RESEARCH

Victoria Police's responses to IBAC's recommendations

December 2023

Special report

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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Letter of Transmittal

To
The Honourable President of the Legislative Council
and
The Honourable Speaker of the Legislative Assembly

Special report on *Victoria Police's responses to IBAC's recommendations*

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's special report on *Victoria Police's responses to IBAC's recommendations*.

IBAC's findings are contained in this report.

Yours sincerely



Stephen Farrow
Acting Commissioner
Independent Broad-based Anti-corruption Commission

1 Executive summary

1.1 Reasons for this special report

As a result of investigations, research, and audits the Independent Broad-based Anti-corruption Commission (IBAC) makes recommendations to Victoria Police to address and prevent police misconduct and corruption.

This special report is an opportunity to increase transparency and accountability around Victoria Police's responses to recommendations and signals IBAC's intention to report on them on a regular basis.

In developing this special report, IBAC analysed how Victoria Police responded to 104 recommendations made by IBAC following investigations, in special reports, and in research and audit reports between January 2016 and March 2022.[1] [2] IBAC last publicly reported on recommendations made to Victoria Police in 2015 in its special report on police oversight.[3]

This report examines:

- whether Victoria Police accepted or rejected IBAC's recommendations
- whether Victoria Police implemented the recommendations it accepted
- timeliness, including the time taken for Victoria Police to respond to IBAC and implement recommendations
- discipline recommendations, including what disciplinary or management action Victoria Police took against officers
- the systemic or organisational misconduct risks targeted by IBAC's recommendations, for example, conflicts of interest.

This report also draws attention to systemic and organisational police misconduct[4] risks which remain ongoing.

1.2 Key findings about recommendations to Victoria Police

- Victoria Police accepts and implements over 90 per cent of IBAC's recommendations.
- Half of IBAC's investigations involving Victoria Police led to discipline recommendations.
- Half of recommendations that related to taking disciplinary or management action against officers were made in part because officers engaged in 'obscuring behaviours', like concealing or failing to accurately disclose misconduct.
- Improving how Victoria Police handles complaints and undertakes its own misconduct investigations was the issue targeted by the most recommendations.
- Use of force reporting, conflicts of interest, and note-taking and statement making remain systemic and organisational police misconduct risks.
- Victoria Police is usually late when reporting on the implementation of recommendations to IBAC.
- Most recommendations were implemented within two years.

1 Where the due date for implementation or a response was before 1 November 2022.
2 IBAC also reviews the adequacy of Victoria Police misconduct investigations and makes requests to Victoria Police under section 160 of the IBAC Act. Requests arising from these reviews were out of scope.
3 www.ibac.vic.gov.au/publications-and-resources/article/special-report-concerning-police-oversight
4 'Police personnel misconduct' is defined in section 5 of the IBAC Act. For ease of reference, this special report refers to this conduct using the term 'police misconduct'.

1.3 IBAC's recommendation functions and powers

Under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) IBAC can make recommendations to Victoria Police (and the public sector generally).

Section 15 of the IBAC Act gives IBAC education and prevention functions which include making recommendations to the public sector.[5] Under the IBAC Act, this includes Victoria Police.

IBAC also has recommendation powers which relate specifically to investigations. These are set out in section 159 of the IBAC Act and permit IBAC to make recommendations at any time in relation to a matter arising out of an investigation about any action IBAC considers should be taken.

Victoria Police is not required to accept, implement, or publicly report on IBAC's recommendations. However, recommendations made under section 159 of the IBAC Act require Victoria Police to give a report to IBAC if it does not intend to adopt a recommendation stating the reason why.[6]

There are limits to IBAC's recommendation powers under section 159 of the IBAC Act. Unless a section 159 recommendation is contained in a special or annual report, it must be made in private. IBAC can make previously private recommendations public if IBAC considers there has been failure to take appropriate action in relation to a recommendation.[7] Analysis of such private recommendations has informed this report's findings, but they are not quoted in this report.

In its current form, the IBAC Act limits IBAC's ability to hold agencies, including Victoria Police, publicly accountable. IBAC is seeking legislative change to permit greater visibility of all its recommendations.

IBAC is seeking legislative change to permit greater visibility of all its recommendations.

