Report to the Attorney-General

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

1 January 2024–31 December 2024

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Published by order, or under the authority, of the Parliament of Victoria 2026.

ISBN 978-1-922349-65-1

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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 2024–31 December 2024
Previous inspection report	IBAC's Report to Attorney-General pursuant to section 464ZP *Crimes Act 1958* (Vic) for the period 1 January 2023 to 31 December 2023.
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 must 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's section 464ZN report for the period 1 January 2024 to 31 December 2024 (the 464ZN report)
- results and recommendations from the IBAC inspection under section 464ZO conducted in July 2025 for the period 1 January 2024 to 31 December 2024 (the inspection period).

IBAC does not have the power to inspect records or make comments regarding Victoria Police's 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 legislation 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. The Act 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 may 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.
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.

Authority	Circumstances under which a DNA profile sample may be taken
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 regarding DNA profile sample powers and functions. Additionally, there are prescribed 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[1] or supervise the taking of a DNA profile sample (scraping from the mouth),[2] 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 Property and Laboratory Management system (PaLM) is a property management system used by Victoria Police to manage DNA samples taken under Subdivision 30A 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.

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.

[1] Chief Commissioner's authorisation under *Crimes Act 1958* (Vic) s 464Z dated 1 July 2019 authorises a person who has completed the Forensic Procedures training course.
[2] Chief Commissioner's authorisation under *Crimes Act 1958* (Vic) s 464Z dated 1 July 2019 authorises a police officer who has completed DNA - Supervised Mouth Scraping training.

IBAC further conducted a desktop review of the Chief Commissioner's reports to the Attorney-General under section 464ZFE for the period 1 January 2024 to 31 December 2024 (the 464ZFE report).

Inspection powers of IBAC are limited to the taking of DNA profile samples, senior police authorisations, and authorisations under section 464ZFAE.[3]

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.[4]

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[5]
- a senior police officer authorisation under section 464ZFAE.

The taking of DNA profile samples from registrable offenders under section 464ZFAB is beyond IBAC's inspection scope.

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 1,000 samples or greater, five per cent of the population was selected for testing. Where a subcategory was 999 samples or less, at least 10 per cent of the population 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 yet received by VPFSD 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	194	129	323
Senior police authorisation under section 464SE	44	18	62
Senior police post-conviction authorisation under section 464ZFAC	112	N/A	112
Senior police authorisation under section 464ZFAE	0	0	0
Total	**350**	**147**	**497**

[3] Section 464ZO(3) read in conjunction with the definition of 'records' in s 464ZO(1).
[4] *Crimes Act 1958* (Vic) ss 464ZN and 464ZFE.
[5] 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 during 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 a number of 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.

Tables 3 to 7 summarise IBAC's assessment of the Chief Commissioner's compliance with the DNA profile sample scheme.

Table 3: Assessment of the Chief Commissioner's compliance with reporting requirements

Chief Commissioner's reporting requirements	Compliance rating
The Chief Commissioner's annual report to IBAC	Substantially compliant
The Chief Commissioner's quarterly reports to the Attorney-General	Substantially compliant

Table 4: Assessment of the Chief Commissioner's compliance with DNA profile samples taken with informed consent

Section 464SC informed consent criteria	Compliance rating
Informed consent was recorded in writing using F22/23	Substantially compliant
Person was 15 years of age or older when informed consent was given	Substantially compliant
Police officer has recorded a relevant offence for which the DNA profile sample is sought	Substantially compliant
Police officer has recorded the nature of the procedure to be conducted	Substantially compliant
Police officer has recorded the grounds for taking the DNA profile sample	Substantially compliant
Police officer is satisfied that taking the DNA profile sample is justified in all of the circumstances	Not compliant

Section 464SC informed consent criteria	Compliance rating
Police officer has recorded the DNA person's informed consent	Substantially compliant
Compliance check has been completed by a senior police officer	Not compliant
Police officer taking the DNA profile sample is authorised to take it	Substantially compliant
DNA person was cautioned before the DNA profile sample was taken	Substantially compliant
Overall compliance	Substantially compliant

Table 5: Assessment of the Chief Commissioner's compliance with senior police officer authorisation to take a DNA profile sample from a DNA person who has refused to provide informed consent

Section 464SE senior police officer authorisation criteria	Compliance rating
Senior police officer authorisation was made in writing using F24/25	Substantially compliant
Person was 15 years of age or older when authorisation was given	Compliant
Senior police officer hearing the application was independent of the investigation	Unable to determine
DNA person was under lawful arrest or in custody	Unable to determine
DNA person refused to give informed consent	Not compliant
DNA person was given a reasonable opportunity to respond to application	Substantially compliant
Senior police officer recorded the grounds on which the authorisation was given	Substantially compliant
A copy of the authorisation was given to the DNA person	Unable to determine
The required information was given to the DNA person and recorded on DEC	Substantially compliant
Police officer named in the authorisation has taken the DNA profile sample	Unable to determine
Police officer taking the DNA profile sample is authorised to take it	Compliant
DNA person was cautioned before the DNA profile sample was taken	Compliant
Senior police officer refuses to give an authorisation	Not applicable
Overall compliance	Substantially compliant

Table 6: Assessment of the Chief Commissioner's compliance with senior police officer authorisation to take a post-conviction DNA profile sample

Section 464ZFAC senior police officer authorisation criteria	Compliance rating
Senior police officer authorisation was made in writing using F26	Compliant
No prior sample held by the Chief Commissioner for indefinite retention	Substantially compliant
Person was found guilty of a DNA offence (or not guilty because of mental impairment)	Substantially compliant
Person was 18 years of age or over at the time of the finding of guilt (or not guilty due to mental impairment)	Compliant

Section 464ZFAC senior police officer authorisation criteria	Compliance rating
Authorisation was given within the required timeframe	Compliant
Service of a notice to attend on a relevant person	Unable to determine
Police officer taking the DNA profile sample was authorised to take it	Substantially compliant
DNA person was cautioned before the DNA profile sample was taken	Unable to determine
Overall compliance	Substantially compliant

Table 7: Assessment of the Chief Commissioner's compliance with senior police officer authorisation to take a DNA profile sample from a person who has previously provided a sample

Section 464ZFAE senior police officer authorisation criteria	Compliance rating
Senior police officer authorisation to take a DNA profile sample from a person who has previously provided a sample	Not applicable

2.2. Recommendations

Based on the findings set out in this report under section 4, IBAC makes the following recommendations:

Recommendation 1 of 2025:

Victoria Police investigate whether DNA profile sample 112412456 was taken in compliance with the Act; and if the sample was not taken in compliance with the Act, ensure that it is dealt with appropriately.

Recommendation 2 of 2025:

a) Victoria Police investigate whether DNA profile sample 105783237 was taken in compliance with the Act; and

b) if the sample was not taken in compliance with the Act, ensure that it is dealt with appropriately.

