Inquiry into the external oversight of police corruption and misconduct in Victoria
Committee functions

The IBAC Committee is constituted under section 12A of the Parliamentary Committees Act 2003.

(1) The functions of the Committee are—

(a) to monitor and review the performance of the duties and functions of the IBAC;
(b) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament;
(c) to examine any reports made by the IBAC;
(d) to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the Independent Broad-based Anti-corruption Commission Act 2011;
(e) to carry out any other function conferred on the IBAC Committee by or under this Act or the Independent Broad-based Anti-corruption Commission Act 2011;
(f) to monitor and review the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO officers or Ombudsman officers;
(g) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate that require the attention of the Parliament, other than those in respect of VAGO officers or Ombudsman officers;
(h) to examine any reports made by the Victorian Inspectorate, other than reports in respect of VAGO officers or Ombudsman officers;
(i) to consider any proposed appointment of an Inspector and to exercise a power of veto in accordance with the Victorian Inspectorate Act 2011.

(1A) Despite anything to the contrary in subsection (1), the IBAC Committee cannot—

(a) investigate a matter relating to the particular conduct the subject of—
   (i) a particular complaint or notification made to the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011; or
   (ii) a particular disclosure determined by the IBAC under section 26 of the Protected Disclosure Act 2012, to be a protected disclosure complaint;
(b) review any decision by the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011 to investigate, not to investigate or to discontinue the investigation of a particular complaint or notification or a protected disclosure complaint within the meaning of that Act;
(c) review any findings, recommendations, determinations or other decisions of the IBAC in relation to—
   (i) a particular complaint or notification made to the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011; or
   (ii) a particular disclosure determined by the IBAC under section 26 of the Protected Disclosure Act 2012, to be a protected disclosure complaint; or
Committee functions

(iii) a particular investigation conducted by the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011;

(ca) review any determination by the IBAC under section 26(3) of the Protected Disclosure Act 2012;

(d) disclose any information relating to the performance of a function or the exercise of a power by the IBAC which may—

(i) prejudice any criminal investigation or criminal proceedings; or

(ii) prejudice any investigation being conducted by the IBAC; or

(iii) contravene any secrecy or confidentiality provision in any relevant Act.

(2) Despite anything to the contrary in subsection (1), the IBAC Committee cannot—

(a) investigate a matter relating to particular conduct the subject of any report made by the Victorian Inspectorate;

(b) review any decision to investigate, not to investigate, or to discontinue the investigation of a particular complaint made to the Victorian Inspectorate in accordance with the Victorian Inspectorate Act 2011;

(c) review any findings, recommendations, determinations or other decisions of the Victorian Inspectorate in relation to a particular complaint made to, or investigation conducted by, the Victorian Inspectorate in accordance with the Victorian Inspectorate Act 2011;

(d) disclose any information relating to the performance of a function or exercise of a power by the Victorian Inspectorate which may—

(i) prejudice any criminal investigation or criminal proceedings; or

(ii) prejudice an investigation being conducted by the IBAC; or

(iii) contravene any secrecy or confidentiality provision in any relevant Act.
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This report is available on the Committee’s website.
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Bibliography
Terms of reference

Inquiry into the external oversight of police corruption and misconduct in Victoria

Self-referenced by the Committee on 19 June 2017:

That, under s 33 of the Parliamentary Committees Act 2003, the Independent Broad-based Anti-corruption Commission Committee inquire into, consider and report, no later than 30 June 2018, on the external oversight and investigation of police corruption and misconduct in Victoria.

Specifically, the Committee is required to:

1. Examine the current system for the oversight of police corruption and misconduct in Victoria, in particular the role of IBAC and the Victorian Inspectorate.
2. Identify and assess best-practice models for the oversight of police.
3. Identify and review the main challenges to the effective oversight and investigation of complaints and disclosures about police in Victoria. This will involve an examination of the legal framework for the oversight of police in Victoria. The review will encompass both the legal responsibilities of those overseeing police as well as the perspectives and experiences of complainants, including marginalised Victorians.
4. Consider best-practice strategies to improve the oversight and investigation of police corruption and misconduct and how they may be implemented in Victoria.
Chair’s foreword

Police play a critical role in society, preventing and combating crime, enforcing the law and protecting, assisting and engaging with the community in a myriad of ways. The job of a police officer is a demanding one: they can be called on to make split-second decisions in complex, stressful and dangerous circumstances. In order to do their jobs effectively, police officers have distinctive powers to arrest, detain, search and use force against individuals. However, the use of these powers is strictly governed by the law and by the understanding that effective and legitimate policing rests on the consent and confidence of the community—an understanding central to the values and commitments of Victoria Police. While the majority of Victoria Police officers do a fine job in serving the community, the maintenance of public confidence in police depends to a considerable degree on how officers who do the wrong thing are held accountable. In this regard, an effective system for handling complaints and disclosures (‘whistleblower’ complaints) is vital.

In 2016, the Independent Broad-based Anti-Corruption Commission Committee’s Strengthening Victoria’s integrity agencies? report identified that there were concerns among some stakeholders about the impartiality and effectiveness of the current police complaint-handling and oversight systems in Victoria. Some stakeholders called for the creation of a new, independent body to receive, handle and investigate all complaints about police, instead of Victoria Police and IBAC, along the lines of the Office of the Police Ombudsman for Northern Ireland (PONI). In response to these concerns, the Committee determined in July 2016 to self-reference an inquiry into the external oversight of police corruption and misconduct in Victoria.

In undertaking this Inquiry, the Committee carried out wideranging research into past Australian and international inquiries, examined a range of best practice models and principles and sought and received extensive evidence on the strengths and weaknesses of the present Victorian system. The Committee found that Victoria’s mixed civilian review system—in which the responsibility for handling and investigating complaints is shared between Victoria Police and IBAC as an independent oversight body—is a robust one that can, with improvement, meet the relevant best practice principles. The Committee does not therefore recommend the creation of a new independent body to receive, handle and investigate all complaints about police.

However, the Committee’s research, and evidence received during this Inquiry, demonstrate that the complaints and police oversight system needs significant improvement. The Committee has therefore made 69 recommendations to improve the transparency, impartiality, effectiveness and efficiency of the system.

In particular, the Committee considers that IBAC needs to give greater priority to its functions of handling, investigating and oversighting complaints about police. For example, IBAC investigates only approximately 2% of the allegations it determines warrant investigation, referring the rest to Victoria Police, including a range of serious police misconduct matters. In order to enhance the attention IBAC gives to serious police misconduct, and police oversight generally, the Committee has recommended the establishment of an adequately staffed and empowered Police Corruption and Misconduct Division within IBAC. Further, the Committee has recommended that, unless there are exceptional circumstances, IBAC, rather than Victoria Police, investigate serious police misconduct. In order to assist IBAC in carrying out these important functions, the Committee has recommended the conferral of selected additional investigative and oversight powers on it.
Chair's foreword

The Committee's recommendations address the need for significant improvements in the complaints system across a wide range of functions and activities, including the receipt, handling, assessment, referral, investigation, review and oversight of complaints and disclosures about police. In particular, the Committee emphasises the importance of the accurate assessment of all complaints to ensure, for example, that serious police misconduct is not wrongly classified as a customer service issue or similar lower-level concern.

Further, the Committee has made recommendations, from a complainant-centred perspective, to improve the public information about the complaints system that is available (including high quality data on the operation of the system). It has also made recommendations to ensure that complainants, especially vulnerable complainants, are better communicated with and supported throughout the process. In addition, the Committee has identified a range of necessary improvements to ensure the impartiality and thoroughness of Victoria Police complaint investigations (particularly at the regional level). This includes the better management of issues such as officer complaint histories and conflicts of interest. Finally, the Committee has recommended that Victoria Police and IBAC make more use of conciliation as a way of effectively resolving complaints.

While there is certainly a need for IBAC to play a stronger role within the complaints system, the Committee recognises the importance of Victoria Police continuing to play its distinctive part in taking responsibility for addressing misconduct within its ranks through upholding professional standards, handling and investigating complaints and managing discipline. Not only IBAC, but Victoria Police, have critical parts to play in relation to police accountability and oversight.

In carrying out this Inquiry, the Committee has been struck by the strength and diversity of contending views among stakeholders. The Committee wishes to express its appreciation to the broad range of people who shared their views, experience and expertise with it. The insights of integrity agencies, individuals who work within them and those with specialist knowledge of the relevant legislation have been invaluable. In particular, the Committee expresses its appreciation to IBAC for its regular assistance in providing information and responding to requests. The Committee is also grateful to complainants who courageously shared their experiences and perspectives with it.

For their cooperative, bipartisan and conscientious work on this Inquiry, I thank my Committee colleagues: Hon Marsha Thomson MP (Deputy Chair), Mr Sam Hibbins MP, Mr Danny O'Brien MP, Mr Simon Ramsay MLC, Mr Tim Richardson MP and Ms Jaclyn Symes MLC. Further, I would like to thank the Committee Secretariat for their hard work on this Inquiry and report: Ms Sandy Cook, Executive Officer; Dr Stephen James, Research Officer; and Ms Justine Donohue, Administrative Officer.

Finally, the Committee acknowledges the excellent work of Victoria Police and trusts that the recommended improvements to the complaints system will, by enhancing the accountability of Victoria Police, reinforce the public’s confidence in the vital service it performs.

Hon Kim Wells MP
Chair
Executive summary

Introduction

In 2016, the Independent Broad-based Anti-Corruption Commission Committee’s *Strengthening Victoria’s integrity agencies?* report identified concerns among stakeholders about the transparency, impartiality and effectiveness of the current police complaint-handling and oversight systems in Victoria. Some stakeholders called for the establishment of a new, independent body to receive, handle and investigate all complaints about police, instead of Victoria Police and the Independent Broad-based Anti-corruption Commission (IBAC), along the lines of the Office of the Police Ombudsman for Northern Ireland (PONI). In response to these concerns, the Committee determined in July 2016 to inquire into the external oversight of police corruption and misconduct in Victoria, including the effectiveness of the complaints and police oversight systems.

Police play a vital role in society in preventing crime, enforcing the law and protecting and assisting the community on a day-to-day basis. Their work is complex and demanding and can be extremely challenging. In order to meet these demands and effectively carry out their duties, police are provided with significant powers, strictly governed by the law, to detain, search and use force against individuals. The community expects these powers to be used lawfully and that police officers will be accountable for their actions.

The community’s trust and confidence in the police is reinforced by the effective, ‘independent and objective’ oversight of its complaints handling, which contributes to the accountability of police in a democratic society. However, there has been considerable, and continuing, debate about how that independent oversight of police ought to be institutionalised and exercised. A key issue in this debate is how to strike an appropriate balance between police responsibility for managing the conduct of their members and an external agency’s oversight and investigation of complaints about police. In examining this issue, the Committee has explored the relevant research, evaluated the evidence it has received and sought to learn from interstate and international experience as well as best practice principles.

Operation of the current system: a snapshot

The current system in Victoria for the handling of complaints and disclosures about police is extremely complex. It is based on an intricate, overlapping, and sometimes fraying, patchwork of laws, policies and processes governing Victoria Police and IBAC. This includes the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* (‘IBAC Act 2011 (Vic)’), the *Victoria Police Act 2013 (Vic)*, the *Protected Disclosure Act*

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2012 (Vic) (covering whistleblower protections) and the *Victoria police manual.* Given the complexities involved, which are thoroughly examined in Chapter 3, only a sketch of the system is given here.

Under the current system, both IBAC and Victoria Police have a role in receiving, handling, assessing and investigating complaints about police corruption and other misconduct. Members of the public and police officers may make complaints about misconduct, broadly conceived, to either Victoria Police or IBAC in the first instance. Victoria Police is also required to inform IBAC of complaints about misconduct and the details of any investigation it is conducting. In addition, IBAC acts as the clearing house for disclosures ('whistleblower complaints') about police wrongdoing. Under the legislation, IBAC is required to dismiss, refer or investigate complaints. The vast majority of complaints are referred back to Victoria Police for investigation. IBAC investigates around 2% of the allegations that it determines warrant investigation, referring the remainder back to police, while Professional Standards Command (PSC), Victoria Police, investigates approximately 10% of the complaints it receives, referring the rest to regions, departments or commands.

As an external oversight body, IBAC can request information from the police, review police investigations, audit police systems and processes and undertake investigations under the authority of its 'own motion' jurisdiction. IBAC can also make recommendations to Victoria Police and exercise a range of educative and preventive functions. IBAC itself is subject to oversight by the Victorian Inspectorate (VI).

**Models and best practice principles**

The issue of how best to investigate and oversee complaints about police corruption and misconduct has been long been considered by researchers, official inquiries and stakeholders in a range jurisdictions. In order to lay the foundation for a systematic evaluation of the evidence received during this Inquiry, the Committee examined the key inquiries into police corruption and other misconduct, and how they sought to address it, in the United States of America, England and Wales, Northern Ireland, New Zealand and Australia. Through this work—together with complementary analysis of models of police oversight, overseas examples and international standards—the Committee identified best practice principles to draw on in its assessment of the operation of the Victorian system.

**Past inquiries: key themes and lessons**

A number of key themes and lessons arose out of the Committee's survey of past inquiries into police corruption, misconduct and complaints systems. They were:

- the importance of an effective and fair system for handling and investigating complaints about police to the maintenance of public confidence

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vi See the discussion in Chapter 4 of this report.
Executive summary

- the challenges that complex legislative frameworks present for complainants, police and oversight agencies
- the need for an ‘independent element’ in any system for the handling of complaints about police and rigorous oversight of any police complaint investigations\textsuperscript{viii}
- the importance of striking an appropriate balance between police responsibility for addressing misconduct and maintaining professional standards and external oversight\textsuperscript{ix}
- the importance of comprehensive and accurate collection and management of data about complaints, as well as its rigorous analysis and transparent reporting.
- the importance of effective public information about the complaints system and better communication with complainants, from the making of a complaint to its finalisation.

The Committee has taken account of these themes and lessons throughout the report.

Models of police oversight: Internal Affairs, Civilian Review and Civilian Control

Leading researchers have identified three main models for the handling of complaints about police: Internal Affairs, Civilian Review and Civilian Control.\textsuperscript{x} It should be noted, however, that existing complaint and oversight systems will incorporate aspects of these models and therefore overlap to some degree.\textsuperscript{xi}

**Internal Affairs**

The Internal Affairs approach was the dominant model in the common law world until the 1970s.\textsuperscript{xii} Under this model, police are almost exclusively responsible for receiving, handling and investigating complaints about police officers.\textsuperscript{xiii} Depending on the gravity of the conduct complained about, complaints are allocated to a more or less senior supervisor.\textsuperscript{xiv}

In support of aspects of the Internal Affairs model it has been argued that it is beneficial for police to take responsibility for addressing corruption and misconduct within its ranks and for upholding professional standards. It has also been argued that police can effectively and efficiently employ their special skills, knowledge and resources to investigate complaints.\textsuperscript{xv}


\textsuperscript{ix} See Wood report; Kennedy report; Tink report; Lander report.

\textsuperscript{x} See, for example, Tim Prenzler, ‘Scandal, Inquiry, and reform: the evolving locus of responsibility for police integrity’ in Tim Prenzler and Garth den Heyer (eds), *Civilian oversight of police: advancing accountability in law enforcement*, CRC Press, Boca Raton, 2016, pp. 4-8.

\textsuperscript{xi} Ibid.; Tink report, p. 2; Lander report, p. 26.

\textsuperscript{xii} Ibid.; Tink report, p. 2; Lander report, p. 26.

\textsuperscript{xiii} Ibid., p. 4.

\textsuperscript{xiv} Ibid.