5 Sections 15(5) and 15(6)(b) of the IBAC Act.
6 Section 161(b) of the IBAC Act.
7 Section 159(5) of the IBAC Act.

2 Introduction

As Victoria's independent police oversight body, IBAC is responsible for identifying, exposing, and investigating police misconduct. IBAC also has education and prevention functions. There are several ways that IBAC meets its responsibilities and functions including:

- receiving complaints/notifications about conduct of police personnel (including complaints received by Victoria Police, which are mandatorily reported to IBAC)
- assessing allegations about police misconduct to determine which are to be investigated by IBAC, referred to Victoria Police for action, and which are to be dismissed
- reviewing the outcomes of Victoria Police's misconduct investigations to check they have been investigated thoroughly and fairly. Its reviews may result in requests for Victoria Police to strengthen its policies and procedures to address systemic police misconduct issues and risks and improve its conduct of internal investigations
- conducting 'own-motion' investigations (i.e., IBAC does not need to have received a complaint) including a 'standing own-motion' in relation to deaths or serious injuries after police contact
- conducting investigations into police misconduct, including serious or systemic police misconduct, which may involve holding private or public examinations
- monitoring and ensuring Victoria Police acts in response to IBAC's investigations and reviews
- auditing how Victoria Police handles complaints
- overseeing Victoria Police's compliance with five acts including the *Crimes Act 1958*, *Drugs Poisons and Controlled Substances Act 1981*, *Sex Offenders Registration Act 2004*, *Witness Protection Act 1991*, and the *Firearms Act 1996*. Commencing 30 September 2024, IBAC will also assume a compliance and reporting function in relation to Victoria Police's registration and management of human sources
- developing and presenting prevention education and training for Victoria Police officers and employees.

What is police misconduct?

In Victoria, police misconduct means conduct by a police officer or protective services officer (PSO) which:

- constitutes an offence punishable by imprisonment; or
- is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- is disgraceful or improper (either on or off duty).

In relation to public servants, which includes police custody officers, employed by Victoria Police and police recruits, misconduct means conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it.

Examples of police misconduct include:

- using excessive force
- unauthorised access, use, or disclosure of Victoria Police information
- drink driving or traffic offences
- accepting bribes
- not declaring or managing conflicts of interest
- stalking, family violence, assault, sexual misconduct, and sexual assault
- human rights breaches
- failing to follow Victoria Police policies.

2.1 Types of recommendations IBAC can make

Investigations

IBAC's work includes undertaking investigations into allegations of police misconduct. In response to these investigations, IBAC can make recommendations under section 159 of the IBAC Act.[8] These recommendations can be made at any time in relation to a matter arising out of an investigation about any action IBAC considers should be taken.

Unless these recommendations are made in a special or annual report, they must be made in private. However, IBAC can make these recommendations public, if it considers that there has been a failure to take appropriate action.

Research and audit reports

IBAC's work also includes developing and publishing research and audit reports. Research reports tend to focus on an identified systemic or organisational misconduct risk, rather than a specific investigation. For example, IBAC has published research reports on protective service officers and drink driving by police officers.

In recent years, IBAC has focused on Victoria Police's complaint handling processes in what it refers to as 'audit reports'. These reports have audited samples of complaints investigated by Victoria Police to assess how they have been handled.

Recommendations made in research and audit reports are not the same as recommendations made in response to investigations. Instead, these recommendations are made under IBAC's education and prevention functions under section 15 of the IBAC Act.[9] Unlike section 159 recommendations, recommendations made under section 15 do not require Victoria Police to report to IBAC if it does not intend to take action in response to a recommendation.

IBAC's analysis of Victoria Police's compliance with recommendations in this special report does not distinguish between recommendations made under section 159 (either privately or publicly) and recommendations made in a research or audit report.

2.2 IBAC makes recommendations to address, reduce and prevent police misconduct

IBAC's recommendations aim to address, reduce, and prevent police misconduct. IBAC does this by identifying systemic and organisational risks that have contributed, or could contribute, to police misconduct. IBAC then develops recommendations in response to those risks. Often this means recommending that Victoria Police amend or develop policies, processes, training, or systems.

Regarding investigations, IBAC may also recommend that Victoria Police take disciplinary action against officers.

Victoria Police generally accepts and implements IBAC's recommendations although it is not obligated to.[10] IBAC's recommendations have led to improvements across a wide range of Victoria Police's activities, including drug testing of officers, access to police information, ensuring individuals are lawfully detained, and providing oleoresin capsicum (OC)[11] spray aftercare.

2.3 IBAC's legislation limits what it can say publicly about recommendations arising from investigations

Section 159 of the IBAC Act states that a recommendation arising out of an investigation which is not contained in a special report that has been tabled in Parliament, or in an annual report, must be made in private. However, the IBAC Act does allow IBAC to make public a recommendation where it considers that there has been a failure to take appropriate action in relation to the recommendation.[12]

Many of IBAC's investigations are not the subject of special reports for a range of reasons, including where the publication of the findings might not be in the public interest or there may be witness wellbeing considerations. As a result, most of IBAC's recommendations are made in private to Victoria Police (and other agencies).