Recommendation 3 of 2025:

a) Victoria Police seek advice to identify the potential risks where a police officer who has not been named in the section 464SE authorisation takes the DNA profile sample;
b) if risks are identified, Victoria Police ensure these are mitigated through changes to policy and/or procedure; and
c) Victoria Police notify IBAC of the outcome of the advice and any mitigation measures taken as a result thereof.

2.3. Prior IBAC recommendations

IBAC reviewed the eight in-progress recommendations made in the report for inspection period 1 July 2019 to 31 December 2022. One further recommendation is currently in progress from the inspection period 1 January to 31 December 2023. The status of this recommendation was not assessed by IBAC, as it was finalised after the current inspection had taken place.

Of the eight in-progress recommendations made in the report for the inspection period 1 July 2019 to 31 December 2022, four have been determined to be complete. The remaining four recommendations will be subject to further review by IBAC in its next inspection.

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 8: 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 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.	Completed
Recommendation 10 of 2023 That 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.	Completed
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.	Completed
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.	Completed
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 1 of 2024 That Victoria Police investigate the underlying cause of misclassification of DNA sample authorities.	In progress

3. The Chief Commissioner's reports

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.[6] The report sets out information in relation to the taking and destruction of DNA profile samples for the previous 12 months.[7] The report must also include matters which the Chief Commissioner must report to the Attorney-General under section 464ZFE (refer to section 3.2 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 3.2 of this report.

3.1. The Chief Commissioner's annual 464ZN report to IBAC

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

1. **Taken report 2024**

   Forensic samples received by VPFSD in the period 1 January to 31 December 2024. 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 2024**

   Forensic samples destroyed during the period 1 January to 31 December 2024. 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 2024**

   Forensic samples retained by VPFSD for a period of more than 12 months, as at 31 December 2024. 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.

DNA samples taken during the inspection period

Table 9 provides information relating to DNA samples taken during the inspection period by Victoria Police that must be reported to IBAC.

Table 9: DNA samples taken during the inspection period

Sample obtained by	Total	Adult	Children
Informed consent (Adult section 464SC(1), Child section 464SC(2))	4,403	4,256	147
Authorisation made pursuant to section 464SE	208	190	18
Senior police authorisation made pursuant to section 464ZFAC	1,190	1,190	-
Authorisation made pursuant to section 464ZFAE	-	-	-

[6] *Crimes Act 1958* (Vic) s 464ZN(1).
[7] *Crimes Act 1958* (Vic) s 464ZN.

Sample obtained by	Total	Adult	Children
Registrable offender sample section 464ZFAB	646	646	-
Children's Court orders	5	-	5
Court orders	105	105	-
Total[8]	**6,557**	**6,387**	**170**

DNA samples taken but not provided to VPFSD

The investigating police officer is responsible for initial registration of the DNA sample onto PaLM. Six thousand five hundred fifty-seven records were included in the 464ZN report. Of these, IBAC noted 472 instances where a DNA sample had been registered in PaLM during the inspection period but had not been received by VPFSD.

Similar issues were found in previous inspections, leading to a prior recommendation that Victoria Police implement a process to ensure that when a sample is registered, the sample and relevant paperwork are provided to VPFSD.

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

IBAC notes that a higher percentage of samples taken by investigating officers have been provided to VPFSD in this inspection period (93 per cent) compared with the inspection period 1 January to 31 December 2023 (90 per cent). This indicates that the implementation of the recommendation by VPFSD is having the desired effect.

Misclassification of DNA samples

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

Of the 497 DNA samples reviewed by IBAC, 23 instances were noted where the PaLM record relating to the authority under which the DNA sample was taken had been misclassified. This occurs where informants record the incorrect event on PaLM in the first instance. Despite audits being conducted by VPFSD staff to ensure a sample is recorded under the correct event, when reports are generated, the system produces the initial incorrect event due to limitations of the current system.

IBAC is concerned that the limitation of the current system may be causing Victoria Police to report inaccurate statistics on the taking of DNA profile samples to both IBAC and the Attorney-General. While VPFSD has previously attempted to seek an IT solution to this system limitation, no such solution has been identified. After IBAC raised concern about inaccurate reporting again, VPFSD has advised that this IT investigation could be revisited. IBAC encourages Victoria Police to ensure VPFSD has the resources and funding available for any IT solution to enable correct reporting.

In the inspection period 1 January to 31 December 2023, IBAC recommended that the underlying cause of misclassifications of DNA sample authorities be investigated. This recommendation is currently in progress and will be reviewed by IBAC in its next inspection.

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 not found guilty.[9]

[8] This number includes six samples taken from children aged 10–14 years.
[9] *Crimes Act 1958* (Vic) s 464SD(2)(h).

The investigating police officer is responsible for notifying VPFSD and updating PaLM with the case status. VPFSD undertakes 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.[10]

Table 10 provides data relating to the destruction of DNA profile samples that must be reported to IBAC.

Table 10: Samples destroyed by VPFSD during the inspection period

Reasons for destruction	Total
Administrative issue	23
Destruction period reached	88
Extension or retention order rejected	17
Matter not proceeded with/Person not charged	767
Person not found guilty	94
Total	**989**

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

the investigating police officer must update the PaLM record to ensure that the DNA profile samples obtained under sections 464SC or 464SE are retained indefinitely.[11]

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.[12] However, if on an appeal against conviction the relevant registrable offence is quashed or set aside, this DNA profile sample may not be retained indefinitely.[13]

For child DNA profile samples to be retained, an application for a court order must be made at 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.[14]

[10] *Crimes Act 1958* (Vic) s 464ZG(5).
[11] *Crimes Act 1958* (Vic) s 464ZFB(1AA).
[12] *Crimes Act 1958* (Vic) s 464ZFAB(7).
[13] *Crimes Act 1958* (Vic) s 464ZFAB(8).
[14] *Crimes Act 1958* (Vic) s 464ZFB(1).

Table 11 provides data relating to DNA profile samples held by VPFSD for 12 months or more that must be reported to IBAC.

Table 11: Samples retained by VPFSD for 12 months or more

Status of investigation	Total	Adult	Children
Matter before the court or warrant issued	3,483	3,411	72
Held conditionally pending judicial proceeding	1,845	1,812	33
Ongoing investigation extension sought	64	58	6
Total	**5,392**	**5,281**	**111**

Compliance assessment: In relation to the report submitted to IBAC under section 464ZN, the Chief Commissioner is assessed as being **Substantially compliant.**

3.2 Chief Commissioner's quarterly reports to the Attorney-General

The Chief Commissioner must 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 or more. 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.[15]

IBAC reviewed four reports provided to the Attorney-General for the period 1 January to 31 December 2024. All reports contained the details set out within section 464ZFE of the Act and were deemed to be compliant.

