ibac independent broad-based anti-corruption commission
Victoria

Report to the Minister

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

1 January 2017 – 31 December 2020

Acknowledgement

IBAC acknowledges the Traditional Owners of Country throughout Victoria and pays respect to and recognises the contribution from their Elders past and present

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Chapter 1

Overview

Background

1 Definitions

Chief Commissioner	Chief Commissioner of Victoria Police
Compliance Manager (CMs)	sworn Victoria Police personnel responsible for the management of RSOs
FAC	Firearms Appeals Committee
IBAC	the 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 2017 to 31 December 2020
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
RSO	Registered Sex Offender
The Act	Sex Offenders Registration Act 2004 (Vic)
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)
SOR Amendment Act	Sex Offenders Registration Amendment (Miscellaneous) Act 2004
SO	Supervision Order
VPM	the Victoria Police Manual
VPS	Victorian Public Sector

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 compliance by the Chief Commissioner of Police (Chief Commissioner) and authorised persons, with their obligations to ensure registered sex offenders comply with their reporting obligations and that the sex offender register is maintained, as set out in Parts 3 and 4 of the Act.

To facilitate this function, IBAC officers may inspect the Victoria Police Register of Sex Offenders and do anything necessary or convenient to enable the inspection to be carried out.[1]

This report is given pursuant to section 70O of the Act, which provides that IBAC may report to the Minister 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.[2]

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.

3 Timing of the report

The report sets outs the results of two comprehensive inspections conducted by IBAC in October 2019 and December 2021 covering a total period of between 1 January 2017 to 31 December 2020 (the inspection period). In the course of the inspections, IBAC liaised with Victoria Police on matters that arose from the inspection period.

In the course of 2020 and 2021, various COVID-19 pandemic restrictions meant that IBAC officers were significantly delayed in being able to attend on-site at the Registry to conduct further inspections, which in turn contributed to the delay in the progress and finalisation of this report.

To ensure the report reflects updates or changes made by Victoria Police to the Registry's processes and procedures in response to matters raised by IBAC in the course of the inspections, IBAC also provided Victoria Police with a post-inspection report and received feedback at various times up until July 2022.

Where a matter raised in the inspection has since been satisfactorily dealt with, the report includes a summary of the matter and an outline of the change or update made in response. Future inspections will verify the effectiveness of any updates or changes made by the Registry in practice, and the progress of recommendations.

IBAC plans to conduct its next inspection of the Registry in Quarter 4 of the 2023 calendar year.

4 Legislative Framework

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

(1) The purpose of this Act is—

a. to require certain offenders who commit sexual offences to keep police informed of their whereabouts and other personal details for a period of time—

   i. to reduce the likelihood that they will re-offend; and
   ii. to facilitate the investigation and prosecution of any offences that they may commit;

b. to prevent registrable offenders working in child-related employment;
c. to empower the IBAC to monitor compliance with Parts 3 and 4 of this Act;
d. to provide for the making of prohibition orders to prevent registrable offenders engaging in certain conduct.

[1] *Sex Offenders Registration Act 2004* (Vic) s 70N.
[2] *Sex Offenders Registration Act 2004* (Vic) s 70N(5)(b).

5 The Sex Offender Register

The Chief Commissioner must establish and maintain a Register of Sex Offenders (the Register)[3] which is to contain the information referred to in s 62(2) of the Act in respect of each registrable sex offender (RSO) (to the extent known by the Chief Commissioner).

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

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

Transition to electronic files

During the 2019 inspection, the Registry commenced a project to create electronic files for all new RSOs and to scan and digitise the large volume of existing hard copy files.

During the 2021 inspection IBAC was informed that the Registry had successfully completed the project and all RSO files can now be accessed electronically.

Ability to record State-specific information

IBAC notes that additional fields to cater for Victorian-specific legislation are not able to be readily added to NCOS due to it being operated by a federal body and used by other law enforcement agencies across Australia. However, as the Act requires any information reported in respect of a RSO pursuant to Part 3 to be contained within the Register[4], IBAC encourages the Registry to continue to pursue opportunities with the ACIC and other users to facilitate updates to NCOS fields which also reflect the Victorian legislative requirements.

Key statistics

The following key statistics relate to information contained in the Register for the inspection period:

RSOs added to the Register during the period 1 January 2017 to 31 December 2018	1,073
RSOs added to the Register during the period 1 January 2019 to 31 December 2020	917
Total RSOs in the Register as at 31 December 2020	**9,318**

[3] *Sex Offenders Registration Act 2004* (Vic) s 62(1).
[4] *Sex Offenders Registration Act 2004* (Vic) s 62(2)(f)

Chapter 2

Inspection Results

Summary

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**
• Victoria Police monitoring of RSO compliance with reporting obligations	**Compliant**
• Maintenance of the Register	**Substantially compliant**
• Victoria Police maintenance of RSO suspension of reporting obligations	**Substantially compliant**
• Notification of reporting obligations by Victoria Police	**Substantially compliant**
• Modified reporting arrangements	**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 personal information from the Register (to certain bodies, for specified purpose, publication)	**Substantially compliant**
• Disclosure of personal information from the Register (other)	**Substantially compliant in part; not compliant in part**
• Responding to requests by RSOs	**Substantially compliant**

2 Recommendations

IBAC makes the following recommendations:

Recommendation 1 of 2021

That the Registry review and update relevant procedures, guidelines and processes to ensure that documentation provided by a RSO as required by regulation 15 of the Sex Offenders Registration Regulations 2014 (Vic) (the Regulations), is recorded by the Registry at the time the report is received, and that those records are available for inspection by IBAC.

