Report to the Attorney-General

Pursuant to section 464ZP of the Crimes Act 1958 (Vic)

1 January 2023–31 December 2023

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1. Overview

1.1. Definitions

Chief Commissioner	Chief Commissioner of Victoria Police
DEC	Digital Evidence Collection
DNA person	(a) A person of or above the age of 18 years who is suspected of having committed or attempted to commit an indictable offence; or has been charged with an indictable offence; or has been summonsed to answer to a charge for an indictable offence; or (b) A child of or above the age of 15 years but under the age of 18 years suspected of having committed or attempted to commit a DNA sample offence; or who has been charged with a DNA sample offence; or has been summonsed to answer to a charge for a DNA sample offence.
DNA offence	An indictable offence or an offence specified in Schedule 8 of the Act or any offence of conspiracy to commit, incitement to commit or attempting to commit an indictable offence or an offence specified in Schedule 8.
DNA profile sample	A sample taken for the purpose of deriving a DNA profile that is either a blood sample, a sample of hair (other than pubic hair) including the root if required, a sample of saliva or a scraping taken from the mouth.
DNA sample	In this report IBAC refers to a DNA sample as being any sample taken under the Act.
DNA sample offence	Any indictable offence specified in Schedule 9 of the Act.
Forensic procedure	The taking of a sample from any part of the body, whether an intimate or non-intimate sample or any other type of sample, or the conduct of any procedure on or physical examination of the body. A forensic procedure is expressly defined to exclude the taking of DNA profile samples and fingerprints.
IBAC	the Independent Broad-based Anti-corruption Commission
Inspection period	1 January 2023–31 December 2023
Previous inspection report	IBAC's Report to Attorney-General pursuant to section 464ZP *Crimes Act 1958* (Vic) for period 1 July 2019 to 31 December 2022
Registrable offender	Subject to certain exceptions, a registrable offender is a person whom a court has at any time sentenced for a registrable offence.
Senior police officer	Victoria Police officer of or above the rank of senior sergeant
the Act	*Crimes Act 1958* (Vic)
VPFSD	Victoria Police Forensic Services Department
VPM	Victoria Police Manual – DNA profile samples

1.2. Introduction

IBAC's oversight functions are set out under section 464ZM of the *Crimes Act 1958* (Vic) (the Act) and relate to the taking of DNA profile samples and authorisations given by a senior police officer. IBAC's power under section 464ZO of the Act is to inspect the records of Victoria Police in relation to the carrying out of their functions and powers for the taking of DNA profile samples, and to determine the extent of compliance by Victoria Police with these powers.

IBAC also reviews the data provided to IBAC by the Chief Commissioner of Police (Chief Commissioner) under section 464ZN of the Act to determine if the report contains the information required.

IBAC is required to provide a written report to the Attorney-General on:

- information in relation to DNA profile samples provided to IBAC by the Chief Commissioner as required by section 464ZN
- the results and recommendations arising from inspection of Victoria Police records under section 464ZO.

This report sets out:

- results of IBAC's review of the Chief Commissioner section 464ZN report for the period 1 January 2023 to 31 December 2023 (the 464ZN report)
- results and recommendations from the IBAC inspection under section 464ZO conducted in July 2024 for the period 1 January 2023 to 31 December 2023 (the inspection period).

IBAC does not have the power to inspect records or make comments regarding Victoria Police compliance with the collection, retention and destruction of non-DNA profile samples, including:

- forensic procedures
- compulsory procedures
- voluntary samples.

Where reports provided by the Chief Commissioner to IBAC include information relating to non-DNA profile samples, IBAC confined the review to determining whether the information required by the Act is included in the report.

1.3. Legislative framework

The legislative framework governing DNA sample collection is outlined in Part 3, Division 1, Subdivision 30A of the Act. The Act grants Victoria Police specific powers to take DNA samples from suspects and others involved in criminal investigations, including those suspected of indictable offences.

On 1 July 2019, a new scheme for taking DNA profile samples commenced in Victoria following amendments to the Act.[1] The Act now distinguishes between DNA profile samples and DNA samples obtained by a forensic procedure. The IBAC inspection is focused on the use of powers to take DNA profile samples by Victoria Police.

Table 1 provides an overview of circumstances under which a DNA profile sample may be taken.

Table 1: Legislative authority overview

Authority	Circumstances under which a DNA profile sample can be taken
Section 464SC(1)	DNA profile sample taken from a DNA person, aged 18 years or over, suspected on reasonable grounds of committing an indictable offence; or has been charged with an indictable offence; or has been summonsed to answer a charge for an indictable offence. A DNA profile sample can only be taken where informed consent has been given and the taking of the sample is justified in all the circumstances, or where a senior police officer gives an authorisation under section 464SE.

[1] Amendments were made under the *Justice Legislation Amendment (Police and Other Matters) Act 2019* (Vic).

Authority	Circumstances under which a DNA profile sample can be taken
Section 464SC(2)	DNA profile sample taken from a DNA person, aged between 15-17 years, believed on reasonable grounds to have committed a DNA sample offence; or has been charged with a DNA sample offence; or summonsed to answer a charge for a DNA sample offence. A DNA profile sample can only be taken where informed consent has been given by both the child and their parent or guardian, and the taking of the sample is justified in all the circumstances, or where a senior police officer gives an authorisation under section 464SE.
Section 464SE	A senior police officer may authorise the taking of a DNA profile sample from a DNA person if the officer is satisfied that the DNA person is under lawful arrest or in lawful custody and the person is not incapable of giving consent by reason of mental impairment and the DNA person (and their parent/guardian if the DNA person is a child) has refused to give consent under section 464SC.
Section 464ZFAB	A police officer can direct that a DNA profile sample be taken from a person who is a registrable offender, as defined in the *Sex Offenders Registration Act 2004 (Vic)*, if the Chief Commissioner of Police does not have a (previously obtained) sample that may be retained indefinitely.
Section 464ZFAC	A senior police officer may authorise the taking of a DNA profile sample from a person aged 18 years or over if the person is found guilty of a DNA offence, or not guilty of a DNA offence (other than an offence heard and determined summarily) because of mental impairment; it is within six months of the final determination of an appeal or the expiration of any appeal period for the DNA offence and no DNA profile sample has been obtained previously that can be retained indefinitely.
Section 464ZFAE	A senior police officer may authorise the taking of a DNA profile sample from a person who has previously provided a sample, in accordance with sections 464T, 464U, 464V, 464ZF, 464ZFAAA, 464SC, 464SE, 464ZFAB or 464ZFAC, but a forensic scientist has not derived a DNA profile.

1.4. Victoria Police governance

The Victoria Police Manual DNA Profile Samples (VPM) addresses policy and procedure pertaining to DNA profile sample powers and functions. Additionally, there are prescriptive templated forms to assist members when seeking to obtain a DNA profile sample from a person.

A Victoria Police officer may only take a non-intimate sample[2] or supervise the taking of a DNA profile sample (scraping from the mouth),[3] after completing the required training.

DNA samples and the supporting documentation are received, processed and analysed by the Biological Sciences Group within the Victoria Police Forensic Services Department (VPFSD).

PaLM system

The Police Asset and Liaison Management system (PaLM) is a property management system used by Victoria Police to manage DNA samples taken under section 464 of the Act.

Audits

The DNA Analysis Unit (DNAAU) within VPFSD is responsible for receiving and handling DNA profile samples. Legislative compliance checks are conducted by DNAAU at receipt to ensure validity prior to laboratory processing, reporting and database upload. Where anomalies are identified in the DNA profile sample supporting documentation, the DNAAU communicate directly with the investigating police officer to obtain the information required for compliance with the Act. If a DNA sample is taken that does not comply with the Act, the DNA profile sample is either quarantined to await legal advice or marked for destruction.

[2] Chief Commissioner's authorisation under *Crimes Act 1958* (Vic) s464Z dated 1 July 2019 authorises a person who has completed the Forensic Procedures training course.
[3] Chief Commissioner's authorisation under *Crimes Act 1958* (Vic) s464Z dated 1 July 2019 authorises a police officer who has completed DNA - Supervised Mouth Scraping training.

1.5. IBAC scope and methodology

Desktop review of reports under section 464ZFE and 464ZN of the Act

IBAC conducted a desktop review of the information provided in the 464ZN report. The results of the review are detailed in section 3 of this report.

IBAC further conducted a desktop review of the Chief Commissioner's report to the Attorney-General under section 464ZFE for the period 1 January 2023 to 31 December 2023 (the 464ZFE report).

Inspection powers of IBAC are limited to the taking of DNA profile samples, senior police authorisations, and authorisations under section 464ZFAE.[4]

Whilst the above reports include information regarding the taking, retention and destruction of DNA profile samples, registrable offender samples, forensic procedure samples, compulsory procedure samples and voluntary samples, IBAC's review is limited to verifying that the required information is contained in the reports.[5]

Inspection of section 464ZO records

IBAC inspected records associated with Victoria Police functions and powers pertaining to the taking of DNA profile samples. Inspection powers do not extend to assessing the merits of decisions and actions taken by Victoria Police.

The inspection focused on Victoria Police compliance with taking DNA profile samples by:

- informed consent under section 464SC
- a senior police officer authorisation under section 464SE
- a senior police officer post-conviction authorisation 464ZFAC[6]
- a senior police officer authorisation under section 464ZFAE.

Sampling methodology

The Act does not provide guidance on the sample size required for an inspection.

The sample population was divided into subcategories of DNA profile samples. Where the population of a subcategory was greater than 600 cases, 10 per cent of the subcategory was selected for testing. Where a subcategory was less than 600 cases a representative sample was selected for testing.

Children are considered a vulnerable group within the population, therefore IBAC reviewed 100 per cent of DNA profile samples taken from this group.