However, IBAC notes the misclassification of DNA samples identified in this inspection and prior inspections as discussed in 3.1, which affects the compliance rating for this criteria.

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

[15] *Crimes Act 1958* (Vic) s 464ZFE.

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 that 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. [16]

A DNA profile sample may then be taken if the adult DNA person gives informed consent.[17]

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. [18]

A DNA profile sample may then be taken if the child and a parent/guardian of the child gives informed consent.[19]

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.[20]

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.[21] A DNA person who is a child and their parent/guardian must be informed of

[16] *Crimes Act 1958* (Vic) s 464SC(1).
[17] *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.
[18] *Crimes Act 1958* (Vic) s 464SC(2).
[19] *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.
[20] *Crimes Act 1958* (Vic) s 464SD(2).
[21] *Crimes Act 1958* (Vic) s 464SD(2)(c).

the DNA sample offence they are believed on reasonable grounds of having committed, have been charged with, or have been summonsed to answer.[22]

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.[23]

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 provided to a DNA person prior to them giving informed consent. The forms contain fields to record:

- the grounds for taking the DNA profile sample
- the nature of the procedure to be conducted (mouth scraping or blood sample)
- the relevant offence
- the basis on which the police officer is satisfied that the taking of the DNA sample is justified in all the circumstances
- the consent of the DNA person (and the DNA person's parent/guardian if applicable).

Detailed findings

IBAC officers selected 323 DNA profile sample informed consent forms to review in this inspection period (194 F22 forms and 129 F23 forms). Of these selected samples, IBAC identified:

- one instance where the member had incorrectly labelled the sample as a 464 DNA profile sample to PaLM
- eight instances where the forms provided were court ordered child samples
- six instances where the forms provided were not informed consent samples
- eight instances where informed consent was recorded on DEC only.

IBAC officers therefore inspected 300 DNA profile sample informed consent forms (183 F22s and 117 F23s) and noted 383 instances of incomplete or incorrect information.

Table 12 details the exceptions noted during the inspection of F22 and F23.

Table 12: Summary of exceptions noted during the inspection period

Incomplete or incorrect information	Adult	Child
Recording of relevant offence*	8	26
Recording of the nature of the procedure to be conducted*	4	0
Recording of the grounds for taking the sample	9	7
Recording of the justification for taking the sample	81	40
Recording the informed consent of the DNA person and their parent/guardian (if applicable)	11	12
Conducting and recording of senior police officer compliance check	111	74

[22] *Crimes Act 1958* (Vic) s 464SD(2)(d).
[23] *Crimes Act 1958* (Vic) ss 464SD(3)(a) and (b).

Incomplete or incorrect information	Adult	Child
Total	224	159

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

Informed consent was recorded in writing using F22/23

Use of DEC to record informed consent

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. Since being updated on 28 October 2019, the VPM has mandated that informed consent be recorded in writing using F22 and F23.

IBAC identified eight instances where informed consent was recorded by DEC only. Whilst the Act allows informed consent to be recorded through audio, audio-visual recording or in writing, the VPM states that the collecting member must use F22 or F23 to record informed consent in writing.

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

When informed consent is recorded on DEC, the recording is held at the police station where it was recorded, meaning that VPFSD has no oversight of the recording.

Use of forensic procedure form to record 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'.

Testing identified five instances where F1 had been used to gain and record informed consent instead of F22/23. Although F1 contains most of the information captured by F22/23, there are differences between the 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 F22/23 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 F22/23.

VPFSD advised that where 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 reported on (for example in criminal proceedings), a disclosure will need to be made.

It is important that police comply with the instructions in the VPM to use F22/23 when requesting and taking a DNA profile sample by way of informed consent. These forms – when completed accurately – ensure compliance with the relevant provisions in the Act.

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.

For inspection purposes, IBAC treats the use of F1 as an informed consent form, and its use is therefore included in the number of F22/23 forms inspected by IBAC.

Use of superseded version of F22/23 to record informed consent

The last revision to F22 and F23 occurred in April 2020. This included 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 identified three instances where a superseded version of F22/23 had been used to capture informed consent. There has been a noticeable decrease in the number of superseded forms being used by members since IBAC began its inspections.

Where a form is revised, VPFSD now provides communication to members via the Victoria Police intranet regarding the change. IBAC viewed two of these communications sent by VPFSD and is satisfied that they are having a meaningful impact on members using the most up-to-date forms.

Police officers adding information to forms *after* the DNA profile sample is taken

During the inspection for period 1 July 2019 to 31 December 2022, IBAC identified 29 instances where information had been corrected or added to F22 and F23 retrospectively.

The Act provides that a DNA person can only give informed consent after a police officer informs them of certain information. IBAC relies 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 a previous recommendation which has since been acquitted. IBAC officers did not identify any instances of retrospective information being added to forms in this inspection.

Compliance assessment: In relation to recording informed consent in writing using F22/23, the Chief Commissioner is assessed as being **Substantially compliant.**

Person was 15 years of age or older when informed consent was given

For a person to be considered a 'DNA person' and be eligible to have their DNA profile sample taken by informed consent, they must either be 18 years of age or older for an adult, or between the ages of 15 and17 for a child.[24]

Of the 183 cases reviewed, IBAC identified one instance where an informed consent DNA profile sample was taken in relation to a person aged 12 years old. VPFSD advised that this sample has since been destroyed due to non-compliance with the Act.

Compliance assessment: In relation to the requirement that a DNA profile sample under section 464SC be taken in relation to persons aged 15 years or older, the Chief Commissioner is assessed as being **Substantially compliant.**

Police officer has recorded a relevant offence for which the DNA profile sample is sought

The legislation requires that a DNA person be informed of the indictable offence (adult) or DNA sample offence (child) before they can give informed consent.

Where the offence section of F22/23 is incomplete or contains an offence which is neither indictable nor a DNA sample offence (depending on the circumstance), VPFSD conducts a review of Victoria Police databases to ensure a relevant offence has been linked to the DNA person for the taking of the sample. Furthermore, VPFSD informed IBAC that missing information relating to offences would likely be captured on the DEC recording. However, because VPFSD does not conduct compliance checks of DEC recordings, this cannot be confirmed.

During the inspection, IBAC officers reviewed 183 F22s and identified eight instances where no offence was recorded.

[24] *Crimes Act 1958* (Vic) s 464(2).

Upon further investigation, all eight cases were found to have indictable offences recorded against the DNA profile sample on PaLM.

During the inspection, IBAC officers reviewed 117 F23s and found:

- nine instances in which no offence was recorded
- 17 instances in which the offence recorded was not a DNA sample offence.

Upon further investigation, IBAC identified that two of the nine cases in which no offence was recorded did not have a corresponding DNA sample offence recorded in PaLM. The offences recorded were 'recklessly cause injury' and 'theft of motor vehicle'.