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.

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.

Recommendation 4 of 2021: That Victoria Police review and update its procedures and guidelines to ensure accurate recording of reported other names that a 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 s 14(1)(a) being '… any other name by which he or she is, or has previously been, known'.

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.

3 Recommendations from previous report

IBAC made six recommendations in its previous inspection report dated 19 June 2018; all were accepted by Victoria Police. 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 1 of 2017 That the Registry review procedures and guidelines regulating the suspension of RSO reporting obligations. The procedures and guidelines should include criteria for the use of the power in section 39A of the Act and set out the circumstance for when an application pursuant to section 45A of the Act should be made.	Complete
Recommendation 2 of 2017 That the Registry review: • those files where a notice has been issued pursuant to sections 52 or 54 and, where appropriate, apply to the court to request the error be corrected pursuant to section 50(5A), with notification to the RSO of the intention to make such application. • procedures and guidelines regulating how any errors in relation to registration are handled by the Registry. The procedures and guidelines should include processes for the making of applications pursuant to section 50(5A) of the Act where it is deemed an error needs to be corrected. The process should permit the correction of the error by the relevant judicial officer in chambers.	Complete
Recommendation 3 of 2017 That the Chief Commissioner takes steps to ensure that relevant authorisations, procedures and guidelines are in place to ensure alternative reporting provisions can be effectively managed in the event they are required.	Complete
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.	Incomplete[5]

[5] Victoria Police have advised IBAC that they have since updated the process to record all s63 disclosures on the Register and therefore IBAC should now be able to inspect them. This recommendation only retains "incomplete" status because IBAC have not yet been able to verify this. Verification will occur at the next scheduled inspection.

Recommendation 5 of 2017 That the Registry take steps as a priority to ensure that current procedures and guidelines are followed and complete details of section 64(2) disclosures – including the purpose of such disclosures – are recorded in a manner that allows inspection by IBAC.	Complete
Recommendation 6 of 2017 That the Registry review its procedures and guidelines regarding the recording of information security breaches to ensure that breaches are recorded accurately and that IBAC is notified of any breaches promptly.	Complete

Report on Compliance with Part 3 of the Act

4 Compliance category one – 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.[6]

The Registry's procedures[7] 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 receive reports from RSOs.

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

5 Compliance category two – Victoria Police monitoring of RSO compliance with reporting obligations

RSO must report 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. Reports relating to change of address or contact with children must be made within one day of the change or contact occurring.

From the inspections it was evident that changes to relevant personal details were generally being made in-line with the reporting timeframes specified by the Act.

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

Interstate and overseas movements of RSOs

A RSO is to report their intended and actual absences from Victoria within prescribed timeframes, and to provide specified details in relation to their movements.[8]

Overseas travel by RSOs was impacted by the *Passports Legislation Amendment (Overseas Travel by Child Sex Offenders) Act 2017* (Cth) (the Passports Amendment Act) which amended three Acts in relation to a 'reportable offender' being a person on a child protection offender register (such as the Victorian Register), who consequently has reporting obligations.

The amendment to the *Criminal Code Act 1995* (Cth) makes it an offence for an Australian citizen, who is a reportable offender, to leave Australia without permission from a competent authority or without the applicable reporting obligations having been suspended.[9]

The *Australian Passports Act 2005* (Cth) was amended to enable a competent authority to make a refusal or cancellation request in relation to an Australian passport held by an Australian citizen and reportable offender; in response, the relevant Minister must cancel the subject Australian passport.

Similarly, amendments to the *Foreign Passports (Law Enforcement and Security) Act 2015* (Cth) enable a competent authority to make a request in relation to a person who is an Australian citizen and reportable offender; in response, the Minister must order the surrender of the person's foreign travel documents.

IBAC notes that the Chief Commissioner's Instruction 12/17 was issued in response to the above changes and outlines the Victoria Police process for an application to cancel a passport and for a RSO to request permission to travel overseas. The

[6] *Sex Offenders Registration Act 2004* (Vic) s 23(3).
[7] VPM Practice Guide for RSO Management, and other relevant guidelines, policy or procedure.
[8] *Sex Offenders Registration Act 2004* (Vic) ss 14(1)(l), 18 - 21A.
[9] *Criminal Code Act* 1995 (Cth) Div 271A.

Registry confirmed that a comprehensive risk assessment is conducted prior to granting approval to travel internationally, and that approvals do not absolve RSOs of their reporting obligations under the Act.

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.
IBAC officers reviewed a representative sample of files in relation to absences and travel plans which included activities triggering statutory reporting obligations relating to travel and passports under the relevant amended legislation outlined above.