DNA profile samples taken during the inspection period but not received by VPFSD during the inspection period were excluded from the population.

Table 2 outlines the sample sizes selected for testing for each subcategory of DNA profile samples.

Table 2: Sample sizes

Sample obtained by	Adult	Child	Total
Informed consent under section 464SC	327	117	444
Senior police authorisation under section 464SE	60	13	73
Senior police post-conviction authorisation under section 464ZFAC	102	N/A	102
Senior police authorisation under section 464ZFAE	0	0	0
Total	**489**	**130**	**619**

[4] Section 464ZO(3) read in conjunction with the definition of 'records' in s 464ZO(1).
[5] *Crimes Act 1958* (Vic), ss 464ZN, 464ZFE.
[6] A senior police officer authorisation is defined in the Act as being an authorisation made under s 464ZFAC.

2. Summary

2.1. Level of compliance

The following ratings are used to describe the level of statutory compliance achieved by the Chief Commissioner:

- **Compliant** – full compliance with statutory requirements, or any degree of non-compliance was relatively minor and 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.
- **Unable to determine** – The necessary evidence was not available to IBAC to enable an assessment of compliance with the Act to be made in the course of the inspection.
- **Not applicable** - An invoking element in the criteria was not activated within the scope of the inspection. The element of the criteria may require that a particular activity be carried out or that an event occur before the requirement needs to be complied with.

In relation to the rating of 'unable to determine', IBAC acknowledges there may be various reasons why the information required for the inspection was not available, including where:

- insufficient relevant information is available to enable an assessment of compliance to be made
- the required records were not centrally available for inspection.

Table 3 summarises IBAC's assessment of the Chief Commissioner's compliance with the DNA profile sample scheme.

Table 3: Assessment of the Chief Commissioner's compliance

Compliance category		Compliance rating
3. The Chief Commissioner annual report to IBAC[7]		Compliant
4. Annual inspection of records relating to the taking of DNA profile samples[8]		
4.1	DNA profile samples taken with informed consent:[9]	
	• Offences	Substantially compliant
	• Nature of the procedure to be conducted	Substantially compliant
	• Grounds for taking a DNA profile sample	Substantially compliant
	• Justification	Not compliant
	• Recording consent	Substantially compliant
	• Compliance check	Not compliant
4.2	Senior police officer authorisation to take a DNA profile sample from a DNA person who has refused to provide informed consent:[10]	

[7] *Crimes Act 1958* (Vic), s 464ZN.
[8] *Crimes Act 1958* (Vic), s 464ZO(3).
[9] *Crimes Act 1958* (Vic), s 464SC.
[10] *Crimes Act 1958* (Vic), s 464SE.

Compliance category		Compliance rating
	• Senior police officer declaration of independence	Unable to determine
	• Lawful arrest or custody requirements to give an authorisation	Unable to determine
	• Recording refusal to give informed consent	Unable to determine
	• Recording reasons why a sample should not be taken	Unable to determine
	• Recording grounds on which the authorisation is given	Substantially compliant
	• Refusal to give an authorisation	Not applicable
	• Providing a copy of the authorisation to a DNA person	Unable to determine
	• Information to be provided to the DNA person	Unable to determine
4.3	Senior police officer authorisation to take a post-conviction DNA profile sample[11]	Substantially compliant
	• Service of post-conviction authorisation	Unable to determine
4.4	Senior police officer authorisation to take a DNA profile sample from a person who has previously provided a sample[12]	Not applicable
4.5	Chief Commissioner quarterly reports to the Attorney-General[13]	Compliant

2.2. Recommendations

Based on the findings set out in this report under section 4, IBAC makes the following recommendations to ensure inspections can be undertaken with all requisite information:

Recommendation 1 of 2024: Victoria Police investigate the underlying cause of misclassifications of DNA sample authorities.

Recommendation 2 of 2024: Victoria Police consider implementing a centralised electronic records management system to store and record the taking, destruction and retention of DNA profile samples.

In finalising this report IBAC provided the Chief Commissioner of Victoria Police a copy of the draft report for review. On 4 June 2025, Victoria Police responded to the draft report and accepted recommendation 1 and rejected recommendation 2. Victoria Police advised that:

> *Extensive consideration has previously occurred under the auspices of the 'Optimising DNA Collection Project'. The project was unable to identify a single existing IT system to service the DNA collection process - short of developing a new system in its entirety. A standalone IT solution is cost prohibitive and would require integration with existing systems to ensure sustainability. Given the current fiscal environment facing Victoria Police, this is not feasible.*

Within the response, three recommendations from the previous inspection report for period 1 July 2019 to 31 December 2022 (previous inspection report) were rejected on the basis that Victoria Police does not believe implementation will result in the intended compliance uplift. Another four recommendations from the previous inspection report were rejected on the basis that implementation is not possible without an identified funding source. Details of the rejections are set out within section 2.3 as well as within the body of the report. Victoria Police noted recommendations 9, 10, 11 and 12 of 2023 are now complete. IBAC will review the acquittal of these recommendations at its next inspection.

[11] *Crimes Act 1958* (Vic), s 464ZFAC.
[12] *Crimes Act 1958* (Vic), s 464ZFAE.
[13] *Crimes Act 1958* (Vic), s 464ZFE.

2.3. Prior IBAC recommendations

IBAC reviewed the progress of the nineteen recommendations made by IBAC in past inspection reports, including one recommendation from the period 1 July 2019 to 31 December 2020[14] and 18 recommendations from the inspection period 1 July 2019 to 31 December 2022.[15]

Of the 18 recommendations made in the inspection report for period 1 July 2019 to 31 December 2022, four were accepted by Victoria Police and are currently in progress. The implementation of these recommendations will be subject to further review by IBAC in its next inspection. The remaining 14 recommendations were initially accepted in principle by Victoria Police in 2023 however, as mentioned above, during the consultation process to finalise this report, Victoria Police amended its position and rejected seven of the recommendations for the reasoning set out below:

- Recommendations 1, 3 and 7 are rejected on the basis Victoria Police does not believe implementation will result in the intended compliance uplift
- Recommendations 4, 15, 16 and 17 are rejected on the basis implementation is not possible without an identified funding source.

IBAC will continue to work with Victoria Police's Forensic Services Department to build its compliance with the Act and the DNA profile sample framework.

Table 4: Status of recommendations made by IBAC in prior reports

Recommendation	Status
Recommendation 2 of 2022: That Victoria Police include the timeframes applying to statutory destruction requirements, as applicable to the authority under which the DNA profile sample was taken, in all relevant policies, procedures and templates relating to the destruction of DNA profile samples.	In progress
Recommendation 1 of 2023: That Victoria Police update the relevant parts of the VPM to make it clear that when police officers complete or review the forms F22 and F23, they ensure that all sections of the form have been filled in and contain the relevant information as required.	Rejected
Recommendation 2 of 2023: That Victoria Police, in cases where information is found to be in error or missing from the form, ensure the issue is followed up with the relevant police officer to determine what action is to be taken to ensure the consent requirements under the Act have been complied with.	Completed
Recommendation 3 of 2023 That Victoria Police update the VPM in relation to requesting the taking of a DNA profile sample from a DNA person to include information and guidance on applying the different standards of suspicion and belief as well as establishing that there exist reasonable grounds for having reached these standards.	Rejected
Recommendation 4 of 2023 That Victoria Police implement a process: (a) to prevent the use of form F1 to obtain consent for taking a DNA profile sample; and (b) for dealing with cases where the incorrect form has been used, including assessing and mitigating identified risks associated with this practice.	Rejected

[14] Three recommendations were made by IBAC in its 2022 report with two of those recommendations acquitted during an inspection that took place in 2023.
[15] IBAC's report covering the period 1 July 2019 to 31 December 2020 was a limited inspection report solely on the 464ZN report provided by Victoria Police whist the latter report, covering the period 1 July 2019 to 31 December 2022, was a full inspection report covering all DNA profile samples taken during the period and the 464ZN reports for the period 1 January 2021 to 31 December 2022.

Recommendation	Status
Recommendation 5 of 2023 That Victoria Police take steps to: (a) ensure that superseded versions of forms are not available for use by police (b) update the VPM to emphasise that when taking a DNA profile sample by informed consent, a police officer must ensure they use the most recent version of the relevant form.	Completed
Recommendation 6 of 2023 That Victoria Police: (a) update the VPM and related procedures to prohibit the practice of entering information retrospectively into DNA profile sample forms, making it clear that once a form has been signed by a DNA person or senior police officer, no further information should be entered. (b) implement a process for dealing with cases where forms F22 and F23 have been altered post-signature of the DNA person or others, including assessing and mitigating identified risks associated with this practice.	Completed
Recommendation 7 of 2023 That Victoria Police take steps to ensure that police no longer (solely) use DEC recordings and they comply with the VPM by ensuring that forms F22 and F23 are used to seek and record informed consent given by a DNA person.	Rejected
Recommendation 8 of 2023 That Victoria Police develop a process for ensuring compliance checks are completed before being provided to VPFSD.	In progress
Recommendation 9 of 2023 That Victoria Police revise forms F24/F25 to include a declaration that the senior police officer making the authorisation has not been involved in the investigation of the offence.	In progress
Recommendation 10 of 2023 Victoria Police revise forms F24/F25 to provide for the police officer completing the form to tick or circle the relevant details regarding the DNA person's lawful arrest or custody arrangements to enable a senior police officer to determine if they are satisfied the requirements of section 464SE(1)(a) of the Act are met.	In progress
Recommendation 11 of 2023 That Victoria Police amend its process to ensure that when a police officer applies for an authorisation from a senior police officer, evidence of the DNA person's refusal to give informed consent is also provided and retained for IBAC inspections.	In progress
Recommendation 12 of 2023 That Victoria Police update its guidance documentation to provide instructions on what is required when recording on form F24/F25 as required, the response from the DNA person, their parent or guardian or their legal practitioner.	In progress
Recommendation 13 of 2023 That Victoria Police update its guidance documentation to provide instruction on what is required when detailing the grounds for granting or refusing an authorisation to take a DNA profile sample.	In progress
Recommendation 14 of 2023 That Victoria Police update its processes to ensure that the provision of an authorisation to a DNA person prior to the sample being taken, is captured and available to IBAC for inspection.	In progress