Of the 17 instances in which the offence recorded in F23 was not a DNA sample offence, IBAC found:

- nine instances where an additional offence recorded on PaLM was a DNA sample offence
- two instances where the offence recorded on PaLM was 'reckless conduct endanger serious injury' (this type of offence must have been done in circumstances of gross violence to be a DNA sample offence. IBAC was unable to determine if these offences were committed in circumstances of gross violence)
- six instances where there was no additional DNA sample offence recorded in PaLM (these samples were destroyed or are awaiting destruction by VPFSD).

F22/23 is the mechanism for recording evidence of information provided to the DNA person prior to them giving informed consent. Where the indictable offence or DNA sample offence is missing from the forms, IBAC is unable to determine whether the DNA person has provided informed consent. Victoria Police policy requires that F22/23 be used to evidence informed consent. Due to this, there are 34 cases in which IBAC is unable to determine whether informed consent was provided by the DNA person.

VPFSD will provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

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

Police officer has recorded the 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.[25] 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, four 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.

For child informed consent DNA profile samples, no 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 all cases, the police officer recorded that a mouth scraping was to be conducted.

VPFSD does not perform a compliance check to ensure that the police officer has recorded the nature of the procedure to be conducted. VPFSD informed IBAC that missing information relating to the procedure section of the forms would likely be captured on the DEC recording. This cannot be confirmed as DEC recordings are held at individual police stations and VPFSD does not have oversight of the recordings.

IBAC notes that there has been an increase in compliance during this inspection period with this criteria compared to the last inspection. Due to this, IBAC will not make a recommendation in this inspection period to ensure that the recording of the nature of the procedure forms part of VPFSD's compliance checks. VPFSD will provide general

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

communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

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

Police officer has recorded the grounds for taking the 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 to a charge for an indictable offence
- a child 15 to 17 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 to a charge for a DNA sample offence.[26]

F22/23 has a section for the police officer to record whether the person is suspected, charged, or summonsed to answer to a relevant offence.

During the inspection, IBAC noted:

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

VPFSD has advised IBAC that the grounds for taking a DNA profile sample are also recorded by the police officer in PaLM. However, IBAC considers that the grounds should be recorded in F22/23 so that the senior police officer completing their compliance check can ensure that the taking of the DNA profile sample is justified in all the circumstances.

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

Police officer is satisfied that taking the DNA profile sample is justified in all the circumstances

The taking of a DNA profile sample must be justified in all the circumstances.[27] F22/23 contains a section for the police officer to record why the taking of the DNA profile samples is justified in all the circumstances.

For adult informed consent DNA profile samples, testing identified 81 instances where the justification to take a DNA profile sample could not be determined due to the following:

- 45 instances where the police officer did not record a justification
- 29 instances where the police officer did not record a justification and instead repeated the indictable offence
- two instances where a superseded F22 was used, which did not contain a section to record a justification
- five instances where the incorrect form was used (F1), which did not contain a section to record a justification.

For child informed consent DNA profile samples, testing identified 40 instances where the justification to take a DNA profile sample could not be determined due to the following:

- 25 instances where the police officer did not record the justification
- 14 instances where the police officer did not record a justification and instead repeated the DNA sample offence
- one instance where a superseded F23 was used, which did not contain a section to record a justification.

VPFSD has advised that ensuring that there is a justification recorded in F22/23 for taking the DNA profile sample does not form part of their current compliance checks. VPFSD will analyse a sample where forms have been signed

[26] *Crimes Act 1958* (Vic) s 464(2).
[27] *Crimes Act 1958* (Vic) s 464SC(1).

by a senior police officer who has conducted the senior compliance check and there is an accompanying forensic evidentiary item. Where VPFSD cannot determine forensic relevance (e.g. a blank form, no signature from a senior police officer, no forensic evidence in PaLM), samples are given an 'LS' disclosure to ensure the informant is aware that a disclosure will be required where the sample is to be reported on.

Upon further investigation of these cases, VPFSD advised that all forms had been signed by a senior police officer, and had forensic evidentiary items attached.

IBAC considers that the presence of a signature from a senior police officer and an accompanying forensic evidentiary item is insufficient to demonstrate that the taking of the DNA profile sample is justified in all the circumstances. This is because the VPM states that a police officer must consider whether obtaining the sample is justified because it is likely to contribute to or assist with their investigation. Without the police officer recording this in the form, IBAC is unable to determine if the taking of the sample was justified.

IBAC notes that there has been a decrease in compliance with this criteria. VPFSD will provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

Compliance assessment: In relation to recording that the taking of the DNA profile sample is justified in all of the circumstances, the Chief Commissioner is assessed as being **Not compliant.**

Police officer has recorded the DNA person's informed consent

Informed consent of the DNA person and their parent/guardian (if applicable) is recorded on F22 and F23 by ticking a box declaring that 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.

Further, the responses of the DNA person and their parent/guardian's (if any) as to whether they understand the information given to them by the police officer must be recorded in F22/23.

Of the 183 F22 forms reviewed, IBAC identified 11 cases where it could not be determined if informed consent was given due to:

- eight instances where the consent box had not been ticked
- one instance where the DNA person's response indicated that they did not understand the information given to them by the police officer
- two instances where the DNA person did not sign the form.

Of the 117 F23 forms reviewed, IBAC identified eight cases where it could not be determined if informed consent was given due to:

- one instance where the consent box had not been ticked by the DNA person
- three instances where the consent box had not been ticked by the DNA person's parent/guardian
- one instance where the DNA person did not sign the form
- one instance where the DNA person's parent/guardian did not sign the form
- one instance where F22 was used instead of F23 and the police officer therefore did not record the DNA person's parent/guardian's informed consent or signature
- one instance where the parent/guardian ticked the consent box for the taking of a blood sample instead of a mouth scraping.

VPFSD informed IBAC that checking whether the informed consent boxes in F22/23 are completed accurately does not form part of their current compliance checks. All samples that are signed by the DNA person and their parent/guardian (if applicable) are currently processed by VPFSD.

Upon further clarification of the current process, VPFSD advised that where a DNA person responds that they do not understand the information given to them by the police officer, VPFSD will communicate with the member to clarify this issue.

VPFSD will provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

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

Compliance check has been completed by a senior police officer

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
- the information contained in the form is accurate
- the senior police officer is satisfied the taking of the sample is justified in all circumstances.

Of the 300 forms tested during the inspection, 84 instances were identified where the compliance check was not completed. Although this 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.

The compliance check contains a section where the senior police officer must record that 'VP [registration number] is authorised to take the sample'. IBAC identified 121 instances where this section of the compliance check was completed incorrectly by the senior police officer, who recorded their own registration number instead of the registration number of the police officer collecting the DNA profile sample. This is a concern to IBAC as one of the main purposes of the compliance check is to ensure that the police officer taking the sample is authorised to take it. Where the senior police officer has recorded their own registration number instead of the registration number of the police officer taking the sample, it is unclear to IBAC whether the person taking the sample is authorised. Furthermore, where the compliance check is inaccurately completed by the senior police officer, IBAC cannot be satisfied that they have performed their compliance check of the form competently.