IBAC has previously sought legislative reform to allow it to publish private recommendations outside of a special report.

8 Of the 104 recommendations considered by this report, 77 were made under section 159 of the IBAC Act.
9 Of the 104 recommendations considered by this report, 27 were made under section 15 of the IBAC Act.
10 In the case of recommendations made under section 159 of the IBAC Act, if Victoria Police does not adopt the recommendation, it must give a report to IBAC on the reason for not doing so, per section 161 of the IBAC Act.
11 Also known as capsicum spray or pepper spray.
12 Section 159(5) of the IBAC Act.

3 Key findings from IBAC's review

3.1 Victoria Police accepted and implemented most of IBAC's recommendations

Victoria Police accepted 92 per cent of the 104 recommendations made between January 2016 and March 2022.[13]

Victoria Police partially accepted four per cent of recommendations and rejected three per cent of recommendations. The predominant reason Victoria Police either partially accepted or rejected recommendations was because it considered that the current policy settings were appropriate.

For example, in its audit of Victoria Police complaints handling at the regional level, IBAC recommended that all formal and informal workplace guidance be recorded on subject officers' professional development and assessment plans to clearly outline performance or conduct issues and the actions taken in response to issues. Victoria Police rejected this recommendation because 'Victoria Police maintains that the Register of Complaints, Serious Incidents, and Discipline (ROCSID) is the receptacle for the recording of discipline sanctions. Each time a police officer appears before a selection panel for transfer, a copy of their probity report is made available to the employee and the selection panel. Members can then be questioned by the panel on matters or concerns arising out of that report.'

Excluding rejected recommendations and recommendations not finalised as of 1 November 2022, IBAC assessed that Victoria Police had implemented or partially implemented 98 per cent of recommendations. This high implementation rate is partly due to the work done by Victoria Police to make the required changes to relevant policies and practices, and is also a by-product of IBAC engaging with Victoria Police on some recommendations for long periods of time to ensure implementation had occurred. This often required IBAC to request further work be done on a recommendation or that more information be provided.

IBAC keeps recommendations open until a satisfactory outcome is reached. There have been two recommendations, related to disciplinary action and misconduct investigations, where IBAC determined that a satisfactory outcome was unable to be reached after Victoria Police accepted the recommendations. The recommendations were determined to be not implemented and were closed.

Victoria Police accepted 92 per cent of the 104 recommendations made between January 2016 and March 2022.

13 All percentages are rounded to the nearest whole number, and this may cause some totals to not equal 100 per cent.

Table 1: Systemic and organisational misconduct risks most commonly associated with IBAC's recommendations[14] [15]

Systemic and organisational misconduct risks	Number of recommendations	Number of IBAC operations/ reports[16]
Handling of complaints and misconduct investigations (relates to handling of complaints and misconduct investigations undertaken by Victoria Police)	37	15
Disciplinary, management or criminal action and complaint histories (includes managing officers with multiple complaints, complaint histories being supplied for short-listed candidates, and IBAC's discipline recommendations)	35	23
Information management (relates to information security, recording and sharing for genuine purposes)	17	11
Legal obligations (includes any obligation under an Act, such as reporting misconduct, disclosing evidence, complying with human rights)	17	10
Obscuring behaviours (includes failure to properly investigate, interfering in a misconduct investigation, failing to report misconduct, issues with statement and note-taking)	17	11
Human rights (includes human rights training or focus on the Charter of Human Rights and Responsibilities in other training or guidance and policies and processes being consistent with the Charter)	15	11
Conflicts of interest (relates to the independence of police investigators or other officers in complaint or oversight investigations)	13	8
Arrests and custody management (relates to officers' actions when a person is arrested or in custody, such as undertaking and recording risk assessments, taking firearms into cells, using excessive force during arrest, failing to advise a person of the reason for their arrest)	13	10
Force (includes use of excessive force by officers and operational safety and tactics training)	13	10
Note-taking and statements (includes giving a false, inaccurate, or misleading statement, refusing to give a witness statement to IBAC, or misrepresenting notes as contemporaneous)	13	10
Use of force forms (relates to the accuracy of, or issues with, forms completed by officers after an incident where force was used)	11	7
Searches and warrants (relates to policies and processes regarding searches and execution of warrants, including officers' understanding and compliance)	6	3
Body-worn cameras and other video recording (includes officers activating their body-worn cameras, video recording of search warrants, surveillance in interview rooms)	6	5

Source: IBAC

14 This table does not include all identified systemic and organisational misconduct risks.
15 One recommendation can relate to multiple systemic and organisational misconduct risks.
16 Refers to the number of operations or reports the recommendations are connected to. For example, there were 37 recommendations that related to complaint handling and misconduct investigations which were connected to 15 operations and reports.