Recommendation	Status
Recommendation 15 of 2023 That Victoria Police ensure that all records, or copies of records, relating to the taking of a DNA profile sample by an authorisation given by a senior police officer are kept in a central location that will allow for access and inspection by IBAC officers.	Rejected
Recommendation 16 of 2023 That Victoria Police update the VPM, and include guidance notes on relevant forms or written procedures, requiring police to: (a) record whether a person who is the subject of a senior police officer authorisation is a relevant person. (b) ensure that a copy of the notice to attend is provided to VPFSD along with the senior police officer authorisation to ensure it is available to IBAC during an inspection.	Rejected
Recommendation 17 of 2023 That Victoria Police ensure that when an authorisation requires an affidavit of service, a copy of the affidavit is provided to VPFSD together with the authorisation and a copy of the notice to attend so that these are available to IBAC for inspection.	Rejected
Recommendation 18 of 2023 That Victoria Police put in place a process to ensure that when a sample is registered, the sample and relevant paperwork is provided to VPFSD.	Completed

3. The Chief Commissioner annual report to IBAC

The Chief Commissioner must provide a written report to IBAC as soon as practicable after 1 January but no later than 1 March in each year.[16] The report sets out information in relation to the taking and destruction of DNA profile samples for the previous 12 months.[17] The report must also include matters which the Chief Commissioner is required to report to the Attorney-General under section 464ZFE (refer to section 4.5 of this report for details).

There is some duplication of the information contained in the quarterly reports to the Attorney-General and annual report to IBAC.

Results from the review of the Chief Commissioner annual report to IBAC for the inspection period are detailed in section 3.1 of this report.

Results from the review of the Chief Commissioner quarterly reports to the Attorney-General for the inspection period are detailed in section 4.5 of this report.

3.1. Content of the Chief Commissioner annual 464ZN report to IBAC

The 464ZN report consisted of a letter attaching the following:

1. **Received report 2023**
   Forensic samples received by VPFSD in the period 1 January to 31 December 2023. Each record included a unique identifying number for the sample, the date the sample was taken, the method by which the sample was obtained, and whether the donor was an adult or child when the sample was taken.
2. **Destroyed report 2023**
   Forensic samples destroyed during the period 1 January to 31 December 2023. Each record included a unique identifying number for the sample, the date the sample was taken, the date the requirement to destroy the sample arose, the reason for the destruction of the sample, the date the sample was destroyed and the person responsible for destroying the sample.
3. **Retained report 2023**
   Forensic samples retained by VPFSD for a period of more than 12 months, as at 31 December 2023. Records included a unique identifying number for each sample and the reason the sample was retained relevant to the status of the investigation linked to the sample.

The 464ZN report was provided to IBAC within the legislative timeframe.

The statistical data in the report is set out below in sections 3.2, 3.3 and 3.4.

[16] *Crimes Act 1958* (Vic) s 464ZN(1).
[17] *Crimes Act 1958* (Vic) s 464ZN.

3.2. DNA samples taken during the inspection period

Table 5 provides information relating to DNA samples taken during the inspection period by Victoria Police that are required to be reported to IBAC.

Table 5: DNA samples taken during the inspection period

Sample obtained by	Total	Adult	Children
Informed consent (Adult section 464SC(1), Child section 464SC(2))	3949	3819	130
Authorisation made pursuant to section 464SE	160	146	14
Senior police authorisation made pursuant to section 464ZFAC	970	970	-
Authorisation made pursuant to section 464ZFAE	-	-	-
Registrable offender sample section 464ZFAB	374	374	-
Children's Court orders	6	-	6
Court orders	124	124	-
Total[18]	**5583**	**5433**	**150**

DNA samples taken but not provided to VPFSD

The investigating police officer is responsible for initial registration of the DNA sample onto PaLM. 5583 records were included in the 464ZN report. Of these, IBAC noted 578 instances where a DNA sample had been registered in PaLM but had not been received by VPFSD.

Similar issues were found in previous inspections, leading to Recommendation 18 of the previous inspection report:

- that Victoria Police put in place a process to ensure that when a sample is registered, the sample and relevant paperwork is provided to VPFSD.

In response to this recommendation VPFSD has implemented a process to monitor and follow up these unreceipted DNA samples. On a quarterly basis VPFSD generate a report from PaLM of all unreceipted DNA samples which is distributed to the relevant stations for actioning.

IBAC considers that Recommendation 18 of the previous inspection report is acquitted.

Misclassification of DNA samples

Compliance checks are conducted by DNAAU at receipt of a DNA sample. The DNA sample documentation is verified against the PaLM record for completeness and accuracy.

Of the 619 DNA samples reviewed, 22 instances were noted where the PaLM record relating to the authority under which the DNA sample was taken had been misclassified. Each instance was identified by DNAAU at receipt and IBAC was advised of these errors during the inspection.

Recommendation 1:

IBAC recommends that Victoria Police investigate the underlying cause of misclassifications of DNA sample authorities.

[18] This number includes six samples taken from children aged 10-14 years.

3.3. DNA profile samples destroyed during the inspection period

A DNA profile sample must be destroyed if:

- the DNA person has not been charged with a relevant offence 12 months after the DNA profile sample was taken
- the charge is not proceeded with
- the DNA person is found not guilty.[19]

The investigating police officer is responsible for notifying VPFSD and updating PaLM with the status of the case. VPFSD undertake the destruction of DNA profile samples held at VPFSD, based on the conditions above and advice received from the investigating police officer.

A DNA profile sample must be destroyed if one of the above conditions are met, unless an application is made by the investigating police officer to the relevant court for an order to extend the destruction period.[20]

A DNA profile sample will be destroyed if deemed to be invalid due to non-compliance with legislative requirements.

Table 6 provides data relating to the destruction of DNA profile samples required to be reported to IBAC.

Table 6: Samples destroyed by VPFSD during the inspection period

Reasons for destruction	Total
Administrative issue	61
Destruction period reached	175
Extension or retention order rejected	34
Matter not proceeded with/Person not charged	1438
Person not found guilty	280
Other	17
Total	**2005**

3.4. DNA profile samples retained during the inspection period

For adult DNA profile samples, if a court finds a person guilty or not guilty by reason of mental impairment of:

- the indictable offence in respect of which the DNA profile sample was taken
- any other indictable offence arising out of the same circumstances
- any other indictable offence in respect of which evidence obtained as a result of the DNA profile sample had probative value

then the investigating police officer must update the PaLM record to ensure that DNA profile sample obtained under sections 464SC or 464SE are retained indefinitely.

If a DNA profile sample is taken under section 464ZFAB, being from a registrable offender where the Chief Commissioner does not already have a DNA profile sample that may be retained indefinitely, then the DNA profile sample may be retained indefinitely.[21] However, if on an appeal against conviction the relevant registrable offence is quashed or set aside, then this DNA profile sample may not be retained indefinitely.[22]

[19] *Crimes Act 1958* (Vic) s 464SD(2)(h).
[20] *Crimes Act 1958* (Vic) s 464ZG(5).
[21] *Crimes Act 1958* (Vic) s 464ZFAB(7).
[22] *Crimes Act 1958* (Vic) s 464ZFAB(8).

For child DNA profile samples, an application for a court order must be made any time after a finding of guilty or not guilty by reason of mental impairment (but no later than six months after the final determination of an appeal or expiry of appeal period) of:

- the offence in respect of which the DNA profile sample was taken
- any other offence arising out of the same circumstances
- any other offence in respect of which evidence obtained as a result of the DNA profile sample had probative value.

Table 7 provides data relating to DNA profile samples held by VPFSD for 12 months or more that are required to be reported to IBAC.

Table 7: Samples retained by VPFSD for 12 months or more

Status of investigation	Total	Adult	Children
Matter before the court or warrant issued	3840	3776	64
Held conditionally pending judicial proceeding	1804	1771	33
Ongoing investigation extension sought	65	62	3
Total	**5709**	**5609**	**100**

Compliance assessment: In relation to the review of the Chief Commissioner annual report to IBAC, it is determined that the report contained the required information and is assessed as being **Compliant.**

4. Annual inspection of records relating to the taking of DNA profile samples

4.1. DNA profile samples taken with informed consent

A police officer may request a DNA person 18 years or older provide a DNA profile sample if the officer is satisfied that the taking of the DNA profile sample is justified in all circumstances and the DNA person:

- is suspected on reasonable grounds of having committed an indictable offence; or
- has been charged with an indictable offence; or
- has been summonsed to answer a charge for an indictable offence. [23]

A DNA profile sample may then be taken if the adult DNA person gives informed consent.[24]

A police officer may request a DNA person aged 15–17 years provide a DNA profile sample if the officer is satisfied that the taking of the DNA profile sample is justified in all circumstances, and the DNA person:

- is believed on reasonable grounds of having committed a DNA sample offence; or
- has been charged with a DNA sample offence; or
- has been summonsed to answer a charge for a DNA sample offence. [25]

A DNA profile sample may then be taken if the child and a parent/guardian of the child gives informed consent.[26]

A DNA person or parent/guardian will be taken to have given informed consent to a request for a DNA profile sample, if they give their consent after being informed by a police officer, in a language likely to be understood by them, of the following:

- the nature of the procedure to be conducted to take the DNA profile sample
- the purpose for which the DNA profile sample is required
- that the taking of the DNA profile sample could produce evidence to be used in a court
- that information obtained from analysis of forensic material obtained by the taking of the DNA profile sample will be placed on a DNA database and may be used for the purpose of a criminal investigation, or any other purpose for which the DNA database can be used under Subdivision 30A of the Act or the corresponding law of a participating jurisdiction
- that the sample taken will be destroyed if they are not charged with an indictable offence or a DNA profile sample offence at the end of 12 months after the DNA profile sample was taken, or if the person has been so charged but the charges are not proceeded with, or the person is found not guilty
- that they may refuse to consent to the taking of the DNA profile sample
- that if they refuse to give consent, a senior police officer may authorise the taking of the DNA profile sample.[27]

An adult must also be informed of the indictable offence they are suspected of committing, have been charged with or have been summonsed to answer. A DNA person who is a child and their parent/guardian must be

[23] *Crimes Act 1958* (Vic) s 464SC(1).
[24] *Crimes Act 1958* (Vic) s 464SC(3)(a)(i). Alternatively, a DNA profile sample may be taken from an adult DNA person if a senior police officer gives an authorisation (s 464SC(3)(a)(ii)) - see Part 2 below.
[25] *Crimes Act 1958* (Vic) s 464SC(2).
[26] *Crimes Act 1958* (Vic) s 464SC(3)(b)(i). Alternatively, a DNA profile sample may be taken from a child DNA person if a senior police officer gives an authorisation (s 464SC(3)(b)(ii)) - see Part 2 below.
[27] *Crimes Act 1958* (Vic) s 464SD(2).

informed of the DNA sample offence they are believed on reasonable grounds of having committed, have been charged with, or have been summonsed to answer.[28]

The Act requires the police officer to record the giving of the above information by audio recording, audio-visual recording or in writing signed by the DNA person. The police officer must give or send by registered post a copy to the DNA person or their legal practitioner or the parent/guardian of the child.[29]

In accordance with the VPM, police officers must use the following forms for obtaining and recording informed consent from a DNA person:

- VP Form 22 DNA Profile Sample Informed Consent – Adult (F22)
- VP Form 23 DNA Profile Sample Informed Consent – Child (F23)

The VPM states that police officers must use F22 and F23 to inform the person of the information required by section 464SD(2), and record in writing that the DNA person (and if a child, the parent/guardian) consents.

F22 and F23 set out the information to be given to a DNA person prior to them giving informed consent. The forms contain fields to record:

- the grounds for taking the DNA profile sample
- relevant offence
- personal details of the DNA person
- the basis on which the police officer is satisfied that the taking of the DNA sample is 'justified in all of the circumstances'.

Detailed findings

IBAC officers inspected 427 DNA profile sample informed consent forms (327 F22 and 100 F23) and noted 329 instances where the forms were incomplete or contained incorrect information.

Table 8 details the exceptions noted during the inspection of F22 and F23.

Table 8: Summary of exceptions noted during the inspection period

Incomplete or incorrect information	Adult	Child
Offence*	22	23
Nature of the procedure to be conducted*	13	2
Grounds for taking the sample	12	5
Justification	131	36
Recording consent	10	2
Compliance check	49	24
Total	**237**	**92**

* contain information required by the Act to be provided to the DNA person and their parent/guardian (if applicable) prior to giving informed consent.

Offences

The legislation requires that a DNA person be informed of the indictable offence (adult), DNA sample offence (child) and the nature of the procedure to be conducted before they can give informed consent.

Where the offence section of F22 or F23 is incomplete or contains an offence which is neither indictable nor a DNA sample offence, VPFSD conducts a review of Victoria Police databases to ensure a relevant offence has been linked to the DNA person. Additionally, VPFSD informed IBAC that missing information relating to the offence

[28] *Crimes Act 1958* (Vic) s 464SD(2).
[29] *Crimes Act 1958* (Vic) s 464SD(3)(a) and (b).

would likely be captured on the DEC recording. During the inspection, IBAC officers reviewed 327 F22s and found 22 instances in which no offence was recorded.

F22 and F23 are the mechanism for recording evidence of information provided to the DNA person prior to them giving informed consent. Where information is missing from the forms, it becomes unclear whether the DNA person has provided informed consent as defined within the Act. It is Victoria Police policy that F22 and F23 must be used to capture informed consent.

This issue was addressed by Recommendation 1 of 2023 made in the previous inspection report:

- That Victoria Police update the relevant parts of the VPM to make it clear that when police officers complete or review the forms F22 and F23, they ensure that all sections of the form have been filled in and contain the relevant information as required.

On 14 November 2023, the recommendation was accepted in principle by Victoria Police.

VPFSD informed IBAC that updating the VPM may not assist in ensuring that Victoria Police members complete all sections of the forms. To meet the intention of this recommendation, VPFSD is revising F22 and F23 to be more intuitive. IBAC was advised that the amendments to the forms would be completed by April 2025.

VPFSD also agreed to provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete forms.

In response to reviewing a draft version of this report, Victoria Police advised IBAC it rejects Recommendation 1 of 2023 on the basis implementation will not result in the intended compliance uplift. IBAC will continue to monitor this issue during future inspections.

DNA sample offences

During the inspection, IBAC officers reviewed 100 F23s and found 11 instances where no offence was recorded at all and 12 instances where the offence recorded on F23 was not a DNA sample offence. Further investigation of the 12 non-DNA sample offences found:

- in 11 instances VPFSD confirmed that additional offences, being at least one DNA sample offence, were linked to the child within Victoria Police databases
- one instance where the offence was not a DNA sample offence. The DNA profile sample was destroyed.

Compliance assessment: In relation to recording the indictable offence (adult) and DNA sample offence (child), the Chief Commissioner is assessed as being **Substantially compliant.**

Nature of the procedure to be conducted

To provide informed consent, the DNA person must be informed of the nature of the procedure to be conducted.[30] The two procedures able to be conducted using F22 and F23 are:

- a mouth scraping taken under the supervision of an authorised police officer
- a blood sample taken by a medical practitioner or nurse in the presence of a police officer.

The procedure to be conducted must be recorded in the relevant form by ticking a box.

For adult informed consent DNA profile samples, 13 instances were identified where IBAC was unable to determine if the DNA person had been given information on the nature of the procedure to be performed. IBAC officers noted:

- 11 instances where the police officer did not record which procedure was to be conducted on F22
- two instances where the incorrect form was used to capture informed consent.

For child informed consent DNA profile samples, two instances were identified where IBAC was unable to determine if the DNA person had been given information on the nature of the procedure to be performed. In these instances, the police officer did not record which procedure was to be conducted on F23.

[30] *Crimes Act 1958* (Vic) s 464SD(2)(b).

VPFSD informed IBAC that missing information relating to the procedure section of the forms would likely be captured on the DEC recording. IBAC has not verified the content of the DEC recording as these are retained at individual stations and the VPM states that informed consent must be recorded in writing.

Compliance assessment: In relation to recording the nature of the procedure to be conducted, the Chief Commissioner is assessed as being **Substantially compliant.**

Grounds for taking a DNA profile sample

A request by police for a DNA profile sample under section 464SC can only be made of a DNA person. A DNA person is defined as:

- a person 18 years or older who is suspected of having committed or attempted to commit an indictable offence (adult) or has been charged with an indictable offence or has been summonsed to answer for a charge for an indictable offence
- a child 15 to 18 years who is suspected of having committed or attempted to commit a DNA sample offence or has been charged with a DNA sample offence or has been summonsed to answer for a charge for a DNA sample offence.[31]

During the inspection IBAC noted:

- 12 instances where the grounds for taking the DNA profile sample were not recorded on F22
- five instances where the grounds for taking the DNA profile sample were not recorded on F23.

The Act does not define 'suspicion', 'belief' or 'reasonable grounds'.

The VPM does not provide information or guidance on the common law as it applies to distinguishing between suspicion and belief, or what is required to form a belief on reasonable grounds.[32]

This issue was addressed by Recommendation 3 of 2023 made in the previous inspection report:

- That Victoria Police update the VPM in relation to requesting the taking of a DNA profile sample from a DNA person to include information and guidance on applying the different standards of suspicion and belief as well as establishing that there exist reasonable grounds for having reached these standards.

During the inspection VPFSD stated that the different standards of suspicion and belief are covered during police officer training. IBAC has requested the relevant training material evidencing this and has not been provided with this information to date. When evidence of training is received, IBAC will reconsider the need for this recommendation.

On 14 November 2023, this recommendation was accepted in principle by Victoria Police. In response to the draft report Victoria Police advised IBAC it rejects Recommendation 3 of 2023 on the basis implementation will not result in the intended compliance uplift.

Compliance assessment: In relation to recording the grounds for taking a DNA profile sample, the Chief Commissioner is assessed as being **Substantially compliant.**

Justification

The taking of a DNA profile sample must be justified in all the circumstances.[33] The VPM states the justification must be recorded on F22 and F23.

For adult informed consent DNA profile samples, testing identified 131 instances where the justification to take a DNA profile sample could not be determined due to the following:

- 84 instances where the police officer did not record the justification on F22
- five instances where a superseded F22 was used, which did not contain a space to record the justification

[31] *Crimes Act 1958* (Vic) s 464(2) Definitions.
[32] See for example *George v Rockett* (1990) 170 CLR 104.
[33] *Crimes Act 1958* (Vic) s 464SC(1).

- seven instances where the incorrect form was used, which did not contain a space to record the justification
- 35 instances where the police officer did not record a justification and instead repeated the indictable offence.

For child informed consent DNA profile samples, testing identified 36 instances where the justification to take a DNA profile sample could not be determine due to the following:

- 20 instances where the police officer did not record the justification on F23
- two instances where a superseded F23 was used, which did not contain a space to record the justification
- 14 instances where the police officer did not record a justification and instead repeated the DNA sample offence.