A RSO must report intended travel at least seven days before their interstate or international travel commences.[10] During the 2019 inspection, IBAC officers observed a limited number of circumstances where the RSO had not provided adequate notification. IBAC officers were satisfied that CMs made assessments to consider whether the RSO was in breach of their obligations and followed through appropriately. Of the sample inspected during the 2021 inspection, all instances of interstate or international travel were reported within the required timeframes. It was also evident that supporting documentation was retained on each RSO's file and appropriate notes made in the system where relevant.

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

6 Compliance category three – Maintenance of the Sex Offender Register

Receipt of information to be acknowledged

The police officer or other person receiving a report under Part 3 must acknowledge in writing the making of the report[11]. 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.

During the 2019 inspection there were several instances where IBAC officers were unable to assess whether the information was received in the form required by the Act, due to the reporting method not being captured in the receipt template.

During the 2021 inspection, the Registry informed IBAC officers that changes had been made to internal processes and policy documents that inform case managers of what is required when completing a receipt template.

IBAC inspected a representative sample of receipts and found the information was accurate, updated in NCOS and met all legislative requirements, including in relation to receipt retention.

A small number of minor administrative errors or omissions were noted for follow-up by the Registry. IBAC is satisfied that these issues have been attended to and rectified.

Verifying documentation or evidence when making a report

A RSO making a report[12] is to provide documentation to verify or support the report[13], being:

- 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.

IBAC officers determined that the Registry's policy documents contain clear guidance on what documents must be provided by a RSO when making a report.

During the 2021 inspection, IBAC officers were not able to confirm if documentation required had been presented at the time the RSO made their report. The Registry informed IBAC that it did not collect the documentation required in all instances, and

[10] *Sex Offenders Registration Act 2004* (Vic) s 18(2).
[11] *Sex Offenders Registration Act 2004* (Vic) s 25.
[12] *Sex Offenders Registration Act 2004* (Vic) s 23.
[13] Sex Offenders Registration Regulations 2014 (Vic) r 15.

any documentation provided or sighted is recorded on the Interpose system, this being unavailable for IBAC inspection officers to review at the time.

IBAC was also informed that if documentation was not provided for vehicle ownership or a vehicle generally driven by the RSO, Victoria Police would verify the vehicle registration using the LEAP database and place a comment on Interpose. For a report regarding a change in the RSO's employment, the CM would either call or visit the employer to confirm the place of employment and place a comment on Interpose.

IBAC requests that the Registry ensure that when a RSO makes a report relating to vehicle ownership/use or employment, the CM ensures the RSO provides the documentation as required by the Act and Regulations. Further, IBAC requests that the Registry record the information in a way that can be reviewed by IBAC officers at future inspections.

Recommendation 1 of 2021: That the Registry review and update relevant procedures, guidelines and processes to ensure that documentation provided by a RSO as required by regulation 15, is recorded by the Registry at the time the report is received, and that those records are available for inspection by IBAC.

Registration exemption orders

Division 2 of Part 2 was inserted into the Act and commenced on 1 March 2018, which establishes a scheme for registration exemption orders.

Pursuant to section 11A of the Act, a person found guilty of a registrable offence that is a specified offence, being a Class 1 or 2 offence listed in Schedule 5, 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]

The Act outlines the circumstances in which a registration exemption order cannot be sought, including where the person was a RSO at the time of committing the offence, or where the person has been found guilty of another registrable offence.[15] An application for registration exemption cannot be applied for where the specified offence was against more than one victim.[16]

If a registration exemption order is made by the relevant court, the person ceases to be a registrable offender and is no longer subject to reporting obligations under Part 3 of the Act.

IBAC officers inspected a sample of registration exemption orders made during the inspection period and confirmed that individuals who had successfully sought exemption orders were no longer subject to reporting obligations under Part 3 of the Act. IBAC is satisfied that exempted individuals were deregistered as RSOs and that copies of the exemption orders were retained on file where the offender was registered at the time the exemption order was granted.

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

7 Compliance category four – Victoria Police maintenance of RSO suspension from reporting obligations

Suspensions of reporting obligations

There are several ways in which a RSO's reporting obligations may be suspended under the Act,[17] being:

- A RSO who is required to report for the remainder of his or her life may apply to the Supreme Court of Victoria for an order suspending those obligations (s 39).
- The Chief Commissioner may apply at any time to a relevant court for an order suspending the reporting obligations of a RSO (s 39A).
- The Chief Commissioner may suspend a RSO's reporting obligations for up to five years[18] 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 of the community (s 45A).[19]

[14] *Sex Offenders Registration Act 2004* (Vic) s 11A.
[15] *Sex Offenders Registration Act 2004* (Vic) s 11A(2).
[16] Unless the specific offence relates to child abuse material or pornography - see *Sex Offenders Registration Act 2004* (Vic) ss 11A(3) and (4).
[17] Note that s 32 of the Act provides for circumstances in which reporting obligations are suspended by operation of law.
[18] Section 45A(1) was amended by s 17(2) of the *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* which came into operation on 1 March 2018.
[19] 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.

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

The Chief Commissioner is a party to applications made by a RSO to the Supreme Court for suspension.[20]

IBAC has not provided comment on the handling by police of these applications made to the court by RSOs, as many aspects of the police's response will attract legal professional privilege.