The following examples demonstrate the types and breadth of the recommendations Victoria Police has implemented following an IBAC investigation or report.

Improving Victoria Police's illicit drug testing regime

In 2016, IBAC published its special report on illicit drug use by Victoria Police officers.[17] IBAC found that, at the time, only around five per cent of Victoria Police officers were subject to random drug testing each year, which was unlikely to have a deterrent effect. At that rate, a Victoria Police officer would only be randomly drug tested around once every 20 years. IBAC recommended that Victoria Police undertake a comprehensive review of the use of illicit drugs by its officers, including associated policies, systems, and practices to inform the development of a robust framework to prevent and detect illicit drug use, including the adequacy of the testing regime.

It was not until August 2022 that Victoria Police was able to implement the changes recommended in the special report. Victoria Police has now achieved a 30 per cent target for random alcohol and drug testing.

Making sure individuals are lawfully detained

In 2019 as part of Operation Lynd, IBAC investigated the conduct of officers involved in the arrest of an individual in Fitzroy. The individual was not informed of their rights or the reason for their arrest. IBAC found that the Critical Incident Response Team (CIRT) who performed the arrest did not have a custody handover procedure in place at the time, which contributed to officers acting inconsistently with the individual's human rights when local detectives took over.

IBAC identified that CIRT lacked a formal custody handover procedure to ensure individuals were lawfully detained and in a manner that was consistent with the Charter of Human Rights and Responsibilities (the Charter). Victoria Police advised IBAC that it had implemented a formal custody handover procedure in November 2020.[18]

Providing clear advice on using social media and detecting and investigating internet-based offending

In 2018 as part Operation Turon[19], IBAC investigated allegations that a then Assistant Commissioner had used a pseudonym to post inappropriate comments online regarding matters involving Victoria Police. IBAC substantiated the allegations that the Assistant Commissioner engaged in online trolling, both on and off duty, including in relation to matters relevant to Victoria Police and with information he obtained in the course of his duties. He resigned while under investigation.

In August 2019, IBAC made recommendations to Victoria Police including that it review the training provided to Professional Standards Command (PSC) investigators to ensure they can investigate internet-based offending fully and effectively, and review its social media policy, including the use of pseudonyms. By March 2020, Victoria Police accepted and implemented both recommendations. Enhanced training is now delivered to PSC investigators, and the social media policy now provides clear instructions and advice to employees on the risks and behavioural standards expected when using social media and addresses the use of pseudonyms.

Ensuring proper OC spray aftercare

In 2020 as part of Operation Wingan, IBAC investigated the conduct of officers involved in the apprehension of a male. During the incident, the male was sprayed with OC spray. IBAC's investigation found that Victoria Police vehicles were not equipped with sufficient water to provide the required aftercare.

In October 2022, as a result of IBAC's Operation Wingan, Victoria Police informed IBAC that it now required all primary and secondary response vehicles to carry sufficient water containers to provide proper OC spray aftercare.[20]

17 www.ibac.vic.gov.au/publications-and-resources/article/special-report-concerning-illicit-drug-use-by-victoria-police-officers
18 www.ibac.vic.gov.au/publications-and-resources/article/special-report-on-police-misconduct-issues-and-risks-associated-with-victoria-police-critical-incident-response-team
19 www.ibac.vic.gov.au/publications-and-resources/article/operation-turon-special-report-october-2021
20 www.ibac.vic.gov.au/publications-and-resources/article/special-report-on-police-misconduct-issues-and-risks-associated-with-victoria-police-critical-incident-response-team

3.2 Victoria Police is usually late when reporting on implementation

The IBAC Act only requires Victoria Police to report to IBAC in cases where it has not adopted and does not intend to adopt a recommendation arising from an investigation that has been made under section 159 the IBAC Act.

Nevertheless, IBAC almost always requests that Victoria Police report back on implementation – generally within six to 12 months of the recommendation being made.[21]

After receiving an implementation report, IBAC assesses whether the recommendation was implemented, and may seek more information or further updates from Victoria Police.

A recommendation is closed by IBAC when further updates are no longer required from Victoria Police (usually because IBAC has assessed it as being implemented).

While Victoria Police accepted and implemented most of IBAC's recommendations, 90 per cent[22] of first implementation reports were late. While implementation reports for 14 recommendations were less than two weeks overdue, implementation reports on most recommendations were between 25 and 100 days overdue. For 21 recommendations they were more than 150 days overdue.