\textsuperscript{xv} *Wood report; Kennedy report; Tink report; Lander report*; Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, pp. 13-14; Victoria Police, *Submission 52*, 1 May 2018; The Police Association of Victoria, *Submission 28*, 8 August 2017, p. 5. See also Section 2.3.1 in Chapter 2 of this report.
Executive summary

However, many inquiries into internal investigations units have found problems of partiality, lack of thoroughness, an unhealthy scepticism, or even hostility towards, complainants and a lack of transparency regarding processes and outcomes.xvi Given the extensive powers exercised by police, and the particular challenges of investigating police, it has been argued that there is a need for robust, independent, external oversight.xvii

Civilian Review

The Civilian Review model has been described as a compromise between an Internal Affairs approach and a fully-fledged Civilian Control approach like that of PONI. xviii The Civilian Review approach was developed as a response to criticism and scandals within police forces, many of which were exposed in the inquiries surveyed in Chapter 2.xix According to one researcher, ‘Civilian review takes many forms, but the principal idea is to provide an independent check on possible bias without excessive interference in police management.’xx

Under a minimalist Civilian Review model, police carry out investigations into complaints with the external body monitoring them, sometimes only after an investigation has been completed.xxx Review bodies under this approach will typically audit police complaint files and respond to complainant appeals from police investigations.xxxi

However, it is important to note that the Civilian Review model is not limited to this minimalist approach.xxxii It can encompass fully independent bodies with robust investigative powers, own motion investigation jurisdiction, the capacity and will to investigate police corruption and other serious misconduct, the power to take over police investigations, the authority to conduct public and private inquisitorial hearings, and the power to prosecute or refer matters for prosecution.xxxiii In some jurisdictions, such bodies may also decide appeals against police disciplinary determinations.xxxiv

While the Civilian Review model is the dominant model internationally.xxxv concerns have been expressed that Civilian Review systems do not always deliver on their promise of robust external oversight and investigations—especially if too many complaints are referred back to police for investigation.xxxvi

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xvii Wood report, vol. I, p. 481; State Services Authority, Review of Victoria’s integrity and anti-corruption system, Melbourne, 2010 (‘Proust report’), p. 29; Lander report 2015, p. 26; Tink report, p. 3. See also the discussion in Section 2.2 of Chapter 2 in this report.


xix Ibid.

xx Ibid.

xxi Ibid.

xxii Ibid.

xxiii Ibid.

xxiv Ibid.

xxv Ibid, pp. 5–6.

xxvi Ibid.

Civilian Control

Under the Civilian Control model, the governing principle is that police ‘should not investigate nor adjudicate complaints against their own’ since this involves an intrinsic conflict of interest and partiality.\textsuperscript{xviii} On one view, the Civilian Control model would require that all complaints about police be received, handled, assessed, investigated and reviewed by a fully independent external agency.\textsuperscript{xxx} PONI is one of the rare examples of the Civilian Control model. While PONI is often referred to as an exemplar of the Civilian Control model, even it retains aspects of the Civilian Review approach. For example, it does not investigate all complaints, makes use of informal resolution approaches and is authorised under its governing legislation to refer complaints back to police in some circumstances.\textsuperscript{xxix}

Criticisms of the Civilian Control model have included the cost of requiring an external agency to handle and investigate complaints about police, that the agency will lose the particular investigative skills of police that could be applied to complaints investigations and that it would erode the fundamental responsibility of police forces to manage their own members and uphold their professional standards.\textsuperscript{xxx}

Relevance of the models to Victoria

Each of the models of complaint handling and police oversight has strengths and weaknesses. The current Victorian system draws on elements of each model but is best described as a relatively strong Civilian Review approach that also shares a number of features of the Civilian Control model. For example, IBAC, as a legally independent body, is informed of most complaints about police, monitors and reviews those complaints and police investigations, can carry out its own investigations (including through its own motion jurisdiction), has a range of covert and coercive investigation powers, can take over a police investigation, can audit Victoria Police and can recommend improvements.

Both the United Nations Office on Drugs and Crime (UNODC) and the Council of Europe's Commissioner for Human Rights have recognised the importance of taking account of local circumstances in developing and improving complaints systems and police oversight.\textsuperscript{xxx} Moreover, neither, as discussed below, has argued that a Civilian Control model along the lines of PONI must be adopted if best practice principles are to be met.

Best practice principles for complaint handling and police oversight

The most authoritative statement of best practice principles relating to complaints about police and police oversight—cited in many submissions to this Inquiry and endorsed by the UNODC—comes from the Council of Europe’s Commissioner for

\textsuperscript{xviii} Ibid.

\textsuperscript{xx} Ibid, p. 7.

\textsuperscript{xxx} See the discussion of PONI in Section 2.3.5 in Chapter 2 of this report and the references cited therein.


Executive summary

Human Rights. The Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police identifies five essential principles:

- **Independence**: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
- **Adequacy**: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- **Promptness**: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
- **Public scrutiny**: procedures and decision-making should be open and transparent in order to ensure accountability; and
- **Victim involvement**: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

The Committee has also identified a range of other compatible best practice principles in the International Organization for Standardization’s (ISO’s) complaint-handling standards and the Hayes Review of police oversight in Northern Ireland. It has also identified best practice principles concerning the collection, analysis and publication of complaints data.

It is important to note that these best practice principles are compatible with a range of complaints and police oversight systems on the spectrum from Civilian Review to Civilian Control; they do not, for instance, prescribe (or require) that a fully-fledged PONI-style system be adopted.

The UNODC has similarly recognised that mixed systems for complaints-handling and police oversight can comply with these best practice principles:

External oversight is complementary to internal mechanisms: it can reinforce them and sustain police managers in their efforts to enhance police integrity and performance.

... Enhancing police accountability must not be limited to establishing a new (independent) structure but must include strengthening the capacity, capability and competence of existing internal and external accountability structures.

In interpreting and employing these best practice principles, the Committee therefore considers that it is important to bear in mind the following points:

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xxxiii Opinion of the Commissioner for Human Rights concerning police 2009; UNODC, *Handbook on police accountability, oversight and integrity*, United Nations, New York, 2011. With respect to submissions to this Inquiry, see, for example, St Kilda Legal Service, Submission 36, 18 August 2017; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017; Ms Tamar Hopkins, Submission 4, 18 July 2017.

xxxiv Opinion of the Commissioner for Human Rights concerning police 2009, p. 3.


xxxvi See the discussion in Chapter 4 of this report.


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• Police need not be excluded from managing discipline or handling certain complaints.
• Not all complaints need to be investigated (for example, some might be resolved informally, through conciliation and so on)—but they all need to be monitored by the independent, external oversight body.
• The oversight body need not investigate all complaints about police (although the Council of Europe’s Commissioner for Human Rights recommends that it investigate all complaints about ‘serious misconduct’).
• The oversight body must be fully independent and exercise oversight over the entire police complaints system and be informed about all complaints.
• The oversight body must be able to intervene and take over police investigations when that is justified and review and audit police complaint-handling and investigations.
• The oversight body must be given robust investigative powers and be able to initiate investigations on its own motion.
• Complainants, investigators and those cooperating with investigators ought to be protected against reprisals.
• The oversight body should be able to make recommendations to police with respect to particular complaints and investigations, or more generally in relation to police complaint-handling, policies, processes and practices (and require that police give an account of their actions in response to recommendations).

Application of the best practice principles in Victoria

The mixed Civilian Review system is the dominant one internationally and within the Australian states, including Victoria. It balances the role of police in managing their workforce and upholding standards with rigorous, independent, external oversight. The importance of striking the right balance in this regard has been recognised in a number of inquiries surveyed in Chapter 2, including the Wood, Kennedy, Lander and Tink inquiries.

IBAC meets the UNODC’s prerequisites for an external, independent police oversight body given its jurisdiction and powers under the IBAC Act 2011 (Vic), Victoria Police Act 2013 (Vic) and the Protected Disclosure Act 2012 (Vic).

Robust Civilian Review complaints systems can comply with the identified best practice principles. This is the case with IBAC, which is legally and institutionally independent from police; has jurisdiction and capacity to investigate and oversee complaints; and can recommend improvements to Victoria Police. The Committee recommends the retention of IBAC’s complaints-handling, investigative and oversight roles. There also remains an important role for Victoria Police with respect to maintaining standards and handling and investigating certain complaints. Therefore, the Committee does not consider that a PONI-style body is required in Victoria.

RECOMMENDATION 1: That IBAC, as an independent body, retain its role in receiving, handling, investigating and overseeing complaints and disclosures about police; it is not necessary to create a new body in addition to IBAC to undertake these tasks. (p. 50)

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xxxix UNODC, Handbook on police accountability, oversight and integrity, United Nations, New York, 2011, especially pp. iv, 2–3, 13–14, 16, 33–73; Opinion of the Commissioner for Human Rights concerning police 2009; Hayes report, pp. 23–27 (on ‘informal resolution’); Wood report; Kennedy report; Tink report; Lander report, pp. 23–32; sections 2.2, 2.3.2 and 2.3.5 in Chapter 2 of this report.

xi Wood report; Kennedy report; Lander report; Tink report.

This is not to say, however, that the concerns raised by stakeholders are not valid. Indeed, the Committee closely examined those concerns and has recommended a wide range of reforms to improve the role of IBAC within the complaints and oversight system.

Addressing the complexity of the legislative framework

Simplifying and clarifying the legislative framework

The Committee found that the current system for handling complaints and disclosures about police is extraordinarily complex and confusing in terms of:

- who may make a complaint or disclosure (members of the public and Victoria Police personnel)
- the kinds of conduct that may be complained about
- whose conduct may be complained about (for example, police officers and Protective Services Officers (PSOs))
- how a complaint or disclosure may be made
- to whom (for example, IBAC, Victoria Police or the Victorian Equal Opportunity and Human Rights Commission (VEOHRC)) a complaint or disclosure may be made—and how (for example, directly or by indirect report or notification)
- how complaints and disclosures are received, handled, assessed, dismissed, referred or investigated by Victoria Police, IBAC and the VEOHRC
- how complaints are monitored, reviewed and overseen
- what information must (or may) be provided to complainants and disclosers, from the making of a complaint or disclosure to its conclusion.

In particular, the provisions in the IBAC Act 2011 (Vic), Victoria Police Act 2013 (Vic) and Protected Disclosure Act 2012 (Vic) relating to the making and handling of complaints and disclosures about police corruption and police misconduct are over-complex, as is the interaction of these Acts with each other.

The Committee considers that the legislative regime should be simplified and clarified so that the system for the receipt, handling, assessment, referral, investigation, review and oversight of complaints and disclosures can be made more effective, not only for members of the public, police officers and PSOs, but also for investigating entities such as IBAC and Victoria Police. The Committee also believes that the structure, language and usability of the relevant legislation can be improved by applying plain-language principles.

RECOMMENDATION 5: That the Victorian Government review the legislative regime for complaints and disclosures about police and consolidate, simplify and clarify the legislative provisions on who may make a complaint or disclosure, how they may make a complaint or disclosure and to whom. In addition, the Government should seek to simplify and clarify the provisions in the Victoria Police Act 2013 (Vic), IBAC Act 2011 (Vic), Protected Disclosure Act 2012 (Vic), and relevant regulations, with respect to:

- the legislative definitions of police misconduct
- the reporting of police misconduct by police personnel and its notification to IBAC
- the receipt, handling, assessment, investigation, review and oversight of complaints and disclosures about police misconduct. (p. 104)
In addition, the Committee has made a range of specific recommendations in relation to these matters.xiii

RECOMMENDATION 6: That the Victorian Government apply plain-language principles to improve the design of the IBAC Act 2011 (Vic), Victoria Police Act 2013 (Vic) and the Protected Disclosure Act 2012 (Vic) so that they are easier to use, understand and navigate. This should include better use of headings, notes, examples and tables, as well as useful internal and external hyperlinks in digital versions of the legislation. (p. 104)

The Committee notes that it has in a number of reports recommended improvements to the design and usability of the legislative framework for Victoria’s integrity regime, including most prominently in its review of the Protected Disclosure Act 2012 (Vic).xiii

Improving the definitions of misconduct and clarifying IBAC’s investigative functions

The Committee received evidence that the definitions of police misconduct are unnecessarily complex and confusing and also leave a number of gaps in coverage and jurisdiction, especially for IBAC. In terms of transparency and public scrutiny, the kinds of police wrongdoing that can be complained about, and to whom, should be clearly defined. This is especially important in a mixed Civilian Review complaints system where there needs to be a clear demarcation for police and oversight bodies with regard to their respective oversight, investigation, review and audit responsibilities. In particular, best practice principles recommend that various kinds of serious police misconduct should generally be reserved for investigation by an external oversight body rather than by police.xlv

Improving the definitions of police misconduct

The Committee received evidence that the Victoria Police Act 2013 (Vic) and the IBAC Act 2011 (Vic) should be amended so that the provisions defining police wrongdoing are consolidated, simplified and clarified. In particular, the categories of ‘police personnel conduct’ and ‘police personnel misconduct’ under the IBAC Act 2011 (Vic) and ‘misconduct’ and ‘conduct’ under the Victoria Police Act 2013 (Vic) should be replaced with categories of ‘police misconduct’ and ‘serious police misconduct’. Further, ‘police misconduct’ should include the kinds of conduct covered by the present definitions of ‘police personnel conduct’ under s 5 of the IBAC Act 2011 (Vic) and ‘conduct’ under s 166 of the Victoria Police Act 2013 (Vic). It should also encompass the definition of ‘improper conduct’ under the Protected Disclosure Act 2012 (Vic).

For a mixed Civilian Review complaints system such as Victoria’s to work effectively, the external oversight agency, rather than police, should generally investigate serious police misconduct. In order for this to work, however, the Committee believes there
needs to be a clear delineation between serious police misconduct and other kinds of misconduct. The Committee has received strong evidence during this Inquiry of the need to include a category of ‘serious police misconduct’ in the legislation and to define it clearly. This is to ensure transparency and enhance independence, impartiality and accountability and that IBAC, rather than Victoria Police, generally investigate these kinds of serious police misconduct. This is essential for the maintenance of public confidence in Victoria’s complaints system.

The Committee considers that there should be three categories of police wrongdoing—customer service (and similar matters), generally dealt with by police; misconduct (which can be dealt with by IBAC or police); and serious police misconduct (that should generally be dealt with by IBAC). It should be emphasised, however, that IBAC needs to maintain global oversight in relation to all complaints about police within the system.

The main issue therefore becomes where that line should be drawn. How broadly or narrowly should ‘serious police misconduct’ be defined? The Committee has received wideranging, and keenly contested, evidence on this issue. The Committee believes that its recommended definition covers the commonest forms of serious police misconduct without being too broad. This definition of ‘serious police misconduct’ ensures that the kinds of misconduct covered are sufficiently grave and, generally, appropriately investigated by IBAC rather than police. It strikes the right balance between the roles of Victoria Police and IBAC, as an oversight agency, in Victoria’s mixed Civilian Review complaints system.

**RECOMMENDATION 20:** That the Victorian Government seek to amend the *Victoria Police Act 2013* (Vic) (‘*Victoria Police Act*’) and *IBAC Act 2011* (Vic) (‘*IBAC Act*’) so that the provisions defining police misconduct are consolidated, simplified and clarified. These include s 5 of the *IBAC Act* and Part 9 of the *Victoria Police Act* (especially ss 166–169).

In particular, the categories of ‘police personnel conduct’ and ‘police personnel misconduct’ under the *IBAC Act* and ‘misconduct’ and ‘conduct’ under the *Victoria Police Act* should be replaced with categories of ‘police misconduct’ and ‘serious police misconduct’ that are clearly defined in the legislation.

‘Police misconduct’ should include the kinds of conduct covered by the present definitions of ‘police personnel conduct’ under the *IBAC Act* (s 5) and ‘conduct’ under the *Victoria Police Act* (s 166). It should also encompass the definition of ‘improper conduct’ under the *Protected Disclosure Act 2012* (Vic).

In addition, the *Victoria Police Act* and the *IBAC Act* should be amended to require the Chief Commissioner of Police to notify IBAC of any conduct that falls under the recommended definitions of ‘police misconduct’ and ‘serious police misconduct’.

‘Serious police misconduct’ should be defined in the relevant legislation in terms similar to s 10 of the *Law Enforcement Conduct Commission Act 2016* (NSW) as:

- conduct of a police officer, Protective Services Officer or other police personnel that could result in the prosecution of the officer or employee for a serious indictable offence or serious disciplinary action against the officer or employee for a disciplinary infringement, including:
  - corrupt conduct
  - serious assault and other serious criminal offences
  - wrongful arrest, false imprisonment and malicious prosecution
  - serious mistreatment in police custody
  - the use of excessive force
  - human rights violations (including cruel, inhuman and degrading treatment).
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• a pattern of officer misconduct carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of Victoria Police. (p. 189)

The definition of ‘relevant offence’ in the IBAC Act 2011 (Vic)

The Committee has also received evidence that the definition of ‘relevant offence’ in s 3 of the IBAC Act 2011 (Vic), which is part of the definition of ‘corrupt conduct’ in the Act, needs to be modified to address a current gap in IBAC’s investigative jurisdiction. The Committee recommends that the gap be addressed by amending the definition so it includes any indictable offence committed in Victoria. This will give IBAC the clear and comprehensive jurisdiction it needs to investigate corrupt conduct.

