Report to the Minister

Pursuant to section 70O of the Sex Offenders Registration Act 2004 (Vic)

1 January 2021 – 31 December 2022

ibac | Strengthening Victoria's Integrity

Acknowledgement

IBAC acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

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1. Overview

1.1. Definitions

BDM	Births, Deaths and Marriages
Chief Commissioner	Chief Commissioner of Victoria Police
Class 1 offence	An offence against a child as listed in Schedule 1 of the Act
Class 2 offence	An offence against a child as listed in Schedule 2 of the Act
Class 3 offence	An offence listed in Schedule 3 of the Act that is committed against a person other than a child by a serious sexual offender
Class 4 offence	An offence listed in Schedule 4 of the Act that is committed against a person other than a child by a serious sexual offender
Compliance Manager (CMs)	Sworn Victoria Police personnel responsible for managing RSOs
Discretionary sex offender registration order	A discretionary court order to require an offender found guilty of a Class 3 or Class 4 offence or other offence committed as an adult (that is not a Class 1 or 2 offence) to comply with the reporting obligations under the Act
FAC	Firearms Appeals Committee
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	*Independent Broad-based Anti-corruption Commission Act 2011* (Vic)
IBAC officers	IBAC officers authorised to inspect the Register
Inspection period	1 January 2021 to 31 December 2022
Mandatory sex offender registration order	An order set by operation of the Act where an offender is sentenced to a Class 1 or Class 2 offence.
NCOS	National Child Offender System
NORO	Notice of Reporting Obligations
Policy rules	Policy rules contained in the Victoria Police Manual relating to the management of RSOs
Prior year report	IBAC's report to the Minister for the period 1 January 2018 to 31 December 2020
RSO	Registered Sex Offender
the Act	*Sex Offenders Registration Act 2004* (Vic) (as current in the inspection period)
the Register	Victoria Police Register of Sex Offenders
the Registry	the division of Victoria Police responsible for maintaining the Register
the Regulations	*Sex Offender Registration Regulations 2014* (Vic) (as current in the inspection period)
VPM	Victoria Police Manual
VPS	Victorian Public Sector
WS Act	*Worker Screening Act 2020* (Vic)

1.2. Introduction

Pursuant to section 70L of the *Sex Offenders Registration Act 2004* (Vic) (the Act), the Independent Broad-based Anti-corruption Commission (IBAC) is responsible for monitoring the compliance of the Chief Commissioner of Police (Chief Commissioner) and authorised persons with their obligations to ensure Registered Sex Offenders (RSOs) comply with their reporting obligations and that the Sex Offender Register (the Register) is maintained, as set out in Parts 3 and 4 of the Act.

To facilitate this function, IBAC officers may inspect the Register and do anything necessary or convenient to enable the inspection to be carried out.

This report is given pursuant to section 70O of the Act, which provides that IBAC may report to the Minister for Police on the results of its inspections and compliance by the Chief Commissioner and authorised officers with Parts 3 and 4 of the Act.

The Minister must cause a copy of this report to be laid before each House of Parliament within 15 sitting days after the day on which the Minister receives the report.

A draft copy of this report was provided to the Chief Commissioner for consultation and comment. A final copy of the report was also given to the Chief Commissioner.

This report:

- sets out the findings of IBAC's inspection conducted from December 2023 to January 2024 of records, reports and access to the Register for the period 1 January 2021 to 31 December 2022 (the inspection period)
- includes an update on the Chief Commissioner's response to IBAC's 6 recommendations made in the prior year's report.

1.3. Legislative Framework

The purpose of the Act, as set out in section 1 of the Act, is to:

- require certain offenders who commit sexual offences to keep police informed of their whereabouts and other personal details for a period of time –
    - to reduce the likelihood that they will re-offend
    - to facilitate the investigation and prosecution of any offences that they may commit
- prevent registrable offenders working in child-related employment
- empower the IBAC to monitor compliance with Parts 3 and 4 of this Act
- provide for the making of prohibition orders to prevent registrable offenders from engaging in certain conduct. [1]

Unless otherwise stated, references in this report to the Act or the Sex Offender Registration Regulations (the Regulations) refer to the versions that were in effect during the inspection period.

1.4. The Sex Offender Register

The Chief Commissioner must establish and maintain a Register of Sex Offenders[2] which is to contain the information referred to in section 62(2) of the Act in respect of each RSO (to the extent known by the Chief Commissioner).

The division within Victoria Police responsible for maintaining the Register is the Sex Offender Registry (the Registry).

Information required to be recorded in the Register is held on the National Child Offender System (NCOS) electronic database, as well as on electronic or (previously) hardcopy files relevant to each RSO. NCOS is operated by the Australian Criminal Intelligence Commission (ACIC) and used by law enforcement agencies Australia-wide.

[1] *Sex Offenders Registration Act 2004* (Vic) s 1 – Purpose and outline.
[2] *Sex Offenders Registration Act 2004* (Vic) s 62(1).

Information reported by RSOs to Victoria Police is provided to the Registry using interpose then recorded in electronic files specific to each RSO and entered into NCOS. Information received from other government bodies relevant to the administration of the Act is also entered into NCOS.

Key statistics

The following statistics show the number of RSOs added to the Register in the inspection period and the total number of RSOs on the register at the end of the inspection period.

- 922 RSOs added to the Register during the period 1 January 2021 to 31 December 2022
- 9913 RSOs on the Register as at 31 December 2022

2. Summary

2.1. Level of Compliance

The following three ratings are used to describe the level of statutory compliance achieved by the Chief Commissioner during the inspection period in respect of the categories of compliance referred to below:

- **Compliant** – fully compliant with statutory requirements, or any degree of non-compliance was relatively minor in the nature of an occasional mistake or oversight.
- **Substantially compliant** – generally compliant with statutory requirements, but there were material compliance problems or issues identified.
- **Not compliant** – a failure to meet statutory requirements entirely, or a pattern of fundamental compliance problems or issues identified.

This Report also considers other matters related to the Chief Commissioner's compliance with the Act, including governance, and any relevant historical matters.

The following table summarises IBAC's assessment of the Chief Commissioner's compliance with the relevant parts of the Act.

Compliance category	Compliance rating
Part 3	
Persons approved to receive reports from RSOs	Compliant
Monitoring of RSO compliance with reporting obligations	Compliant
Maintenance of the Register	Substantially Compliant
Suspension of reporting obligations	Compliant
Notification of reporting obligations	Substantially compliant
Modified reporting arrangements	Substantially Compliant
Investigative powers and procedures under the Act	Compliant
Part 4	
Obligation to establish and maintain the Register	Substantially compliant
Restricting access to the Register	Compliant
Disclosure of RSO information from the Register	Substantially compliant
Responding to requests by RSOs	Compliant

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2.2. Recommendations

IBAC makes the following recommendations:

Recommendation 1 of 2024:

That the VPM or relevant manuals or guidelines are updated to include:

- further detail on calculating reporting periods under the Act
- case examples to demonstrate common scenarios and common errors
- what supporting documentation may be required, i.e., a full national police reference system report (or equivalent) for the particular RSO.

Recommendation 2 of 2024

In relation to section 52 and 54 notices, that Victoria Police:

- include instructions with the relevant section 52 and 54 notification template(s) or other documents, that outline the record keeping requirements under the Regulations
- request an Acknowledgement of Receipt for all notices served on an RSO
- ensure that notices and related documentation are saved within NCOS and the RSO's electronic file in line with the relevant SOR guidelines.

Recommendation 3 of 2024

Victoria Police update its practice to include that a notice is to be served on an RSO residing in a residential facility as required by sections 16(5) and (6) of the Act.