Victoria Police requested an extension on a first implementation report for 20 per cent of recommendations. Of these, 55 per cent were overdue past their extension due date, ranging from seven to 130 days.[23]

Reasons for delays varied and included:

- Victoria Police determining more work on the response was required
- approvers within Victoria Police being on leave
- other Victoria Police work receiving priority (for example, the COVID-19 response).

Table 2: Overdue first implementation reports

Days first implementation report overdue	Number of recommendations	Number of operations/ reports
1-10	14	5
11-50	24	8
51-100	28	7
101-200	11	3
201+	10	3
Total	**87**	**26**[24]

In November 2020, IBAC implemented a process for managing overdue responses to recommendations, including sending a reminder a month before the due date and further engaging with Victoria Police as soon as progress response or final report becomes overdue. In 2020, the average length of time that Victoria Police was late in providing a progress or final report was 129 days. In 2021, this decreased to 30 days. IBAC is continuing to work with Victoria Police to improve timeliness of responses.

21 IBAC requests Victoria Police report back to IBAC on the implementation of recommendations regardless of whether a recommendation is made following an investigation, a research or audit report, or made in public or private.
22 IBAC did not include a date for a response regarding seven recommendations. Recommendations Victoria Police rejected are included in this figure because Victoria Police provided its decision not to accept in the first implementation report.
23 At 1 November 2022, one recommendation was three months overdue on its extension due date, but a response had not been provided by the time of the analysis and therefore is not captured in this range.
24 The same operation or report may be included more than once in this total depending on when responses to individual recommendations were received.

Table 3: Overdue recommendations by year

Year recommendation made [25]	Number of overdue recommendations[26]	Average days overdue
2016	19	192
2018	25	43
2019	23	83
2020	12	129[27]
2021	9	30[28]

Forty-five per cent of recommendations were closed by IBAC after receiving Victoria Police's first implementation report, usually because the recommendation had been implemented.[29]

Eighty per cent of recommendations were closed by IBAC within 12 months of the due date for Victoria Police's first implementation report.[30] Therefore, most recommendations were implemented within 18 months to two years.[31]

3.3 Around half of IBAC's investigations into Victoria Police led to discipline recommendations

IBAC has the power to charge officers when it believes an offence has been committed. When an IBAC investigation makes a finding of police misconduct that is a breach of discipline as set out in section 125 of the *Victoria Police Act 2013* (Victoria Police Act), IBAC can make a recommendation to the Chief Commissioner of Police that they consider taking disciplinary action against the relevant officers.

There is no limitation as to what IBAC can recommend under section 159 of the IBAC Act following an investigation (except that it relates to a matter arising out of an investigation). However, disciplinary recommendations are affected by section 129 of the Victoria Police Act which requires the Chief Commissioner of Police, or their authorised delegate, to inquire into a breach of discipline before determining an outcome. IBAC does not have power over whether a discipline or management action is administered or what that action is.

As part of the Victorian Government's current systemic review of police oversight, IBAC submitted that the Victoria Police Act should be amended to enable the Chief Commissioner of Police to lay disciplinary charges upon receiving a recommendation to do so from IBAC, rather than requiring the Chief Commissioner to first conduct another inquiry and repeat IBAC's work.

This special report examined 33 IBAC operations.[32] IBAC recommended that Victoria Police take, or consider taking, disciplinary or management action 22 times across 19 operations. These recommendations were made in relation to 43 officers and two public servants employed by Victoria Police. The ranks of officers spanned the organisation, ranging from constable to assistant commissioner.

Covering up wrongdoing or 'obscuring behaviours' were associated with 50 per cent of discipline recommendations.

25 IBAC did not make any recommendations to Victoria Police in 2017. 2022 is not included because the scope of the data does not capture a full calendar year.
26 Based on the due date of the implementation report.
27 Averaged over 11 recommendations because a response for one of the 12 recommendations had not been received.
28 Averaged over eight recommendations because a response for one of the nine recommendations had not been received.
29 Excludes recommendations not finalised by 1 November 2022.
30 Excludes recommendations not finalised by 1 November 2022.
31 From the date IBAC made the recommendation to Victoria Police to the date IBAC considered the recommendation closed.
32 This included seven operations that featured in special reports: Dawson, Gloucester, Ross, Turon, Apsley, Hotham, and Yarrowitch.

What are obscuring behaviours?

Obscuring behaviours refer to actions by officers who are directly involved in, or are witnesses to misconduct, and conceal or fail to accurately disclose that misconduct. They can also refer to instances where supervisors or other officers fail to rigorously inquire about, report, investigate, or actively conceal misconduct. Obscuring behaviours can include issues with notetaking or statement making, such as minimising or not recording an officer's actions, or investigations undertaken by Victoria Police where alleged conduct is not rigorously investigated.

