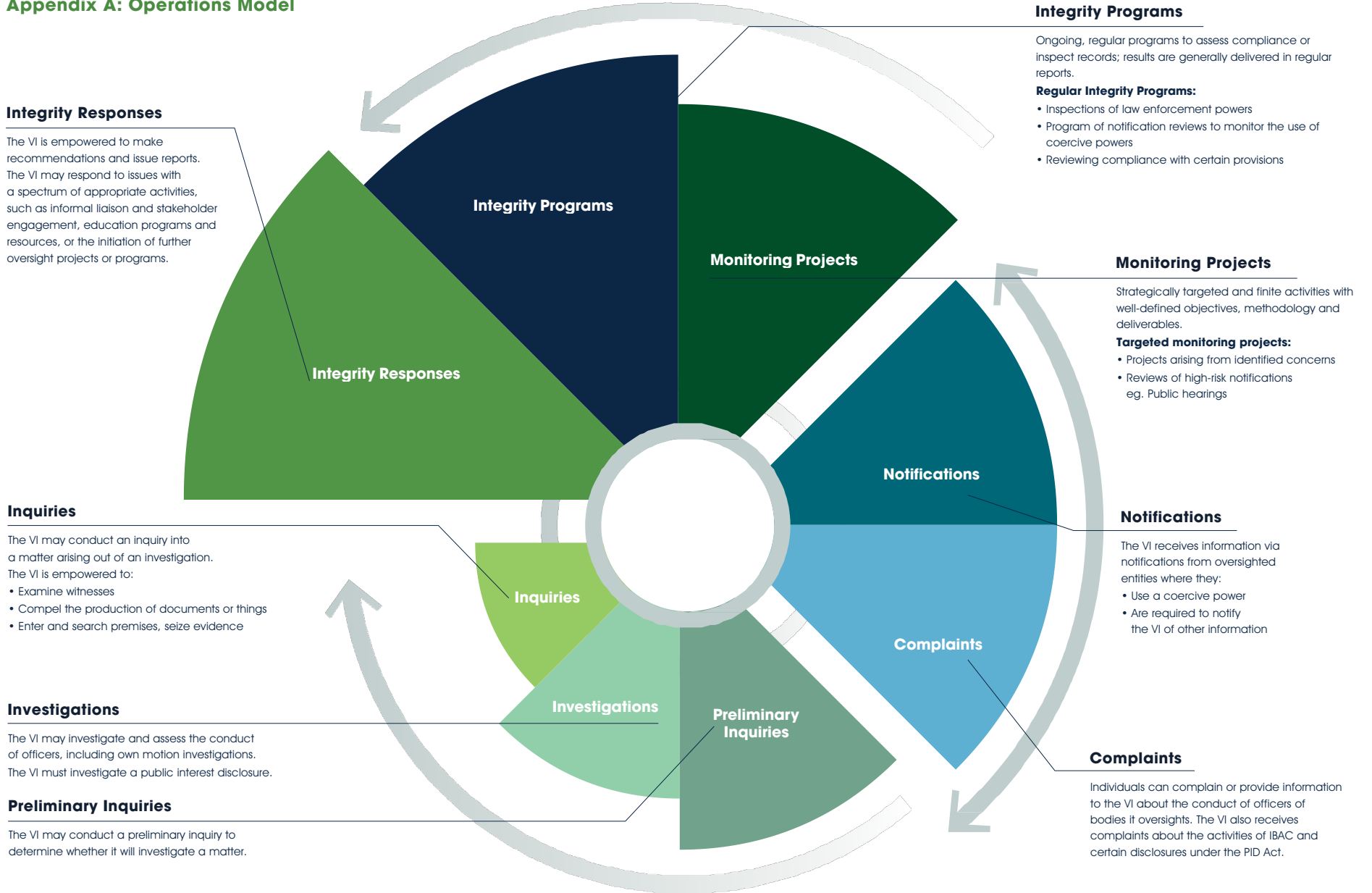
We have set out, in **Appendix C**, a list of the integrity responses we may take together with the intended aim of each response.