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

On application by the Chief Commissioner under s 39A the court may suspend reporting obligations of a RSO for a period of up to and including the remainder of their life.[21]

No applications under this provision were made by police in the reporting period. The outcome of an earlier IBAC recommendation relevant to s 39A applications is set out below.

Suspension of reporting obligations by Chief Commissioner (s 45A)

Legislative amendment and suspension of reporting obligations for a stated time period

On 1 March 2018 (being part way through the inspection period) an amendment to section 45A took effect which enabled the Chief Commissioner to suspend a RSO's reporting obligations for up to five years. Previously the maximum period for suspension under this provision was 12-months.

IBAC's 2018 report had identified several cases where s 45A was used to suspend a RSO's reporting obligations for multiple 12-month periods, rather than apply to the court under s 39A for a suspension order for a longer period. IBAC's review of suspension files (below) after the legislative change indicates that the earlier issue identified is unlikely to reoccur.

IBAC reviewed a sample of files pertaining to (amended) s 45A suspensions for a stated time period and concluded that these were appropriately made.

Criteria to consider in deciding to suspend reporting obligations

There are several factors that the Chief Commissioner (or delegate) must consider in determining whether to suspend an offender's reporting obligations.[22]

During the inspection IBAC officers also found in a small number of files that the extent to which the legislative criteria had been considered in the decision-making process was unclear. IBAC requested that the Registry provide an explanation of its practice in relation to documenting the consideration and weight applied to the relevant mandated factors.

The Registry since advised IBAC that it has established a RSO Management Victoria Police Manual and Practice Guide, which has been publicised organisationally. This includes internal communications to ensure understanding and compliance in relation to ss 39A and 45A applications.

The Registry also provided IBAC with an outline of the steps taken by Victoria Police as part of the decision-making process in relation to suspension, which includes assignment of each case to a senior officer to manage, case conferencing each RSO file to determine the required criteria, and that these records and outcomes are uploaded to the RSO's electronic file.

IBAC considers recommendation 1 of 2017 complete and the next inspection will review the Registry's updated procedures to verify that changes made in response to IBAC's recommendation have been implemented in practice.

Errors in suspension notices

The inspections also identified instances where there were errors in record keeping or issues with notices of suspension given to RSOs. For example, inconsistencies in specifying the end or review date of suspension periods in notices.

The Registry has taken remedial action in response to issues identified, such as updating letter templates to ensure the start and end date of suspensions are clear.

[20] *Sex Offenders Registration Act 2004* (Vic) s 41.
[21] *Sex Offenders Registration Act 2004* (Vic) s 40(1A).
[22] *Sex Offenders Registration Act 2004* (Vic) s 45A(3).

Reporting gaps between suspension periods and notification

IBAC identified a small number of cases of 12-month suspensions where a gap existed between a RSO's suspension of reporting obligations expiring and the commencement of a new suspension period, and in some cases the notice of reporting obligations (NORO) was not issued to the RSO until after expiry of the suspension. It was also unclear in some cases whether the RSO's reporting obligations were reactivated during the gap period or why there was a gap between reporting periods.

The managing of suspensions, gaps and reporting obligation notifications are particularly important where the subject RSO suffers from a serious health condition that may affect their capacity to comply with the reporting obligations.

The Registry informed IBAC that it is expected that the RSO is managed by their CM in accordance with normal reporting obligations under the Act. Further, that the circumstances of certain RSO cases justified not issuing a NORO where there was a gap period.

Also, that there is an internal audit completed of all current suspensions each month and three months before the expiry of the suspension, a comment is added to the offender's Interpose investigation shell stating the suspension is due to expire and requesting the CM confirm if a new application will be submitted or that the reporting obligations will recommence.

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.

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 **Substantially Compliant.**

Delegation of power

Following the 2018 legislative change to s 45A which increased suspension of reporting periods from 12-months to 5 years, Victoria Police failed to update the required delegation to reflect the change until 7 July 2021. This was an administrative failure which, upon being discovered, was reported to IBAC and corrected by issuing a new instrument of delegation to enable the delegate to suspend reporting obligations for up to 5 years.

This meant that in some cases the delegate suspended RSOs' reporting obligations for periods of more than 12 months, without holding the requisite delegation of power.

The Registry contacted affected RSOs and notified them that the suspension of their reporting obligations will remain in place in accordance with the original decision notified to them. The Registry acknowledged that some RSOs may wish to have their suspension regularised and were offered to cancel the suspensions and invited to reapply for suspension should they wish to do so. No RSOs exercised this option.

IBAC identify that there is a risk, albeit low, that if the (purported) decision was later found (by a court) to be no decision at all, this could render a suspension invalid. A consequence of invalidity is that an affected RSO is determined as being in breach of their reporting obligations under the Act. However, IBAC recognises that it would be highly improbable that Victoria Police would take any action for non-compliance in the circumstances as set out above. Further, any prosecution for breach of reporting obligations would likely fail as the purported decision would be a 'reasonable excuse' for non-compliance and thus no offence is committed.

To avoid the risks associated with outdated delegations of power, Victoria Police should ensure that it reviews and updates relevant delegations as soon as any legislative changes are made to the exercise of powers under the Act.

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.