Other issues most associated with discipline recommendations included:[33]

- excessive use of force (nine recommendations)
- issues with notetaking and statement making (nine recommendations)
- complaint or misconduct investigations undertaken by Victoria Police (eight recommendations)
- arrests and custody management (eight recommendations).

Of the 22 discipline recommendations, Victoria Police took some action in relation to 15 recommendations. Multiple officers can be named in a discipline recommendation however Victoria Police might determine to only take action against some, or none, of the officers. The main reasons Victoria Police does not take disciplinary or management action when recommended by IBAC is because after conducting its own investigation Victoria Police makes different findings to IBAC about the conduct or because the officer resigned.

The most common type of disciplinary or management action taken by Victoria Police was delivering workplace guidance to the relevant officers (eight recommendations). Two recommendations resulted in admonishments, one recommendation resulted in dismissal, and one recommendation resulted in criminal charges.

What is workplace guidance?

Workplace guidance (also known as management intervention) is education, advice, or guidance provided by a supervisor to address a performance issue. It is a development action, rather than a disciplinary one.

What is an admonishment?

An admonishment, or admonishment notice, is an intervention that may be used when an officer commits a breach of discipline. Admonishment notices essentially serve as formal warnings. They do not lessen or substitute the need for necessary management intervention or further discipline action.

Of the 22 discipline recommendations, Victoria Police took some action in relation to 15 recommendations.

33 Most recommendations are associated with multiple systemic and organisational misconduct risks.

3.4 Many of IBAC's recommendations aim to improve Victoria Police's handling of complaints and misconduct investigations

A third of IBAC's recommendations to Victoria Police targeted systemic and organisational misconduct risks associated with the handling of complaints and misconduct investigations.

Victoria Police is required to conduct investigations into allegations or complaints of police misconduct made either directly to it or referred to it by IBAC. Anyone can make a complaint to Victoria Police about any type of police misconduct. Most complaints made to Victoria Police are referred to its regions, departments, and commands for investigation. Professional Standards Command generally investigates the most serious and complex matters.

Part of IBAC's police oversight role is to ensure complaints investigated by Victoria Police are handled appropriately. IBAC does this directly through its audits of Victoria Police's handling and reviews of complaints as well as through its investigations.[34]

Examples of recommendations IBAC has made to Victoria Police to address risks associated with its complaint handling audits and misconduct investigations are set out below.[35]

- Operation Ross (2016) involved incidents of excessive use of force by officers against several people at Ballarat police station. IBAC's recommendations included that 'Victoria Police review and strengthen its approach to managing officers who have multiple complaints or concerning patterns of complaints, including by ensuring that a subject officer's full complaint history is attached to a complaint file prior to allocation to an investigator and requiring complaint investigators to consider whether a possible pattern of conduct has been identified and if so, recommend appropriate intervention action'. [36]
- Operation Tia (2018) involved a police employee who had disclosed police information without authorisation.[37] IBAC identified vulnerabilities in relation to the need for Victoria Police to introduce a formal and documented risk assessment process for instances when an employee is charged with criminal offences and/or for when Professional Standards Command employees are under investigation.
- IBAC's audit of complaints investigated by Professional Standards Command (2018) recommended that 'Victoria Police ensures policy and procedural improvements identified by investigators are formally recorded as recommended action and implements measures to share those learnings across the organisation'. [38]

34 IBAC also conducts reviews of Victoria Police misconduct investigations as a matter of routine and makes requests for action to Victoria Police under section 160 of the IBAC Act. However, these reviews and requests were outside the scope of this report.
35 IBAC most recently made further recommendations on improving Victoria Police's handling of complaints and misconduct investigations in the audit *Victoria Police's handling of complaints made by Aboriginal People* in May 2022 – however this audit was out of scope of this report.
36 www.ibac.vic.gov.au/publications-and-resources/article/investigation-summary---operation-ross
37 www.ibac.vic.gov.au/publications-and-resources/article/annual-report-2018-19
38 www.ibac.vic.gov.au/publications-and-resources/article/audit-of-complaints-investigated-by-professional-standards-command-victoria-police

3.5 Use of force reporting, conflicts of interest, and notetaking and statement making are ongoing misconduct risks

Use of force reporting, conflicts of interest (including declarable associations), and notetaking and statement making remain systemic and organisational misconduct risks because of their pervasiveness, impact on police work and the community, and connection to other behaviours that can perpetuate misconduct and corruption. They also remain ongoing areas of interest for IBAC because Victoria Police has not always fully accepted or implemented recommendations related to these issues.

Use of force reporting

Victoria Police collects data about the use of force by police officers. Victoria Police requires police officers who use force to complete a form which records information about the force police officers have used in an incident.[39] The forms also collect information about force used against police officers.