Recommendation 4 of 2024

That the Registry explore options for developing a process to enable the Registry to identify the number of s27(3) notices issued during a given period and produce those notices to IBAC for inspection.

Recommendation 5 of 2024

That Victoria Police update its processes to ensure that information within a notification to the Secretary of the Department of Justice and Community Safety (DJCS) for the purpose of administering the *Worker Screening Act 2020* (Vic) (WS Act) only contain information permitted to be included by section 63(1B) of the Act.

Recommendation 6 of 2024

Victoria Police ensure that, when an application for publishing an RSO's information under Division 10 of the Act is approved, the approval section of the form is completed and signed, and the completed form made available for review by IBAC officers during an inspection.

Prior to the inspection there were six outstanding recommendations made by IBAC in previous inspection reports – one recommendation from the inspection report for period 1 January 2015 to 31 December 2016 and five recommendations from the inspection report for the period 31 December 2017 to 31 December 2020.

The below table outlines the status of each recommendation, and some further detail is set out in the relevant section of this report.

Recommendation	Status
Recommendation 4 of 2017 That the Registry review relevant procedures and guidelines (including processes) to ensure that all disclosures pursuant to section 63 of the Act are recorded and available for inspection by IBAC, in accordance the requirement of section 70M of the Act.	Complete
Recommendation 1 of 2021 That the Registry review and update relevant procedures, guidelines and processes to ensure that documentation provided by an RSO as required by regulation 15 of the *Sex Offenders Registration Regulations 2014* (Vic), is recorded by the Registry at the time the report is received, and that those records are available for inspection by IBAC.	Complete
Recommendation 2 of 2021 That the Registry review and update relevant procedures and guidelines to reflect the Registry's approach to the necessary arrangements made prior to a suspension expiring, managing gaps between suspensions and the timing of a notice of reporting obligations being issued. Guidelines should also include the circumstances in which a NORO is not considered necessary and how reporting obligations are to be managed in these cases.	Complete
Recommendation 3 of 2021 That the Registry include in the relevant policy or procedure a notation to the effect that delegations of power under the Act are to be regularly reviewed to ensure they remain current and that any proposed changes to the Act triggers an immediate review of all relevant delegations or authorisations.	Complete
Recommendation 4 of 2021 That Victoria Police review and update its procedures and guidelines to ensure accurate recording of reported other names that an RSO is or has been known by, and the period during which the RSO was known by the other name(s). Also, that the term 'alias' used in this part of the manual is replaced with the wording used in section 14(1)(a) being '… any other name by which he or she is, or has previously been, known'.	Complete
Recommendation 5 of 2021 That the Registry review all relevant guidelines and procedures to ensure that instructions for recording information in the Register are in line with statutory requirements regarding details of where any subsequent government custody occurs.	Complete

3. Inspection findings

Report on Compliance with Part 3 of the Act

3.1. Persons approved to receive report from RSOs

Only a police officer approved for the purpose by the Chief Commissioner may receive reports from RSOs made in person, and only a police officer or other person approved for the purpose may receive reports made in another way.[3]

The Registry's procedures stipulate that only those police officers or other persons who have completed the Registered Sex Offender Management training course conducted by the Registry are approved to perform the role of Compliance Manager (CM) and can receive reports from RSOs.

Compliance assessment: In relation to persons approved to receive reports from RSOs, the Chief Commissioner is assessed as being **Compliant.**

3.2. Monitoring RSO compliance with reporting obligations

Reporting changes to relevant personal details

Generally, the Act requires RSOs to report any change in their personal details within seven days of that change occurring.[4] Reports relating to change of address or contact with children must be made within one day of the change or contact occurring.[5]

During the inspection it was evident that changes to relevant personal details were generally reported in compliance with the reporting timeframes in the Act.

Where there were delays in reporting or failures to report changes of address in person, it was evident that the CM or the Registry had considered in each instance whether there had been a breach of the Act by the RSO.

Interstate movements of RSOs

Leaving Victoria to travel within Australia

An RSO is required to report their intended and actual absences from Victoria within prescribed timeframes, and to provide specified details in relation to their movements.[6]

IBAC officers reviewed a sample of files in relation to absences and travel plans which included activities triggering statutory reporting obligations. There were a limited number of cases where the RSO had not provided adequate notification prior to travel. However, IBAC officers were satisfied that in these cases the CM had done an assessment to determine whether the RSO was in breach of their reporting obligations.

Returning to Victoria when travelling within Australia

On returning to Victoria, an RSO is required to report their return to the Chief Commissioner within seven days of entering and remaining within Victoria, not counting any days spent in government custody.[7]

In the majority of cases, RSOs had reported their return to Victoria within the required timeframe. Where this was unclear, IBAC officers verified that Registry staff had queried the issue with the relevant CM.

[3] *Sex Offenders Registration Act 2004* (Vic) s 23(3).
[4] *Sex Offenders Registration Act 2004* (Vic) ss 17(1), (1B), (3) and (4).
[5] *Sex Offenders Registration Act 2004* (Vic) s 17(1A).
[6] *Sex Offenders Registration Act 2004* (Vic) ss 14(1)(l), 18
[7] *Sex Offenders Registration Act 2004* (Vic) s 20(2)

Frequent absences from Victoria

If an RSO leaves or intends to leave Victoria to travel elsewhere in Australia on an average of at least once a month, they are required to report to the Chief Commissioner in general terms:

- the reason for travelling
- the frequency and destinations of travel.[8]

IBAC reviewed a sample of RSO files, 10 cases, where an RSO had reported frequent travel, and in each case the required details were recorded within the Register.

Overseas movements of RSOs

It is an offence for an Australian citizen, who is a registered offender, to leave Australia without permission from a competent authority or without the applicable reporting obligations having been suspended.[9] The Act sets out certain criteria that an RSO is required to provide prior to leaving Victoria as well as additional information required on their return.

IBAC officers noted that the Registry's procedural documentation includes clear instructions for CMs on the application and approval process for RSO international travel. In summary, RSOs intending to go overseas are required to complete a Registered Offender Overseas Travel Application / Notification Form which contains the details required by the Act.

IBAC inspected a sample of RSO files, 17 cases, where international travel had occurred. IBAC is satisfied that the management of the request process is in accordance with the relevant legislation and internal procedures, and that records relating to the request and any permissions for international travel, were included on the relevant RSO files.

Compliance assessment: In relation to monitoring RSO compliance with reporting obligations from RSOs, the Chief Commissioner is assessed as being **Compliant.**

3.3. Maintenance of the Register

Receipt of information to be acknowledged

The police officer or other person receiving a report from an RSO must acknowledge in writing the making of the report[10]. The acknowledgement must be given to the person making the report (receipt) and must include:

- the name and signature of the police officer or other person who received the report
- the date and time when, and the place where, the report was received
- a copy of the information reported.

IBAC officers inspected a sample of RSO files, 130 receipts, and found that in most cases the information was accurate, had been updated in NCOS and met all legislative requirements, including retaining the receipt. IBAC identified nine instances where the CM issuing the receipt had not signed it. In five cases, IBAC officers were unable to determine the method in which the report by the RSO was received (i.e., whether by phone, in person or e-mail).

IBAC officers reviewed the Registry's procedural documentation and templates and found there were clear instructions on drafting a receipt. The issues identified stemmed from the use of modified/previously used receipt templates. The Registry agreed to remind CMs of the criteria required when completing a receipt and to reiterate the importance of using the current template each time a receipt is required.