One instance was also identified where the police officer completing the form conducted their own compliance check.

The systemic issues identified with the completion of the senior police officer compliance check, and the number of instances of incorrect or inaccurate information in the forms, are of concern to IBAC as they suggest that senior police officers may be treating the checks as a formality rather than a meaningful review prior to the taking of DNA profile samples.

This issue was addressed by Recommendation 8 of inspection period 1 July 2019 to 31 December 2022:

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

VPFSD advised that a checklist is in development which will assist in ensuring that all sections of the form are complete and contain the correct information. VPFSD will also provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

Compliance assessment: In relation to the completion of compliance checks by senior police officers for F22/23, the Chief Commissioner is assessed as being **Not compliant.**

Police officer taking the DNA profile sample is authorised to take it

A police officer is authorised to supervise the taking of a mouth scraping where they have completed the 'DNA—Supervised Mouth Scraping' training.[28] IBAC authorised officers were provided with a record of all officers who were authorised to supervise the taking of a mouth scraping during the inspection period.

VPFSD advised that where a senior police officer compliance check is completed, VPFSD does not conduct an additional check to ensure that the member was authorised. Where it is identified that an unauthorised member has taken the DNA profile sample, VPFSD will add an 'N' disclosure to the sample. This is to ensure that the informant is aware that there is an issue with the sample that they need to disclose if the sample is to be reported on.

Of the 300 forms tested, IBAC identified three instances where the police officer was not authorised to take the DNA profile sample. Because these three forms had been signed by a senior police officer who supposedly conducted a compliance check, VPFSD did not conduct their own check to ensure the member taking the sample was authorised. However, IBAC identified an issue with the compliance checks of these three cases where the senior police officer had recorded their own registration number instead of the registration number of the member taking the sample. The three cases were not identified by either the senior police officer or VPFSD as being non-compliant with the Act and therefore did not have an appropriate disclosure recorded at the time of the inspection.

Compliance assessment: In relation to the police officer taking the DNA profile sample under section 464SC being authorised to take it, the Chief Commissioner is assessed as being **Substantially compliant.**

DNA person was cautioned before the DNA profile sample was taken

The Act requires that before a DNA profile sample is taken by informed consent, the DNA person must be cautioned that they do not have to answer any questions asked by the person taking the sample but that anything they do say may be given in evidence.[29]

The VPM requires that the caution be completed in writing using Part B of F22/23 and submitted to VPFSD. The caution must be signed by the DNA person and a parent/guardian (if applicable). If the DNA person refuses to sign the caution, an independent person may sign on their behalf if present.[30]

'Independent person' is not defined within the Act or the VPM.

Where the caution form has not been provided to VPFSD, an 'F' disclosure is recorded against the case to ensure the informant is aware that there is an issue with the sample that will require disclosure if the sample is to be reported on.

Of the 300 forms reviewed, IBAC identified:

- five instances where a caution form was not attached to the file
- one instance where the caution form was attached to the file but not completed
- three instances where the responses given by the DNA person did not indicate understanding of the information given to them by the police officer
- 12 instances where the caution form was not signed by either the DNA person or an independent person.

VPFSD advised that all cases which did not contain a caution form or signature had been given an 'F' disclosure.

VPFSD will provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

Compliance assessment: In relation to the police office cautioning a DNA person before taking a DNA profile sample by informed consent, the Chief Commissioner is assessed as being **Substantially compliant.**

[28] Victoria Police Instrument of authorisation–Forensic procedures–physical examination of non-intimate parts of the body, taking non-intimate samples and supervising the taking of mouth scrapings, signed by Chief Commissioner of Police on 1 July 2019.
[29] *Crimes Act 1958* (Vic) s 464Y(1).
[30] *Crimes Act 1958* (Vic) s 464Y(2)(a).

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.[31] A 'senior police officer' means a police officer of, or above, the rank of Senior Sergeant.[32]

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 the circumstances.[33]

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.[34]

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 with which a senior police officer must be satisfied to authorise a request.

Detailed findings

Senior police officer authorisation was made in writing using F24/25

The Act requires that an authorisation under section 464SE be given in writing signed by the senior police officer giving it.[35] The VPM requires that officers use the templated F24/25 forms to apply for and give an authorisation under section 464SE. IBAC selected 62 senior police officer authorisations made under section 464SE for review (44 adult, 18 child samples). Of the 44 adult senior police officer authorisations selected for review by IBAC, nine were discovered to be samples taken under section 464ZFAC, and one had informed consent forms attached. IBAC therefore reviewed 52 senior police officer authorisations.

Of the 52 senior police officer authorisations reviewed (adult and child), IBAC identified three instances where the incorrect form was used to give the authorisation. The three incorrect forms were F21A, which is a senior police officer authorisation directing an adult to undergo a compulsory procedure.

[31] *Crimes Act 1958* (Vic) s 464SE(1).
[32] *Crimes Act 1958* (Vic) s 464(2).
[33] *Crimes Act 1958* (Vic) s 464SE(1).
[34] *Crimes Act 1958* (Vic) s 464SE(2).
[35] *Crimes Act 1958* (Vic) s 464SF(2).

While F21A contains much of the same information that must be recorded in F24/25, it does not record whether a previous application for a court order has been made under section 464U or 464V. The consequence is that the senior police officer hearing the application has not recorded that they have had regard to the legislative requirement that no previous application has been applied for and refused by the court in relation to the same matter and on the same grounds as the 464SE authorisation.

VPFSD has advised that where F21A is used to give an authorisation under section 464SE, the case is flagged with an 'E disclosure' to ensure that the informant is aware that there is an issue with the sample that will need to be disclosed if it is to be reported on.

In all other instances IBAC found that the most up-to-date version of F24/25 had been used to give the authorisation and had been signed by the senior police officer giving it.

Compliance assessment: In relation to the requirement for the senior police officer to give the authorisation under section 464SE in writing using F24/25 and sign the form, IBAC assesses the Chief Commissioner as being **Substantially compliant.**

Person was 15 years of age or older when authorisation was given

For a person to be considered a 'DNA person' and eligible to have their DNA profile sample taken under a senior police officer authorisation, they must either be 18 years of age or older for an adult, or between the ages of 15-17 for a child.[36]

Of the 52 authorisations reviewed, all persons were aged 15 years or older at the time the authorisation was given to a police officer to take the DNA profile sample.

Compliance assessment: In relation to the requirement that a DNA profile sample under section 464SE be taken in relation to persons aged 15 years or older, the Chief Commissioner is assessed as being **Compliant.**

Senior police officer hearing the application was independent of the investigation

The senior police officer making the decision to give or refuse an authorisation must not be involved in the investigation of the offence.[37]

During the inspection, IBAC was unable to verify if the senior police officers giving the authorisations met this requirement. This was due to F24/25 having no section 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.