Compliance assessment: In relation to recording the justification for taking a DNA profile sample, the Chief Commissioner is assessed as being **Not compliant.**

Recording consent

Informed consent of the DNA person or their parent/guardian (if applicable) is recorded on F22 and F23 by ticking a box declaring they have understood the information provided, and consent to provide a DNA profile sample. The form must be signed by the DNA person and their parent/guardian (if applicable) and the member requesting the DNA profile sample.

For adult informed consent DNA profile samples, testing identified 10 instances where it could not be determined if informed consent was given due to:

- seven instances where the consent box had not been marked on F22
- three instances where the consent box had been marked retrospectively by a police officer on F22.

For child informed consent DNA profile samples, testing identified two instances where consent had not been recorded on F23 and consequently it could not be determined if informed consent was given.

Compliance assessment: In relation to recording the giving of informed consent, the Chief Commissioner is assessed as being **Substantially compliant.**

Compliance Check

F22 and F23 have a section to record the compliance check completed by a police officer holding the rank of Sergeant or above. The purpose of the compliance check is to:

- confirm that the police officer taking the DNA profile sample has undertaken the required internal training
- that the information contained is accurate
- that the senior police officer is satisfied that the taking of the sample is justified in all circumstances.

Of the 401 forms tested during the inspection, 73 instances were identified where the compliance check was not completed. Although the compliance check is not required by the Act, it is an important part of Victoria Police's internal governance. The VPM specifies that the compliance check must be completed in all circumstances, whether consent has been given or refused.

Furthermore, 147 instances were noted where the compliance check was completed incorrectly by the senior police officer recording their own registration number instead of the registration number of the police officer collecting the DNA profile sample.

This issue was addressed by Recommendation 8 of the previous inspection report:

- That Victoria Police develop a process for ensuring that compliance checks are completed before being provided to VPFSD.

Victoria Police has accepted this recommendation in principle. VPFSD advised that a checklist is in development which will assist in ensuring all sections of the required form are complete and contain the correct information. VPFSD was unable to provide a timeline on when the form will be in use. IBAC encourages Victoria Police to

develop the checklist which is likely to ensure that several of the recommendations made in IBAC's previous inspection reports are acquitted.

Compliance assessment: In relation to recording compliance checks for F22 and F23, the Chief Commissioner is assessed as being **Not compliant**.

Other matters

Incomplete F22 and F23 forms

Missing information from F22 and F23 was recognised in Recommendation 2 of the previous inspection report:

- That Victoria Police, in cases where information is found to be in error or missing from the form, ensure the issue is followed up with the relevant police officer to determine what action is to be taken to ensure the consent requirements under the Act have been complied with.

This recommendation has been accepted in principle by Victoria Police. The current procedure for non-compliant F22 and F23 forms is to add a disclosure to the sample ID. The disclosure serves as an alert to the investigating police officer that there is an issue with the DNA profile sample that will require disclosure if it is to be reported on. Issues that require a disclosure include:

- a member not being authorised to take a sample
- a Form F1 or Form 21 being used in error
- F22 Part B and F23 Part B (Caution) not being provided with the DNA profile sample.

The current procedure does not include providing feedback of non-compliance to the collecting member. VPFSD has agreed to provide communications to authorised Victoria Police members notifying them of issues found during IBAC's inspection.

A process for providing targeted feedback to authorised Victoria Police members will assist in reducing the number of instances of non-compliance. However, IBAC acknowledges that the current disclosure process in conjunction with general communications to authorised Victoria Police members is sufficient to acquit the recommendation.

Incorrect use of VP Form F1 to capture informed consent

The DNA profile sampling scheme commenced on 1 July 2019 and replaced the previous 'forensic procedures' framework. Since the introduction of the scheme Victoria Police can collect DNA by way of a 'forensic procedure' in limited circumstances.

The Victoria Police Manual Forensic Procedures, details Victoria Police processes for conducting a forensic procedure. These processes include the use of VP Form F1, Request for Forensic Procedure from a Suspect Aged 18 years or more (F1).

During the inspection period there were 427 cases of a DNA profile sample being obtained through informed consent. Testing identified seven instances where F1 had been used to gain a DNA profile sample instead of F22. Although F1 contains most of the information captured by F1, there are differences between the two forms, in particular:

- F1 does not contain details surrounding the destruction of the DNA profile sample
- F1 refers to the procedure as an intimate sample, whereas F22 correctly specifies the nature of the procedure as either a mouth scraping or a blood sample
- F1 refers to the term 'forensic procedure' as well as sections of the Act that do not relate to a DNA profile sample.

In addition to the above differences, F1 does not contain a compliance check or the justification section added to later revisions of F22 and F23.

IBAC enquired whether any feedback had been provided to the collecting members by VPFSD on the incorrect use of F1. VPFSD confirmed that no feedback was provided. VPFSD advised if F1 has been used in error, the case is labelled with an 'F disclosure'. This alerts the investigating police officer that there was an issue during collection

of the DNA profile sample and if the sample is to be utilised in Victoria Police work, for example in criminal proceedings, a disclosure will need to be made.

It is important police comply with the instructions in the VPM to use F22 and F23 when requesting and taking a DNA profile sample by way of informed consent. These forms - when correctly completed - ensure compliance with the relevant provisions in the Act.

This issue was addressed by Recommendation 4 of 2023 made in the previous inspection report:

- That Victoria Police implement a process:
  a) to prevent the use of form F1 to obtain consent for taking a DNA profile sample; and
  b) for dealing with cases where the incorrect form has been used, including assessing and mitigating identified risks associated with this practice.

On 14 November 2023, this recommendation was accepted in principle by Victoria Police. In response to reviewing a draft version of this report, Victoria Police advised IBAC it now rejects Recommendation 4 of 2023 on the basis implementation would not be possible without an identified funding source.

IBAC acknowledges the decrease in the incorrect use of F1. However, as the DNA profile sample framework has been established since July 2019, Victoria Police should aim to eliminate the incorrect use of F1. Providing feedback to members when an incorrect form has been used would assist in this. IBAC will continue to monitor this issue during future inspections.

Superseded version of F22 and F23

Since the introduction of the DNA profile sample scheme, there have been several revisions to F22 and F23, the most recent being in April 2020. The revisions include the addition of the following two sections:

- a compliance check box which requires a sergeant or above to ensure the information in the form is accurate and confirm that they agreed that the taking of the sample was justified in all the circumstances
- a section to specify how the taking of the DNA is relevant and/or likely to contribute to or assist the investigation.

IBAC considers these additions important as they provide additional assurance that police members involved in taking DNA profile samples turn their mind to whether the taking of the DNA profile sample is justified in all the circumstances.

During the inspection, IBAC found eight instances where a superseded version of F22 or F23 had been used to capture informed consent. During the previous inspection IBAC found 34 instances of a superseded form being used.

This issue was addressed by Recommendation 5 of the previous inspection report:

- That Victoria Police take steps to:
  a) ensure that superseded versions of forms are not available for use by police.
  b) update the VPM to emphasise that when taking a DNA profile sample by informed consent, a police officer must ensure they use the most recent version of the relevant form.

The recommendation has been accepted by Victoria Police in principle. IBAC was informed that DNA profile sample forms are accessed via the Victoria Police intranet and when a new version is published the previous version is removed. It was suggested that the use of superseded forms is likely to occur where a station has pre-printed multiple copies of a form. During the inspection VPFSD was provided a list of stations where superseded forms had originated. VPFSD advised these stations have been contacted and directed to use the current version of F22 and F23.

Considering current VPFSD procedures, targeted communications to members and the significant improvement in use of correct forms since IBAC's previous inspection, IBAC considers this recommendation has been acquitted.

Information added to forms retrospectively

During the inspection, IBAC identified 29 instances where information had either been corrected or added to F22 and F23 retrospectively:

- 23 instances of general information being corrected or entered regarding the DNA person (i.e., name, gender, date of birth or age)
- one instance where the information corrected or entered should have been given to the DNA person prior to giving informed consent
- two instances where the consent box had been marked after the DNA person had signed the form.

The Act states that a DNA person can only give informed consent after a police officer informs them of certain information. IBAC rely on the forms to verify whether the required information was provided to the DNA person prior to them giving informed consent. Where retrospective changes or additions are made to forms, IBAC cannot determine whether the requirements under the Act have been met.

This issue was addressed by Recommendation 6 of the previous inspection report:

- That Victoria Police:
  a) update the VPM and related procedures to prohibit the practice of entering information retrospectively into DNA profile sample forms, making it clear that once a form has been signed by a DNA person or senior police officer, no further information should be entered.
  b) implement a process for dealing with cases where forms F22 and F23 have been altered post-signature of the DNA person or others, including assessing and mitigating identified risks associated with this practice.

This recommendation has been accepted in principle by Victoria Police. During the inspection, IBAC was advised that VPFSD has revised its internal documentation to remove any reference to altering forms after being signed by the DNA person.

IBAC considers that this recommendation has been acquitted, considering amendments to VPFSD procedural documentation and the significant decrease in the number of forms identified as having retrospectively added information since IBAC's previous inspection.

Recording informed consent on DEC

The VPM for DNA profile samples, when first introduced in July 2019, allowed for the recording of informed consent in writing or by DEC recording. On 28 October 2019, Victoria Police updated the VPM, which now mandates that informed consent be recorded in writing using F22 and F23.

Of the 427 informed consent records inspected, IBAC found 15 instances where informed consent was recorded by DEC only. Whilst the Act allows informed consent to be recorded through audio, audio-visual or writing, the VPM states the collecting member must use F22 or F23 to record informed consent in writing. It is noted that in this inspection period there has been a significant decrease in instances where informed consent has been captured using DEC recordings only.