Verifying documentation or evidence when making a report

An RSO is required to provide documentation to verify or support the following:[11]

[8] *Sex Offenders Registration Act 2004* (Vic) s 21
[9] *Criminal Code Act* 1995 (Cth) Div 271A.
[10] *Sex Offenders Registration Act 2004* (Vic) s 25.
[11] *Sex Offenders Registration Act 2004* (Vic) s 23(1) and Sex Offenders Registration Regulations 2014 (Vic) r 15.

- for a report relating to employment - two payslips issued to the RSO within the previous 2 months
- for a report relating to vehicle ownership by the RSO - a copy of a current motor vehicle registration notice; or for a vehicle generally driven by the RSO - a certificate for any vehicle owned or a document that confirms that a vehicle is generally driven by the RSO.

When reviewing files where an RSO reported changes to their employment or vehicle ownership, IBAC officers were unable to confirm if the required documentation had been provided by the RSO at the time they made a report as, during the inspection period, it was not a Victoria Police requirement for CM's to record sighting of or retain a copy of the documentation required by the Regulations. This issue was also noted in IBAC's previous inspection report[12] which included Recommendation 1 of 2021 (i.e. that the Registry update its process to ensure that RSOs provide the required documentation when making a report).

On 21 June 2023, being outside of the current inspection period, a new version of the Sex Offenders Registration Regulations 2014 (Vic) (Regulations) came into effect. The new Regulations do not require an RSO to provide vehicle ownership or use documentation. Therefore, the aspect of Recommendation 1 of 2021 pertaining to vehicle ownership is no longer relevant.

In response to Recommendation 1 of 2021, Victoria Police have updated the Registry's procedural documentation to ensure that when an RSO reports new employment, the CM must either record the sighting of the payslips or request copies of the payslips and upload the documents to Interpose. IBAC officers reviewed these changes and are satisfied that this aspect of Recommendation 1 of 2021 has been completed. The implementation of the updated process will be reviewed by IBAC at the next inspection.

Registration exemption orders

A person found guilty of a registrable offence[13] may apply to the relevant court for a registration exemption order if they satisfy certain criteria, including that they were 18 or 19 years old at any time during the commission of the offence.[14]

A registration exemption application must be made within six months from the date that the applicant receives their notice of reporting obligations.[15] If a registration exemption order is made by the relevant court, the person ceases to be a registrable offender for the purposes of the Act, and therefore no longer has any reporting obligations.

During the inspection period, 13 registration exemption orders were granted, with four relating to offenders who had been entered into the Register at the time the orders were granted. IBAC officers inspected the four entries and confirmed that individuals who successfully sought exemption orders were no longer subject to reporting obligations. IBAC is satisfied that exempted individuals were deregistered as RSOs and that copies of the exemption orders were retained by the Registry for inspection by IBAC.

Compliance assessment: In relation to maintenance of the register, the Chief Commissioner is assessed as being **Substantially Compliant.**

3.4. Suspension of reporting obligations

An RSO's reporting obligations may be suspended under the Act,[16] in the following ways.

Supreme Court may suspend reporting obligations on application by RSO (s 39)

An RSO who is required to report for the remainder of their life may apply to the Supreme Court of Victoria for an order suspending those obligations.[17] The Chief Commissioner is a party to applications made under this provision.[18]

In the reporting period, the Chief Commissioner was not made a party to an RSO suspension application.

[12] Report to the Minister Pursuant to section 700 of the Sex Offenders Registration Act 2004 (Vic) – for the period 1 January 2017 – 31 December 2020
[13] *Sex Offenders Registration Act 2004* (Vic) s 3(1) – Definitions - means a Class 1 or Class 2 offence referred to in Schedule 5.
[14] *Sex Offenders Registration Act 2004* (Vic) s 11A.
[15] *Sex Offenders Registration Act 2004* (Vic) s 11C
[16] Note that s 32 of the Act provides for circumstances in which reporting obligations are suspended by operation of law.
[17] *Sex Offenders Registration Act 2004* (Vic) s 39.
[18] *Sex Offenders Registration Act 2004* (Vic) s 41.

Supreme Court may suspend reporting obligations on application by the Chief Commissioner (s 39A)

The Chief Commissioner may apply at any time to a relevant court for an order suspending the reporting obligations of an RSO.[19] On an application under section 39A, a court may suspend the RSO's reporting obligations for the period of time specified in the order, which may be the remainder of the RSO's life.[20]

In the reporting period, there were no applications made by the Chief Commissioner under this provision.

Chief Commissioner may suspend reporting obligations (s 45A)

The Chief Commissioner may suspend an RSO's reporting obligations if satisfied that the RSO does not pose a risk, or poses a low risk, to the sexual safety of one or more persons or to the community (s 45A).[21] The suspension period must not exceed five years. A suspension under this provision must be by way of written notice served on the RSO.[22]

The power to suspend reporting obligations under section 45A is delegated by the Chief Commissioner to officers holding, or acting in, the position of Superintendent within the Offender Management Division.

IBAC reviewed all section 45A suspension cases, being 37 in total.

IBAC officers also reviewed the relevant Instrument of delegation and verified that it was operative in the inspection period and that suspension decisions were made by officers with the required delegation.

In all suspension cases, the notice of suspension contained the required information. In 25 cases, IBAC viewed evidence that the notice was served on the RSO. In 11 cases, a record of service could not be located within NCOS or the particular RSO's electronic file. The Registry confirmed that in each of these cases a notation was made in Interpose to inform the CM to serve the notice, and in some cases the CM had acknowledged this or confirmed service. [23] In one case the suspension was cancelled[24] due to death of the RSO.

Criteria to consider in whether to suspend reporting obligations

There are several factors that the Chief Commissioner (or delegate) must take into account in deciding whether to suspend an RSO's reporting obligations.[25] These include in summary, the seriousness of the registrable offences committed and how long ago the offending occurred, the age of the offender and the victim(s) at the time of the offending and at present, the RSO's history of compliance with reporting obligations and their capacity to comply, and any other matter considered appropriate.

The Registered Sex Offender management practice guide includes instructions to CMs in relation to the criteria to be addressed in section 45A of the Act. This detail is also set out in the relevant issue cover sheet (ICS) template that forms part of a suspension application. As part of the process, a senior officer conducts a case conference and engages relevant expertise. If further information is required, the case is returned to the CM. The guide also states that the outcome is to be noted within NCOS and documents saved to the RSO's electronic file.

IBAC officers determined that in each case the particular RSO was recorded as posing a low risk or no risk to persons or the community, and the supporting documentation was viewed for the majority of the cases.

In two cases, IBAC could not locate within NCOS or the electronic file the ICS containing the assessment of the criteria set out in section 45A of the Act . In one case it was noted that an earlier assessment was relied on to make a new suspension, although an updated assessment was not located in NCOS or the RSO's electronic file.

Reporting gaps between suspension periods and notification

In the previous report, IBAC recommended updates to the relevant Registry procedures and guidelines to ensure that RSOs are notified of upcoming suspension expiry dates and new suspension dates (where applicable) in a timely manner. Victoria Police accordingly updated the relevant Registry manuals and guides to include monthly audits to identify RSOs who are due for an annual review of their suspension period or where a suspension will expire within the next three months. The updates set out the process and responsibilities to ensure that all RSOs

[19] *Sex Offenders Registration Act 2004* (Vic) s 39A.
[20] *Sex Offenders Registration Act 2004* (Vic) s 40(1A).
[21] In coming to the required state of satisfaction, the Chief Commissioner (or delegate) must take into account the matters listed in section 45A(3) of the Act.
[22] *Sex Offenders Registration Act 2004* (Vic) s 45A(1).
[23] As IBAC officers had access to NCOS and the RSOs' electronic files only, it relied on the Registry to verify if information or documents were recorded within Interpose.
[24] *Sex Offenders Registration Act 2004* (Vic) s 45A(4)(b) – the Chief Commissioner may cancel a suspension under this section at any time.
[25] *Sex Offenders Registration Act 2004* (Vic) s 45A(3).

receive a Notice of Reporting Obligations (NORO) in a timely manner to advice of the reinstatement of their reporting obligations, or where a new suspension is to commence.