This recommendation has now been acquitted by Victoria Police, with F24/25 being updated in March 2025 (after the inspection period). The revised forms now incorporate a section for the senior police officer to confirm that they are independent of the investigation for which the DNA profile sample is being taken. This will allow IBAC to determine compliance with this legislative criteria at its next inspection.

Compliance assessment: In relation to the requirement for the senior police officer hearing the application to be independent of the investigation, IBAC is currently **Unable to determine** compliance by the Chief Commissioner**.**

DNA person was under lawful arrest or in custody

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

- under lawful arrest by warrant
- under lawful arrest under sections 458 or 459 or a provision of any other Act

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

- in the custody of an investigating official in accordance with a Magistrates' Court or Children's Court order under 464B(5) of the Act.[38]

This requirement is recorded on F24/25 through 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 now been acquitted by Victoria Police, with F24/25 being updated in March 2025 (after the inspection period). The revised forms now allow the applicant police officer to record the details of the DNA person's lawful arrest or custody arrangements. This will allow IBAC to determine compliance with this legislative criteria at its next inspection.

Compliance assessment: In relation to the requirement that the DNA person be under lawful arrest or in custody, IBAC is currently **Unable to determine** compliance by the Chief Commissioner.

DNA person refused 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 that the senior police officer record refusal to give informed consent on F22 or F23, including if refusal has been recorded on DEC.

In 20 of the 52 cases reviewed, IBAC was not provided with evidence of the DNA persons' refusal of informed consent. Consequently, for these 20 cases, IBAC was unable to determine whether the DNA person had refused informed consent prior to the 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 now been acquitted by Victoria Police. The revised version of F24/25 updated in March 2025 (after the inspection period), instructs police officers to attach a copy of F22/23 to the DNA kit and submit it to the DNA Receipting Team at VPFSD to record the person's refusal to give informed consent. This will allow IBAC to determine compliance with this legislative criteria at its next inspection.

In one of the 52 cases reviewed (DNA profile sample 112412456), the F23 attached as evidence of the DNA person's and their parent/guardian's refusal of informed consent indicated that informed consent had been given. It is therefore unclear why an authorisation under section 464SE was applied for and given. IBAC queried this case with VPFSD who advised that it is not part of their current compliance checks to ensure refusal of informed consent before an authorisation is given.

IBAC therefore makes **Recommendation 1 of 2025**, that:

Victoria Police investigate whether DNA profile sample 112412456 was taken in compliance with the Act; and if the sample was not taken in compliance with the Act, ensure that it is dealt with appropriately.

[38] *Crimes Act 1958* (Vic) s 464SE(1)(a).
[39] *Crimes Act 1958* (Vic) ss 464SE(1)(c)-(d).

Compliance assessment: In relation to ensuring refusal to give informed consent before a senior police officer authorisation is given, IBAC is currently **Unable to determine** compliance by the Chief Commissioner.

DNA person was given a reasonable opportunity to respond to application

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 F24/25.

IBAC reviewed 52 forms and found nine 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 indicating that no reason was provided, it could equally be read as no reasonable opportunity being given to do so. Consequently, IBAC was unable to determine compliance with this requirement of the Act for these nine cases.

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

- 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 now been acquitted by Victoria Police. The revised version of F24/25 updated in March 2025 (after the inspection period) now instructs that where no response is given by a DNA person, their parent/guardian (if applicable) or their legal practitioner (if present), that this be recorded by checking a box in the form. This revision has addressed the ambiguity for recording a 'no' response by the relevant persons.

Compliance assessment: In relation to giving the DNA person a reasonable opportunity to respond to the application, the Chief Commissioner is assessed as being **Substantially compliant.**

Senior police officer recorded the grounds on which the authorisation was 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 F24/25.

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

Of the 52 cases reviewed by IBAC, seven instances were identified where the grounds had not been recorded appropriately by the senior police officer hearing the application. 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 why taking the 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 by Victoria Police. VPFSD is currently in the process of developing a checklist which will assist Victoria Police members in completing the forms to ensure legislative compliance. 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.**

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

A copy of the authorisation was given to the 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.[41]

Both the VPM and F24/25 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 by Victoria Police. VPFSD is currently in the process of developing a checklist which will assist Victoria Police members in completing the forms to ensure legislative compliance. Ensuring that a copy of the authorisation is given to the DNA person will form part of this checklist. 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**.**

The required information was given to the DNA person and recorded on DEC

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.[42]

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 F24/25 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 reviewed a sample of 10 DEC recordings and found that, in one instance, the police officer did not inform the DNA person that an authorisation had been made under section 464SE.

In another instance (DNA profile sample 105783237), IBAC found that no recording had been made in relation to the 464SE authorisation. When this issue was raised with VPFSD, IBAC was advised that the DNA person who was in custody was refusing to leave their cell but was willing to provide the sample after the authority was read aloud to them. To alleviate safety concerns and prevent the DNA person becoming aggressive, a decision was made for the sample to be taken in the custody area.

IBAC makes **Recommendation 2 of 2025**, that:

a) Victoria Police investigate whether DNA profile sample 105783237 was taken in compliance with the Act; and
b) if the sample was not taken in compliance with the Act, ensure that it is dealt with appropriately.

Compliance assessment: In relation to information to be provided to the DNA prior to taking a DNA profile sample under an authorisation, and the recording of this information, the Chief Commissioner is assessed as being **Substantially compliant.**

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

Police officer named in the authorisation has taken the DNA profile sample

The Act requires that an authorisation under section 464SE be given to a police officer.[44] IBAC identified instances where the police officer named in F24/25, as the authorised police officer, was not the police officer who ultimately took the DNA profile sample.

This was raised with VPFSD who advised that due to operational complexities, the police officer named in F24/25 is not always the police officer to take the sample. One such example is where the named police officer's shift ends and a different police officer takes over the collection of the sample.

IBAC makes **Recommendation 3 of 2025**, that:

a) Victoria Police seek advice to identify the potential risks where a police officer who has not been named in the section 464SE authorisation takes the DNA profile sample;
b) if risks are identified, Victoria Police ensure these are mitigated through changes to policy and/or procedure; and
c) Victoria Police notify IBAC of the outcome of the advice and any mitigation measures taken as a result thereof.

This issue has not typically formed part of the inspection criteria against which IBAC assesses compliance, as it is unclear whether the police officer named in the section 464SE authorisation must be the police officer to take the DNA profile sample.

Police officer taking the DNA profile sample is authorised to take it

A police officer is authorised to supervise the taking of a mouth scraping where they have completed the 'DNA—Supervised Mouth Scraping' training.[45] IBAC authorised officers were provided with a record of all officers who were authorised to supervise the taking of a mouth scraping during the inspection period.