RECOMMENDATION 21: That the Victorian Government seek amendment of the definition of ‘relevant offence’ in s 3 of the IBAC Act 2011 (Vic) to include any indictable common law offence committed in Victoria. (p. 190)

Clarifying IBAC’s investigative functions

IBAC has also drawn the Committee’s attention to complexity and uncertainty in the legislative characterisation of IBAC’s functions and powers to investigate the full range of police ‘conduct’ and ‘misconduct’. After deliberation on this issue, the Committee has recommended that s 15(2) of the IBAC Act 2011 (Vic) be amended to provide that, among its other functions, IBAC has functions of investigating police misconduct and serious police misconduct (as defined in this report).

RECOMMENDATION 38: That the Victorian Government seek the amendment of s 15(2) of the IBAC Act 2011 (Vic) to provide that IBAC has functions of investigating police misconduct and serious police misconduct (as defined in this report). (p. 252)

The reporting and oversight of Local Management Resolution and Management Intervention Model matters

The Committee has been concerned for some time that Local Management Resolution (LMR) and Management Intervention Model (MIM) matters were not being formally reported to IBAC since Victoria Police did not consider them to be ‘complaints’ under the relevant legislation that had to be reported to IBAC. LMRs and MIMs are meant to be used by Victoria Police as an informal way of handling and resolving complaints about customer service issues, like rudeness, and other lower-level performance issues.

Until early 2018, Victoria Police considered that LMRs and MIMs did not meet the threshold of ‘complaint’ and in their view they were not required to formally report them to IBAC under s 169 of the Victoria Police Act 2013 (Vic) and did not do so.

xliv See the discussion in Section 5.6.2 of Chapter 5 of this report.
xlvi IBAC Act 2011 (Vic) s 57(2); Victoria Police Act 2013 (Vic) s 169; Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 31 July 2017, p. 1; IBAC, correspondence, 30 November 2017, p. 3.
xlvii Section 3.2.5 in Chapter 3 of this report and the references cited therein; IBAC, Audit of Victoria Police complaint handling systems at regional level, Melbourne, September 2016, especially pp. 11-14; Victoria Police, Submission 52, 1 May 2018, pp. 18-19.
xlviii See the discussion in Section 3.2.5 in Chapter 3 of this report.
For its part, IBAC read the legislation in the same way.\textsuperscript{xlix} IBAC had been satisfied with being able to ‘view details’ of LMRs and MIMs through the Victoria Police ROCSID (Register of Complaints, Serious Incidents and Discipline) database.\textsuperscript{i}

The Committee, however, was concerned that the failure to report LMRs and MIMs in IBAC annual reports weakened transparency and accountability.\textsuperscript{k} Consequently, the rigour of IBAC’s oversight in relation to the complaints system was reduced to an extent since IBAC would be less likely to detect any police misconduct that had been wrongly classified as an LMR or MIM.

**The need for further reform**

In response to the concerns expressed by the Committee, and IBAC’s own concerns, since January 2018 Victoria Police has, under an informal arrangement reached with IBAC, been sending LMRs and MIMs to IBAC so it can monitor the receipt, classification and handling of them by police.\textsuperscript{li}

While the Committee is encouraged by the response of IBAC and Victoria Police to the concerns over the treatment of LMRs and MIMs, it considers that the current informal arrangements are insufficient and that legislative amendments are necessary. As noted above, Victoria Police is not currently legally required to report MIMs and LMRs to IBAC. The Committee considers that Victoria Police should be required to report all MIMs and LMRs to IBAC for assessment, monitoring and review to ensure that they have been correctly classified. In addition, IBAC should include detailed information about LMRs and MIMs in its annual reports.

**RECOMMENDATION 18:** That the Victorian Government seek to amend relevant provisions of the *Victoria Police Act 2013* (Vic) and the *IBAC Act 2011* (Vic) to clarify that ‘complaints’ and ‘disclosures’ about Victoria Police include Victoria Police’s categories of Management Intervention Model (MIM) and Local Management Resolution (LMR) matters and that Victoria Police be required to report all these matters to IBAC for assessment, monitoring and review. In addition, the legislation should be amended to clarify that IBAC has the power to investigate a complaint that it considers has been wrongly classified as a MIM or LMR matter by Victoria Police. (p. 184)

**RECOMMENDATION 19:** That IBAC include in its annual reports an account of the number and nature of Management Intervention Model matters (MIMs) and Local Management Resolution matters (LMRs) they have received from Victoria Police as well as the number of MIMs and LMRs that were incorrectly classified. (p. 184)

**Improving IBAC’s police oversight role**

While the Committee has not recommended the creation of a new, independent body to deal exclusively with complaints about police along the lines of PONI, this does not, of course, mean that improvements to IBAC’s and Victoria’s Police’s role and performance within the complaints and oversight system are unnecessary. The

\textsuperscript{xlix} IBAC, correspondence, 30 November 2017, p. 3.

\textsuperscript{i} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4.


\textsuperscript{lii} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4.
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Committee believes that there need to be improvements not only to the legislative framework governing the complaints and oversight system but also to IBAC’s and Victoria Police’s performance within it.

The need for a new Police Corruption and Misconduct Division

While a mixed Civilian Review complaints system can be compatible with best practice principles, this will only be the case if it is sufficiently robust and effective. In particular, while it is prudent for Victoria Police to take responsibility for addressing a range of forms of misconduct, this must always be subject to rigorous oversight, not only by PSC, but also by IBAC. In this regard, the Committee makes a number of recommendations to strengthen not only the impartiality of police investigations of complaints but also IBAC’s oversight of them.

Until early this year, IBAC consistently maintained that it ‘retained’ complaints about serious police misconduct to investigate for itself, referring only customer service, and similar low-level matters, to police for investigation. However, IBAC only investigates around 2% of allegations it receives about police misconduct that it determines warrant investigation, and, until recently, police were not formally reporting lower-level matters such as LMRs and MIMs at all to IBAC.

More recently, IBAC has argued that it is required, as it indeed is, under s 73 of the IBAC Act 2011 (Vic) to refer all complaints it considers are more appropriately dealt with by police to police for investigation, and that a significant proportion of those matters currently referred to police are, in IBAC’s own judgement, serious matters (for example, serious assaults). IBAC has argued that the lack of necessary expertise, resources and legislative powers are significant factors in the number of complaints it refers back to Victoria Police under s 73. In light of these circumstances, the Committee considers that the role of IBAC, in both the oversight and investigation of police misconduct, should be strengthened.

In order for IBAC to prioritise not only serious or systemic corruption but also serious police misconduct, it needs to modify its governance arrangements and resource allocations to make these new arrangements work effectively, both in terms of its own investigations and its global police oversight functions.

Therefore, the Committee recommends that IBAC formally establish a new Police Corruption and Misconduct Division to handle the varied dimensions of its investigative and oversight functions in relation to police wrongdoing. The establishment of such a division will not only ensure that IBAC devotes sufficient attention to police misconduct but strengthen its relevant expertise and capacity, including its capacity to meet best practice with respect to the handling of complaints about police, and, indeed, to help improve the performance of Victoria Police itself with respect to these matters.

IBAC has informed the Committee that it is planning to appoint a Deputy Commissioner with particular responsibilities regarding IBAC’s

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liii See sections 2.4 and 2.5 in Chapter 2 of this report.
liv See the discussion in Chapter 2 of this report. See also the Lander report.
lv See, for example, IBAC, Exposing and preventing corruption in Victoria. Special report: IBAC’s first five years, Melbourne, December 2017, p. 6.
lvi See the discussion in chapters 3 (Section 3.2.5), 4 (section 4.4.1) and 5 (Section 5.6.1) of this report.
police oversight and related functions. It is important to note that the Committee recognises the need for IBAC to retain the discretion to allocate resources between divisions within its organisation.

**RECOMMENDATION 2:** That IBAC should formally establish a dedicated Police Corruption and Misconduct Division to increase public confidence in Victoria’s system for the handling of complaints about police corruption and other misconduct, improve its capacity to conduct effective investigations, enhance its independence, develop its expertise and improve its overall performance. This division should consolidate IBAC’s legislated functions that relate to complaints and disclosures about police corruption and other misconduct in Victoria. It should have dedicated teams for:

- Complaint receipt and assessment
- Investigations and referrals (including reviews and audits of investigations and own motion investigations)
- Public information and communications
- Welfare management (of complainants and those subject to investigation)
- In-house and external training (with respect to IBAC and Victoria Police personnel)
- Research and prevention.

IBAC should retain the discretion to allocate resources, including staff, between divisions in its organisation. (p. 52)

The Committee recognises the present challenges for IBAC in recruiting appropriate investigators to handle complaints about police as well as the need for its increased investigative workload to be adequately resourced.

**RECOMMENDATION 3:** That IBAC increase the number of staff dedicated to the investigation of complaints and disclosures about police within the proposed Police Corruption and Misconduct Division. In addition, IBAC should increase the number of civilian specialists it recruits from a diverse range of backgrounds and disciplines. (p. 52)

**RECOMMENDATION 4:** That the Victorian Government adequately resource the Police Corruption and Misconduct Division in IBAC to ensure that it can independently and effectively investigate complaints and disclosures about Victoria Police. (p. 52)

**Prioritising, and investigating, serious police misconduct**

**Prioritising attention to serious police misconduct**

The Committee has received evidence from some stakeholders that IBAC has paid insufficient attention to its investigative function in relation to police misconduct. This has been attributed in part to the nature of the current legislation as well as IBAC’s orientation towards its (certainly invaluable) anti-corruption functions in relation to the public sector at large, as well as its reluctance to fully develop its role as a complaint-handling body in relation to police misconduct.

Section 15(1A) of the *IBAC Act 2011* (Vic) requires IBAC to ‘prioritise its attention’ on ‘serious corrupt conduct or systemic corrupt conduct’:

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lvi Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to the Committee’s questions), 24 May 2018, pp. 14–17.
Inquiry into the external oversight of police corruption and misconduct in Victoria

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(1A) In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct or systemic corrupt conduct.

In this regard, the Victorian Inspector, Mr Eamonn Moran PSM QC, has told the Committee that there is presently no legislative distinction between ‘serious’ and other police misconduct nor, as seen above, present legislative authority for IBAC to prioritise serious police misconduct:

Under the legislation—the IBAC Act [2011 (Vic)]—IBAC is required to prioritise the investigation and exposure of serious or systemic corrupt conduct. So it is perfectly understandable that they are going to devote the majority of their resources to that task. Whereas with respect to police personnel misconduct, there is no sort of similar obligation. There is no classification of what might be regarded as serious police personnel misconduct or systemic, where a priority could be given to IBAC to then look at that form of misconduct.\textsuperscript{lx}

This year IBAC has itself recognised the need to prioritise its attention on not only on serious or systemic corruption but also serious police misconduct. This is in order to ensure that IBAC’s powers and resources are equally focused on … serious police misconduct.\textsuperscript{lx}

The Committee considers that IBAC should prioritise not only the investigation and exposure of serious or systemic corrupt conduct but also serious police misconduct as defined in this report.\textsuperscript{lxi}

**RECOMMENDATION 36:** That the Victorian Government seek the amendment of s 15(1A) of the **IBAC Act 2011** (Vic) to provide that:

In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct, systemic corrupt conduct or serious police misconduct. (p. 240)

**Investigating serious police misconduct**

The Committee endorses the continued responsibility of Victoria Police to address wrongdoing within its organisation, its role with respect to the disciplinary system and its shared responsibility with IBAC for handling and investigating complaints about police misconduct. However, best practice principles recommend that a body such as IBAC investigate all complaints about serious police misconduct and exercise rigorous, global oversight over the entire complaints system—police responsibility is not undermined by such measures but reinforced by them.

**RECOMMENDATION 37:** That the Victorian Government seek the amendment of the **IBAC Act 2011** (Vic) to require that, unless there are exceptional circumstances, IBAC, rather than Victoria Police, investigate complaints and disclosures about ‘serious police misconduct’ (as defined in this report). In addition, in their annual report IBAC must report what exceptional circumstances existed justifying referral of a complaint or disclosure about serious police misconduct back to police. Further, IBAC must maintain rigorous oversight of any such referral of a complaint or disclosure back to police. (p. 251)

\textsuperscript{lix} Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, *Transcript of evidence*, p. 15.

\textsuperscript{lx} Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 24 May 2018, pp. 5–6.

\textsuperscript{lxi} See Section 8.2.1 in Chapter 8 of this report.
Improving IBAC’s investigative and oversight capacity: additional powers

The IBAC Commissioner, the Hon Robert Redlich QC, informed the Committee that he considered that IBAC does not presently have all the powers and jurisdiction it needs to investigate and review police corruption and misconduct in an optimal way. He emphasised that this meant that it was often ‘more appropriate’ under s 73 of the IBAC Act 2011 (Vic) for complaints to be referred to Victoria Police for investigation, even complaints about serious police misconduct. In the Commissioner’s view, these deficiencies would be even more marked were IBAC to undertake more investigations of complaints about police.

IBAC has stressed that any additional investigative powers conferred on IBAC officers ‘must be subject to the same safeguards as those that apply to the exercise of those powers by police officers.’

At hearings and through correspondence, the Committee sought the views of stakeholders on these issues. It received the most detailed response from the Law Institute of Victoria, which endorsed IBAC’s view that it needed a range of additional powers to enhance its investigative capacities.

Which additional powers does IBAC need?

The Committee devoted considerable attention, analysis and discussion to the merits of the additional jurisdiction and powers proposed by IBAC. This involved, for example, consideration of whether such jurisdiction and powers existed under comparable interstate legislation.

Recommended additional powers

The Committee has recommended legislative amendments to enhance IBAC’s investigative and oversight powers in the following areas:

- ‘cease and desist’ directions in relation to investigations by public bodies
- the power to search a person
- named persons and search warrant executions
- passwords and access to cloud documents
- power to require names and addresses
- arrest warrants relating to IBAC examinations
- offence to destroy or conceal evidence
- protection of IBAC witnesses.

Discussion of the nature and justification of the recommended amendments in these areas can be found in Chapter 8.

RECOMMENDATION 40: That the Victorian Government seek to insert a new provision in the IBAC Act 2011 (Vic) to require a relevant principal officer or the Chief Commissioner of Police to cease conducting an investigation or making inquiries about a matter that is the subject of an IBAC investigation or preliminary inquiry. (p. 255)

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Law Institute of Victoria, supplementary evidence, 17 May 2018, p. 2.
RECOMMENDATION 41: That the Victorian Government seek to amend sections 86 and 91 of the IBAC Act 2011 (Vic) to give IBAC the power to search a person during an authorised search of premises under a search warrant. (p. 256)

RECOMMENDATION 42: That the Victorian Government seek to amend Form 3 of the IBAC Regulations 2013 (Vic) to provide that ‘all IBAC authorised officers’ be authorised to enter and search the specified premises, rather than requiring that officers be identified on a particular warrant. (p. 257)

RECOMMENDATION 43: That the Victorian Government seek to insert a new section in similar terms to section 465AAA and 465AA of the Crimes Act 1958 (Vic) into the IBAC Act 2011 (Vic), to require individuals to assist IBAC officers to access data held on a computer or data storage device or elsewhere, during the execution of a search warrant. (p. 257)

RECOMMENDATION 44: That the Victorian Government seek to insert a new section in the IBAC Act 2011 (Vic) to give IBAC the power to obtain names and addresses of persons in similar terms to s 456AA of the Crimes Act 1958 (Vic). (p. 258)

RECOMMENDATION 48: That the Victorian Government seek to amend s 139 and s 153 of the IBAC Act 2011 (Vic) to provide that:

- an application for an arrest warrant may be made to the IBAC Commissioner when a person, in relation to whom a summons has been issued has (a) failed to appear or where there is a reasonable suspicion that a person is likely to fail to appear, or (b) is otherwise attempting or is likely to evade the service of the summons
- authorised IBAC Officers may execute warrants for failing to appear and for contempt. (p. 261)

RECOMMENDATION 49: That the Victorian Government seek to create an offence in the IBAC Act 2011 (Vic) for the destruction and/or concealment of evidence relevant to an IBAC investigation. (p. 261)

RECOMMENDATION 50: That the Victorian Government seek to establish offences of engaging in conduct to undermine an IBAC investigation, procure false testimony, bribery of a witness and fraud on a witness and to protect witnesses generally, in similar terms to provisions in other states. (p. 262)

Proposed additional powers that should be reviewed by the Victorian Government

The Committee also considered a range of other proposed amendments, the merits of which it recommended being reviewed by the Victorian Government. These proposed amendments concerned the following areas:

- the right against self-incrimination in IBAC preliminary inquiries
- power of arrest—reasonable belief of offence
- forensic procedures
- Road Safety Road Rules 2017 exemption
- custody requirements at IBAC examinations
- the seizure of drugs and other controlled substances.