The forms are complex and difficult to understand and complete. IBAC has identified misconduct risks regarding Victoria Police's use of force reporting, namely:

- police officers not reporting their use of force, or
- inaccuracies when police officers do report their use of force.

This obscures whether officers used force during an incident and the level of force used. It limits IBAC's and Victoria Police's capacity to analyse trends, identify problem areas, and initiate misconduct prevention measures.

IBAC has made five recommendations to Victoria Police arising from five separate investigations to improve its use of force reporting between November 2018 and July 2022.

IBAC identified that there were areas for improvement regarding:

- training and education for officers to ensure they understood their obligations to fully complete use of force forms
- policies and procedures related to when and how force should be reported and by which officers
- the use of force reporting form itself in relation to improving data accuracy.

In 2022, Victoria Police advised IBAC that a new use of force database was being developed in conjunction with its state-wide distribution of conducted energy devices (tasers) to all officers, following a review of its use of force reporting system. It is anticipated that the new database will operate from October 2024 and training will be developed to support its implementation.

The new system will be electronic and completed by police officers remotely, without having to return to a police station. Victoria Police anticipates that a shift from a paper-based system to an electronic system will improve the quality of use of force reporting.

IBAC considers that better quality use of force data will allow Victoria Police to identify trends and problem areas more easily, and initiate misconduct prevention measures.

Conflicts of interest and declarable associations

Conflicts of interest arise when a private interest or relationship conflicts with an individual's public duties. They are not inherently indicative of misconduct. However, the risk of police misconduct stems from failures to properly and actively identify, declare, and manage potential, perceived, and actual conflicts.

Declarable associations are a type of conflict of interest. They are any association that:

- is incompatible with the role of the employee and Victoria Police in serving the community
- may reasonably give rise to a perception that an employee is not upholding their obligations as a Victoria Police employee
- may reflect adversely on the employee's standing and reputation in the eyes of the community.

39 Victoria Police, *Victoria Police Manual – Operational safety and the use of force* (Policy, June 2020) 7-9 [10].

IBAC made 13 recommendations in relation to conflicts of interest and declarable associations across eight operations and audit reports. These recommendations were wide ranging from the management of misconduct investigations, security clearances, and processes associated with declarable associations. They also included six recommendations regarding discipline action or further investigation of officers regarding conflicts of interest.

Officers not declaring conflicts of interest before investigating complaints against other officers

In 2016, IBAC published its first audit on how Victoria Police's systems to handle complaints about officers were working.[40] The scope of the audit included a focus on identification of possible conflicts of interest between investigators and officers being investigated (subject officers).

IBAC identified that the investigator was not appropriate in 17 per cent of the files examined and that most of the time, Victoria Police was not identifying conflicts of interest. Only two per cent of audited files had conflicts of interest declaration forms attached. As a result, IBAC recommended that Victoria Police 'require a Victoria Police conflict of interest declaration (form 1426) to be completed for all oversight and investigation files to ensure conflicts of interest are explicitly addressed and managed'.

Victoria Police accepted the recommendation and informed IBAC that before a complaint investigation is assigned, supervisors must approve the conflict of interest form and in the event of an investigation proceeding where a conflict is declared, explain how it will be managed.

IBAC's subsequent audits identified that there has been an increase in conflict of interest forms being used, although problems associated with conflicts of interest persist.

In its most recent audit of Victoria Police's handling of police complaints made by Aboriginal people, published in May 2022, IBAC found that conflict of interest declaration forms were attached to 84 per cent of files, but found deficiencies in how Victoria Police identified and managed investigators' conflicts of interest in 42 per cent of these files.[41] These issues included:

- investigators working at the same station or in the same police service area as the subject officers
- conflicts being declared, but no action being taken to remove or manage the conflict
- officers not declaring a conflict, despite other material on the file suggesting a conflict existed.

Victoria Police accepted IBAC's recommendation to strengthen training and guidance given to complaint investigators on managing conflicts of interest.[42]

In August 2022, Victoria Police implemented an updated conflicts of interest policy which strengthens requirements to identify, manage and review conflicts of interest. IBAC will continue to make recommendations regarding conflicts of interest where it considers they are required.

Notetaking and statement making

Notetaking or statement making vulnerabilities include several improper practices by officers that can occur after an incident or during an investigation. Examples of such practices include:

- wrongly representing notes as contemporaneous
- removing notes from diaries or daybooks
- making statements in collaboration with another officer and potentially contaminating statements
- failing to make detailed and accurate statements or making a false statement.

IBAC has made 13 recommendations in relation to notetaking and statement making across 10 investigations and reports. Nine of these recommendations related to disciplinary or management action.