8 Compliance category five – Notification of reporting obligations by Victoria Police

Notice to be given to a RSO of reporting obligations

A RSO is to be given written notice of their reporting obligations (notice) by the prescribed person or body[23] and the consequences that may arise from a failure to comply.[24]

Where a RSO is sentenced to a registrable offence or a court order or sentence is given which makes a person a RSO, the court[25] must at that time ensure the person is given a written notice (court notice) specifying the consequential reporting period,[26] which is set by operation of the Act.[27]

In some circumstances a notice must be given by the Chief Commissioner or the Secretary, in which case the notice is not required to specify the RSO's reporting period.[28]

Errors in court notices

If a court notice given to a RSO is found to contain an error, for example an incorrect reporting period, the court may issue a further notice to correct an error (correction notice).[29]

The Chief Commissioner has an obligation to notify a RSO of a *change* to their reporting period (s 52) and also has the power - exercisable at any time - to give written notice to a RSO telling them about (among other things) their reporting obligations (s 54).

IBAC's previous inspection identified a need for the Registry to ensure that where errors were identified in court notices its first course of action was to take steps to have the court exercise its power to issue a further court notice to correct an error in the original notice.

Over the course of the inspection IBAC determined that the Registry's approach to identified errors in court notices, in most cases, was to have the matter returned to the relevant court for it to correct the error and issue another notice.

The Registry since informed IBAC that it has updated its procedures and guidelines to reflect the above practice, which includes instructions in the Compliance Officer Manual and relevant standard operating procedures, on what steps to take in the event a court notice requires correcting.

IBAC's inspection identified that in a small number of cases, for example if the original notice containing an error was issued by the court historically, the Registry had issued a notice to the RSO informing them of the (correct) reporting period (s 54). Alternatively, a RSO was notified that their reporting period would increase at the expiry of the Court imposed reporting period and that they should seek legal advice if they did not agree with the extended period set out in the notice (s 52).

IBAC is satisfied that the Registry's current practice is to utilise the court correction process as envisaged by recommendation 2 of 2017, although RSOs may not have been notified of this in all instances. IBAC's next inspection will review the Registry's updated procedures to verify that changes made in response to recommendations have been implemented in practice.

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

[23] *Sex Offenders Registration Act 2004* (Vic) see s50(3); *Sex Offender Registration Regulations 2014* (Vic) see sch 2 person or body to give the notice.
[24] *Sex Offenders Registration Act 2004* (Vic) s 50(1).
[25] *Sex Offender Registration Regulations 2014* (Vic) r 21.
[26] *Sex Offenders Registration Act 2004* (Vic) s 50(5).
[27] *Sex Offenders Registration Act 2004* (Vic) div 5 part 3 and in particular s 34.
[28] *Sex Offender Registration Regulations 2014* (Vic) r 19.
[29] *Sex Offenders Registration Act 2004* (Vic) s 50(5A).

9 Compliance category six – Modified reporting arrangements

Reporting by remote offenders

The Act sets out alternate reporting arrangements that apply if a RSO resides beyond the prescribed distance from the nearest police station.[30] The Registry advised that within the inspection period there were no RSOs to whom this provision applied.

During the 2019 inspection IBAC officers reviewed the updated Victoria Police Compliance Managers' Manual (section 3.1) in relation to the process for managing modified arrangements. IBAC considers recommendation 3 of 2017 to be complete and will monitor compliance with the updated procedures and any occurring alternate reporting arrangements.

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

A 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 an annual report on the day specified by the Chief Commissioner of Police by written notice served on the RSO.[31]

On 1 March 2018 the Act was amended to assist CMs (predominantly in the Western Region close to residential treatment facilities) to manage the annual reporting requirements of RSOs subject to supervision orders (SOs). The intent was to serve notices to compel a specified group of RSOs in residential facilities to be available on a certain date for their annual interview to streamline the annual reporting process for RSOs subject to SOs.

Prior to commencement of the amendment, the Offender Management Division were allocated additional staff to facilitate the effective management of high risk and offenders on SOs.

The additional resources were used to create a Supervision Order Specialist Response Unit (SOSRU) outreach team located in the Western Region. Due to the outreach team's location, they have attended residential facilities on a regular basis and there has been no requirement to schedule bulk annual interviews at these facilities.

On this basis the Registry advised that no section 16(5) notices were served during the inspection period.

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

10 Compliance category seven - 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 a 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.[32] Where fingerprints are sought from a RSO, a police officer is required to 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 2019 inspection IBAC officers inspected a sample of records where a fingerprint or fingerscan had been taken from RSOs. IBAC was satisfied that Victoria Police were meeting its statutory requirements.

At the 2021 inspection IBAC officers were unable to review any additional records due to a change in process whereby these records are stored within the LEAP database. However, IBAC officers did review updated guidance and procedural documentation. IBAC officers were informed that monthly audits are undertaken by the Registry as an added assurance that RSO fingerprints have been taken.

[30] *Sex Offenders Registration Act 2004* (Vic) s 31.
[31] *Sex Offenders Registration Act 2004* (Vic) s 16(5).
[32] *Sex Offenders Registration Act 2004* (Vic) s 27.

IBAC is satisfied that the Registry has the appropriate framework in place to meet its statutory requirements under the Act and requests that for future inspections IBAC officers are provided with documentation, including notices served, to ensure IBAC can complete this aspect of its monitoring obligations.