The proposed amendments in these areas are discussed in Chapter 8.
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RECOMMENDATION 39: That the Victorian Government review whether the IBAC Act 2011 (Vic) should be amended to provide that the abrogation of the right against self-incrimination that applies to investigation summonses applies in relation to preliminary inquiry summonses. (p. 255)

RECOMMENDATION 45: That the Victorian Government review whether powers of arrest should be established in the IBAC Act 2011 (Vic) to allow IBAC to arrest persons reasonably suspected of having committed an offence, in similar terms to the power provided in s 459 of the Crimes Act 1958 (Vic). (p. 258)

RECOMMENDATION 46: That the Victorian Government review whether a mechanism should be created to enable forensic procedures carried out by Victoria Police under section 464 of the Crimes Act 1958 (Vic) to be oversighted by IBAC. (p. 259)

RECOMMENDATION 47: That the Victorian Government review whether an appropriate exemption be created under the Road Safety Road Rules 2017 (Vic) (similar to r 305) for an ‘authorised IBAC officer engaged in official duties’, subject to all necessary safeguards and restrictions. (p. 260)

RECOMMENDATION 51: That the Victorian Government review whether s 126 of the IBAC Act 2011 (Vic) should be amended to permit a prisoner to be transferred into the custody of an authorised IBAC officer that is appropriately trained. (p. 263)

RECOMMENDATION 52: That the Victorian Government review whether s 4 of the Drugs, Poisons and Controlled Substances Act 1981 (Vic) should be amended to include IBAC Officers as persons authorised to seize drugs and controlled substances. (p. 263)

Transparency: best practice data and public information

The need for high quality data

Public access to robust data on the Victoria Police complaints system will assist in making it more transparent and accountable and can be used to inform policy and practice. The Council of Europe’s Commissioner for Human Rights and the UNODC have emphasised the importance of public access to robust data as part of the best practice principle of public scrutiny. Recognising the importance of high quality data, the United Nations General Assembly endorsed the Fundamental Principles of Official Statistics (2014), which provides a basic framework for the development of statistics that are accessible and useful for the public. The UK Statistics Authority Code of Practice and PONI’s publication of statistical data are valuable examples of the application of these best practice principles.

The Committee found that, when compared with the police complaints data that PONI provides on its website, the publication and analysis of statistics on complaints about police by Victoria Police and IBAC are inadequate. Published data provided by Victoria Police also lacked reliability and was therefore difficult to interpret. Both IBAC and Victoria Police have attributed these inadequacies, in part, to the outdated complaint management systems that generate their statistics, and have indicated they are developing new or improved systems. IBAC has also indicated that it intends to publish on their work in dealing with complaints about police in a separate section of their annual report for 2017/18.

Clearly, there is a need in Victoria for the provision of reliable, robust and publicly available data on the complaint-handling system.
RECOMMENDATION 7: That IBAC and Victoria Police draw on the United Nations General Assembly-endorsed Fundamental Principles of Official Statistics (2014) in order to meet best practice in relation to the collection, analysis, reporting and publication of statistics. This includes statistics relating to the making, handling, assessment, dismissal, investigation and nature of complaints and disclosures about police corruption and other misconduct.

This data should be provided across a range of variables, including age, gender, ethnicity and Aboriginality of complainants, and published in IBAC and Victoria Police annual reports and on their websites. The Office of the Police Ombudsman for Northern Ireland provides an excellent example of best practice with respect to the comprehensive collection, management, analysis and publication of statistics. (p. 134)

The need for modernised data collection and complaint management systems

Both IBAC and Victoria Police have acknowledged that the complaint management systems they are using were developed at a time when the business requirements were different and technology was not as developed. If these agencies are to produce accurate, comprehensive statistics on the operation of the complaints-handling system, then it is crucial that they have new and improved data management systems. IBAC and Victoria Police have informed the Committee that they are developing new complaints management systems.

RECOMMENDATION 8: That IBAC and Victoria Police fast-track the implementation of new and improved data collection and complaint management systems that are compatible with each other. (p. 135)

Learning from complaints and complainants

Strategies to reduce complaints can encompass both systemic lessons, including streamlining processes such as assessment and investigation, and those that take into account complainants’ experience of the system. The Committee has received substantial evidence that complainants can play a crucial role in providing information about their experiences, which can be used to reduce complaints and improve police conduct.

In this regard, complainant surveys can fulfil a range of functions. They provide a mechanism to assess the complainant’s satisfaction with the process and to identify unacceptable behaviour and practices that can be improved. In this sense, complainant surveys are part of a complainant-centred approach.

However, the UNODC has cautioned that the complaints process cannot be judged on the basis of complainant satisfaction alone. A combination of evaluative strategies must also be used to gain an understanding of the quality of service delivery, the effectiveness of the system and its impact on police.

RECOMMENDATION 9: That IBAC and Victoria Police establish best practice standards and key performance indicators in relation to complainant satisfaction with their systems for receiving, handling, assessing, investigating and reviewing complaints and disclosures about police corruption and other misconduct.

That IBAC and Victoria Police arrange for the conduct of regular independent complainant surveys, the results of which are publicly reported on their websites.

That IBAC and Victoria Police use the results of these surveys to improve how they receive, handle, assess, investigate and review complaints and disclosures about police corruption and other misconduct. (p. 138)
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Improving public information

The importance of high quality public information that explains the workings of Victoria's integrity and anti-corruption system, and how to make a complaint or disclosure within it, has been emphasised by the Committee in a number of its previous reports—for example, reports on the protected disclosure ('whistleblowing') regime and the performance of IBAC and the VI.\textsuperscript{lxiv} The Committee notes that public information needs to be readily accessible, suitable for its intended audience, consistent across the sector, accurate, in plain language and available in variety of print and digital formats.\textsuperscript{lxv}

The Committee found that there were a range of deficiencies with the public information about the complaints system that Victoria Police makes available. Improvements are needed to ensure that the information it provides on its Compliments and complaints web page, in its guidelines on protected disclosures and in its hard-to-access Victoria Police manual is far more comprehensive, coherent and clear. While the information publicly available from IBAC about the complaints system is generally of a good standard, there is not enough information about how a member of the public or police officer can make a complaint about police and how IBAC handles, assesses, dismisses, refers and investigates complaints. Victoria Police and IBAC need to develop clear and consistent guides on how to make a complaint about police corruption and other misconduct and how that complaint will be handled, including the steps in the process and any applicable time lines.

Producing and making good quality information available is part of an approach by police and oversight agencies that involves the complainant, has a customer service orientation and is receptive to learning from complaints.\textsuperscript{lxvii} Better quality information will also save Victoria Police and IBAC time and resources, since better informed complainants are less likely to have to seek clarification from them or express their frustrations over an opaque and poorly understood process.\textsuperscript{lxviii}

In order to improve the information that Victoria Police, IBAC and the VEOHRC make publicly available to potential complainants so that they are properly informed about the complaints system and how their complaint will be handled, the Committee makes the following recommendations.

**RECOMMENDATION 10:** That IBAC and Victoria Police review the Victoria police manual for accuracy, comprehensibility and consistency with information that IBAC provides with respect to the complaints system and that Victoria Police publish the manual in full on its website in a range of accessible formats. (p. 169)
**RECOMMENDATION 11:** That IBAC and Victoria Police collaborate to produce separate, tailored plain-language publications in a range of formats for members of the public and police that explain the operation of the system for making and handling complaints and disclosures about police, and make them available on their websites and in every police station. A useful model for these publications is IBAC’s Guidelines for making and handling protected disclosures, Melbourne, October 2016. (p. 169)

**RECOMMENDATION 12:** That Victoria Police, IBAC and the Victorian Equal Opportunity and Human Rights Commission review the content, usability and consistency of their websites and improve the information publicly available about the nature and operation of the Victorian system for complaints and disclosures about police.

That, in particular, these organisations make use of short online videos to explain the key aspects of the complaints system from receipt of a complaint or disclosure to communication of the outcome to a complainant or discloser. (p. 169)

**RECOMMENDATION 13:** That IBAC produce and publish on its website a plain-language document explaining:

- how, in general terms, it conducts preliminary inquiries in order to decide whether to dismiss, refer or investigate a complaint
- what legislated and other criteria IBAC uses, and what processes it follows, in general terms, in determining whether to dismiss, refer or investigate a complaint
- what criteria it uses and what processes it follows, in general terms, in deciding whether to review a Victoria Police investigation
- what is involved in IBAC reviews of a Victoria Police investigation, including the possible outcomes of such reviews. (p. 170)

**A complainant-centred approach**

**The importance of confidence in the complaints system**

Public confidence in the system for handling complaints and disclosures about police is important for its effectiveness and legitimacy, something recognised by Victoria Police in the evidence it provided during this Inquiry. The Committee also heard evidence from a range of stakeholders who felt that confidence in the system has been diminished. In particular, a range of stakeholders submitted that Victorians are not always confident enough to make, or persist with, a complaint about police, thinking that it might not be treated seriously or investigated impartially, or that they might suffer some sort of retaliation. This was particularly applicable to a range of vulnerable and marginalised Victorians.

The Committee considered that a range of reforms were needed to ensure that public confidence in the system is reinforced and maintained. In particular, complainants must feel confident that their complaint will be treated seriously and impartially investigated (when investigation is warranted), that they will be adequately involved and supported throughout the process and that their complaint will be finalised efficiently. Confidence in the system will be enhanced, in part, by implementation of the Committee’s recommendations regarding better communication with, and support for, complainants as they navigate their way through what can be a daunting process.\(^{lxxviii}\)

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\(^{lxxviii}\) These are complemented by a wide range of other recommendations with respect to the receipt, handling, assessment, investigation, review and oversight of complaints and disclosures about police.
Executive summary

The need for IBAC and Victoria Police to have complainant charters

Both best practice principles and research demonstrate the importance of complaint-handling bodies identifying, committing to and transparently setting out in a public document the values and standards they will adhere to in handling complaints. This commitment by both the police and oversight agencies is based on longstanding ideas of customer service. In considering reform of the police oversight system in Northern Ireland, the Hayes report observed:

While a change in the structure of the complaints body is important to its success a change in ethos is equally important. … At present the whole complaints system has tended to focus … insufficiently on customer service and satisfaction … The fundamental change in the process I am recommending provides an opportunity to move to a more customer related service … It would be important, therefore, for the new body to establish shortly after its formation a charter or ethos which should be publicly available.lxx

The importance of complaint-handling bodies making explicit commitments to ‘effective and efficient complaints handling’ is also recognised in ISO’s international standard.lxx In addition, it is also consistent with the best practice principles of transparency and openness to public scrutiny recognised by the Council of Europe’s Commissioner for Human Rights.lxxi

The Committee believes that IBAC and Victoria Police should each develop complainant charters that set out the values and standards they will conform to in handling complaints and disclosures about police. These are likely to include the values of impartiality, courtesy and respect, professional communication, transparency and timeliness.

How these kinds of values are identified and defined in the complainant charters will be a matter for IBAC and Victoria Police, taking account of best practice principles and relevant legislated functions, requirements and restrictions. It is encouraging that some of this customer service ethos has recently been recognised by Victoria Police in its submission to this Inquiry:

Victoria Police plans to develop the following:

Police Professional Code of Conduct—Victoria Police will develop a professional code of conduct through close consultation with police officers and PSOs, along with the PRSB [Police Registration and Services Board], VEOHRC and community stakeholders. This code will provide a public commitment to professional conduct and service delivery by Victoria Police.

... Good practice systems for complaint receipt and management—Victoria Police will consult with other complaint-handling bodies, including VEOHRC and the Victorian Ombudsman, to obtain guidance on implementing better practice for receiving and responding to complaints.lxxii


lxxii Victoria Police, Submission 52, 1 May 2018, p. 37.
RECOMMENDATION 14: That IBAC and Victoria Police each develop a concise plain-language charter for complainants, accessible on their websites, setting out the values and standards they will conform to in handling complaints and disclosures about police. (p. 172)

Improving communication with complainants

Major causes of complainant dissatisfaction are not having a complaint properly acknowledged, not being kept informed throughout the process in a regular and comprehensible fashion and not having decisions and outcomes adequately explained.

The Committee considers that IBAC should publish a clear explanation of the legal obligations it has to inform and advise complainants and disclosers and also how these obligations are implemented and affected by any principles, policies and practices it employs in handling complaints and disclosures. This will enhance transparency and public scrutiny, improve complainant understanding and increase the likelihood of more realistic complainant expectations about the complaint-handling process.

The Committee received evidence that IBAC’s communication with complainants needs improvement. This has been recognised by the VI for a number of years. Therefore, the Committee has recommended that, subject to appropriate conditions, IBAC be required to give complainants reasons for its decisions at the assessment and outcome stages. The Committee has also recommended that, subject to reasonable limitations, complainants must be adequately informed about the receipt, handling, progress and outcome of their complaint. Victoria Police has acknowledged, in line with its commitment to victim-centric policing, the need for improvement in its engagement and communication with complainants.

RECOMMENDATION 15: That IBAC produce and publish on its website a plain-language policy document explaining any legislated obligations (for example, under the IBAC Act 2011 (Vic) and the Protected Disclosure Act 2012 (Vic)) that IBAC has to inform and advise complainants and disclosers—from the receipt of a complaint or disclosure (including a notification), to its handling and completion (including dismissal, referral, investigation, review and communication of outcomes). The document should also explain any relevant IBAC principles, policies and practices, whether or not these are mandated by legislation or regulations. (p. 177)

Giving complainants reasons at the assessment and outcome stages

As noted above, the Victorian Inspector considers that IBAC should give complainants reasons for their decisions at the assessment stage, including ‘whether it is going to be investigated’. In contrast, while IBAC has expressed the view that it would prefer to give reasons to complainants, at least in relation to dismissals and referrals, it is concerned about the risk of being burdened with time-consuming legal reviews and challenges. However, the Committee considers that IBAC should give complainants reasons for its decisions at both the assessment (dismiss, refer, investigate) and outcome stages. Moreover, the principles and purposes underlying the provision

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lxxiii Lander report, p. 41.
of reasons to complainants has been recognised by IBAC itself in the context of its 2016 audit Victoria Police’s communication practices when it closes a complaint investigation at the regional level.\textsuperscript{lxv}

Finally, the Committee considers that the provisions in the \textit{IBAC Act 2011} (Vic) are broad enough to protect the legitimate interests of IBAC in protecting its investigations and in avoiding being subject to an undue burden from legal challenges. While IBAC argued that the \textit{Administrative Law Act 1978} (Vic) would need to be amended to give IBAC greater legal protection if it were required, as recommended, to give reasons for its decisions, the Committee does not think this is necessary. However, the Committee believes, to avoid any doubt, that it would be beneficial to review the current application of the \textit{Administrative Law Act 1978} (Vic) to IBAC in this regard.

\textbf{RECOMMENDATION 25:} That the Victorian Government seek the amendment of s 59 of the \textit{IBAC Act 2011} (Vic) to provide that, subject to appropriate conditions and exceptions (including under s 59(4)), IBAC must inform a complainant or discloser whether IBAC has determined to dismiss, refer or investigate a complaint or disclosure and the reasons for that determination. (p. 208)

\textbf{RECOMMENDATION 55:} That the Victorian Government seek the amendment of ss 163–164 of the \textit{IBAC Act 2011} (Vic) to provide that, subject to appropriate conditions and exceptions (including under s 163(4)), IBAC \textit{must} inform a complainant about ‘the results’ of any IBAC investigation of a complaint, including:

\begin{itemize}
  \item any action taken by IBAC
  \item any recommendations IBAC has made
  \item any other formal outcome of an investigation.
\end{itemize}

Subject to appropriate conditions and exceptions (including under s 163(4)), IBAC must also provide the complainant or discloser with the reasons for any action it has taken, any recommendation it has made and any formal outcome of its investigation. (p. 282)

\textbf{RECOMMENDATION 26:} While the Committee does not consider that the \textit{Administrative Law Act 1978} (Vic) (‘the Act’) needs to be amended to provide IBAC with greater legal protection, to avoid any doubt the Victorian Government should review whether s 8 of the Act should be amended to exclude IBAC as a tribunal. (p. 209)

\section*{Support for complainants}

Victorians face many challenges in making a complaint or disclosure about police. Given the complexity of the system (which even legal experts wrestle with), the often unsatisfactory public information and communication with complainants, as well as delays, it is not surprising that complainants can find the experience of making a complaint bewildering and stressful. The Committee recognises the need for complainants to be guided through the process step by step, referred to independent professional services where necessary and supported by complaints-handling bodies. While this is particularly important for marginalised and vulnerable Victorians, it is likely to benefit anyone making a complaint or disclosure.

The Committee considers that Victoria Police and IBAC need to establish coherent approaches to supporting complainants. This includes developing explicit policies, recruiting and training staff with the skills to support complainants and establishing...
in-house leadership and management to ensure that the support (including referral to external support agencies) is effective. For this reason, the Committee recommends that Victoria Police and IBAC each create dedicated complainant welfare manager roles.