Examples of recommendations that sought systemic and organisational change are set out on page 18.

40 www.ibac.vic.gov.au/publications-and-resources/article/audit-of-victoria-police-complaints-handling-systems-at-regional-level p36-37
41 www.ibac.vic.gov.au/article/ibac-to-audit-victoria-police-handling-of-complaints-by-aboriginal-people p11
42 The recommendations from the *Audit of Victoria Police's handling of complaints made by Aboriginal people* are out of scope of this review.

Officers engaging in improper evidentiary and disclosure practices

In July 2020, IBAC tabled its special report on Operation Gloucester.[43] IBAC investigated improper evidentiary and disclosure practices in relation to the Victoria Police investigation of the murders of Sergeant Gary Silk and Senior Constable Rodney Miller. Operation Gloucester identified improper practices used by some police officers with respect to statements and notetaking which did not comply with proper evidentiary and disclosure practices.

As part of its recommendations, IBAC recommended that:

1. Victoria Police reviews and amends the Victoria Police Manual (VPM) and its training to ensure police officers fully understand and comply with their obligations regarding evidence gathering and disclosure practices in investigations of criminal conduct, with a focus on statements and record keeping. The VPM and training should include the elements of proper practices in the making, taking and disclosure of a witness statement, and contemporaneous notes. Additionally, Victoria Police's review should consider:

- the guidance and direction provided in other jurisdictions with a view to identifying other good practices
- officers' obligations regarding evidence and disclosure under the Criminal Procedure Act 2009
- how to most effectively communicate to all officers, including those who do not receive regular formal training, the obligations in recording evidence and the obligations of disclosure
- the role of supervising and senior officers in ensuring officers understand and comply with their evidentiary and disclosure obligations, and how this may be improved to address the concerns identified by Operation Gloucester
- how to achieve understanding by officers that non-compliance with the rules of evidence and the obligations of accurately recording and disclosing relevant evidence may affect the administration of justice and constitute misconduct or corruption.

2. Twelve months after amending its policies, procedures and training to ensure police officers understand and comply with their evidentiary and disclosure obligations, Victoria Police conduct an audit of statement making, taking and disclosure practices, and record keeping practices across the organisation to assess compliance.

Between July 2021 and February 2022, Victoria Police provided responses to the first recommendation, informing IBAC that it had:[44]

- established a steering committee to oversee the implementation of the recommendations
- the Chief Commissioner and Assistant Commissioner Professional Standards Command sent organisation-wide emails reinforcing that improper practices must cease
- drafted a Chief Commissioner's Instruction relating to requirements for statement taking
- updated a Body Worn Camera policy document and published it in the Victoria Police Manual
- assessed the extent to which the Operation Gloucester policy review work overlaps with the findings from the Royal Commission into Police Informants
- updated existing or developed new training
- obtained subject matter expert advice from the Victorian Government Solicitors Office and engaged other jurisdictions both domestic and international to identify good practices and support ongoing reform.

43 www.ibac.vic.gov.au/publications-and-resources/article/operation-gloucester-special-report-july-2020
44 www.ibac.vic.gov.au/publications-and-resources/article/operation-gloucester-special-report-july-2020

4 Conclusion

IBAC's recommendations are a powerful tool to address, reduce and prevent police misconduct.

This special report demonstrates that Victoria Police implemented almost all of IBAC's recommendations made between January 2016 and March 2022. Since then, IBAC has made a further 28 recommendations to Victoria Police.[45]

While IBAC's recommendations have led to several improvements in Victoria Police policies, processes and systems to address, reduce and prevent police misconduct, there are recommendations (or parts of recommendations) that Victoria Police has chosen not to implement. IBAC maintains concerns that there are ongoing systemic and organisational risks associated with use of force reporting, conflicts of interest and declarable associations, and notetaking and statement making.

As demonstrated by the number of discipline recommendations IBAC has made regarding obscuring behaviours, there is work for Victoria Police to do to improve its overall integrity culture to ensure officers are appropriately reporting and investigating misconduct. IBAC is also seeking legislative change to enable the Chief Commissioner of Police to lay disciplinary charges upon receiving a recommendation to do so from IBAC, rather than requiring them to first conduct another inquiry.

IBAC is committed to improving community access to information about its work, particularly its recommendations. IBAC is also seeking legislative change to increase the visibility of the recommendations it makes to agencies and agencies' responses in relation to its investigations.

45 Between 1 April 2022 and 30 September 2023 IBAC made 18 recommendations under section 159 of the IBAC Act to Victoria Police and 10 recommendations pursuant to IBAC's prevention and education functions under section 15 of the IBAC Act.

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