Given that the permitted suspension period is up to five years, there were only six cases where the suspension period expired and a new suspension commenced in the inspection period. In three cases, there was a gap in time from the suspension expiry to the new suspension commencing and in two of the cases the notification of the new suspension was given prior to expiry. IBAC officers noted that in one case the notice was served four days after the next suspension period commenced, although the reason for this was not established from the available information.

Record keeping practices

The relevant SOR Manual outlines that suspension documentation (approved or denied) is to be uploaded on NCOS, the RSO's electronic file and Interpose. As outlined above, in some instances IBAC officers were not able to locate the required documents within either NCOS or the particular RSO's electronic file. IBAC request that for future inspection Victoria Police ensure that record keeping practices align with the SOR guidelines pertaining to the keeping of records within NCOS and RSO electronic files.

Compliance assessment: In relation to Victoria Police's management and maintenance of suspension of reporting obligations of RSOs, the Chief Commissioner is assessed as being **Compliant.**

3.5. Notification of reporting obligations

Notices given by Victoria Police under sections 52 and 54 of the Act

In the inspection period, Victoria Police issued notifications to RSOs under sections 52 and 54 of the Act. As detailed further below, a section 52 notice must be issued by the Chief Commissioner to inform an RSO of a change in reporting obligations, and a notice to an RSO of their reporting obligations may be issued under section 54 at any time.

Victoria Police issued notices under sections 52 or 54 of the Act for a number of reasons. The most common trigger for a notice was where an earlier court notification contained an incorrect reporting period, or the court omitted to notify the RSO of what was in fact a mandatory reporting period.

Notifying an RSO of their correct reporting period is important, as it serves to reduce the risk of the RSO having a lawful excuse (that they had not received a notice or were otherwise unaware of their obligation) in defence of any alleged breach of failing to comply with their reporting obligations under the Act.[26]

IBAC notes that the length of an RSO's reporting period is set by operation of the Act and therefore does not 'change' despite a court notice to an RSO stating a different (incorrect) reporting period.

During the inspection, Victoria Police advised IBAC that updates have been made to the process of dealing with errors in court notified mandatory reporting periods. For example, if a court notification contains an incorrect mandatory reporting period, the Registry will liaise with the relevant court and attempt to have the notice corrected via s50(5A) of the Act. If the court does not correct the notice, the Registry will engage Victoria Police's Legal Services Division with the view of having the mater appealed or judicially reviewed.

Updates to the notification process were made by Victoria Police outside of the inspection period. Therefore, IBAC's inspection results (below) reflect the practice in place at the relevant time. IBAC will review the noted changes and updates to the Registry's policy, procedures and guidelines, in the next inspection.

Change in reporting obligations – section 52 notices issued in the inspection period

The Chief Commissioner must give (or cause to be given) to an RSO written notice of a change in their reporting obligations where that change occurred since the RSO was last notified of their reporting period in Victoria.[27] A notice must be given as soon as practicable after the change and no later than the time the RSO is due to next report. The notice must also contain the RSO's name and new reporting period, the date of the notice and the name, signature and position of the person giving the notice.[28]

[26] *Sex Offenders Registration Act 2004* (Vic) – s 46(3).
[27] *Sex Offenders Registration Act 2004* (Vic) - s 52.
[28] *Sex Offenders Registration Regulations 2014* (Vic) – r 23

In the inspection period, Victoria Police issued 34 notices under section 52 to inform an RSO of an identified error in their reporting period as notified by a court. Each notice effectively set out:

- the reporting period and start date previously notified
- that the prior reporting period calculation was incorrect
- the new reporting period (being 15 years or life)
- an excerpt of section 34(1) of the Act upon which reporting periods are based
- that it is an offence not to comply with reporting obligations
- that legal advice may be sought as to the effect of the notice.

Notice of reporting obligations - section 54 notices issued in the inspection period

The Chief Commissioner may at any time give, or cause to be given, written notice to an RSO of their reporting obligations and the consequences that may arise if they fail to comply.[29]

Victoria Police senior officers within the Registry issued 23 notices under section 54 in the inspection period. Each notice effectively set out:

- the RSO's name and date of birth
- information in relation to reporting obligations and registrable offences
- a summary of section 54 of the Act
- the court record of relevant conviction/s, date, court and location, and length of reporting period (as notified by the court)
- class of each stated registrable offence
- the (correct) reporting period length
- an excerpt of section 34(1) of the Act upon which reporting period is based
- the reporting period as set out in section 34 of the Act, and date from which it applies
- that it is an offence to fail to comply with the reporting obligations
- that legal advice may be sought as to the effect of the notice.

IBAC reviewed 22 of the notices issued under section 54 of the Act.[30] For the reasons set out below, the section 54 notice was issued to inform the particular RSO (among other things) of the (correct) reporting period applicable to their circumstances.

- In two cases, the notice was issued to a corresponding RSO (convicted in an overseas or interstate jurisdiction of relevant offences) setting out their mandatory reporting period in Victoria.
- In 13 cases, the court notification to the RSO contained an incorrect mandatory reporting period. In one case the court exercised a discretion to make a registration order and the ordered reporting period was incorrect. The cause of errors in court notified reporting periods was due to:
    - prior historic convictions[31] for registrable offences not being taken into account (7 cases)
    - convictions for multiple registrable offences being incorrectly classified as a single offence (5 cases)
    - both of the above (1 case)
    - unable to determine from the records (1 case).
- In six cases the court did not notify the RSO of the mandatory reporting period due to prior convictions not being available / taken into account (two cases) or for unknown reasons[32] (four cases).

[29] *Sex Offenders Registration Act 2004* (Vic) - s 54(1).
[30] One notice issued to an RSO now deceased was not reviewed.
[31] Dating back to the 1960s, 1980s, 1990s.
[32] Unable to be determined from the records inspected.

Generally, matters were not returned to court or otherwise made subject to an application for court proceedings due to:

- the passage of time since the court notification was made (13 cases)
- unable to determine the reason (7 cases).

IBAC also identified four cases where the incorrect mandatory reporting period on the court notification, as recorded in NCOS, had ended and a section 54 notice was yet to be issued (noting that a section 52 notice had been issued).

Court discretionary orders

If an offender is convicted of a Class 3 or 4 offence(s) or other offences against adults, the prosecution may apply to the court for a discretionary registration order.[33] To make an order the court must be satisfied that the offender poses an unacceptable risk to the sexual safety of person(s) or the community.[34] If the order is made the offence(s) is deemed a 'registrable offence'[35] and the person is a 'registrable offender'.[36]

IBAC noted four cases where a discretionary court order had an incorrect reporting period due to:

- prior convictions for registrable offences not being taken into account (three cases)
- not all prior convictions for registrable offences being taken into account (one case).

In three cases, the (incorrect) court notified reporting period had ended and Victoria Police issued a section 54 notice to inform the RSO of the correct reporting period. In one case, a section 54 notice had not been issued as the court notified reporting period was yet to end.