**RECOMMENDATION 17:** That Victoria Police and IBAC each create a role for a complainant welfare manager who is authorised, subject to any necessary restrictions, to assist a complainant to make a complaint or disclosure and to provide adequate support throughout the complaint-handling process. This would include, for example, ensuring that the complainant is provided with culturally appropriate information and support. (p. 179)

**RECOMMENDATION 16:** That in handling complaints and disclosures about police corruption and other misconduct, IBAC and Victoria Police ensure that they take proper account of the particular needs and backgrounds of diverse, and sometimes marginalised and vulnerable, Victorians. This includes taking proper account of the needs and backgrounds of Aboriginal and Torres Strait Islander people, CALD (culturally and linguistically diverse) communities, women (especially those experiencing family violence), people who have a disability, young people, drug users, the LGBTQI community, people experiencing social or economic disadvantage and any other vulnerable complainant. In addition, given the challenges that vulnerable complainants commonly face, IBAC and Victoria Police should not only explain the complaints system to them but also ensure they are supported throughout the complaints process. (p. 179)

**Improving assessment, referral, investigation and oversight**

**Assessment**

Assessment is the first step in determining whether a complaint will be dismissed, referred to Victoria Police or investigated by IBAC itself. Since under certain conditions Victoria Police and IBAC can receive complaints about police, each has assessment (or ‘triage’) functions in relation to them. In addition, IBAC, as the clearing house, receives potential protected disclosures (‘whistleblower complaints’) and assesses whether they qualify as protected disclosure complaints that it may then handle.

**Classification of complaints**

Stakeholders expressed a number of concerns over Victoria Police’s classification system. In particular, they provided evidence that allegations relating to more serious kinds of police misconduct, such as serious assaults, have been wrongly classified as minor misconduct or even customer service issues.

The Committee found that Victoria Police’s system for classifying complaints is unduly complex. For example, Victoria Police’s 11 complaint classifications do not clearly link in a consistent way to provisions in the legislative scheme, lack precision and overlap in confusing ways. An indication of this complexity is that Victoria Police provided the Committee with two versions of the ROCSID classification matrix for the 11 classifications, one in February and one in May 2018. See Appendix 6 and Appendix 7 respectively.
With regard to the classification of complaints, Victoria Police has stated that it is developing a new ‘streamlined’ system in which ‘[e]xisting complaint classifications will be reduced from eleven to three options: criminal, misconduct or performance’.[lxxvii] However, no further details of this proposed system were given.

The Committee has recommended that Victoria Police fully implement the recommendations from IBAC’s 2016 and 2018 audits with regard to the classification of complaints. The Committee has also recommended that Victoria Police consolidate, simplify and clarify the categories of complaint files it uses when classifying complaints.

**RECOMMENDATION 23:** That, since Victoria Police accepted IBAC’s recommendations in 2016 and 2018 to improve Victoria Police’s classification of complaints, it should fully implement the recommendations. (p. 203)

**RECOMMENDATION 24:** That Victoria Police, in consultation with IBAC, consolidate, simplify and clarify the categories of complaint files it uses when classifying complaints and disclosures about police. (p. 203)

**Referral**

The evidence shows that the vast majority of complaints are referred to Victoria Police, with only a very small fraction retained by IBAC for investigation. The Committee considers that the proportion of complaints that IBAC investigates is insufficient, and it is also concerned that matters referred to police include complaints alleging serious police misconduct. The Committee has therefore recommended that, unless exceptional circumstances exist, IBAC be prohibited from referring complaints about serious police misconduct to Victoria Police for investigation. Further, to enhance the best practice principles of transparency, public scrutiny and accountability, IBAC must in its annual reports identify what exceptional circumstances existed to justify any referral of a complaint or disclosure about serious police misconduct back to police. In addition, IBAC must maintain rigorous oversight of any such referral.

**RECOMMENDATION 27:** That the Victorian Government seek the amendment of s 73 of the *IBAC Act 2011* (Vic) to prohibit, unless there are exceptional circumstances, IBAC referring to Victoria Police for investigation any complaint or disclosure about ‘serious police misconduct’ (as defined in this report). In addition, in their annual report IBAC must report what exceptional circumstances existed justifying referral of a complaint or disclosure about serious police misconduct back to police. Further, IBAC must maintain rigorous oversight of any such referral of a complaint or disclosure back to police. (p. 219)

With regard to IBAC’s legislated referral power under s 73 of the *IBAC Act 2011* (Vic), the Committee recognises that greater discretion for IBAC with respect to referrals of complaints about police misconduct will assist IBAC in retaining and investigating more complaints than it does presently and in prioritising its attention to not only serious or systemic corrupt conduct but also serious police misconduct. However, this proposed discretion is subject to the Committee’s other recommendations with regard to the non-referral of serious police misconduct, reprisals, informing complainants and conflicts of interest.

**RECOMMENDATION 28:** That the Victorian Government seek the amendment of s 73 of the *IBAC Act 2011* (Vic) so that IBAC ‘may’ (instead of ‘must’) refer a complaint to another person or body to undertake the investigation. (p. 225)

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Consistent with its position that IBAC ought to give complainants reasons for its decisions, the Committee recommends that IBAC and PSC be required to inform a complainant of any planned referral of a complaint to Victoria Police. This is particularly important when a complainant has made a complaint directly to IBAC in the first instance. This will mean that complainants are better informed and better able to gain the benefit of appropriate professional advice and support where necessary. Similarly, the Committee has recommended that PSC inform complainants of any planned referral of a complaint to Victoria Police regions, departments or commands.

**RECOMMENDATION 29:** That the Victorian Government seek the amendment of the *IBAC Act 2011* (Vic) to require IBAC to inform disclosers and complainants of any decision by IBAC to refer a complaint (including a protected disclosure, ‘whistleblowing’, complaint) about Victoria Police back to Victoria Police for investigation prior to its referral. In addition, IBAC should consult with complainants prior to making any referral to Victoria Police where that is practicable. (p. 227)

**RECOMMENDATION 30:** That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to require Professional Standards Command, Victoria Police, before it makes any referral of a complaint about police to Victoria Police’s regions, departments or commands for investigation, to inform the complainant or discloser of that planned referral. In addition, Professional Standards Command should consult with the complainant or discloser prior to making a referral to Victoria Police’s regions, departments or commands where that is practicable. (p. 227)

The Committee’s review of Victoria’s whistleblowing regime demonstrated that whistleblowers can be at risk of reprisals, especially in their workplace, for reporting wrongdoing. This can be true also for police whistleblowers, as shown in recent VEOHRC and IBAC reports. The Committee therefore recommends that IBAC and PSC be prohibited from referring a complaint back to police when there is an unreasonable risk of serious harm to a complainant’s safety, health or welfare due to a reprisal.

**RECOMMENDATION 31:** That the Victorian Government seek the amendment of the *IBAC Act 2011* (Vic) to prohibit IBAC from referring a complaint back to Victoria Police for investigation if there is an unreasonable risk of serious harm to the complainant’s or discloser’s safety, health or welfare due to a reprisal. (p. 230)

**RECOMMENDATION 32:** That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to prohibit Professional Standards Command, Victoria Police, from referring a complaint about police back to regions, departments or commands if there is an unreasonable risk of serious harm to the complainant’s health, safety or welfare due to a reprisal. (p. 230)

IBAC, like the Office of Police Integrity before it, has identified that Victoria Police needs to improve its management of conflicts of interest, conflicts that can undermine the reality or perception of impartiality in the handling and investigation of complaints. This is essential given the role of police in investigating complaints.

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within a robust, mixed Civilian Review complaints system. Therefore, the Committee has recommended that IBAC and PSC be prohibited from referring a complaint to a police investigator affected by a conflict of interest.

**RECOMMENDATION 33:** That the Victorian Government seek the amendment of the *IBAC Act 2011* (Vic) and the *Victoria Police Act 2013* (Vic) to provide that complaints not be referred back to police by IBAC or Professional Standards Command, Victoria Police, for investigation by a police investigator who is affected by a conflict of interest. (p. 234)

Finally, under s 79 of the *IBAC Act 2011* (Vic), IBAC has the ultimate power to withdraw a complaint from a body it has referred a complaint to and take over responsibility for the complaint and investigate it. However, it appears the power has rarely, if ever, been used. The Committee considers that IBAC’s oversight of referrals will be strengthened if it is required to withdraw a referral to Victoria Police when IBAC considers that an investigation is not being undertaken fairly, thoroughly and in a timely manner. Whenever IBAC withdraws a referral from police it should, consistent with the best practice principle of complainant-involvement, inform the complainant unless this would jeopardise the investigation.

**RECOMMENDATION 34:** That the Victorian Government seek the amendment of s 79 of the *IBAC Act 2011* (Vic) to require IBAC to withdraw a complaint it has referred to Victoria Police—that is, take it over and investigate the complaint itself—when IBAC considers that Victoria Police is not investigating the complaint fairly, thoroughly and without unreasonable delay. (p. 236)

**RECOMMENDATION 35:** That the Victorian Government seek the amendment of s 80 of the *IBAC Act 2011* (Vic) so that IBAC must inform a complainant when it has, under the amended s 79, determined to investigate a complaint itself, unless IBAC considers that this would jeopardise the investigation. (p. 236)

**Investigation**

Impartial and effective investigations of complaints and disclosures about police are essential. The Committee found that the timeliness of IBAC’s complaint investigations could be improved. It also found that legislative amendment was necessary in relation to the application of the Freedom of Information (FOI) regime to complaint investigations.

With regard to Victoria Police complaint investigations, the Committee identified the need for improvements with regard to impartiality (including the management of conflicts of interest), complainant-involvement, communication and timeliness. The Committee also considered that the range of complaint determinations used by Victoria Police after the completion of an investigation were confusing and needed to be streamlined.

**IBAC: timeliness**

A number of stakeholders who gave evidence to this Inquiry expressed concerns over the timeliness of complaint investigations. Some stakeholders noted that interactions between IBAC and Victoria Police in relation to a complaint can lead to delays, while others expressed the view that IBAC did not always complete investigations expeditiously.

There is presently no legislative requirement for IBAC to complete an investigation within a set period or within a reasonable time. While there are limited State Government performance measures as part of the Budget process that are relevant
to timeliness (see Table 8.1 and Table 8.3 in Chapter 8), the Committee considers that there should be a legislative requirement with regard to the timely completion of IBAC investigations.

The Committee also encourages IBAC to develop and publicise more precise timeliness targets developed in accordance with the assessed complexity of a complaint investigation.

The Committee therefore recommends that there be a legislative requirement that IBAC complete its investigation of complaints about police within a reasonable time. In accordance with best practice principles, this mandates timeliness while allowing for a degree of flexibility (to accommodate, for example, the time it takes to complete more complex investigations).

**RECOMMENDATION 54:** That the Victorian Government seek the amendment of the *IBAC Act 2011 (Vic)* to require IBAC investigations of complaints about police to be completed within a reasonable time. (p. 275)

**IBAC: exemption from the Freedom of Information regime**

A range of stakeholders expressed their concern to the Committee over the current legislative exemption of IBAC, in certain circumstances, from Victoria’s Freedom of Information (FOI) regime. Section 194 of the *IBAC Act 2011 (Vic)* provides IBAC with an exemption from the FOI regime in relation, broadly, to IBAC investigations. The Committee received evidence that s 194 prevents complainants gaining access to their complaint files, which means they are less able to look after their interests and be involved in the complaints process. In particular, concerns were expressed in regard to complainants gaining access to documentation from Victoria Police when they are undertaking a complaint investigation upon referral from IBAC on the basis that it is an ‘IBAC’ investigation and therefore comes under the s 194 exemption. A number of stakeholders therefore called for s 194 to be repealed.

However, IBAC questioned the soundness of Victoria Police’s argument in this regard and emphasised the importance of s 194 in protecting the integrity of IBAC’s investigations. IBAC gave evidence that it would be better to amend s 194 appropriately to clarify that a complaint investigation by Victoria Police on referral from IBAC is not an IBAC investigation and that complainants cannot be denied, on the basis of s 194, access to documents collected by Victoria Police. The Committee is of the same view.

**RECOMMENDATION 53:** That the Victorian Government seek to amend s 194 of the *IBAC Act 2011 (Vic)* to make it clear that a Victoria Police investigation following a referral from IBAC is not an investigation ‘conducted under the IBAC Act’ so that documents collected by Victoria Police during such an investigation are not exempt under s 194 from the operation of the *Freedom of Information Act 1982 (Vic).* (p. 268)

It should also be noted that IBAC told the Committee that it needed a range of additional investigative powers in order to more effectively investigate police corruption and other misconduct.\textsuperscript{1xx}

\textsuperscript{1xx} See the earlier discussion in this Summary and also Section 8.2.3 in Chapter 8 of this report.
Executive summary

Improving Victoria Police complaint investigations: general requirements

The Committee has received and examined a wide range of evidence, drawing on best practice principles, with respect to Victoria Police’s conduct of complaint investigations. The tenor of that evidence has been corroborated by in-depth IBAC audits of regional complaint-handling systems and PSC complaint investigations. The Committee has found that significant improvements are necessary with regard to impartiality, thoroughness, complainant-involvement, communication and timeliness. The Committee therefore recommends that a general set of requirements for Victoria Police’s handling and investigation of complaints be set out in the *Victoria Police Act 2013* (Vic).

**RECOMMENDATION 56:** That the Victorian Government seek the amendment of Parts 9 and 10 of the *Victoria Police Act 2013* (Vic) to include a general set of requirements for Victoria Police’s handling and investigation of complaints about police at the start of each Part, as follows:

- Investigations must be conducted impartially, fairly, thoroughly and without undue delay.
- Subject to reasonable limitations, complainants must be adequately informed about the receipt, handling, progress and outcome of their complaint.
- Victoria Police must take reasonable steps to protect complainants, investigators and those cooperating with investigators from reprisals.
- Victoria Police must have regard to the human rights obligations in the *Equal Opportunity Act 2010* (Vic), the *Racial and Religious Tolerance Act 2001* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) in handling and investigating complaints.
- Victoria Police must comply with the *Victims’ Charter Act 2006* (Vic) in handling and investigating complaints.
- Subject to reasonable limitations, natural justice must be accorded to police officers and Protective Services Officers who are subject to complaints and investigations of complaints.
- Subject to reasonable limitations, police officers and Protective Services Officers must be adequately informed about the receipt, handling, progress and outcome of complaints against them.
- Victoria Police must pay due regard to the safety, health and welfare of complainants and police officers subject to complaints and investigations of complaints. (p. 301)

Victoria Police: ensuring impartial investigators and avoiding conflicts of interest

The Committee found that the serious problems with Victoria Police’s management of conflicts of interest, which were identified in IBAC’s 2016 audit of regional complaint-handling and in its 2018 audit of PSC complaint investigations, persist.\textsuperscript{1xxxi}

The Committee therefore considers that a clear definition of conflict of interest, perhaps drawing on that of the Victorian Public Sector Commission,\textsuperscript{1xxxi} is needed in the legislation, together with provisions requiring that a complaint investigator not

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be affected by a conflict of interest, that any such investigator be certified as impartial by PSC and that IBAC have the power to require the appointment of an impartial investigator.

RECOMMENDATION 57: That the Victorian Government seek legislative amendments to provide identical, detailed definitions of 'conflict of interest' in both the IBAC Act 2011 (Vic) and the Victoria Police Act 2013 (Vic), supported as necessary by appropriate regulations. (p. 302)

RECOMMENDATION 58: That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to require that police investigations of complaints and disclosures be carried out impartially by an investigator who is not affected by a conflict of interest. (p. 302)

RECOMMENDATION 59: That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to require Professional Standards Command, Victoria Police, to:
- approve the appointment of any police investigators of complaints about police
- certify that any appointed investigator is impartial and not affected by a conflict of interest, and
- report that certification (with supporting reasons) in writing to IBAC. (p. 302)

RECOMMENDATION 60: That the Victorian Government seek the amendment of the IBAC Act 2011 (Vic) to give IBAC the power to veto the appointment of a particular police investigator and to require the appointment of an impartial investigator instead. (p. 302)

Taking officer complaint histories into account

To ensure impartial complaint investigations, it is essential that Victoria Police have accurate and complete records of police officer complaint histories and take them into account—both when allocating complaints to investigators and when investigating allegations against a subject officer. IBAC should have ready access to those complaint histories to aid it in monitoring, reviewing and auditing Victoria Police complaint investigations.