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**.

Search warrants

The Act provides powers to Victoria Police in relation to search warrants.[33]

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

[33] *Sex Offenders Registration Act 2004* (Vic) s 47A.

Report on Compliance with Part 4 of the Act

11 Compliance category seven – 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.[34] This includes information reported in respect of a RSO under Part 3 of the Act.

During IBAC's inspection of the Register, a sample of hardcopy and 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. Typographical or other errors that did not render the information unusable for the purposes of the Act or did not relate to information required to be recorded, were not deemed as errors but noted for follow up by the Registry.

Noted inconsistencies or omissions in the Register included:

- additional / other names not listed
- email and internet account names (usernames)
- telecommunications services
- details of locations of government custody
- 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

A 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.[35]

During the 2019 inspection IBAC noted that several RSOs had reported a middle name or produced documentation showing a middle name, although this did not appear to be recorded in the NCOS name field or as an alternate name. IBAC provided feedback to the Registry and requested that the reporting by RSOs of their middle name is recorded in NCOS and that relevant procedural documents are updated.

Prior to the 2021 inspection, IBAC were informed that the Registry had made changes to the Compliance Officer Manual and communicated to staff the necessity of recording middle names within NCOS. During the inspection, IBAC officers reviewed a sample of RSO files and found that all instances of a RSO reporting a middle name were appropriately recorded within NCOS.

Several RSOs reported currently using, or having previously used, another name. In several instances IBAC officers were unable to see in NCOS the reported other names or the period of use. It was noted that in the Compliance Manager Manual a section titled 'Alias' did not contain instructions for CMs to include a date range for the use of a reported other name. IBAC recommends that this section of the Compliance Manager Manual is reviewed to reflect the requirements and terms used in of ss 14(1)(a)-(b) of the Act.

Recommendation 4 of 2021: That Victoria Police review and update its procedures and guidelines to ensure accurate recording of reported other names that a 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 s 14(1)(a) being '… any other name by which he or she is, or has previously been, known'.

[34] *Sex Offenders Registration Act 2004* (Vic) s 62.
[35] *Sex Offenders Registration Act 2004* (Vic) s 14(1)(a).

A RSO is also required to report any online usernames that they use or intend to use through the internet or other electronic communication service.[36] During the 2019 inspection IBAC officers found several instances where a RSO had reported an internet username, although it did not appear to be recorded in NCOS.

During the 2021 inspection IBAC officers noted that the Compliance Manager Manual instructs users to add a description and category along with the username. In the sample of RSO files reviewed, most of the usernames reported by a 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

A 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.[37] During the 2019 inspection IBAC noted that where RSOs made such reports, the details of where that custody occurred were not recorded in the Register. IBAC was informed that it was not SOR process to record the location of where RSOs served time in custody.

During the 2021 inspection IBAC officers reviewed an additional five files where the RSO had been in government custody, and in some instances the details of where the custody occurred were not recorded.

IBAC notes that the Act requires the details of when and where subsequent custody occurred to be reported. This should be read with s 62(2)(f) which requires the Register to contain any information reported by the RSO under Part 3. IBAC therefore recommends that the Registry review and amend the relevant guidelines and procedures to ensure that instructions are clear and in line with the statutory requirements.

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.

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.**

12 Compliance category eight - 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.[38]

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 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.[39]

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.

[36] *Sex Offenders Registration Act 2004* (Vic) s 14(1)(dd).
[37] *Sex Offenders Registration Act 2004* (Vic) s 14(1)(k).
[38] *Sex Offenders Registration Act 2004* (Vic) s 63(1)(a).
[39] *Sex Offenders Registration Act 2004* (Vic) s 65.

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.

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**.

13 Compliance category nine - Disclosure of personal 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; it is an offence for a person authorised to have access to the Register to disclose personal information in the Register to any person.[40]

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.

A sample of relevant files in each of the above categories was reviewed.

The Act also permits publication of information, including personal information about a RSO, where a 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 *Worker Screening Act 2000* (WS Act); and
- the Firearms Appeals Committee (FAC) of part or all of the information relating to a RSO that is in the Register for the purpose of administering the *Firearms Act 1996 (Vic).*[41]

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 in the inspection period

A full list of the Register is provided to the BDM Registrar daily to ensure they have up-to-date information including any name changes. Where a RSO applies directly to BDM to change their name without prior approval from the Chief Commissioner, BDM will notify the Registry.

IBAC officers were provided with an overview of the process and reviewed a sample of the relevant files during the inspection.

Victoria Police advised that all new RSOs are the subject of notifications to the DJCS Secretary. Accordingly, there were 1990 notifications made in the inspection period. IBAC officers reviewed a sample of these notifications.

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

IBAC officers also reviewed the relevant policies and procedures and is satisfied that the Compliance Officer Manual clearly details the process for making and recording disclosures to DJCS for the purposes of working with children checks.

IBAC is satisfied that disclosures made to the BDM Registrar and DJSC Secretary are recorded and available for inspection.

The Registry also makes disclosures to the FAC where it is deemed necessary. However, during the 2021 inspection, IBAC officers were unable to view or locate documents detailing notifications to the FAC, and a review of the Registry's procedural documentation found no established process for FAC disclosures.