Calculating the reporting period pursuant to section 34 of the Act

There are a number of factors which affect the calculation of a reporting period, including the class of each offence, whether offences arise from the same incident, the age of the offender, prior findings of guilt or convictions for relevant offences (including those committed as a child), and convictions from other jurisdictions.[37]

Although there is no specific requirement under the Act, it would be good practice for Victoria Police to ensure that prior to the commencement of a prosecution, consultation with the Registry takes place to ensure the necessary supporting information has been considered and verify that the correct reporting periods are being applied for, especially in the event of an application under section 11(6) of the Act.

Police prosecutors appearing in relevant proceedings in the Magistrates' Court of Victoria, should also acquaint themselves with the relevant knowledge and information, to ensure that they are aware of the applicable reporting period in a case, and are in a position to identify any error in a court notified mandatory reporting period, and immediately bring this to the attention of the court.

IBAC notes that the VPM and relevant guides do not highlight the complexity and nuances involved in calculating reporting periods, particularly in discretionary cases, and do not include examples to highlight different scenarios or common errors made in calculating reporting periods under the Act.

Recommendation 1 of 2024:

That the VPM or relevant manuals or guidelines are updated to include:

- further detail on calculating reporting periods under the Act
- case examples to demonstrate common scenarios and common errors
- what supporting documentation may be required, i.e., a full national police reference system report (or equivalent) for the particular RSO.

Acknowledgement of receipt and informing Chief Commissioner of a notice given

If Victoria Police give a section 52 or 54 notice to an RSO, they may request the RSO to acknowledge receipt of the notice,[38] in which case a copy of the signed/dated acknowledgement must be provided to the Chief Commissioner

[33] *Sex Offenders Registration Act 2004* (Vic) – s 11(6).
[34] *Sex Offenders Registration Act 2004* (Vic) – s 11(3).
[35] *Sex Offenders Registration Act 2004* (Vic) – s 7(1)(c).
[36] *Sex Offenders Registration Act 2004* (Vic) – s 6(1).
[37] *Sex Offenders Registration Act 2004* (Vic) – s 34.
[38] *Sex Offenders Regulations 2014* (Vic) – r 20 - which applies to a notice issued under Part 3 of the *Sex Offenders Registration Act 2004* (Vic).

(no time frame is specified).[39] IBAC considers this criteria to be met where a copy of the record is saved within NCOS, the RSO's electronic file or Interpose.

IBAC found that in one out of 22 notices issued under section 54, the RSO was requested to sign an acknowledgement of receipt. Although not a mandatory requirement, a best practice approach is to request the RSO to sign an acknowledge of receipt in all cases and ensure a copy of the notice is recorded within NCOS and the electronic file.

The Regulations also state that a person giving a notice to an RSO must, within 3 days after giving the notice, inform the Chief Commissioner in writing:

- that the RSO has been given notice of their reporting obligations
- the date the RSO was given that notice.[40]

Of the 34 notices issued under section 52, IBAC viewed a copy of the signed/served affidavit with the date the RSO was given the notice, which was recorded in either NCOS or the particular RSO's electronic file. In 16 cases, a copy of the affidavit or notice was in the electronic file (only) and IBAC was unable to verify the date the record was first made. Of the 18 cases where details were recorded in NCOS:

- 13 had the required record made within 3 days after giving the notice
- 1 case was recorded within four days
- 4 cases had the record made between 7 - 43 days after giving the notice.

Of the 22 notices issued under section 54, IBAC viewed a copy of the signed/served affidavit that stated the date the RSO was given the notice, which was recorded either in NCOS or the particular RSO's electronic file. In:

- 9 cases the required record was made in NCOS within 3 days
- 3 cases the record was made between 4 - 20 days
- 1 case the record was made in 36 days
- 1 case within 115 days
- 5 cases, IBAC was unable to determine from NCOS or the electronic files the date the record was made.

Where information and documents were not recorded in either NCOS or the electronic files, the Registry confirmed that the required information was recorded in Interpose.

IBAC note that the various Victoria Police manuals, guidelines and instructions governing the Registry process, do not include the Regulation 20 record keeping and timing requirements.

General record-keeping practices

The relevant SOR manual requires section 54 documentation to be uploaded to NCOS and the relevant electronic file.

Overall, IBAC officers were satisfied that Victoria Police kept a record of the required documents in compliance with the Act and Regulations, although some inconsistent record keeping practices or errors were noted. For example, where a notation was made in NCOS that a notice was issued along with the date of issue, a copy of that notice and related records (affidavit and acknowledgement of service (if requested/signed)) were not always attached within NCOS. The documents were either saved in the RSO's electronic file or Interpose. In other cases, a notice had been issued but a notation was not made in NCOS, and copies of related records were in different locations, either NCOS, the RSO's electronic file or Interpose. There were also some errors in NCOS, for example, incorrect reporting expiry dates that appeared to be taken from court notices with errors.

Also, IBAC officers noted the RSO electronic files and documents within these were often named inconsistently or given titles that did not clearly identify the document type, making it difficult to quickly locate a required document.

In IBAC's view, a best practice approach is to ensure that record keeping practices are consistent and adhere to the Registry procedures and guidelines.

[39] *Sex Offenders Registration Regulations 2014* (Vic) – r 20(1) and (2)(b).
[40] *Sex Offenders Registration Regulations 2014* (Vic) - r 20(2)(a).

Recommendation 2 of 2024:

In relation to section 52 and 54 notices, that Victoria Police:

- include instructions with the relevant section 52 and 54 notification template(s) or other documents, that outlines the record keeping requirements under the Regulations
- request an Acknowledgement of Receipt for all notices served on an RSO
- ensure that notices and related documentation are saved within NCOS and the RSO's electronic file in line with the relevant SOR guidelines.

Compliance assessment: In relation to the notification of reporting obligations by Victoria Police, the Chief Commissioner is assessed as being **Substantially Compliant.**

3.6. Modified reporting arrangements

Reporting by remote offenders

The Act sets out alternate reporting arrangements that apply if an RSO resides beyond the prescribed distance from the nearest police station.[41] The Registry advised that within the inspection period there were no RSOs to whom this provision applied.

IBAC officers reviewed the Registry's procedural documentation and were satisfied that there were appropriate procedures in place to assist CMs in establishing alternative reporting arrangements if the need arose.

Reporting by offenders residing in a residential facility as part of a supervision order

An RSO residing at a residential facility (or residential treatment facility) as part of a supervision order or an interim supervision order made under the *Serious Offenders Act 2018* (Vic) must make their annual report on the day specified by the Chief Commissioner of Police by written notice served on the RSO.[42] The notice in this case must specify 'a date' within the calendar month that the particular RSO's 12 month reporting anniversary falls.

The Registry advise that the current process for RSO's who reside at a residential treatment facility as a condition of a supervision order, is that the CM coordinates a date with Corrections Victoria to attend the residential treatment facility and have the RSO make their initial/annual report on that date, at which time the NORO is explained to them.

IBAC notes that whilst the current practice provides for the RSO to report on a specific date in the relevant month (being the day the CM meets with the RSO and takes the report) it omits the requirement to serve a notice on the RSO that specifies that date, as required by sections 16(5) and (6) of the Act.

Also, the templated NORO states that an RSO in a residential facility must report on the 'day specified' by the Chief Commissioner, although the form does not provide for a specified date to be included. There is also a conflicting boldened paragraph which informs the RSO that they have an obligation to report all the required details 'by the end of the calendar month'.

Recommendation 3 of 2024:

Victoria Police update its practice to include that a notice is to be served on an RSO residing in a residential facility as required by sections 16(5) and (6) of the Act.