RECOMMENDATION 61: That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to require Victoria Police to keep records of police officer and Protective Services Officer complaint histories and take them into account when appointing an investigator to undertake an investigation into a complaint about police and when investigating a subject officer in relation to police misconduct. The amendment should also require Victoria Police to provide IBAC with ready access to these records. (p. 302)

Ensuring impartial investigations by Victoria Police at the regional level

The Committee has long been concerned over the risk to impartiality, or at least the perception of impartiality, when a police investigator of a complaint comes from the same town, or a proximate geographical region, as the complainant and/or subject officer. The risk is no doubt higher in small country towns where the anonymity of complainants, subject officers and investigators is harder to protect, and where

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there are more likely to be close personal interactions on a daily basis that can expose complainants to reprisals. This is not to say, of course, that this risk is only present in country regions.

These concerns have also been identified in evidence to the Committee and by IBAC in its 2016 audit of Victoria Police's complaint-handling systems at the regional level (‘regional’ referring to a sector of Victoria Police) and its 2018 audits of PSC complaint investigations and Police oversight of serious incidents, which are closely examined in this report.

In July of this year, the IBAC Commissioner informed the Committee of proposed measures to enhance the perception and reality of impartiality in the regional investigation of complaints about police, particularly in country Victoria. The Commissioner explained IBAC’s proposed approach as follows:

• complaint investigators should generally not be ‘from the same division as the subject officer/s’
• that, if a police manager decides to allocate a complaint to an investigator who is in the same division, they must certify on the conflict of interest form that there is sufficient geographic distance between the investigator and the subject officer/s and there are no other concerns with respect to the impartiality of the investigator.

While Victoria Police takes into account the geographic proximity of investigators and subject officers, it does not support IBAC’s proposal that an investigator not come from the same division as a subject officer. It considers that this will not always be a realistic option.

However, the Committee is mindful that significant deficiencies in relation to Victoria Police complaint investigations and oversight (including issues regarding conflicts of interest, probity and complaint histories) have been identified by IBAC as recently as June 2018. It is also concerned that Victoria Police has not yet fully implemented IBAC’s recommendations on these issues from the 2016 audit of regional complaint-handling systems.

Therefore, consistent with the Committee’s recommendations to ensure impartial complaint investigations, the Committee recommends that the Victoria Police Act 2013 (Vic) be amended to prohibit the formal investigation of a complaint about an officer’s misconduct from a particular police station, or associated geographic region, by an officer from that region or town.

**RECOMMENDATION 62:** That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to prohibit the formal investigation of a complaint about a police officer’s misconduct from a particular police station or associated geographical region, by an officer from that town or region. This is to ensure public confidence in the impartiality and transparency of any Victoria Police investigation and to reduce the risk of reprisals against a complainant. This does not apply to Local Management Resolution (LMR) and Management Intervention Model (MIM) matters. (p. 307)
Simplifying Victoria Police complaint determinations


A number of stakeholders told the Committee that they found the complaint determinations complex, opaque and confusing; this was often made worse by a lack of high quality public information, poor communication practices and the failure to provide adequate reasons or explanations for outcomes. This was also the finding of IBAC in its 2016 regional audit.

Similarly, an internal Victoria Police review in 2012 found that the number and subtle nature of these determination types confused not only subject officers but also investigators, creating anxiety for them and increasing the risk of incorrect determinations. The review recommended that the determinations be reduced to a simple ‘Case to answer’ or ‘No case to answer’. These recommendations were not implemented by Victoria Police.

The Committee considers that, given Victoria Police’s acceptance of this recommendation in 2016, it should prioritise the simplification of complaint determinations.

**RECOMMENDATION 63:** That Victoria Police, in consultation with IBAC, seek to consolidate, simplify and clarify the range of determinations it may make at the conclusion of an investigation into a complaint or disclosure about police. (p. 308)

Monitoring Victoria Police’s implementation of IBAC recommendations

To enhance the transparent monitoring of Victoria Police’s implementation of IBAC recommendations, the Committee considers that IBAC should be required to include in its annual reports detailed information on the progress of Victoria Police in implementing IBAC recommendations.

**RECOMMENDATION 22:** That the Victorian Government seek to amend the *IBAC Act 2011 (Vic)* to require IBAC to include detailed information in its annual reports on the progress of Victoria Police’s implementation of IBAC recommendations. (p. 200)
Disciplinary action against officers

While it was not within the scope of this Inquiry to examine the Victoria Police disciplinary system at large, the Committee notes that Victoria Police gave evidence calling for a legislative amendment to allow it to commence disciplinary action against an officer ‘where the conduct is subject to criminal charges’.Victoria Police explained the rationale for such an amendment as follows:

At present, there is no legislative clarity regarding the ability of Victoria Police to commence disciplinary action against a police officer or PSO where the conduct in question is subject to criminal charges. Whilst legal advice suggests this can be done under current legislative provisions, without the clear articulation of powers in this regard, Victoria Police has not pursued this course of action. This has been an impediment to the timely removal of unsuitable employees. A change to legislation to specifically allow Victoria Police to address misconduct which is also criminal will allow the community to be confident that only those who are most suitable are serving police officers and PSOs.

The tenor of this evidence is consistent with the findings and recommendations of the VEOHRC reports into Victoria Police’s governance and culture.

IBAC has advised the Committee, however, that there are some concerns with the present operation of the Victoria Police disciplinary system and have cautioned that the right balance needs to be struck between managerial, educative and ‘rehabilitative’ approaches to officer wrongdoing and the application of punitive sanctions when warranted.

The Committee considers that there should be a legislative amendment authorising Victoria Police to begin disciplinary action against an officer when the relevant conduct ‘is subject to criminal charges’. The Committee recognises, however, the importance of striking the right balance between appropriate rehabilitative approaches and the application of punitive sanctions for officer wrongdoing in order to ensure adequate accountability within Victoria Police.

RECOMMENDATION 64: That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to authorise Victoria Police to commence disciplinary action against a police officer or Protective Services Officer, including possible dismissal of that officer, where the conduct in question is subject to criminal charges. (p. 310)

Further, given the broader concerns with the nature and effectiveness of the disciplinary system for Victoria Police, the Committee recommends that the Victorian Government review the disciplinary system.

RECOMMENDATION 65: That the Victorian Government review the disciplinary system for Victoria Police, including the nature and operation of the Victoria Police Act 2013 (Vic) with respect to that system. (p. 310)
Executive summary

Oversight of critical incidents

It is beyond the scope of this Inquiry to provide an in-depth examination of issues relating to Victoria Police and IBAC management and oversight of critical incidents involving police contact. In 2018, IBAC completed an audit of Victoria Police’s oversight of ‘serious incidents’ (the Victoria Police term for a critical incident, including death or serious injury where there is police contact). The key findings of this audit showed a similar pattern of deficiencies to those identified in the 2016 and 2018 IBAC audits of Victoria Police complaint investigations—namely, problems with regard to impartiality (including conflicts of interest and complaint histories of officers given oversight roles), thoroughness and effectiveness (including identifying and having regard to human rights), communication and timeliness.

IBAC made a number of recommendations, accepted by Victoria Police, to ensure that there is impartial oversight carried out efficiently and with due regard for any human rights issues. IBAC also recommended that Victoria Police work with it ‘to improve the system for notifying IBAC of all deaths and serious injuries following police contact’. For example, the audit showed that in 28 of the 65 files audited IBAC had not received notification from Victoria Police of serious incidents (including 16 deaths).

IBAC has argued that Victoria Police should be required under the law to notify serious incidents to it. This is presently not the case. IBAC also considers that, while the basis of its standing own motion jurisdiction in relation to serious incidents is sound, that it would be preferable if it were given explicit jurisdiction under the law.

The Committee considers that there should be a legislative requirement for Victoria Police to report serious incidents to IBAC to ensure adequate oversight in relation to deaths and serious injury involving police contact, especially given the deficiencies identified in IBAC’s 2018 audit. The Committee also considers that it would be valuable for the Victorian Government to review the basis and extent of IBAC’s powers in relation to critical incidents.

RECOMMENDATION 66: That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to require Victoria Police to report, as soon as practicable, all critical incidents in which death or serious injury has occurred in connection with police activity to IBAC. These amendments should be supported by appropriate regulations. (p. 315)

RECOMMENDATION 67: That the Victorian Government review the basis and extent of IBAC’s jurisdiction with respect to the investigation and oversight of critical incidents in which death or serious injury has occurred in connection with police activity. (p. 315)

Conciliation as an alternative

Both IBAC and Victoria Police have legislated powers to use conciliation to resolve a complaint. Research, international experience and evidence from stakeholders demonstrate that Alternative Dispute Resolution (ADR) can be a valuable option within a system for handling complaints about police, provided it is used appropriately, with the complainant’s consent and with protections for the
vulnerable. It can be cheaper, quicker and less stressful for complainants and subject officers alike and advance the best practice principle of complainant-involvement. It can also prevent complaints escalating and multiplying and reduce the investigative workloads of IBAC and Victoria.

The Committee therefore recommends that Victoria Police and IBAC make use of their conciliation powers in relation to complaints about police. To ensure that the use of conciliation is transparent and methodical, IBAC and Victoria Police should develop the necessary policies, principles, guidelines and processes and publicise conciliation as an option for complainants.

RECOMMENDATION 68: That IBAC and Victoria Police, with consent of the complainants, use their jurisdiction under the IBAC Act 2011 (Vic) and the Victoria Police Act 2013 (Vic) to conciliate complaints and publicise conciliation as a dispute resolution option. (p. 327)

Conclusion

Reviewing progress made in the 59th Parliament

As can be seen from this summary, the Committee has not recommended that a new, independent agency be established to exclusively handle and investigate all complaints regarding police misconduct and corruption. Rather, it has made 69 recommendations to address a range of limitations with the current system that require attention.

However, given the nature and extent of the concerns raised, it is important that the Committee responsible for the oversight of IBAC in the 59th Parliament keep a watching brief on the implementation of the recommendations to assess if they have adequately addressed the concerns identified in this report. If community confidence in the police complaints and oversight system is to be maintained, it is crucial that the problems identified are addressed.

RECOMMENDATION 69: That the committee responsible for the oversight of IBAC in the 59th Parliament monitor the adoption and implementation of the recommendations contained in this report and assess if the concerns raised have been adequately addressed. Further recommendations will be required if the complaints system is still seen to be falling short of best practice principles. (p. 336)
## Acronyms and abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<tr>
<td>AFVPLS</td>
<td>Aboriginal Family Violence Prevention &amp; Legal Service</td>
</tr>
<tr>
<td>ALA</td>
<td>Australian Lawyers Alliance</td>
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<td>AMA</td>
<td>Africa Media Australia</td>
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<td>ANAO</td>
<td>Australian National Audit Office</td>
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<tr>
<td>APSACC</td>
<td>Australian Public Sector Anti-Corruption Conference</td>
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<tr>
<td>CALD</td>
<td>Culturally and Linguistically Diverse</td>
</tr>
<tr>
<td>CCTV</td>
<td>closed-circuit television</td>
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<tr>
<td>CIRT</td>
<td>Critical Incident Response Team, Victoria Police</td>
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<tr>
<td>CJINI</td>
<td>Criminal Justice Inspection Northern Ireland</td>
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<tr>
<td>CLEDS</td>
<td>Commissioner for Law Enforcement Data Security (Victoria)</td>
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<td>CMS</td>
<td>Complaints Management System</td>
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<tr>
<td>DSS</td>
<td>Drummond Street Services</td>
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<td>DYS</td>
<td>Drum Youth Services</td>
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<td>ECCV</td>
<td>Ethnic Communities Council of Victoria</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>ECLC</td>
<td>Eastern Community Legal Centre</td>
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<tr>
<td>EPSO</td>
<td>Ethics and Professional Standards Officer, Victoria Police</td>
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<tr>
<td>FCLC</td>
<td>Federation of Community Legal Centres</td>
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<tr>
<td>FKCLC</td>
<td>Flemington &amp; Kensington Community Legal Centre</td>
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<tr>
<td>FOI</td>
<td>Freedom of Information</td>
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<tr>
<td>GVCLC</td>
<td>Goulburn Valley Community Legal Centre</td>
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<tr>
<td>IBAC</td>
<td>Independent Broad-based Anti-corruption Commission</td>
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<tr>
<td>ICAC NSW</td>
<td>Independent Commission Against Corruption (New South Wales)</td>
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<tr>
<td>ICAC SA</td>
<td>Independent Commissioner Against Corruption (South Australia)</td>
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<td>ICV</td>
<td>Islamic Council of Victoria</td>
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<td>IID</td>
<td>Internal Investigations Department of Victoria Police</td>
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<td>ICJ</td>
<td>International Commission of Jurists (Victoria)</td>
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<td>IPCA</td>
<td>Independent Police Conduct Authority (New Zealand)</td>
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<td>IPCB</td>
<td>Independent Police Complaints Body</td>
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<td>IPCC</td>
<td>Independent Police Complaints Commission (United Kingdom)</td>
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<td>IRA</td>
<td>Irish Republican Army</td>
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<td>ISO</td>
<td>International Organization for Standardization</td>
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<tr>
<td>LAPD</td>
<td>Los Angeles Police Department</td>
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<tr>
<td>LCCLC</td>
<td>Loddon Campaspe Community Legal Centre</td>
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<tr>
<td>LEAP</td>
<td>Law Enforcement Assistance Program, Victoria Police</td>
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<tr>
<td>LECC</td>
<td>Law Enforcement Conduction Commission (New South Wales)</td>
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<td>Acronyms and abbreviations</td>
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<tr>
<td>LERA</td>
<td>Law Enforcement Review Agency (Manitoba, Canada)</td>
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<tr>
<td>LGBTIQ</td>
<td>lesbian, gay, bisexual, transgender, intersex, queer (or questioning)</td>
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<tr>
<td>LIV</td>
<td>Law Institute of Victoria</td>
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<tr>
<td>LMR</td>
<td>Local Management Resolution</td>
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<td>LPSC</td>
<td>Local Professional Standards Committee</td>
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<td>MIM</td>
<td>Management Intervention Model</td>
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<tr>
<td>MPD</td>
<td>Metropolitan Police Department (Washington, DC)</td>
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<td>NACOLE</td>
<td>National Association of Civilian Oversight of Law Enforcement</td>
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<tr>
<td>NADRAC</td>
<td>National Alternative Dispute Resolution Advisory Council</td>
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<tr>
<td>NCLC</td>
<td>Northern Community Legal Centre</td>
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<tr>
<td>OPC</td>
<td>Office of Police Complaints (Washington, DC)</td>
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<tr>
<td>OPCC</td>
<td>Office of the Police Complaint Commissioner (British Columbia, Canada)</td>
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<tr>
<td>OPI</td>
<td>Office of Police Integrity (Victoria)</td>
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<td>OPP</td>
<td>Office of Public Prosecutions (Victoria)</td>
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<tr>
<td>PCA NZ</td>
<td>Police Complaints Authority (New Zealand)</td>
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<tr>
<td>PCA UK</td>
<td>Police Complaints Authority (United Kingdom)</td>
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<tr>
<td>PCB</td>
<td>Police Complaints Board (Washington, DC)</td>
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<tr>
<td>PCU</td>
<td>Police Conduct Unit, Victoria Police</td>
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<tr>
<td>PONI</td>
<td>The Office of the Police Ombudsman for Northern Ireland</td>
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<tr>
<td>PRSB</td>
<td>Police Registration and Services Board (Victoria)</td>
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<tr>
<td>PSA</td>
<td>Police Service Area</td>
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<tr>
<td>PSC</td>
<td>Professional Standards Command, Victoria Police</td>
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<tr>
<td>PSO</td>
<td>Protective Services Officer</td>
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<tr>
<td>PTSD</td>
<td>post-traumatic stress disorder</td>
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<tr>
<td>ROCSID</td>
<td>Register of Complaints, Serious Incidents and Discipline, Victoria Police</td>
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<tr>
<td>SAPOL</td>
<td>South Australia Police</td>
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<tr>
<td>SMLS</td>
<td>Springvale Monash Legal Service</td>
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<tr>
<td>SOG</td>
<td>Special Operations Group, Victoria Police</td>
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<tr>
<td>UCA</td>
<td>Synod of Victoria and Tasmania, Uniting Church in Australia</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<tr>
<td>VALS</td>
<td>Victorian Aboriginal Legal Service</td>
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<tr>
<td>VCAT</td>
<td>Victorian Civil and Administrative Tribunal</td>
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<tr>
<td>VEOHRC</td>
<td>Victorian Equal Opportunity and Human Rights Commission</td>
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<tr>
<td>VI</td>
<td>Victorian Inspectorate</td>
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<tr>
<td>WAPS</td>
<td>Western Australia Police Service</td>
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<tr>
<td>YPBAS</td>
<td>Young Persons’ Behaviour and Attitudes Survey</td>
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Introduction

1.1 Policing in a democratic society

Police play an important role in society in preventing crime and disorder, enforcing the law, apprehending offenders and assisting in natural disasters and other emergencies. Their work is complex and demanding and can be extremely challenging. As the Fitzgerald Inquiry noted:

In a modern society, diverse and often competing demands are made of the Police Force. Not only is the Force seen as a professional defence against crime and disorder, it is also perceived as a community service, to be called upon for help in circumstances of danger, threat and uncertainty.