Of the 52 forms reviewed, there was one instance where IBAC was unable to determine if the police officer who took the sample was authorised due to one of the F21A forms not having a caution attached to the case. This case already contained a disclosure due to the use of F21A to authorise the taking of the DNA profile sample.

Compliance assessment: In relation to the police officer taking the DNA profile sample under section 464SE being authorised to take it, the Chief Commissioner is assessed as being **Compliant.**

DNA person was cautioned before the DNA profile sample was taken

The Act requires that before a DNA profile sample is taken in accordance with a senior police officer authorisation under section 464SE, the DNA person must be cautioned that they do not have to answer any questions asked by the person taking the sample but that anything they do say may be given in evidence.[46]

The VPM requires that the caution be read to the person immediately before the DNA profile sample is taken using Part C of F24/25. The caution may be recorded either in writing using Part C F24/25 or on DEC. It is not current policy that the caution be provided to VPFSD.

If the caution is recorded in writing, it must be signed by the DNA person and a parent/guardian (if applicable). If the DNA person refuses to sign the caution, an independent person may sign on their behalf if present.[47]

'Independent person' is not defined within the Act or the VPM.

Where the caution form has not been provided to VPFSD or where the police officer has not confirmed that the caution was read and recorded on DEC, an 'F' disclosure is recorded against the case to ensure the informant is aware that there is an issue with the sample that will require disclosure if the sample is to be reported on.

Of the 52 cases reviewed, IBAC did not identify any exceptions.

[44] *Crimes Act 1958* (Vic) s 464SE(5).
[45] Victoria Police Instrument of authorisation–Forensic procedures–physical examination of non-intimate parts of the body, taking non-intimate samples and supervising the taking of mouth scrapings, signed 1 July 2019.
[46] *Crimes Act 1958* (Vic) s 464Y(1).
[47] *Crimes Act 1958* (Vic) s 464Y(2)(a).

Compliance assessment: In relation to the police office cautioning a DNA person before taking a DNA profile sample under a section 464SE authorisation, the Chief Commissioner is assessed as being **Compliant.**

Senior police officer refuses to give an authorisation

If a senior police officer refuses to give an authorisation under section 464SE, the DNA person must be informed orally of the decision as soon as practicable and given written notice of the decision within seven days.[48]

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/F25.

During the inspection VPFSD informed IBAC that they were unaware of any instances of a senior police authorisation under section 464SE being refused.

It is noted that there have been no identified instances of a refusal to give an authorisation under section 464SE since IBAC's inspections began.

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

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
- 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).[49]

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.[50]

An authorisation must be given in writing and signed by the senior police officer giving it.[51]

The VPM requires the use of VP 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

Senior police officer authorisation was made in writing using F26

The Act requires that a post-conviction authorisation must be given in writing and signed by the senior police officer giving it.[52]

[48] *Crimes Act 1958* (Vic) s 464SF(6).
[49] *Crimes Act 1958* (Vic) s 464ZFAC(2).
[50] *Crimes Act 1958* (Vic) ss 464ZFAC(2)(b)-(d).
[51] *Crimes Act 1958* (Vic) s 464ZFAC(9).
[52] *Crimes Act 1958* (Vic) s 464ZFAC(9).

The VPM requires that officers use the templated F26 form to apply for and give an authorisation under section 464ZFAC.

IBAC identified one instance where Part B of F26 was not attached to the file. IBAC was therefore unable to determine if the senior police officer had signed the authorisation. VPFSD has confirmed that this case is currently quarantined pending legal advice.

No other exceptions were identified. All remaining cases used the correct and most up-to-date version of F26. VPFSD now provides communication to members via the Victoria Police intranet where revised versions of forms are released. IBAC notes that there has been an improvement in the use of correct forms for section 464ZFAC since the last inspection.

Compliance assessment: In relation to the requirement for the senior police officer to give the authorisation under section 464ZFAC in writing using F26 and sign the form, the Chief Commissioner is assessed as being **Compliant.**

No prior sample held by the Chief Commissioner for indefinite retention

The Chief Commissioner must not already have a DNA sample that can be retained indefinitely for an authorisation to be given.[53]

IBAC selected 112 cases for review and was notified by VPFSD that one of the samples selected for inspection was destroyed upon receipt to retain a sample that already existed from the person. Another instance was identified where the applicant police officer did not record whether the Chief Commissioner had a DNA profile sample from the person that could be retained indefinitely.

IBAC was unable to review the destroyed case to assess whether the taking of the DNA profile sample was non-compliant with any other criteria. The sample of cases inspected by IBAC for the remainder of the criteria was therefore 111.

Compliance assessment: In relation to the requirement that the Chief Commissioner not already have a DNA sample from the person that can be retained indefinitely, IBAC assesses the Chief Commissioner as **Substantially compliant.**

Person was found guilty of a DNA offence (or not guilty due to mental impairment)

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.[54] A DNA offence is defined within the Act as:

- an indictable offence
- 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.[55]

Of the 111 cases reviewed, IBAC identified one instance where the offence recorded in F26 was 'aggravated assault of a female' under section 24 of the *Summary Offences Act 1966* (Vic), which is not a DNA offence. VPFSD has confirmed that this case is currently quarantined pending legal advice.

Compliance assessment: In relation to the requirement that an authorisation under section 464ZFAC only be given where the person has been found guilty of a DNA offence (or not guilty because of mental impairment), IBAC assesses the Chief Commissioner as **Substantially compliant.**

[53] *Crimes Act 1958* (Vic) s 464ZFAC(2)(d).
[54] *Crimes Act 1958* (Vic) s 464ZFAC(2)(a).
[55] *Crimes Act 1958* (Vic) s 464ZFAC(1).

Person was 18 years of age or older at the time of the finding of guilt (or not guilty due to mental impairment)

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.[56]

IBAC reviewed 111 cases during the inspection and identified no exceptions.

Compliance assessment: In relation to the requirement that an authorisation under section 464ZFAC only be given where the person is 18 years of age or older at the time of the finding of guilt (or not guilty due to mental impairment), IBAC assesses the Chief Commissioner as **Compliant.**

Authorisation was given within the eligible timeframe

A senior police officer may authorise the taking of a DNA profile sample under section 464ZFAC 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), or the expiration of any appeal period.[57]

IBAC reviewed 111 cases during the inspection and identified one instance where the authorisation was not made within the eligible timeframe. VPFSD has confirmed that this case is currently quarantined pending legal advice.

Compliance assessment: In relation to the requirement that an authorisation under section 464ZFAC only be made if it is not more than six months after the final determination of an appeal or the expiration of any appeal period, IBAC assesses the Chief Commissioner as **Compliant.**

Service of a notice to attend on a relevant person

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'.[58] 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.[59]

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

[56] *Crimes Act 1958* (Vic) s 464ZFAC(2)(c).
[57] *Crimes Act 1958* (Vic) s 464ZFAC(2)(b).
[58] *Crimes Act 1958* (Vic) s 464ZFAD(2).
[59] *Crimes Act 1958* (Vic) s 464ZFAD(3).