Capturing informed consent by DEC recording only, negates the two controls in place to ensure that informed consent has been captured appropriately. These controls include the compliance check in F22 and F23 which are to be completed by a senior police officer, and the review completed by VPFSD on receipt of the DNA profile sample.

IBAC officers were advised that when informed consent is recorded on DEC, they are held at the police station where they were recorded.

This issue was addressed by Recommendation 7 of 2023 made in the previous inspection report:

- That Victoria Police take steps to ensure that police no longer (solely) use DEC recordings and that they comply with the VPM by ensuring that forms F22 and F23 are used to seek and record informed consent given by a DNA person.

On 14 November 2023, this recommendation was accepted in principle by Victoria Police. In response to the draft report, Victoria Police informed IBAC it rejects Recommendation 7 of 2023 on the basis implementation will not result in the intended compliance uplift. VPFSD advised communications will be issued to stations to reinforce the existing policy. IBAC will continue to monitor this issue during future inspections.

4.2. Senior police officer authorisation to take a DNA profile sample from a DNA person who has refused to provide informed consent

Where a request for informed consent to take a DNA profile sample from a DNA person is refused, a senior police officer may authorise the taking of the DNA profile sample. The senior police officer must not be involved in investigating the offence for which the taking of the DNA profile sample is required.[34] A 'senior police officer' means a police officer of, or above, the rank of Senior Sergeant.[35]

A senior police officer may give an authorisation if, at the time the authorisation is given, the officer is satisfied:

- the person is under lawful arrest by warrant, or under lawful arrest under sections 458 or 459 of the Act or a provision of any other Act, or in the custody of an investigating official in accordance with an order of the Magistrates' Court or Children's Court under 464B(5) of the Act and was in custody at the time the application for any such order was made
- the person is not incapable of giving informed consent by reason of mental impairment
- the DNA person who is an adult has refused to give informed consent
- for a DNA person who is a child, both the child and the child's parent or guardian have refused to give informed consent
- if the person is an adult, there are reasonable grounds to believe the person has committed the indictable offence in respect of which the authorisation is sought
- if the person is a child, the child is believed on reasonable grounds of having committed the DNA sample offence in respect of which the authorisation is sought
- taking the sample without consent of the person is justified in all of the circumstances.[36]

An authorisation must not be given if an application for a court order for a compulsory procedure in respect of the person for the same matter and on the same grounds has been refused. Authorisations must not be given if a previous application for an authorisation in respect of the person for the same matter on the same grounds has been considered but an authorisation was not given.[37]

The application process outlined in the VPM stipulates the use of templated forms:

- DNA Profile Sample Senior Police Officer's Authorisation - Adult (F24)
- DNA Profile Sample Senior Police Officer's Authorisation - Child (F25)

These forms set out the requirements a senior police officer must be satisfied of to authorise a request.

[34] *Crimes Act 1958* (Vic) s 464SE(1).
[35] *Crimes Act 1958* (Vic) s 464(2).
[36] *Crimes Act 1958* (Vic) s 464SE(1).
[37] *Crimes Act 1958* (Vic) s 464SE(2).

Detailed findings

Senior police officer declaration of independence

The senior police officer making the decision to give or refuse an authorisation, must not be involved in the investigation of the offence.[38]

During the inspection IBAC was unable to verify if the senior police officers giving the authorisations met this requirement. This was due to F24 and F25 having no provision for the senior police officer making the authorisation to declare that they were not involved in the investigation of the offence.

This issue was addressed by Recommendation 9 of 2023 made in the previous inspection report:

- That Victoria Police revise forms F24 and F25 to include a declaration that the senior police officer making the authorisation has not been involved in the investigation of the offence.

The recommendation has been accepted by Victoria Police and is currently in progress. During the inspection, VPFSD advised that the revised forms are currently in draft and are estimated to be completed within the first six months of 2025. In response to the draft report, Victoria Police informed IBAC recommendation 9 is now complete with the relevant forms reviewed, updated and published. IBAC will review the acquittal of this recommendation at its next inspection.

Compliance assessment: In relation to section 464SE(1) regarding the requirement for the senior police officer giving the authorisation to be independent of the investigation, IBAC is **Unable to determine** compliance by the Chief Commissioner.

Lawful arrest or custody requirements to give an authorisation

The senior police officer may authorise the taking of a DNA profile sample from a DNA person if they are satisfied the DNA person is:

- under lawful arrest by warrant
- under lawful arrest under sections 458 or 459 or a provision of any other Act
- in the custody of an investigating official in accordance with a Magistrates' Court or Children's Court order under 464B(5) of the Act.

This requirement is recorded on F24 and F25 by the following statement:

> 'The DNA person is under lawful arrest by warrant /under lawful arrest under Statute/or in custody of an investigating official pursuant to an order made under section 464B(5) of the *Crimes Act 1958*'.

The forms do not make provision for the applicant police officer to differentiate which of the above is applicable to the DNA person. Without specifying this detail, the senior police officer is unable to demonstrate that they have turned their mind to this legislative requirement. Consequently, IBAC is unable to determine compliance.

This issue was addressed by Recommendation 10 of 2023 made in the previous inspection report:

- Victoria Police revise forms F24 and F25 to provide for the police officer completing the form to tick or circle the relevant details regarding the DNA person's lawful arrest or custody arrangements to enable a senior police officer to determine if they are satisfied that the requirements of section 464SE(1)(a) of the Act are met.

The recommendation has been accepted by Victoria Police and is currently in progress. During the inspection, VPFSD advised that the revised forms are currently in draft and are estimated to be completed within the first six months of 2025. In response to the draft report, Victoria Police informed IBAC recommendation 10 is now complete with the relevant forms reviewed, updated and published. IBAC will review the acquittal of this recommendation at its next inspection.

Compliance assessment: In relation to the requirement of section 464SE(1)(a) of the Act, is **Unable to determine** compliance by the Chief Commissioner.

[38] *Crimes Act 1958* (Vic) s 464SE(1).

Recording refusal to give informed consent

The senior police officer must be satisfied that the DNA person (and if applicable their parent/guardian) refused to give a DNA profile sample by informed consent, before making an authorisation.[39]

The VPM requires the senior police officer to record refusal to give informed consent on F22 and F23, including if refusal has been recorded on DEC.

In 38 of the 73 cases reviewed, IBAC was not provided with evidence of the DNA persons' refusal of informed consent. Consequently, IBAC was unable to verify whether the DNA person had refused informed consent prior to the application being made for an authorisation.

The VPM does not require that F22 and F23 accompany the application for authorisation, as evidence of refusal to give informed consent. The senior police officer therefore relies on the following templated statement in F24 and F25:

> 'This application is made because the person is a DNA person and:
>
> - has refused to give consent to a request under section 464SC(1) of the *Crimes Act 1958* (F24)
> - the DNA person is a child and both the child and the child's parent/guardian have refused to give consent to a request under section 464SC(2) of the *Crimes Act 1958*' (F25).

Evidence of the DNA person refusing consent should be given to the senior police officer considering giving an authorisation. This will enable the senior police officer and IBAC to verify if consent was refused prior to an application being made for an authorisation.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 11 of 2023:

- That Victoria Police amend its process to ensure that when a police officer applies for an authorisation from a senior police officer, evidence of the DNA person's refusal to give informed consent is also provided and retained for IBAC inspections.

The recommendation has been accepted by Victoria Police and is currently in progress. During the inspection, VPFSD advised IBAC officers that it is continuing to consider how best to implement this recommendation without additional administrative burden. In response to the draft report, Victoria Police informed IBAC recommendation 11 is now complete with the relevant forms reviewed, updated and published. IBAC will review the acquittal of this recommendation at its next inspection.

Compliance assessment: In relation to recording refusal to give informed consent, IBAC is **Unable to determine** compliance by the Chief Commissioner.

Recording reasons why a sample should not be taken

When reviewing an application for authorisation, the senior police officer must allow the DNA person (and if applicable their parent/guardian and their legal practitioner) a reasonable opportunity to state why the DNA profile sample should not be taken.[40]

The VPM instructs the senior police officer to record the reason given in F24 and F25.

IBAC reviewed 73 forms and found 17 instances where the section to record reasons was blank or the senior police officer entered 'N/A'.

While the incomplete section may be interpreted as no reason was given, it could instead mean no reasonable opportunity was provided. Consequently, IBAC was unable to determine compliance with this requirement of the Act.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 12 of 2023:

[39] *Crimes Act 1958* (Vic), s 464SE(1)(c)-(d).
[40] *Crimes Act 1958* (Vic) s 464SF(1).

- That Victoria Police update its guidance documentation to provide instructions on what is required when recording on form F24 and F25 as required, the response from the DNA person, their parent or guardian or their legal practitioner.

The recommendation has been accepted by Victoria Police and is currently in progress. During the inspection, VPFSD advised that revised forms are currently in draft and are estimated to be completed within the first six months of 2025. In response to the draft report, Victoria Police informed IBAC recommendation 12 is now complete with the relevant forms reviewed, updated and published. IBAC will review the acquittal of this recommendation at its next inspection.

Testing identified one instance where an independent person gave the reasons for refusal and signed F25 in place of a parent or guardian. This is inconsistent with the Act, which provides that in the case of a child, a parent or guardian must be given the opportunity to comment.[41] At the time of the inspection the case was subject to legal advice. The DNA profile sample has been destroyed.

Compliance assessment: In relation to recording reasons why a sample should not be taken, IBAC is **Unable to determine** compliance by the Chief Commissioner.

Recording grounds on which the authorisation is given

An authorisation must be given in writing, signed by the senior police officer and include the date and time the authorisation is given, as well as the grounds on which the authorisation is given. This information must be recorded in F24 and F25.

The VPM does not provide any guidance to the senior police officer for recording the grounds for giving or refusing an authorisation.