In addition, **Appendix D** provides a non-exhaustive guide to the criteria that might be applied in determining the appropriate integrity response.














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Appendix A: Operations Model



Appendix B: Key Functions

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

The VI must consider whether any disclosure received by it relating to any public body or public officer is a PID that must be notified to the appropriate entity.
The VI must also investigate any PIC referred to it by IBAC relating to the conduct of any public body or public officer.

Appendix C: Range of Integrity Responses

The VI chooses from the following range of integrity responses when it identifies non-compliance or other issues during a compliance activity.

Response	Broad criteria	Aim
No further action	No contravention, or insufficient evidence	<ul style="list-style-type: none"> Regulatory response is timely, appropriate and proportionate Resources used appropriately
Inform complainant of more appropriate agency	Outside jurisdiction but insufficient evidence to justify referral to another agency	<ul style="list-style-type: none"> VI not acting outside jurisdiction Opportunity for issue to be addressed by more appropriate agency
Referral to other agency	Outside jurisdiction but sufficient evidence to refer it to more appropriate agency	<ul style="list-style-type: none"> VI not acting outside jurisdiction Appropriate agency is aware of the matter
Defer action (can include feedback letter noting that a matter has been identified and deferred for action)	Matter is not sufficiently serious and does not fall within current strategic priorities	<ul style="list-style-type: none"> Bring issue to person / agency's attention while minimising use of current resources Deter future non-compliant action by that party Encourage self-governance
Private engagement/guidance (can include feedback letters, compliance letters and general integrity guidance)	The conduct is likely not compliant, but engagement around the VI's expectations and how they can be met is likely to be effective	<ul style="list-style-type: none"> Educate and guide the person / agency Confirm the VI's expectations of standards Deter future non-compliant action by that party Achieve a constructive dialogue Achieve compliance

Warning letter	There has been or is likely to have been a contravention of the legislation but no further response is justified. May be appropriate where person / agency has remedied breach and co-operated with the VI or where it is expected to be a one-off incident that does not require greater deterrence.	<ul style="list-style-type: none"> • Stop unlawful behaviour • Deter participant from repeat behaviour • Notify that subsequent breaches may be treated more seriously
Information, guidance, education (can include publication of fact sheets or guidance notes, and presentations)	There has been or is likely to have been a contravention of the legislation on a systemic issue that affects other agencies and stakeholders in the integrity system. May be appropriate where person / agency has remedied breach and co-operated with the VI and does not need deterrence but the VI wishes to inform others of its expectations and / or best practice on the systemic issue.	<ul style="list-style-type: none"> • Educate and guide the person / agency • Inform stakeholders of expected standards • Deter future non-compliant action by all parties • Achieve a constructive dialogue • Achieve compliance • Encourage self-governance • Raise standards across the integrity system
Private recommendation(s)	There has been or is likely to have been a contravention of the legislation and the VI considers there needs to be accountability to ensure compliance.	<ul style="list-style-type: none"> • Confirm the VI's expectations of standards • Deter future non-compliant action by the party • Achieve compliance • Achieve self-governance
Require a party to report on action taken in response to a recommendation.	Recommendation(s) have been made and it is not clear to the VI what action person / agency has taken.	<ul style="list-style-type: none"> • Deter future non-compliant action by the party • Assess whether party is seeking to be compliant
Recommendation to another agency as permitted under the VI Act	The VI is satisfied that a person's conduct should be the subject of further investigatory or enforcement action (eg. CCP, DPP, AFP, VAGO, VWA, IBAC)	<ul style="list-style-type: none"> • Appropriate agency is aware of the matter and makes appropriate investigatory or enforcement decision in accordance with its mandate

Public report (may include recommendations)	There has been, or is likely to have been, a moderate or serious contravention of the legislation and publicity and/or protection of the public is required.	<ul style="list-style-type: none"> • Inform and warn public / integrity system participants about unlawful behaviour • Minimise impact of the behaviour • Deter future unlawful conduct by other integrity system stakeholders • Raise awareness about expected standards
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Appendix D: Our response criteria

When the VI identifies non-compliance during a compliance activity, the following criteria are a guide to the appropriate integrity response.