Compliance assessment: In relation to the management of modified reporting arrangements by Victoria Police, the Chief Commissioner is assessed as being **Substantially Compliant.**

[41] *Sex Offenders Registration Act 2004* (Vic) s 31.
[42] *Sex Offenders Registration Act 2004* (Vic) s 16(5).

3.7. Investigative powers and procedures under the Act

Power to take fingerprints or fingerscan

A police officer has the power to take the fingerprints or fingerscan of an RSO where the fingerprints of the RSO are not already held, or where the police officer is not satisfied as to the identity of the RSO.[43] Where fingerprints are sought from an RSO, a police officer may provide notice to the RSO. The notice must include the following information:

- that failure to comply with the notice may result in an application for a warrant to arrest
- that the RSO may wish to seek legal advice
- the name, rank and telephone number of the police officer serving the notice
- any other prescribed information.

During the inspection IBAC officers were informed that the Registry was unable to confirm the number of notices served as these are not stored within the Register and are not readily accessible. Also, that a notice is only required when an RSO refuses to provide their fingerprints or fingerscans, and generally RSOs provide a copy of their fingerprints without the need for a notice to be served.

IBAC officers reviewed the Registry's procedural documentation and found there was sufficient instruction given to CMs on collecting an RSO's fingerprints, and that the template of the notice set out the information required by the Act.

The Registry also advised that in preparation for an RSO's annual interview, checks are preformed to determine whether an RSO's fingerprints are currently held and, if not, instruction is given to the CM to collect the RSO's fingerprints during the annual interview. The Registry also undertakes quarterly audits to ensure that fingerprints are categorised correctly within Victoria Police's systems to ensure they are retained indefinitely.

IBAC is satisfied that the Registry has sufficient processes in place to ensure that fingerprints are taken in line with the requirements of the Act.

Recommendation 4 of 2024

That the Registry explore options to develop a process to enable the Registry to identify the number of s27(3) notices issued during a given period and produce those notices to IBAC for inspection.

Search warrants

The Act provides powers to Victoria Police in relation to search warrants.[44]

Victoria Police members of a certain rank can apply for a search warrant where they suspect on reasonable grounds that an offence against the Act has been, is being or is likely to be committed and where it is necessary to execute a warrant to:

- investigate or prevent the commission or continuation of that offence; or
- enable evidentiary material to be obtained of the commission of that offence or the identity or location of an offender.

Applications for search warrants are determined by a magistrate and the rules set out in the *Magistrates' Court Act 1989 (Vic)* apply. There are no additional compliance requirements set out within the Act, and accordingly IBAC has not inspected records in relation to searches.

The Registry advised IBAC that search warrants under this provision are managed at divisional levels within Victoria Police and not oversighted by the Registry. Also, the Registry is unable to determine if a specific RSO has been searched under this provision, as no record of the search is kept on NCOS or the RSO's individual file.

IBAC reviewed the search warrants section of the Victoria Police - Compliance Managers' Manual and will continue to monitor any procedural changes that apply to searches.

[43] *Sex Offenders Registration Act 2004* (Vic) s 27.
[44] *Sex Offenders Registration Act 2004* (Vic) s 47A.

Compliance assessment: In relation to the power to take fingerprints or fingerscan pursuant to section 27 of the Act, the Chief Commissioner is assessed as being **Compliant**.

Report on Compliance with Part 4 of the Act

3.8. Obligation to establish and maintain the Register

The Chief Commissioner is required to establish and maintain a register of sex offenders, and certain information as prescribed in respect of each RSO must be contained within the Register.[45] This includes information reported in respect of an RSO under Part 3 of the Act.

During IBAC's inspection of the Register, a sample of electronic files and corresponding NCOS entries were reviewed, predominantly consisting of files added to the Register in the inspection period. IBAC officers identified that the Register substantially contained the information required to be kept, although some inconsistencies, errors and omissions were identified. These were brought to the Registry's attention for verification and follow up.

Noted inconsistencies or omissions in the Register include:

- additional / other names not listed
- email accounts
- vehicle make or colour
- child contact details.

IBAC notes the Registry's ongoing commitment to improving data accuracy which has resulted in a reduction in inconsistencies and errors since the previous inspection. IBAC also notes that in general, CMs and the Registry have continued to follow up on possible breaches of RSO reporting obligations.

Recording of RSO names, alternate names and usernames

Recording of RSO names

An RSO must report their name, along with any other name by which they are known or have previously been known, and the period they have been known by that name.[46]

Of the 217 reports inspected IBAC officers found that when an RSO had reported their name or a name by which they had previously been known, whether during their initial interview or subsequent annual interview, it had been correctly recorded within NCOS. There were four instances identified where the start date for the period the RSO had been known by another name had not been completed.

During the previous inspection IBAC made a recommendation for Victoria Police to include instructions for CMs to include a date range for the use of a reported other name. Victoria Police have since advised that the changes have been made to the Compliance Officer Manual. IBAC officers have reviewed the changes made to the Compliance Officer Manual and consider recommendation 4 of 2021 to be complete.

Recording of RSO usernames

An RSO is required to report any online usernames that they use or intend to use through the internet or other electronic communication service.[47]

In previous inspections IBAC identified instances where an RSO had reported a username however, it had not been recorded within NCOS. In 2021 the Compliance Officer Manual had been updated to instruct users to add a description and category along with the username. In the sample of RSO files reviewed, the majority of the usernames reported by an RSO were contained within NCOS along with an accurate description. Any inconsistencies identified were minor in nature and notified to the Registry for follow-up.

Government custody

An RSO is required to report if they have been in government custody since they were sentenced or released from custody (as the case may be) in respect of a registrable offence, and details of when and where that custody occurred.[48] During the previous inspection IBAC found several instances in which the details of the custody

[45] *Sex Offenders Registration Act 2004* (Vic) s 62.
[46] *Sex Offenders Registration Act 2004* (Vic) s 14(1)(a).
[47] *Sex Offenders Registration Act 2004* (Vic) s 14(1)(dd).
[48] *Sex Offenders Registration Act 2004* (Vic) s 14(1)(k).

location was not recorded within the Register. IBAC made recommendation 5 of 2021 proposing that the Registry review and amend the relevant guidelines and procedures to ensure that instructions are clear and in line with the statutory requirements.

Due to the limited time frame between receiving the recommendation and this inspection, Victoria Police were yet to implement this recommendation at the time of IBAC's current inspection.

During the inspection IBAC officers reviewed a sample of 50 RSO files where an RSO had been in government custody since they were sentence, and in 48 instances the location of the custody had not been recorded.

Victoria Police have since advised that the changes have been made to the relevant procedures to meet IBAC's recommendation. IBAC officers have reviewed the changes and consider recommendation 5 of 2021 to now be complete.

Compliance assessment: In relation to the obligation to establish and maintain a Register under section 62(2) of the Act, the Chief Commissioner is assessed as being **Substantially Compliant.**

3.9. Restricting access to the Register

The Chief Commissioner is required to ensure the Register (or any part of it) is only accessed by a person, or a class of persons, who is authorised to do so by the Chief Commissioner.[49]

Authority to access the Register

IBAC officers were provided with:

- copies of authorisations executed by the Chief Commissioner authorising classes of persons to have access to the Register
- a list of all persons with access to the Register during the inspection period.

IBAC were informed that the Registry also run monthly and quarterly audits on its systems to ensure that only current authorised members have access.

IBAC officers reviewed the above material and are satisfied that appropriate authorisations are in place to restrict access to the Register.