IBAC found the grounds of giving an authorisation varied between forms. For example, some forms involved the authoriser simply listing the indictable offence the DNA person was reasonably believed to have committed, while others contained a detailed analysis of the requirements of the Act, and how taking a DNA profile sample was justified.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 13 of 2023:

- That Victoria Police update its guidance documentation to provide instruction on what is required when detailing the grounds for granting or refusing an authorisation to take a DNA profile sample.

The recommendation has been accepted in principle by Victoria Police and is currently in progress. During the inspection, VPFSD advised that it is currently in the process of developing a checklist which will assist Victoria Police members in completing the form. It was also stated that consideration is being given to revising the forms to enable Victoria Police to meet the intention of the recommendation. IBAC will continue to monitor the implementation of this recommendation in future inspections.

Compliance assessment: In relation to recording the grounds on which an authorisation is given, the Chief Commissioner is assessed as being **Substantially compliant.**

Refusal to give an authorisation

If a senior police officer refuses to give an authorisation under section 464SE in respect of a DNA person, the DNA person must be informed orally of the decision as soon as practicable and given written notice of the decision within seven days.

The VPM further requires that a scanned copy of a refusal be provided to VPFSD via email. This process is also documented in the instructions on F24 and F25.

During the inspection VPFSD informed IBAC that there were no instances of a senior police authorisation under section 464SE being refused.

Compliance assessment: Not applicable, not activated as nil refusals to give authorisation under section 464SE.

[41] *Crimes Act 1958* (Vic) s 464SF(1)(b).

Providing a copy of the authorisation to a DNA person

If a senior police officer gives an authorisation, a copy must be provided to the DNA person prior to the taking of a DNA profile sample.[42]

Both the VPM and F24 and F25 detail instructions for providing a copy of an authorisation to the DNA person prior to taking the DNA profile sample. However, Victoria Police do not record if, or when, a copy has been provided to the DNA person. Consequently, IBAC was unable to determine compliance with this legislative requirement.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 14 of 2023:

- That Victoria Police update its processes to ensure that the provision of an authorisation to a DNA person prior to the sample being taken, is captured and available to IBAC for inspection.

The recommendation has been accepted in principle by Victoria Police and is currently in progress. During the inspection, VPFSD advised that it is currently in the process of developing a checklist which will capture this information. It was also stated that consideration is being given to revising the forms to enable Victoria Police to meet the intention of the recommendation. IBAC will continue to monitor the implementation of this recommendation in future inspections.

Compliance assessment: In relation to providing a copy of the section 464SE authorisation to the DNA person, IBAC is **Unable to determine** compliance by the Chief Commissioner.

Information to be provided to the DNA person

Prior to taking a DNA profile sample under an authorisation, a police officer must inform the DNA person orally of the following:

- that an authorisation under section 464SE has been given
- the date and time the authorisation was given
- the grounds on which the authorisation was given
- that a police officer may use reasonable force to enable the DNA profile sample to be taken.

The police officer must also record the provision of the above information by audio or audio-visual recording and give or send by registered post a copy of the recording no more than seven days after taking the DNA profile sample.[43]

The VPM and F24 and F25 instruct a police officer to record the giving of this information on DEC and to provide a copy to the DNA person within seven days of taking the DNA profile sample.

IBAC enquired about the location of DEC recordings and were advised that DEC recordings are kept at individual stations, and VPFSD does not have access to them.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 15 of 2023:

- That Victoria Police ensure that all records, or copies of records, relating to the taking of a DNA profile sample by an authorisation given by a senior police officer are kept in a central location that will allow for access and inspection by IBAC officers.

On 14 November 2023, Victoria Police accepted this recommendation in principle. In response to reviewing a draft of this report, Victoria Police informed IBAC it rejects Recommendation 15 of 2023 on the basis implementation would not be possible without an identified funding source. IBAC will continue to monitor this issue during future inspections.

Compliance assessment: In relation to information to be provided to the DNA prior to taking a DNA profile sample under an authorisation, IBAC is **Unable to determine** compliance by the Chief Commissioner.

[42] *Crimes Act 1958* (Vic) s 464SF(3).
[43] *Crimes Act 1958* (Vic) s 464SF(4)-(5).

Other matters

Senior police officer authorisation not recorded in writing

Of the 73 senior police authorisations reviewed, IBAC officers noted one instance where no forms were attached to the case. When queried, VPFSD advised that the senior police officer authorisation was captured on DEC. However, the Act requires that a senior police officer authorisation be given in writing.[44]

Incorrect form used to collect a DNA profile sample under a senior police authorisation

IBAC noted an additional three cases where incorrect forms were used to collect a DNA profile sample under a senior police authorisation (one superseded form and two F1).

VPFSD advised that when F1 is used incorrectly, it is flagged. If the sample is to be reported on, the investigating police officer will be notified that a disclosure will be required. When queried on the use of a superseded form, IBAC was informed that DNA profile sample forms are accessed via the Victoria Police intranet and that when a new version of a form is published the previous version is removed. VPFSD has since contacted the station the superseded forms originated from and provided directions to ensure the current forms are being used.

4.3. Senior police officer authorisation to take a post-conviction DNA profile sample

A senior police officer may authorise the taking of a DNA profile sample from a person who:

- is found guilty of a DNA offence or
- is found not guilty of a DNA offence, other than an offence heard and determined summarily, because of mental impairment under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).[45]

A senior police officer may only give this authorisation if:

- it is not more than six months after the final determination of an appeal against the conviction or the verdict of not guilty because of mental impairment (as the case requires), or the expiration of any appeal period
- the person is 18 years or older at the time the finding of guilt, or the finding of not guilty because of mental impairment, was made
- the Chief Commissioner does not have a sample from the person that may be retained indefinitely.[46]

An authorisation must be given in writing and signed by the senior police officer giving it.[47]

The VPM requires the use of FY Form 26, DNA Profile Sample Senior Police Officer's Authorisation - Post Conviction – Adult (F26) to record senior police officer authorisation to take a post-conviction DNA profile sample.

The investigating police officer must complete F26 (Part A) and submit to VPFSD for authorisation by a senior police officer.

The VPFSD senior police officer must consider the application, and if approved, sign F26 (Part B) and return it to the investigating police officer for service.

Detailed findings

Offences

For an authorisation to be given, the Act requires the person to be found guilty of a DNA offence or not guilty of a DNA offence because of mental impairment.[48] A DNA offence is defined within the Act as:

- an indictable offence

[44] *Crimes Act 1958* (Vic) s 464SF(2).
[45] *Crimes Act 1958* (Vic) s 464ZFAC(2).
[46] *Crimes Act 1958* (Vic) s 464ZFAC(2)(d).
[47] *Crimes Act 1958* (Vic) s 464ZFAC(9).
[48] *Crimes Act 1958* (Vic) s 464ZFAC(2)(a).

- an offence specified in Schedule 8
- any offence of conspiracy to commit, incitement to commit or attempting to commit an indictable offence or an offence specified in Schedule 8.[49]

IBAC reviewed 102 cases during the inspection and identified two cases where the DNA offence had not been recorded on F26. At the time of the inspection, these cases were pending legal advice.

Minimum age for an authorisation to be given

For an authorisation to be given, the person must be 18 years or older at the time the finding of guilt for the DNA offence is made, or the finding of not guilty for the DNA offence because of mental impairment.[50]

IBAC reviewed 102 cases during the inspection and identified two exceptions:

- one case where Parts A and B of F26 were not attached to the file
- one case where the incorrect forms were used, and the age of the subject was not recorded.

At the time of the inspection, these cases were pending legal advice.

No prior sample held by the Chief Commissioner

The Chief Commissioner must not already have a DNA sample that can be retained indefinitely for an authorisation to be given.[51]

IBAC reviewed 102 cases during the inspection and identified four exceptions:

- one case had not recorded whether the Chief Commissioner already had a DNA sample retained indefinitely
- one case where Parts A and B of F26 were not attached to the file
- two cases where the incorrect forms were used.

At the time of the inspection, these cases were pending legal advice.

Timeframe regarding taking a sample

The legislation details various timeframes in which a post-conviction authorisation can be carried out.[52]

Victoria Police has procedures and controls in place to ensure legislative timeframe requirements are met.

VPFSD advised that the DNA Management Unit (DNAMU) run periodic reports to identify:

- post-conviction authorisations due to expire within two months
- any outstanding appeal dates.

The DNAMU notify the relevant police officer or work unit requesting the execution of the authorisation for any cases identified within the two-month timeframe.

DNAMU actively monitor senior police authorisations until the appeal period is finalised.

IBAC is satisfied that Victoria Police has a procedure in place to capture the relevant information in the time required.

Giving a post-conviction authorisation

A post-conviction authorisation given must be in writing and signed by the senior police officer giving it.[53]

IBAC reviewed 102 cases during the inspection and identified three exceptions:

- one case where Parts A and B of F26 were not attached to the file
- two cases where the incorrect forms were used.

[49] *Crimes Act 1958* (Vic) s 464ZFAC(1).
[50] *Crimes Act 1958* (Vic) s 464ZFAC(2)(c).
[51] *Crimes Act 1958* (Vic) s 464ZFAC(2)(d).
[52] *Crimes Act 1958* (Vic) s 464ZFAC(3).
[53] *Crimes Act 1958* (Vic) s 464ZFAC(9).

At the time of the inspection, these cases were pending legal advice.

Quarantined DNA samples

When VPFSD receipts a DNA profile sample, the corresponding F26 is reviewed for completeness and accuracy. When anomalies in F26 are identified, the sample is placed in quarantine.

IBAC reviewed 102 cases during the inspection and identified 36 instances where the sample was quarantined due to incorrect forms being used, F26 missing Parts A or B, or missing information.

At the time of the inspection, these samples were pending legal advice.