Criteria	Factors to consider (where relevant)
General questions	<ul style="list-style-type: none">• Is another agency better placed to investigate or enforce the issue? (eg. CCP, DPP)• Is there a breach of the law, a policy or a procedure?• Is there sufficient evidence to demonstrate a breach?• Has procedural fairness been provided?• Are there any other express statutory requirements or considerations (such as reports to relevant Minister(s) and the Parliament, preventing specified conduct from continuing / occurring, remedying harm or loss)?
Seriousness of conduct	<ul style="list-style-type: none">• Is the alleged conduct criminal?• Is there evidence of deliberate, intentional or reckless conduct?• Does the incident represent simple negligence, gross negligence, error of judgement or genuine mistake?• Is it merely a technical breach? Is there evidence of a genuine attempt to comply?• Is there a serious departure from expected lawful conduct?• How prevalent is the conduct? Is it being repeated or systemic?• Has the person / agency taken remedial action (preventative measures, etc)?• Can the conduct be undone?• Are there any other aggravating or mitigating circumstances? (eg. does it involve abuse of trust or authority, vulnerable victims, history of recurring misconduct, etc?)
Harmful impact or detriment	<ul style="list-style-type: none">• Did the conduct / could future conduct result in loss of reputation or impact safety? To what extent?• Are human rights affected by the conduct?• Are more vulnerable individuals impacted by the conduct?• Is the level of impact and consequences of contravention serious or minimal?• How prevalent is the conduct? Is it being repeated or systemic?
Public interest	<ul style="list-style-type: none">• Is there likely to be widespread public interest in the issue?• Will a recommendation by the VI prevent specified conduct from continuing or occurring in the future?

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- Will a recommendation by the VI remedy any harm or loss arising from the conduct?
 - Is transparency important?
 - Would a public response cause more harm to those affected by the conduct? (eg. harm to reputation by reviving issue in public domain)
 - Could a public response achieve transparency without identifying the incident?
 - Would a public or a private response be more likely to undermine public confidence in the VI or the integrity system?
 - Is it more appropriate for the VI, rather than another agency or an affected party, to address the issue?
 - Is there a significant need to clarify, or define the boundaries of, the law?
 - Is it necessary to reinforce the application of the law?
-

Education
(may include VI educating the agency, other agencies, practitioners and the community)

- Is there likely to be widespread public interest in the issue?
 - Is there a need to publicly denounce the conduct?
 - Is the issue systemic or likely to have an impact on others?
 - Is it necessary to reinforce the application of the legislation?
 - Will it achieve a constructive dialogue?
 - Will it educate relevant stakeholders about expected standards?
 - Will it deter future non-compliance / raise standards across the integrity system?
 - Will it encourage self-governance?
 - Will it inform the public of their rights and options?
-

Deterrence

- How prevalent is the conduct? Is it being repeated?
 - Did the party self-report and proactively address the contravention?
 - What is the likely effect of making recommendations (or a lesser response) on this issue?
 - Will making recommendations (or a lesser response) modify or stop the conduct?
 - Will making public recommendations increase compliance by others by demonstrating or explaining the consequences of failure to comply?
 - Will it inform and educate the public as to their rights and options?
 - Are there other contraventions of a similar nature already identified or being addressed? (balancing proposed action for this person / agency with need for consistency)
 - Is there potential for a public response in this instance to be counter-productive?
 - Would the action be disproportionate?
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Maintenance of law/justice

- Will the proposed integrity response appropriately stop the conduct?
 - How does the matter rank in the context of the VI's identified regulatory risks and priorities?
 - What resources are required for the proposed integrity response?
 - Is the use of resources on the proposed integrity response proportionate to the issue and its impact?
 - Are there any applicable/more appropriate alternatives available?
-