Victoria Police has since advised IBAC that notifications to the FAC are completed by the Licensing and Regulation Division (LRD). To enable IBAC's oversight of these disclosures in future, a new process has been established to record the FAC disclosure on NCOS. In response, IBAC has requested that the Registry also update its procedural documentation to include this new process.

IBAC's next inspection will include a review of the Registry's updated procedures to verify that changes made in response to IBAC's recommendation 4 of 2017 now provide for IBAC's inspection of FAC disclosures in practice.

Disclosures to certain bodies

The Act sets out several exceptions where disclosures 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 court: [42]

- for the purpose of judicial functions or activities; or
- for the purpose of the performance of a function of a law enforcement agency under any Act or law; or
- where the disclosure is required by or under any Act or law; or
- 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.

The Registry identified 12,311 disclosures made under 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.

Disclosure for specific purpose

Personal information may be disclosed from the Register for one or more of the five purposes referred to above.

Recommendation 5 of the 2017 report was that the Registry take steps as a priority to ensure that procedures and guidelines are followed and complete details of section 64(2) disclosures – including the purposes for making such disclosures – are recorded in a manner that allows IBAC to assess whether the disclosures had been made in accordance with the Act.

Victoria Police advised IBAC that the recommendation had been completed and that a new process had been established to record section 64(2) disclosures in file notes stored within NCOS, and the process for recording these disclosures is detailed in its procedural documentation.

Prior to both inspections, IBAC requested that the Registry specify to whom the notification or disclosure had been made, the details notified or disclosed, and the reason for the notification or disclosure in each case. IBAC officers reviewed several disclosures pursuant to section 64(2) during both inspections.

During the 2019 inspection, IBAC officers were able to determine the recipient of the disclosures. However, in most cases the records did not specify the explicit purpose or subsection of the Act being relied upon to make the disclosure, despite this requirement being included in the VPM – Procedures and Guidelines and Victoria Police - Compliance Managers' Manual. Therefore, it was not possible for IBAC officers to identify which, if any, disclosures were made pursuant to section 64(2)(c). IBAC was of the view that identification of the subsection is required, particularly in the case of disclosures under section 64(2)(c), which specifies the discloser must form a belief on reasonable grounds that the disclosure is necessary.

In preparation for the 2021 inspection, IBAC was provided with a document listing the RSO IDs where s64(2) disclosures had been made and the relevant subsection. IBAC officers reviewed the changes to Victoria Police's procedural documentation which included instructions on ensuring the criteria of s64(2) is met and that the reason for the disclosure is recorded within Interpose.

[42] *Sex Offenders Registration Act 2004* (Vic) s 64(2)(a)-(d).

However, during the inspection IBAC officers were unable to review any additional information regarding the purpose of the disclosures as they did not have access to Interpose.

Although IBAC considers recommendation 5 of 2017 to have been completed, IBAC's future inspections will require the Registry to provide IBAC officers access to the information contained within Interpose to assess whether, at the time the decision for disclosure was made, the purpose for the disclosures listed under s64(2) was considered and recorded.

Publication of information

The Chief Commissioner is permitted to publish certain information about a RSO who has failed to comply with reporting obligations and cannot be located, if satisfied that publishing the information may assist in locating the RSO or protecting the safety of the community.[43] Information that may be published includes photographs of the RSO, reportable details and disclosure of their status as a RSO.[44]

Publication is subject to certain restrictions, including that the Chief Commissioner must not publish information about a RSO who is a child, or that may identify a child, or information about a RSO who is a protected witness.[45]

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 (s 61E).

The ability to publish personal details of RSOs in certain circumstances, further highlights the importance of ensuring the accuracy of information held within the Registry in the event it is required to assist identify and locate a RSO.

The Registry advised that the introduction of Victoria Police's Proactive Targeting Teams (PTTs) has supported the locating of RSOs thereby reducing the need to publish information.

There were 20 publications made under s 61A in the inspection period that related to 17 RSOs. IBAC officers inspected each of these RSO files and the detail of information published.

The Registry has developed internal processes to manage the application process for publication to ensure that the legislative obligations and considerations pursuant to sections 61A through to 61D are being met.

IBAC officers assessed the pre-application considerations and actions and verified that information had been removed from the Victoria Police website once the RSO was located, and that appropriate follow-up action had been taken. IBAC is satisfied that all publications were made in compliance with the Act.

It was also evident that publication of information is an effective tool for locating RSOs who fail to report or report false or misleading information and are yet to be located by PTTs.

Information security breaches – individual cases

Any personal information in the Register must not be disclosed to another person unless it falls within the exceptions as set out in s 64.

The Registry informed IBAC of eight unauthorised disclosures of personal information in the Register for the inspection period.

In one case the disclosure was the subject of an internal review, which resulted in workplace guidance and training being given to personnel involved in the handling of information from the Register for the purposes of the court process.

In response to the seven cases, the Registry has put in place a cross-checking mechanism whereby all compliance managers in the field have been made aware that intended written disclosures of information from the Register must be checked by a second person prior to sending.

IBAC is satisfied that this process will act to mitigate the risk of unauthorised disclosures as occurred in the noted cases.