Other matters

Superseded forms

IBAC reviewed 102 F26 during the inspection and noted five instances where a superseded version of F26 had been used. IBAC was informed that DNA profile sample forms are accessed via the Victoria Police intranet and when a new version of a form is published, the previous version is removed. It was suggested that the use of superseded forms is likely to occur where a station has pre-printed multiple copies of a form. VPFSD was provided a list of cases where superseded versions of the form had been used. VPFSD has contacted all stations and directed them to use the most up-to-date forms.

Compliance assessment: In relation to the requirements for a senior police authorisation under 464ZFAC of the Act, the Chief Commissioner is assessed as being **Substantially compliant.**

Service of a post-conviction authorisation

Requirements of a Notice to attend

If a senior police officer post-conviction authorisation is given, a Notice to Attend (NTA) must be attached to the authorisation and served on a 'relevant person'.[54] An NTA does not need to be provided to a person who is detained or protected.

The NTA must contain the following information:

- date the post-conviction authorisation was given
- type of DNA profile sample to be taken
- name, rank and telephone number of the senior police officer giving the post-conviction authorisation
- statement that the Chief Commissioner does not have a sample from the person that may be retained indefinitely
- that if the person fails to comply with the NTA, an application for a warrant to arrest the person may be made without further notice
- the person may wish to seek legal advice
- name, rank and telephone number of the police officer serving the NTA or causing the NTA to be served
- that a police officer may use reasonable force to enable the sample to be taken.[55]

The VPM requires a VP Form Notice to Attend – DNA Profile Sample Post-conviction (F27) to inform a relevant person to attend a police station to have a DNA profile sample taken.

The process for preparing an NTA for service outlined in the VPM states the applicant must:

- prepare an F27
- attach a copy of the signed F26 (Part B)
- arrange service

[54] *Crimes Act 1958* (Vic) s 464ZFAD(2).
[55] *Crimes Act 1958* (Vic) s 464ZFAD(3).

- scan and email F26 (Part B) to VPFSD.

IBAC reviewed 102 cases during the inspection and 25 cases had an F27 attached to the paperwork. 77 cases did not have an F27 attached. These cases were queried with VPFSD to determine if an NTA was not required due to the person being either detained or protected.

VPFSD stated that the procedure does not require an F27 to be submitted with the DNA profile sample. Consequently, VPFSD could not confirm whether an NTA was required in these cases. VPFSD further noted that if an NTA existed, it would be located at the police station where the post-conviction authorisation originated.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 16 of 2023:

- That Victoria Police update the VPM, and include guidance notes on relevant forms or written procedures, requiring police to:
    a) record whether a person who is the subject of a senior police officer authorisation is a relevant person.
    b) ensure that a copy of the notice to attend is provided to VPFSD along with the senior police officer authorisation to ensure it is available to IBAC during an inspection.

On 14 November 2023, Victoria Police accepted this recommendation in principle. In response to the draft report Victoria Police informed IBAC it now rejects Recommendation 16 of 2023 on the basis implementation would not be possible without an identified funding source. IBAC will continue to monitor this issue during future inspections.

Serving a Notice to Attend

An NTA may be served on the person by:

- delivering a true copy of the notice to the person personally
- leaving a true copy of the notice for the person at their last or most usual place of residence or business with a person who apparently resides or works there and who is apparently not less than 16 years of age
- posting the notice to the person at their last known place of residence or business.[56]

If an NTA is served by post, the affidavit of service must state how the police officer ascertained the address to which the NTA was posted, and the time and place of posting.[57]

Of the 25 NTA reviewed during the inspection, 12 had the affidavit of service attached. VPFSD advised IBAC that the collecting member is not required to submit the affidavit of service to VPFSD with the DNA profile sample. Consequently, VPFSD could not confirm whether an affidavit of service was required for each authorisation.

This issue was raised in IBAC's previous inspection report resulting in Recommendation 17 of 2023:

- That Victoria Police ensure that when an authorisation requires an affidavit of service, a copy of the affidavit is provided to VPFSD together with the authorisation and a copy of the notice to attend so that these are available to IBAC for inspection.

On 14 November 2023, Victoria Police accepted this recommendation in principle. In response to the draft report Victoria Police informed IBAC it now rejects Recommendation 17 of 2023 on the basis implementation would not be possible without an identified funding source. IBAC will continue to monitor this issue during future inspections.

Compliance assessment: In relation to service of a senior police authorisation and Notice to Attend under section 464ZFAC of the Act, IBAC was **Unable to determine** the Chief Commissioner's compliance.

[56] *Crimes Act 1958* (Vic) s 464ZFAA(4).
[57] *Crimes Act 1958* (Vic) s 464ZFAA(5).

4.4. Senior police officer authorisation to take a DNA profile sample from a person who has previously provided a sample

A senior police officer, on request from a police officer, may authorise a DNA profile sample to be taken from a person if they have previously provided a sample.[58]

Authorisations granted are not limited by the age of a person who has previously provided a sample.

A senior police officer may only give this authorisation if they are satisfied that:

- a sample for the purpose of deriving a DNA profile was previously taken in accordance with a court order made under sections 464T, 464U, 464V, 464ZF or 464ZFAAA; or
- a sample for the purpose of deriving a DNA profile was taken in accordance with section 464SC, an authorisation under section 464SE, a direction given under section 464ZFAB or a senior police authorisation under section 464ZFAC; and
- a forensic scientist has not derived a DNA profile from the sample taken from the person.[59]

Once an authorisation is given, the senior police officer may serve, or cause to be served, a notice on a person directing them to attend a police station to provide a DNA profile sample within 28 days of service.[60]

The VPM requires the use of VP Form DNA Profile Sample Senior Police Officer's Authorisation – Sample Previously Provided (F28) for giving a senior police officer authorisation under section 464ZFAE.

There were no instances in the inspection period of an authorisation made by a senior police officer to take a DNA profile sample from an adult who previously provided a sample.

Compliance assessment: Not applicable as this procedure was not activated during the inspection period.

4.5. Chief Commissioner quarterly reports to the Attorney-General

The Chief Commissioner is required to submit to the Attorney-General a report each quarter containing:

- a list that identifies by a unique number every sample taken in the period to which the report relates
- the date on which every sample listed in the report was taken
- any samples destroyed in the period to which the report relates and the reason for the destruction
- for any sample destroyed, the date the requirement to destroy it arose, the date of destruction and the name of the person who destroyed it
- information on any DNA profile sample that has been retained for 12 months or more including the status of any investigation of the DNA person from whom the sample was taken
- information on forensic material taken from suspects under section 464R (forensic procedure on adult), 464T (court ordered compulsory procedure) or 464U (forensic procedure on child) that has been retained for 12 months. The information must include the status of any investigation of the suspect from whom the forensic material was taken
- the number of senior police officer authorisations given and refused under sections 464SA and 464SE within the period to which the report relates[61]

IBAC reviewed four reports provided to the Attorney-General for the period 1 January 2023 to 31 December 2023. All reports contained the details set out within section 464ZFE of the Act and were deemed to be compliant.

Compliance assessment: In relation to the reports submitted to the Attorney-General under section 464ZFE, the Chief Commissioner is assessed as being **Compliant.**

[58] *Crimes Act 1958* (Vic) s 464ZFAE(1).
[59] *Crimes Act 1958* (Vic) s 464ZFAE(1).
[60] *Crimes Act 1958* (Vic) s 464ZFAE(2).
[61] *Crime Act 1958* (Vic), s464ZFE.

5. General record keeping

Victoria Police does not have a central repository for documentation related to the taking of DNA profile samples. Victoria Police procedures require only certain parts of DNA profile sample documentation to be submitted to VPFSD with a DNA profile sample. The combination of these process limitations has restricted IBAC's ability to determine Victoria Police compliance with some sections of the Act.

Most recommendations made in IBAC's previous inspection report have been accepted or accepted in principle by Victoria Police. Whilst Victoria Police shows a commitment to acquit these recommendations, legislative and administration errors will continue due to the manual nature of the current system. The current system relies on paper-based forms that are scanned and recorded in PaLM. Documentation not required to be submitted to VPFSD with the DNA sample is retained at a local station level.

The system increases the risk of non-compliance with the Act which may further impact Victoria Police's ability to successfully prosecute cases.

Implementation of a centralised electronic records management system to store and record the taking, destruction and retention of DNA profile samples, would improve efficiency, enhance security, and increase compliance. Furthermore, most of the recommendations made in previous IBAC inspection reports would be acquitted with the implementation of a centralised electronic records management system.

As a result, IBAC made a recommendation in its draft report stating that:

Recommendation 2 of 2024

Victoria Police consider implementing a centralised electronic records management system to store and record the taking, destruction and retention of DNA profile samples.

When responding to the draft report, Victoria Police informed IBAC that it rejects the recommendation stating that it would not be financially feasible given Victoria Police's fiscal environment. However, IBAC maintains that implementation of a centralised electronic management system is worth future consideration as it would enhance data consistency and accuracy by minimising the risk of conflicting information and ensuring users are working with the most up to date data. It would also simplify compliance efforts, making it easier for Victoria Police to adhere to regulatory requirements and ensuring that reports received by IBAC and the Attorney-General contain up-to-date and accurate information.

6. Conclusion

IBAC recognises the significant role of VPFSD in ensuring the overall effective and efficient operation and management of the DNA profile sample scheme.

IBAC encourages Victoria Police to ensure that VPFSD is appropriately resourced, including to allow for necessary IT enhancements or upgrades to systems to mitigate risks of error and incomplete data and to provide for efficiencies.

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

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

In the inspection period IBAC provided two recommendations to Victoria Police for consideration.



Victoria Elliott

Commissioner

Independent Broad-based Anti-corruption Commission

Date: 05 August 2025



Independent Broad-based Anti-corruption Commission

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