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

Of the 111 cases reviewed during the inspection, only 14 cases had an F27 NTA attached. Of these 14 cases, two NTAs did not contain the contact details of the serving police officer.

Ninety-seven cases did not have an F27 attached. These cases were queried with VPFSD to determine whether an NTA was not required due to the person being either detained or protected.

VPFSD advised that the current procedure does not require an F27 to be submitted with the DNA profile sample. Further, VPFSD noted that due to the operational complexities relating to the collection of samples under a section 464ZFAC authorisation, it is not possible for VPFSD to determine if a person is a 'relevant person' under the legislation and therefore required service of an NTA.

This issue was previously raised and resulted 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.

Victoria Police ultimately rejected this recommendation on the basis that implementation would not be possible without an identified funding source.

It is noted that without the implementation of this recommendation, IBAC will remain unable to determine Victoria Police compliance with the requirement of the Act to serve an NTA on persons who are relevant persons.

Recording service of 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.[60]

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.[61]

Of the 14 NTA reviewed during the inspection, only three had an affidavit of service attached.

In relation to the 11 cases which did not contain an affidavit of service, VPFSD advised IBAC that the collecting member is not required to submit the affidavit of service to VPFSD with the DNA profile sample. Further, due to the operational complexities relating to the taking of a DNA profile sample where a section 464ZFAC authorisation has been given, VPFSD cannot confirm whether an affidavit of service was required for each NTA.

An example provided by VPFSD is where an authorisation under section 464ZFAC is issued and the person cannot be located by Victoria Police. Where the person is later taken into custody for another reason and the unexecuted authorisation is identified by the police officer, VPFSD state that an affidavit of service would not be required.

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.

Victoria Police ultimately rejected this recommendation on the basis implementation would not be possible without an identified funding source.

During the inspection, IBAC authorised officers requested that VPFSD either give IBAC the remaining 11 affidavits of service or provide a reason as to why an affidavit of service was not required in each case. VPFSD was able to

[60] *Crimes Act 1958* (Vic) s 464ZFAA(4).
[61] *Crimes Act 1958* (Vic) s 464ZFAA(5).

provide three of these affidavits of service. No reason was given as to why the remaining documents were not provided to IBAC.

Where IBAC has proposed a compromise to enable its inspection objectives to be met despite a rejected recommendation, IBAC urges Victoria Police to make all reasonable efforts to assist.

Of the affidavits able to be inspected, IBAC deemed service of these notices to attend to be compliant. However, because IBAC was not provided with reasons as to why affidavits of service were not required for eight out of the 14 notices to attend, IBAC was unable to determine whether service was required and consequently, could not determine the compliance of the Chief Commissioner.

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.

Police officer taking the DNA profile sample was authorised to take it

A police officer is authorised to supervise the taking of a mouth scraping where they have completed the 'DNA—Supervised Mouth Scraping' training.[62] IBAC authorised officers were provided with a record of all officers who were authorised to supervise the taking of a mouth scraping during the inspection period.

Of the 111 forms tested, IBAC identified one instance where the police officer who took the sample was not authorised. This case was identified by VPFSD in its compliance check.

Compliance assessment: In relation to the police officer taking the DNA profile sample under section 464ZFAC being authorised to take it, the Chief Commissioner is assessed as being **Substantially compliant.**

DNA person was cautioned before the DNA profile sample was taken

The Act requires that before a DNA profile sample is taken in accordance with a senior police officer authorisation under section 464ZFAC, the DNA person must be cautioned that they do not have to answer any questions asked by the person taking the sample but that anything they do say may be given in evidence.[63]

The VPM requires that the caution be read to the person and recorded in form F30. The caution must be provided to VPFSD.

The caution must be signed by the DNA person. If the DNA person refuses to sign the caution, an independent person may sign on their behalf if present.[64]

'Independent person' is not defined within the Act or the VPM.

Where the caution form has not been provided to VPFSD, an 'F' disclosure is recorded against the case to ensure the informant is aware that there is an issue with the sample that will require disclosure if the sample is to be reported on.

Of the 111 cases reviewed, IBAC identified 45 instances where the caution form was not attached to the file.

Upon further investigation, VPFSD advised that 40 of the 45 cases which did not contain an F30 form had been quarantined pending legal advice. For the remaining five cases, VPFSD advised that the forms were sighted upon receipt of the case but did not scan into the system, or the informant advised that the caution had been read and recorded on DEC.

VPFSD will provide general communications to members on the outcomes of IBAC inspections including commentary on incomplete or incorrect forms. This communication will be reviewed by IBAC at its next inspection.

Compliance assessment: In relation to the police officer cautioning a DNA person before taking a DNA profile sample under a section 464ZFAC authorisation, IBAC is **Unable to determine** the Chief Commissioner's compliance.

[62] Victoria Police Instrument of authorisation–Forensic procedures–physical examination of non-intimate parts of the body, taking non-intimate samples and supervising the taking of mouth scrapings, signed 1 July 2019.
[63] *Crimes Act 1958* (Vic) s 464Y(1).
[64] *Crimes Act 1958* (Vic) s 464Y(2)(a).

DNA profile sample was taken within eligible timeframe

The legislation details various timeframes in which a post-conviction authorisation can be carried out.[65]

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.

Quarantined DNA profile samples taken under a section 464ZFAC authorisation

When VPFSD receives 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 111 cases during the inspection and identified 46 instances where the sample was quarantined pending legal advice.

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.[66]

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.[67]

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.[68]

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.

[65] *Crimes Act 1958* (Vic) ss 464ZFAC(3)-(6).
[66] *Crimes Act 1958* (Vic) s 464ZFAE(1).
[67] *Crimes Act 1958* (Vic) s 464ZFAE(1).
[68] *Crimes Act 1958* (Vic) s 464ZFAE(2).

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's compliance with certain sections of the Act.

Most recommendations made in IBAC's previous inspection reports have now been accepted and are either complete or in progress. Whilst Victoria Police shows a commitment to acquit these recommendations, legal and administrative 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.

This system increases the risk of non-compliance with the Act which may 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, it is likely that most of the recommendations made in previous IBAC inspection reports would be acquitted through the implementation of a centralised electronic records management system.

During the last inspection, IBAC made a recommendation that Victoria Police consider implementing a centralised electronic record management system to store and record the taking, destruction and retention of DNA profile samples. While this recommendation was not accepted due to the current fiscal environment of Victoria Police, 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 help ensure 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 for necessary IT enhancements or system upgrades to reduce the risk of error and incomplete data and improve efficiency.

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

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

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



Victoria Elliott

Commissioner

Independent Broad-based Anti-corruption Commission

Date: 07/05/2026

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