[43] *Sex Offenders Registration Act 2004* (Vic) pt 3 div 10.
[44] *Sex Offenders Registration Act 2004* (Vic) s 61A(2).
[45] *Sex Offenders Registration Act 2004* (Vic) s 61C.

IBAC sought information from the Registry to determine whether all cases had been the subject of an internal review by the Information Management and Security Division within Victoria Police. The Registry advised IBAC that the internal review process was adhered to in these cases. However, the Registry acknowledge that there is scope to improve the administrative process of recording unauthorised disclosures and subsequent notifications to track the review process and outcomes more easily.

IBAC is satisfied that the Registry has notified it as soon as practicable after becoming aware of an unauthorised disclosure and considers recommendation 6 of 2017 complete.

IBAC will continue to monitor the reviews and internal actions taken by Victoria Police for any unauthorised disclosures.

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

Information security– data breach

In May 2021, the Registry notified IBAC of the self-identification of a large number of inadvertent disclosures made through the family violence reporting portal. The Registry identified an organisational technology systems and practice issue which led to the unintentional disclosures of the RSOs' status to parties external to Victoria Police.

Given the sensitive nature of the disclosure, Victoria Police implemented several risk mitigation strategies to contain the information and sought advice from the Victorian Government Solicitors Office (VGSO) on any further actions to be taken in response to the breach as well as any notification requirements. The Registry informed IBAC that Victoria Police's position is that existing safeguards, such as those in privacy and other legislation imposing confidentiality obligations on agencies, as well as the required adherence to security policies, sufficiently protects the information from unauthorised on-disclosure by relevant personnel outside Victoria Police.

The Registry informed IBAC that Victoria Police determined that there was no requirement to inform RSOs of the disclosure unless the breach was likely to result in serious harm. Consequently, Victoria Police conducted a risk assessment and found that the risk of harm was minimal or very remote.

Additionally, the Registry notified the detail of the unauthorised disclosures to the Office of the Victorian Information Commissioner (OVIC) who did not provide any advice beyond that already implemented by the Registry.

Overall, the Registry assessed its legislative compliance obligations pertaining to data breaches, and conducted relevant risk assessments and audits which did not identify any adverse outcomes as a result of the data breach.

Further, the Registry informed IBAC that it had implemented a number of process changes to capture potential unauthorised disclosures through the relevant portal. These include automated notifications for review and subsequent approval, removing the use of terms which identify the status of a RSO in the relevant system outside of the Registry and broad network notifications to ensure relevant personnel are made aware of this change, internal monthly audits, a new E-learning package for police, an enhanced Compliance Manager Training course that includes an overview of the Act, and in particular disclosure provisions. Further, proposed IT solutions include changes to the relevant software to automatically scan referral narratives for key words that indicate a member may be about to disclose a RSO's status to a third party.

IBAC's next inspection will focus on the above systems and process changes to determine the implementation status of all notified updates to process and procedures, as well as the effectiveness of what are extremely important risk mitigation strategies to ensure data breaches of this type are avoided in future.

Compliance assessment: In relation to Victoria Police's obligations pertaining to disclosure of personal information in the Register, in relation to the unintended disclosures via use of the portal system outside of the Registry **Not Compliant.** However, IBAC notes that since the unintended unauthorised disclosures involving the portal, Victoria Police has taken substantial remedial action to mitigate the risk of future non-compliance with its disclosure obligations in this area.

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.[46]

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 RSOs provided it is considered appropriate to do so. This process is utilised for research purposes. Information disclosed under this section contains no identifying information.[47]

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 the publication of information of registered offenders under section 64A of the Act, the Chief Commissioner is assessed as being **Substantially Compliant**.

14 Compliance category ten - Responding to requests by RSOs

The Chief Commissioner must, on request, provide a RSO with a copy of all reportable information held on the Register in relation to that RSO as soon as practicable.[48] A RSO may request that any incorrect reportable information be amended which must be done provided that the Chief Commissioner is satisfied that the information is incorrect.[49]

During the 2019 inspection, IBAC officers reviewed three files where a RSO had made a request.

In two of the three instances, the copies of the RSO request did not appear to be on file. IBAC officers were not able to verify when the requests were made and therefore could not assess whether the request was complied with within the required timeframe.

Victoria Police informed IBAC that the Registry has developed and embedded a process detailing how a request by a RSO for their reportable information is handled to ensure the appropriate information is captured. IBAC will review this process in detail at the next inspection.

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 Substantially **Compliant**.

[46] *Sex Offenders Registration Act 2004* (Vic) s 63(2).
[47] *Sex Offenders Registration Act 2004* (Vic) s 64A.
[48] *Sex Offenders Registration Act 2004* (Vic) s 66.
[49] *Sex Offenders Registration Act 2004* (Vic) ss 66(3), 66(4).

Conclusions

Governance

During the inspection IBAC officers were briefed on the Registry's governance arrangements. IBAC is satisfied that there is an effective framework for managing the Registry's governance and operational issues within Victoria Police.

Resourcing

IBAC officers were given a comprehensive briefing on the resourcing for the Registry, which has been impacted by the introduction and expansion of relevant legislation as set out in this report. The Registry has also seen an increase of 1990 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 meetings 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.



Stephen Farrow
Acting Commissioner

16 June 2023

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