Authority to access information about protected witnesses

The Chief Commissioner is required to ensure that any personal information contained in the Register about a person who is a participant in a Victorian witness protection program (or is otherwise the subject of an order under Division 9 of Part 3 of the Act) cannot be accessed other than by a person authorised by the member of the police force or officer of an 'approved authority' responsible for the day to day operation of the witness protection program.[50]

No protected witnesses were added to the Register during the inspection period nor were there any changes to circumstances of any protected witness already on the Register.

IBAC reviewed the procedure developed by Victoria Police in relation to the management of RSOs who are participants in the Victorian witness protection program, and is satisfied that it adequately covers the management of these RSOs. Also, IBAC is satisfied that the delegations and authorisations in place permit the Victoria Police Witness Protection Unit to handle the information from the Register.

Location and physical access

The Registry is located at Victoria Police premises and provides an appropriate level of security.

IBAC is satisfied that the Registry is in a secure environment and that appropriate controls are in place to restrict access to the Register.

[49] *Sex Offenders Registration Act 2004* (Vic) s 63(1)(a).
[50] *Sex Offenders Registration Act 2004* (Vic) s 65.

Compliance assessment: In relation to the obligation to restrict access to the Register under sections 63(1)(a) and 65 of the Act, the Chief Commissioner is assessed as being **Compliant**.

3.10. Disclosure of RSO information from the Register

The Chief Commissioner is required to ensure that personal information contained in the Register is only disclosed in accordance with the Act, and it is an offence for a person authorised to have access to the Register to disclose personal information in the Register to any person.[51]

Despite these provisions, the Act permits the making of:

- notifications of certain information contained in the Register; and
- disclosures of certain information contained in the Register.

The Act also permits publication of information, including personal information about an RSO, where an RSO has failed to comply with reporting obligations and cannot be located.

Notifications

The Act permits the Chief Commissioner to notify the following bodies or persons of certain information contained in the Register:

- the Registrar of Births, Deaths and Marriages (BDM Registrar) of the name (including alias or prior name), date of birth and residential address(es) of any RSO in the Register;
- the Secretary to the Department of Justice and Community Safety (DJCS Secretary) of the name (including alias or prior name), date of birth and residential address(es) of any RSO as stated in the Register for the purpose of administering the WS Act; and
- the Firearms Appeals Committee (FAC) of part or all of the information relating to an RSO that is in the Register for the purpose of administering the *Firearms Act 1996* (Vic).[52]

Notification at the earliest opportunity is necessary to ensure that the registration process is effective, and the protective purposes of the Act and other relevant legislation are met.

Notifications made to the BDM Registrar

IBAC officers were advised that a full list of RSO's contained within the Register is provided to the BDM Registrar daily to ensure they have up-to-date information including any name changes. This is to ensure that if an RSO applies directly to BDM to change their name without prior approval from the Chief Commissioner, BDM will be able to notify the Registry.

IBAC officers reviewed the relevant procedural documents that outline the process and were provided with a report sent during the inspection period. IBAC is satisfied that the notifications made to the BDM Registrar were made in accordance with the Act.

Notification made to the Secretary of the Department of Justice and Community Safety

The Registry advised that once an RSO is registered they are the subject of a notification to the DJCS Secretary. Accordingly, there were 922 notifications made in the inspection period. A sample of these notifications were reviewed during the inspection.

As stated above, the Act allows for the Chief Commissioner to notify the DJCS Secretary of an RSO's name (including alias or prior name), date of birth and residential address or addresses of any registrable offender as stated in the Register.

During the inspection, 64 of the 75 notifications reviewed contained additional information including an RSO's reported country of birth, conviction details, reporting period, whether the RSO is within custody or the community, and registration identification number. When queried with the Registry, IBAC officers were informed that the additional information within the notifications was not only contained within the Register but also within other Victoria Police systems.

[51] *Sex Offenders Registration Act 2004* (Vic) s 63(1)(b), s 64(1).
[52] *Sex Offenders Registration Act 2004* (Vic) ss 63(1A) – 63(1C).

As the Act specifically states what RSO information can be provided to the DJCS Secretary, unlike notifications to the FAC where part or all of an RSOs information can be shared, it is IBAC's view that the information contained within a notification to the DJCS Secretary should be limited to what is stated within the Act.

Recommendation 5 of 2024

That Victoria Police update its processes to ensure that information within a notification to the Secretary of the Department of Justice and Community Safety (DJCS) for the purpose of administering the *Worker Screening Act 2020* (Vic) (WS Act) only contain information permitted to be included by section 63(1B) of the Act.

Notifications made to the Firearms Appeals Committee

The Registry advised that during the inspection period no notifications had been made to the FAC.

During a previous inspection IBAC officers were unable to view or locate any documents detailing the process for recording notifications made to the FAC and recommended that Victoria Police review and update its procedures to ensure that the notifications are recorded and available for inspection by IBAC.

IBAC officers reviewed the Registry's updated procedures and are satisfied that the Registry has the appropriate processes in place to ensure that notifications made to the FAC are recorded within the Register. IBAC considers recommendation 4 of 2017 to be complete.

Disclosures to certain bodies

The Act sets out several exceptions where disclosure of personal information from the Register to certain bodies and for certain purposes can occur. Specifically, the Chief Commissioner or a person authorised to have access to the Register may disclose personal information from the Register to a government department, public statutory authority or a court:

- for the purpose of judicial functions or activities
- for the purpose of the performance of a function of a law enforcement agency under any Act or law
- where the disclosure is required by or under any Act or law
- if the Chief Commissioner or a person authorised to have access to the Register believes on reasonable grounds that disclosure is necessary to enable the proper administration of the Act; or for the purposes of a prohibition order made under Part 4A of the Act, or
- for the purposes of an order made under Part 4A (other than an order under section 66ZD or 66ZE). [53]

The Registry identified 3867 disclosures made for the purposes listed above, during the inspection period. The majority of disclosures were made to the Department of Health and Human Services (DHHS) and Corrections Victoria. Other bodies included state and federal law enforcement agencies and interstate child protection registers.

IBAC officers were advised that all disclosures that took place during the inspection period were classified as business-as-usual disclosures. This was confirmed by assessing a sample of the disclosures made during the inspection period along with a review of the Registry's procedural documentation.

Publication of information

The Chief Commissioner is permitted to publish on an internet site maintained by the Chief Commissioner, certain information about an RSO who has failed to comply with reporting obligations or provided false or misleading details, if satisfied that publishing the information may assist in locating the RSO or protecting the sexual safety of the community, and the RSO's whereabouts are unknown.[54] Information that may be published includes photographs of the RSO, reportable details and disclosure of their status as an RSO.[55] Prior to publication reasonable efforts must be made to contact the RSO to advise them that information about them may be published if they do not report to police.[56]

[53] *Sex Offenders Registration Act 2004* (Vic) s 64(2).
[54] *Sex Offenders Registration Act 2004* (Vic) s 61A(1).
[55] *Sex Offenders Registration Act 2004* (Vic) s 61A(2).
[56] *Sex Offenders Registration Act 2004* (Vic) s 61B.

Publication is subject to certain restrictions, including that the Chief Commissioner must not publish information about an RSO who is a child, or that may identify a child, or information about an RSO who is a protected witness.[57]

The Commissioner may have regard to certain matters prior to publication, including (but not limited to):

- the benefit to the community of publication
- the effect publication might have on a victim of an offence committed by the RSO
- any medical, psychiatric, psychological or other assessment relating to the RSO.