Policing is one of the most demanding jobs in society and requires intelligent, educated, uniquely suited and dedicated people. Successful policing also requires the active support and confidence of the public.¹

In order to meet these demands and effectively carry out their duties, police are provided with significant powers, including powers to detain, search and use force against individuals. The community, in providing these powers, has the expectation that they will be used judiciously and police will be accountable for their actions. As the High Court of Australia has acknowledged,

the effectiveness of the police in protecting the community rests heavily upon the community’s confidence in the integrity of the members of the police force, upon their assiduous performance of duty and upon the judicious exercise of their powers.²

Victoria Police has also recognised that exercising their unique powers effectively and legitimately depends not only on compliance with the law but on the consent and cooperation of the public, which is based on trust and confidence in the police force as an institution.³

The community’s trust and confidence in the police is reinforced by the effective oversight of its complaints handling. The effective and impartial investigation of complaints against police has also been identified in academic research, reviews, inquiries and decisions of courts as an essential part of police accountability and vital to the effective functioning of a modern democracy.⁴ This has also been acknowledged by police themselves.⁵

Moreover, if corruption and police misconduct occur due to a lack of effective oversight, it can erode the public’s trust and confidence in law enforcement agencies and in the law generally. Therefore, the external oversight role of bodies such as the

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³ Victoria Police, Submission 52, 1 May 2018, p. 6.
⁵ Victoria Police, Submission 52, 1 May 2018, p. 29.
Independent Broad-based Anti-corruption Commission (IBAC) in the handling and investigation of complaints about police in Victoria is an essential one. As Garth den Heyer and Alan Beckley explain:

Independent and objective oversight of police organizations ... is essential to ensure the accountability and the effectiveness of police activities and safeguards the rights of members of the public against overreaction, use of excessive force, or misconduct committed by individual or collective police officers.\

However, there has been considerable, and continuing, debate about how that ‘independent and objective oversight’ of police ought to be institutionalised and exercised. A key issue in this debate, examined in this report, is how to strike an appropriate balance between the responsibility of police in managing the conduct of their members and the external oversight and investigation of complaints about police.

1.2 Rationale for the current Inquiry

In its report to the Parliament of Victoria, Strengthening Victoria’s key anti-corruption agencies?, this Committee identified concerns raised by key stakeholders regarding the investigation of complaints about police in Victoria, including calls for a new, independent complaints-handling system. The Committee determined in the report that, given the experience of other jurisdictions and the concerns raised by Victorian stakeholders, it would investigate these concerns further. At the same time, the then IBAC Commissioner, Mr Stephen O’Bryan QC, also acknowledged in IBAC’s annual report for 2015/16 the challenges facing IBAC and Victoria Police in identifying, investigating and preventing misconduct.

Indeed, more recently, Victoria Police has also recognised these challenges:

Victoria Police acknowledges ... that the current system is not sufficient and requires significant improvement. The complaints handling, discipline and performance management systems of Victoria Police have been the subject of many internal and external reviews over the past decade. All of these reports, reviews and audits reiterate common themes of unnecessary formality and legalistic processes, concerns of bias, a lack of attention to complainants’ needs, excessive timeframes, poor communication, complexity and inadequate data management. Victoria Police accepts these findings, and is seeking to implement change to achieve good practice ...

In July 2017, the Committee decided that it would commence, in accordance with s 33(3) of the Parliamentary Committees Act 2003 (Vic), a self-referenced inquiry. The Terms of Reference for the Inquiry required the Committee to:

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9 Ibid., p. 96.
10 IBAC, Annual report 2015/16, Melbourne, pp. 5–6.
11 Victoria Police, Submission 52, 1 May 2018, p. 12.
Chapter 1 Introduction

1.3 Oversight of complaints against Victoria Police: an historical snapshot

Historically, the investigation of complaints was handled internally within Victoria Police, without any form of external oversight. In the 1970s, Victoria Police was subject to limited oversight by the Victorian Ombudsman. In 1986, a new, independent Police Complaints Authority was created to review the police. However, it was abolished in 1988, following opposition from Victoria Police and The Police Association of Victoria and, in contrast, criticism that its powers were too limited and its resources inadequate. The oversight power then reverted to the Ombudsman with the creation of the Deputy Ombudsman (Police Complaints). However, the Ombudsman’s role in relation to complaints about police continued to be subject to criticism from various quarters. These included claims that it remained inadequately resourced, failed to effectively address complaints about police and had limited success in having its recommendations implemented by police. These criticisms were heightened in the context of Melbourne’s ‘gangland wars’ during 2002–2003 and by allegations of possible links between police and organised crime. There were calls, at the time, for a royal commission into policing in Victoria.12

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In 2004, in response to these concerns, the Labor Government initially increased the powers and resources of the Ombudsman (giving the office, for example, the power to conduct own motion investigations) and subsequently created the Office of Police Integrity (OPI). The OPI was given the powers of a royal commission, which were overseen by a new Special Investigations Monitor, to detect, investigate and prevent police corruption and serious misconduct … to examine police practices and procedures to ensure they work effectively … and [to] monitor and review the way Victoria Police investigates or conciliates complaints.

While the OPI had some success in exposing and investigating corrupt conduct within Victoria Police (notably in relation to excessive force used by some members of the Armed Offenders Squad), it faced criticism that it could not directly discipline police officers and that it could only make recommendations to the Chief Commissioner of Police, refer criminal cases to the state’s prosecutor and report to Parliament on its work and police responses. The OPI was also criticised over the fact that the vast majority of complaints were still investigated by police and that a number of high profile prosecutions of police officers had failed.

There was growing pressure to establish a broad-based anti-corruption commission with stronger powers and broader jurisdiction over the wider public sector as well as police, along the lines of New South Wales’s Independent Commission Against Corruption (ICAC NSW). In response, the Labor Government commissioned an independent review of Victoria’s integrity system. The review endorsed the establishment of a Victorian Integrity and Anti-Corruption Commission which would take over both the role of the OPI, with respect to complaints about alleged police corruption and misconduct, and of the Ombudsman, with respect to whistleblower complaints. With the election of the Liberal–National Coalition in November 2010, plans commenced to create a new broad-based anti-corruption commission modelled on ICAC NSW. In due course, the OPI was abolished and its functions in relation to detect, investigate and prevent police corruption and serious misconduct, examine police practices and procedures to ensure they work effectively, and monitor and review the way Victoria Police investigates or conciliates complaints.
to police oversight and investigation were transferred to the newly created IBAC. IBAC also took over the Ombudsman’s clearing-house role in relation to protected disclosures (‘whistleblower complaints’).\(^7\)

### 1.4 Operation of the current system

The current system in Victoria for the handling of complaints and disclosures about police is extremely complex. It is based on an intricate, overlapping and sometimes fraying patchwork of laws, policies and processes governing Victoria Police and IBAC. This includes the Independent Broad-based Anti-corruption Commission Act 2011 (Vic) (‘IBAC Act 2011 (Vic)’), the Victoria Police Act 2013 (Vic), the Protected Disclosure Act 2012 (Vic) (covering whistleblower protections) and the Victoria police manual. Given the complexities involved, which are thoroughly examined in Chapter 3, only a sketch of the system is given here.

Under the current system, both IBAC and Victoria Police have a role in receiving, handling, assessing and investigating complaints about police corruption and other misconduct. Members of the public and police officers may make complaints about misconduct, broadly conceived, to either Victoria Police or IBAC in the first instance. Victoria Police is also required to inform IBAC of complaints about misconduct and the details of any investigation it is conducting. In addition, IBAC acts as the clearing house for disclosures (‘whistleblower complaints’) about police wrongdoing. Under the legislation, IBAC is required to dismiss, refer or investigate complaints. The vast majority of complaints are referred back to Victoria Police for investigation (see the discussion in Section 4.4 in Chapter 4).

As an external oversight body, IBAC can request information from the police, review police investigations, audit police systems and processes and undertake investigations under the authority of its ‘own motion’ jurisdiction. IBAC can also make recommendations to Victoria Police and exercise a range of educative and preventive functions. IBAC itself is subject to oversight by the Victorian Inspectorate (VI).

### 1.5 The Committee’s Inquiry

The Committee has undertaken comprehensive research to gain a thorough understanding of the current legislation and the practical operation of the police complaints system in Victoria. The Committee has also, where appropriate, compared the Victorian system with complaint-handling systems of other Australian and overseas jurisdictions in order to enhance its understanding of common problems and best practice solutions to them. The Committee has also employed a variety of processes and obtained information through a number of sources, as outlined below.

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1.5.1 The work of the Committee

Literature review, background briefings and further stakeholder engagement

The Committee began its investigations by conducting a thorough literature review. This included an analysis of relevant academic publications and the consideration of government and parliamentary reports and policy documents on police complaint systems within Australia and selected overseas jurisdictions. The Committee also reviewed principles and policy guidelines from international organisations such as the United Nations Office on Drugs and Crime (UNODC), European Union, Commissioner for Human Rights (Council of Europe) and Transparency International.

Whilst there has been considerable research into overseas police complaints systems, there has been very little academic or legal research into the current Victorian complaints system since the passing of the *Victoria Police Act* in 2013. This has meant that, with respect to the current Victorian complaints and oversight system, the Committee has primarily relied on its own analysis of the relevant legislation and the views of key stakeholders, including a number of significant IBAC and Victoria Police publications and reports.

In addition, informal briefings were held with the then IBAC Commissioner, Mr Stephen O’Bryan QC; the Victorian Inspector, Mr Robin Brett QC; and the Special Minister of State, the Hon Gavin Jennings MLC. The Committee also attended a briefing from officers at Victoria Police Professional Standards Command at Victoria Police headquarters.

Finally, police complaint-handling statistics and other additional information were requested from IBAC, Victoria Police, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and other stakeholders throughout the Inquiry.

Written submissions

The Committee called for submissions through an advertisement placed in *The Age* on 7 February 2017 and publicised the Inquiry through Twitter. The Committee also wrote to a number of stakeholders, seeking their input and participation in the Inquiry. The Committee determined to write to academics with research experience in the area, public sector organisations, community legal centres, IBAC, the VI and Victoria Police, inviting submissions to provide the Committee with a thorough and broad understanding of the current operation of the police complaints system and the challenges it faces.

A list of submissions received is contained in Appendix 1.

Hearings in Melbourne

The Committee invited a number of individuals and organisations who had made submissions to the Inquiry to attend closed, in camera or public hearings. Closed and public hearings were held in Melbourne on 5, 19 and 26 February 2018, 5 March 2018 and 7 May 2018. In camera hearings were held in Melbourne on 19 February 2018 and 5 March 2018.

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A list of hearings conducted by the Committee is contained in Appendix 2.

**Closed hearings in Brisbane and Sydney**

The Committee determined that it was important to understand police oversight systems in other Australian jurisdictions.

When the Committee travelled to Queensland and New South Wales for other inquiry work, it also met with equivalent anti-corruption agencies, inspectorates and parliamentary committees to discuss their respective police oversight systems. Closed hearings were also conducted with Professor Tim Prenzler, University of the Sunshine Coast, who is a scholar on external police oversight agencies in Australia and overseas; Mr Andrew Tink AM, author of the New South Wales *Review of police oversight* (2015); and Mr Alan Beckley, a former long-serving police officer and academic from the United Kingdom based at Western Sydney University.

A list of interstate informal meetings and closed hearings conducted by the Committee is contained in Appendix 3.

**Meetings overseas**

Research undertaken by the Committee identified that the Office of the Police Ombudsman for Northern Ireland (PONI) represented a ‘best practice’ system for investigating complaints independently, and determined that lessons could also be gained from the Independent Police Complaints Commission in the United Kingdom and from the experience in New Zealand, where complaints about police had been successfully reduced. The Committee’s travel included meetings with these and other police oversight agencies, their respective police forces and relevant parliamentary oversight committees.

A list of the Committee's overseas meetings is contained in Appendix 4.

**Seminar and conference attendance**

The Committee and Secretariat attended a number of conferences and seminars that included specific panels and presentations highlighting police oversight issues.

They included:

- Australian Public Sector Anti-Corruption Conference (APSACC) on 18–19 November 2015 in Brisbane and 14–16 November 2017 in Sydney.
- Police Accountability Roundtable, hosted by the Law Institute of Victoria, Melbourne, 25 July 2017
1.6 Scope of the Inquiry

In undertaking the Inquiry, the Committee employed best practice principles derived from research, international laws and standards.

However, given the breadth and complexity of the role of Victoria Police and IBAC within Victoria’s integrity and anti-corruption system, the Committee decided to focus on improving the complaints system and the oversight of police corruption and misconduct in Victoria. The following parameters of this report should be noted. The report:

• only discusses police culture where it is relevant to the effective operation of the complaints-handling system. The Committee acknowledges that much work has to be done in improving police culture in Victoria and is aware of the substantial ongoing work of the VEOHRC and Victoria Police’s efforts to address the recommendations made by it.

• does not discuss, nor make recommendations with regard to, VEOHRC’s handling of complaints of sex discrimination and sexual harassment by police. VEOHRC’s role is only discussed more generally to identify its role in the police complaint-handling system in Victoria

• discusses police management, operations and prevention activities only where they are relevant to the effective operation of the complaints system.

• does not examine the effectiveness of Victoria Police’s disciplinary system. The Committee is aware of the work of the VEOHRC in this regard and its recommendations to improve it.19

• focuses on the assessment and investigation of complaints against police officers and Protective Services Officers (PSOs) rather than Victoria Police public servants

• does not examine the oversight of critical incidents in depth

• draws on the 5 February 2018 edition of the Victoria Police manual20

• does not take into account the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018 (Vic), which, at the time of writing, was on the agenda to be debated in the Legislative Council.

Finally, the Committee recognises the excellent research, audit and preventive work that IBAC has undertaken, especially through a number of in-depth reports into policing in Victoria.21 While the Committee has drawn extensively on a number of these reports, the focus of this Inquiry is on the legislative framework for the complaints system, how it operates in practice and how it can be improved, including, in particular, the roles of IBAC and Victoria Police within it.

19 VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase One Report, Melbourne, 2015; VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase 2 Audit, Melbourne, 2017. See also the earlier work of the OPI on these issues: OPI, A fair and effective Victoria Police discipline system, Melbourne, 2007; OPI, Improving Victoria Police discipline and complaint handling systems: a progress report, Melbourne, 2011.

20 The Committee is aware that new editions have since been released on 1 May and 31 July 2018.

Chapter 1 Introduction

1.7 Report structure

The first part of the report provides a foundation for the Committee’s further examination of issues related to the system for handling complaints about police in Victoria, drawing on key research as well as interstate and international experience. Chapter 2 examines the key themes and lesson of past inquiries, the contending models of complaints handling and oversight, useful overseas examples and applicable best practice principles. It also addresses the issue of whether Victoria needs a new external body to handle complaints about police. Chapter 3 then provides a detailed account of the operation of the current police oversight and complaints-handling system in Victoria.

Chapter 4 follows with an overview of best practice principles and examples of data monitoring systems that flow from these principles. It provides a statistical overview of the current Victorian complaints system in practice; assesses the quality of the collection, analysis and reporting of complaints statistics; identifies some of the key issues for the system that arise from an evaluation of the available statistics; and makes recommendations for the provision of robust, publicly available data on the performance and operation of the system.

The remaining chapters closely examine a range of issues with the police oversight and complaints system in Victoria that have been identified by complainants and other stakeholders, including IBAC and Victoria Police, and discusses the Committee’s recommendations to address these issues. Drawing on best practice principles, the report focuses on issues relating to the making, assessment, referral and investigation of complaints and disclosures about police, recognising that they overlap in complex ways in terms of both the law and practice.

Chapter 5 evaluates the current system for making complaints, including the issues of public confidence in the system, challenges faced by complainants, the kinds of police wrongdoing covered, the quality of public information, Victoria Police’s and IBAC’s communication with complainants and what support complainants need.

Chapter 6 evaluates the processes IBAC and Victoria Police use in classifying and assessing complaints and disclosures about police, including the status and treatment of the Local Management Resolution (LMR) and Management Intervention Model (MIM) classifications and the information provided to complainants at the assessment stage.