Information published on the internet must be removed as soon as practicable after the RSO is located.[58]

IBAC officers viewed the instruments that delegated the function of publishing information about an RSO on an internet site maintained by the Chief Commissioner, to the Deputy Commissioner, Public Safety and Security as well as Assistant Commissioner, Intelligence and Covert Support Command.

Application process for publishing RSO information

Once an RSO is unable to be located and in breach of their reporting obligations, Victoria Police deem the RSO as 'missing'. The CM is instructed to initiate the process for the management of missing RSOs which includes completing Publication of Registrable Offender's Details Application form (Form 1471). This form contains information that the Chief Commissioner is required to be satisfied of,[59] as well as information that may be considered[60] prior to the authorisation of publishing an RSOs information. It also sets out enquiries made by Victoria Police to locate the RSO as well as attempts to contact the RSO. The form also contains an authorisation section for either the Deputy Commissioner, Public Safety and Security or the Assistant Commissioner, Intelligence and Covert Support Command.

During the inspection period there were 14 cases of publication of missing RSO's information. IBAC officers inspected each of these RSO files and the details of the information published. In each instance Form 1471 contained the information required. In 13 cases the authorisation section of the form had not been signed and therefore it could not be verified if the delegate had in fact considered the information in order to form the required satisfaction. In some of these cases the Registry provided emails which included the delegate, however it was not always clear within the email whether the delegate had read and considered the information in Form 1471.

The Registry also advised that it was not part of its process to record the approval of the delegate on Form 1471 as it was not a requirement of the Act to gain written approval prior to publishing. While IBAC agrees that it is not a specific requirement of the Act to gain written approval, the Chief Commissioner (or delegate) is required to be satisfied of certain criteria prior to publishing and the consideration should be recorded to enable IBAC officers to determine compliance with the Act. Further, as Form 1471 contains an approval section for the Chief Commissioner (or delegate) to complete, this suggests an intention for that approval to be formally recorded.

Recommendation 6 of 2024

Victoria Police ensure that when an application for publishing an RSO's information under Division 10 of the Act is approved, the approval section of the form is completed and signed, and the completed form made available for review by IBAC officers during an inspection.

Removal of information

The Act requires the Chief Commissioner to remove the information published as soon as practicable after the RSO has been located. Victoria Police procedural documentation provides clear instructions and responsibilities for removing the information once the RSO has been located.

In all 14 instances IBAC officers were advised that the information published was removed the same day the RSO was located.

Disclosure of information of missing RSO

The Act allows for the Chief Commissioner or a police officer of or above the rank of superintendent to disclose personal information about an RSO if that information:

[57] *Sex Offenders Registration Act 2004* (Vic) s 61C.
[58] *Sex Offenders Registration Act 2004* (Vic) s 61E(1).
[59] Sex Offenders Registration Act 2004 (Vic) ss 61A(1)(a)-(b)
[60] *Sex Offenders Registration Act 2004* (Vic) s 61D.

- has been published, and
- at the time of making the disclosure the information has not been removed.[61]

During the inspection period there were two instances where, in addition to publishing information relating to a missing RSO, Victoria Police held a media press conference to request public assistance to locate the missing RSO. In both instances the information had been published and, at the time the media press conference had taken place, had not been removed from Victoria Police's website.

Information security breaches

Any personal information in the Register must not be disclosed to another person unless it falls within the exceptions as set out in the Act. The Registry informed IBAC of 13 unauthorised disclosures of personal information in the Register for the inspection period. All disclosures were subject to internal review by Victoria Police's Professional Standards Command.

Eight of those disclosures involved a CM providing a copy of a section 25 receipt to the incorrect RSO. In all eight cases, the CM was given workplace guidance and the involved SOCIT introduced mechanisms to lower the likelihood of the issue reoccurring. The Registry also advised that it is implementing a new process to password protect email attachments when a section 25 receipt is issued by email. The Registry advised that during the inspection period approximately 26,281 section 25 receipts were processed by the Registry.

In three instances the disclosures were made through an internal reporting system that includes a free text component. In all three instances, the members involved were given workplace guidance and were required to undertake additional information management and security training. Victoria Police have also implemented changes to the reporting system to prevent future unauthorised disclosures.

In two instances disclosures had been made to members of the community by a Victoria Police member in error. In both instances it was determined that there had been no malicious intent behind the disclosures. Once the error had been identified, corrective measures had been taken and members involved had received workplace guidance.

IBAC is satisfied that Victoria Police has an adequate process in place to manage unauthorised disclosures, including the actions taken to mitigate the risk of future unauthorised disclosures. IBAC will continue to monitor the reviews and internal actions taken by Victoria Police for any unauthorised disclosures.

Chief Commissioner's guidelines on accessing and disclosing personal information in the Register

The Chief Commissioner is required to develop guidelines in relation to accessing and disclosing personal information in the Register.[62] Specific commentary concerning the content and form of the procedures, guidelines and policy rules is outlined in other parts of this Report.

Section 64A disclosures - de-identified information

The Chief Commissioner may disclose to any person de-identified information in the Register in respect of one or more RSO, provided it is considered appropriate to do so. This process is utilised for research purposes. Information disclosed under this section contains no identifying information.[63]

IBAC was provided with a list of all RSOs whose de-identified information had been disclosed during the inspection period and is satisfied with the management and process in which disclosures are made.

Compliance assessment: In relation to Victoria Police's obligations pertaining to intended disclosures of personal information in the Register **Substantially Compliant.**

3.11. Responding to requests by RSOs

The Chief Commissioner must, on request, provide an RSO with a copy of all reportable information held on the Register in relation to that RSO as soon as practicable. An RSO may request that any incorrect reportable

[61] *Sex Offenders Registration Act 2004* (Vic) s 61F.
[62] *Sex Offenders Registration Act 2004* (Vic) s 63(2).
[63] *Sex Offenders Registration Act 2004* (Vic) s 64A.

information be amended, which must be done provided that the Chief Commissioner is satisfied the information is incorrect.[64]

During the inspection period there were two instances where an RSO made a request for all their reportable information held on the Register. Both requests were actioned the same day the request was made. IBAC officers also reviewed procedural documentation that detailed the process for handling requests for reportable information.

Compliance assessment: In relation to the obligation to respond to requests by RSOs under section 66 of the Act, the Chief Commissioner is assessed as being **Compliant**.

3.12. Other matters

Governance

During the inspection IBAC officers were briefed on the Registry's governance arrangements. The Registry produce a large suite of procedural documentation which includes standard operating procedures, manuals, guidelines, and templates which are regularly updated and provide clear instruction. The Registry has also implemented and preformed 25 different audits of the Register to ensure data validity and to alert Registry staff to upcoming actions. IBAC is satisfied that there is an effective framework for managing the Registry's governance and operational matters within Victoria Police.

Resourcing

IBAC officers were given a comprehensive briefing on the resourcing for the Registry. The Registry has also seen an increase of 922 RSOs during the inspection period. Victoria Police continue to prioritise the work of the Registry in acquitting legislative responsibilities under the Act.

Overall

The helpful discussions between IBAC and staff at the Registry, along with the Registry's willingness to engage constructively with IBAC's oversight functions, demonstrates Victoria Police's continued commitment to meeting its statutory obligations and ensuring best practice in relation to the requirements set out in the Act. Registry staff were courteous and cooperative and provided considerable assistance to IBAC in undertaking the inspections.

I take this opportunity to thank the Registry for their assistance, particularly in facilitating access to the Registry and its records and providing ongoing assistance to IBAC officers about the operation of the Registry.



Victoria Elliott

Commissioner

Date: 23 December 2024

[64] *Sex Offenders Registration Act 2004* (Vic) s 66.

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