Chapter 7 addresses a number of issues related to IBAC’s referral of complaints back to Victoria Police for investigation. This includes the number and kinds of complaints referred, IBAC’s referral power under the IBAC Act 2011 (Vic), conflict of interest concerns, the protection of complainants against reprisals and IBAC’s oversight of referrals.

Chapter 8 examines the impartiality and effectiveness of investigations by IBAC and Victoria Police of complaints and disclosures as well as the oversight of those investigations.

Chapter 9 examines the usefulness of conciliation as an alternative to the investigation of complaints about police, drawing on key research and international experience.

Finally, Chapter 10 highlights the key themes of the Inquiry and how the complaints and oversight system in Victoria can be improved.
1.8 Concluding remarks

In carrying out its work, the Committee has drawn upon the views, experience and expertise of a broad range of people. The public and confidential submissions, public, closed and in camera hearings, site visits, briefings and interstate and overseas meetings have provided valuable insights into the function and work of independent police complaints bodies and the practical operation of the Victorian system. The insights of integrity agencies, individuals who work within the current framework and those with specialised knowledge of the relevant legislation have been crucial. The Committee is also particularly grateful to complainants who had the courage to make submissions or present to the Committee. Their evidence has provided unique personal insights into the problems that currently exist in the system.

The Committee is most appreciative of the time, effort and valuable contributions that all these individuals and organisations have made to this Inquiry.

Finally, in undertaking this Inquiry the Committee acknowledges the excellent work of the majority of Victoria Police officers and hopes that, by making recommendations to improve the complaints-handling and oversight system in Victoria, those officers who violate public trust will be dealt with in an appropriate manner, allowing public confidence in the force to be assured.
Models and best practice principles

2.1 Introduction

In Victoria there have been calls from some stakeholders for the establishment of a new, independent body to investigate and oversee all complaints about police along the lines of the Office of the Police Ombudsman for Northern Ireland (PONI) instead of the presently shared roles played by Victoria Police and the Independent Broad-based Anti-corruption Commission (IBAC). The issue of how best to investigate and oversee complaints about police corruption and misconduct, and what kind of oversight body might be appropriate, has been long been considered by researchers, official inquiries and stakeholders involved in a range jurisdictions. To address these issues and lay the foundation for a systematic evaluation of the evidence the Committee has received during the Inquiry, this chapter examines past inquiries, models of complaints systems, relevant overseas examples and best practice principles, and considers the most appropriate form of complaint investigation and oversight for Victoria.

2.2 Past inquiries: themes and lessons

There is a long history of inquiries into police corruption and misconduct, complaints systems and police oversight in common law jurisdictions such as the United States of America, United Kingdom, New Zealand and Australia. This section provides a brief survey of some of the key inquiries, distilling from it major themes and lessons that are relevant to identifying best practice principles for the handling and oversight of complaints about police.

2.2.1 United States of America

In 1929, the National Commission on Law Observance and Enforcement (the Wickersham Commission) was established during The Prohibition to inquire into police connections with the illegal alcohol industry.\(^{22}\) It found that police were heavily involved with organised crime and used torture and threats to extract forced confessions.\(^{23}\) The Commission made a recommendation that “every locality … [have] a disinterested agency … to which a citizen, especially one who is poor and uninfluential, may report abuses with the knowledge that they will be protected against retaliation and that his complaint will be searchingly investigated”.\(^{24}\) However, the recommendation was not acted upon.\(^{25}\)

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\(^{23}\) Ibid.

\(^{24}\) Ibid., p. 9 (quoting from the Commission).

\(^{25}\) Ibid., p. 9.
In 1972, the Knapp Commission of Inquiry into the New York City Police Department identified systematic corruption in the Department that included protection rackets for illegal parking, vice, gambling and drug trafficking as well as theft from crime scenes and interference with the course of justice through fabricated and manipulated evidence and the bribery of lawyers. The Commission concluded that this corruption was compounded by an inadequate system for handling complaints about police:

At the present time a citizen wishing to make a complaint about a policeman knows that his complaint will ultimately be investigated by other policemen. This discourages complaints, because many New Yorkers just don’t trust policemen to investigate each other...

This distrust is not confined to members of the public. Many policemen came to us with valuable information which they consented to give us only upon our assurance that we would not disclose their identity to the Department or to any District Attorney.

Any proposal for dealing with corruption must therefore provide a place where policemen as well as the public can come with confidence and without fear of retaliation. Any office designed to achieve this must be staffed by persons wholly unconnected with the Police Department.

In the early 1990s, the Mollen Commission found that corruption, which had lessened somewhat following the Knapp Report, had re-emerged strongly in the New York City Police Department because the avoidance of scandal was given greater weight than exposing and dealing with corrupt practices. The Commission gave some support for an independent body to audit the police disciplinary system, which could gather its own intelligence, initiate investigations, gain access to Departmental records and staff, subpoena witnesses and conduct public and private hearings. However, this support was countered by its view that police needed to take responsibility to investigate themselves, especially given that in its view the Police Department best understood "the corruption hazards facing cops, the culture that protects it, and the methods that can most effectively uncover it." The Commission led to the creation of limited civilian and external review in the form of the Civilian Complaint Review Board (1993) and the Commission to Combat Police Corruption (1995).

Also in the early 1990s, the Independent Commission on the Los Angeles Police Department (Christopher Commission) undertook an inquiry into the Los Angeles Police Department (LAPD) following the fallout from the beating of an African American man, Rodney King; the acquittal by an all-white jury of four police officers alleged to be involved; and deadly riots in the city. While the Commission found that the LAPD was plagued by chronic misconduct, police brutality and cover-ups, and that the complaints system was defective, it did not recommend an external body to handle complaints.
2.2.2 United Kingdom

England and Wales

In the United Kingdom in 1960 the Royal Commission on the Police was established in response to corrupt practices and assaults and concerns about the inadequate investigation of complaints about police. The Commission identified a number of problems with the complaints and discipline system of the time, a system which was almost exclusively within the control of chief constables. In particular, the Commission noted evidence it had received expressing concern over perceived ‘partiality’ in police handling and investigating complaints about themselves:

A system in which the investigation of complaints is the concern of the police alone may not have the appearance of justice being done ... A chief constable might well be inclined either to partiality or to over-severity in trying one of his own men; in any case it cannot be easy for him, with a natural sympathy towards his own officers, to adopt the attitude of mind which is necessary if justice is to be done—and, almost as important, if justice is seen to be done. It was with this in mind, rather than on the ground of specific allegations of miscarriages of justice, that some witnesses contended that the investigation of complaints against police should be handed over to a person or body outside the force.

The Commission did not, however, recommend ‘civilian control’ of the complaints system, considering that it would weaken police management of misconduct. Instead, it recommended a number of improvements, including that complaints about a police officer should only be investigated by an officer from another division, to enhance impartiality; that decisions about the outcomes of complaints be made by the chief constable; that complaints be better recorded and reported; that complainants be allowed to attend disciplinary hearings and question a subject officer in some circumstances; and that the public prosecutor be in charge of complaints alleging the commitment of a criminal offence by an officer against a member of the public.

The Scarman Report on the Brixton race riots of 1981 criticised police control of the complaints system and called for an independent body:

Many will continue to criticise [the complaint system] so long as the investigation of complaints remains in police hands ... Only the establishment of an independent service for the investigation of all complaints against the police will silence their criticisms.

However, the report recommended a more modest system of external review of the gravest cases of police misconduct. Following the report, the external Police Complaints Authority (PCA UK) was established.

34 Ibid., p. 12
35 Ibid.
36 Ibid., p. 12 (quoting from the Commission).
37 Ibid., p. 12.
38 Ibid., pp. 12–13.
41 Ibid., p. 13.
In 1999, the Stephen Lawrence Inquiry, established to examine the allegedly racially motivated murder of a teenager in 1993, criticised the PCA UK for its heavy reliance on police investigators and its ‘limited input into police discipline’.\textsuperscript{42} The weak role of the PCA was thought to worsen the already widespread dissatisfaction of many ethnic minorities with police.\textsuperscript{43} In response, the Authority was replaced by the Independent Police Complaints Commission (IPCC) (2004), which was ‘given enlarged powers to independently investigate serious matters involving police and to handle appeals’.\textsuperscript{44}

In 2012, the IPCC was criticised by a House of Commons Home Affairs Committee Inquiry as ‘not yet capable of delivering the kind of powerful, objective scrutiny that is needed to inspire … [public] confidence’.\textsuperscript{45} The Home Affairs Committee elaborated that

\[\text{compared with the might of the 43 police forces in England and Wales, the IPCC is woefully underequipped and hamstrung in achieving its original objectives. It has neither the powers nor the resources that it needs to get to the truth when the integrity of the police is in doubt. Smaller even than the Professional Standards Department of the Metropolitan Police, the Commission [IPCC] is not even first among equals, yet it is meant to be the backstop of the system. It lacks the investigative resources necessary to get to the truth; police forces are too often left to investigate themselves; and the voice of the IPCC does not have binding authority. The Commission must bring the police complaints system up to scratch and the Government must give it the powers that it needs to do so.}\textsuperscript{46}

The Home Affairs Committee also expressed concern that

\[\text{… Complaints are often investigated by the force about which a complaint or referral has been made ... [and that the] IPCC continues to employ a significant number of former police officers, some who hold senior posts in the force, who may naturally favour their former colleagues.}\textsuperscript{47}

The Home Affairs Committee recommended increased resources for the IPCC, an increase in the number of investigations conducted by it, a reduction in the proportion of ex-police officers in the Commission to 20% and a stronger appeal jurisdiction.\textsuperscript{48}

In the face of continuing criticism, in July 2014 the Government made a commitment to ‘improve standards of police integrity’ through:

- A review of the whole disciplinary police system to be led by Major General (Retd.) Chip Chapman;
- A consultation on proposals to strengthen protections for police whistle-blowers;
- A review of the entire police complaints system, including … the role, powers and funding of the IPCC.\textsuperscript{49}

\textsuperscript{42} Ibid., pp. 14–15.  
\textsuperscript{43} Ibid., p. 15.  
\textsuperscript{44} Ibid.  
\textsuperscript{48} Ibid., p. 16.  
Chapter 2 Models and best practice principles

Following this commitment, in December 2014 the Home Office reported on its review of the complaints and disciplinary systems in a consultation paper.\(^5^0\) The report echoed many earlier criticisms of the complaints system and the IPCC:

> The review found that elements of the police complaints system do not work efficiently or effectively. Few of those involved with the system have confidence in its ability to operate effectively. Large numbers of members of the public do not believe that the system will respond to their complaints fairly or effectively. Complaints take too long to resolve, either by local resolution or following the outcome of an investigation by either the police or the IPCC.

... The complaints system is complex and, as a result, resolution of complaints can be slow. The legislation and guidance explaining how the complaints system operates is long and difficult to follow.\(^5^1\)

In response to these criticisms, further examinations of the system\(^5^2\) and a wide range of reforms, on 8 January 2018 the Independent Office for Police Conduct replaced the IPCC.\(^5^3\)

**Northern Ireland**

Inquiries into policing in Northern Ireland occurred in the shadows of the ‘Troubles’, which involved sectarian violence, resistance to and defence of the United Kingdom’s role in the country and the controversial roles of both the Irish Republican Army (IRA) and the Royal Ulster Constabulary within it.\(^5^4\) This context coloured public confidence or distrust in the police along political and religious lines.

The Secretary of State appointed Dr Maurice Hayes in 1995 to examine the existing complaints system that operated under the auspices of the Independent Commission for Police Complaints.\(^5^5\) Dr Hayes found that the system did not allow for the effective exposure, sanctioning or prevention of misconduct and had lost the confidence of the community.\(^5^6\) The key problem, as he saw it, was that police investigated all the complaints about police so that the system was not regarded as impartial.\(^5^7\) As Dr Hayes explained,

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\(^{5^7}\) Ibid.
The overwhelming message I got from nearly all sides and from all political parties was the need for the investigation to be independent and to be seen to be independent. While there were systemic failings in the present arrangements they lacked credibility because of a lack of independence, because it was the Chief Constable who decided what was a complaint, because there was no power of initiative, and because the complaints were investigated by police officers ... The main value which was impressed upon me was independence, independence, independence.58

Nevertheless, the Hayes report retained police involvement to some degree within the complaints system under the oversight of the proposed independent body.59 He termed this a ‘mixed model’, describing it in the following terms:

Under this [recommended] arrangement complaints would be categorized under three headings: serious complaints possibly involving criminal action (such as death in custody, serious injury etc.), which the Complaints Body has a statutory duty to investigate; less serious but still substantial complaints which might, at the discretion of the Complaints Body, be remitted to the police for investigation and report, either supervised or unsupervised; and quality of service type complaints which would be remitted to the police for informal resolution.60

As part of the Good Friday Agreement peace process, the Hayes report was endorsed by the Independent Commission on Policing for Northern Ireland (1999), paving the way for the establishment of the Office of the Police Ombudsman of Northern Ireland (PONI) as an independent investigative and police oversight body.61

2.2.3 New Zealand

In 2004, following allegations of sexual assaults committed by New Zealand police officers and claims of inadequate investigation of those allegations, a Commission of Inquiry into Police Conduct was appointed.62 In its 2007 report, the Commission made a number of observations and recommendations relevant to New Zealand’s complaint and oversight system that operated under the auspices of the Police Complaint Authority (PCA NZ). Most relevant for this Committee’s Inquiry were its observations on the complexity of the system, the difficulties complainants often face in making a complaint, the need for good communication with complainants and the importance of independent investigations of allegations.63

With respect to New Zealand Police’s ‘standards and procedures’ on internal investigations, the Commission noted that they are to be found in, or originate from, a wide range of legislation, regulations, general instructions, directives, policy documents, manuals, and other documents. The volume and the complexity of standards and procedures hamper their communication to police staff. There appears to be no system for confirming that staff have read and understood important policy instructions.64

58 Ibid., p. 17 (quoting from the Hayes report).
59 Ibid., p. 17.
60 Ibid., p. 17 (quoting from the Hayes report).
61 Ibid., p. 18.
63 Bazley report, vol. 1, pp. 6–7, 15–17, 64, 103–104.
64 Ibid., p. 6.
Given the complexity of the system, it is unsurprising that the Commission also found that complainants faced serious challenges in understanding how to make a complaint and in making a complaint:

Over the entire period of interest [1979–2005] to this inquiry, the files revealed a range of difficulties some complainants have had in laying a complaint. There is a need for greater effort in educating the public about the complaints process and their right to complain and how to go about it. 65

Taking account of this complexity, the Commission further recommended improvements to the way police communicate with complainants throughout the investigation of their complaint. 66 Complainants should, for example, in the Commission’s view, ‘be given … realistic expectations at the start of an investigation about when key milestones are likely to be met’, together with ‘regular updates on progress, and advance notice if the investigation is likely to be delayed for any reason’. 67

With regard to independence, the Commission noted the importance of the careful identification and management of potential conflicts of interest that might undermine the perception and/or reality of the impartiality of an investigation. 68

In response to the Commission’s report, the PCA NZ became the Independent Police Conduct Authority (IPCA), with the power to investigate ‘serious matters, report on them and actively monitor less serious complaints that have been referred to the police’. 69

### 2.2.4 Australia

Many inquiries have been held into policing in Australia. 70 Fewer inquiries have, however, given substantial attention to the systems for handling and overseeing complaints about police. This section provides a brief survey of the key Australian inquiries that have given considerable attention to complaints systems and police oversight.

#### Commonwealth

In 1975, the first report of the Law Reform Commission, as it was then called, inquired into complaints against police in the context of proposals for the creation of a national police force. 71 Independent police oversight was again at issue:

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65 Ibid., p. 7.
66 Ibid., pp. 7, 16, 64.
67 Ibid., p. 16.
68 Ibid., 103–106.
Chapter 2 Models and best practice principles

Until now there has been no system in any police force in Australia for the independent investigation and determination of complaints against police. There have been various Police Appeals Boards for appeals against penalties on disciplinary charges within the service. There are a few tentative attempts in the States of Australia for independent review after a police inquiry has exonerated a policeman. There has been no tribunal to determine public complaints. A complaint has basically been handled, investigated and determined behind closed doors at police headquarters.

... The Commission proposes the introduction of an independent element both in the investigation of complaints against police and in the determination of those complaints, and not purely on an *ex post facto* basis.

The problem is to infuse an independent element at the various stages of handling complaints.  

Nevertheless, in the Commission’s view, a balance had to be struck between independent oversight and review and the responsibility of a police force for addressing misconduct, maintaining standards, enforcing discipline and keeping up morale:

So far as the determination of complaints is concerned, it is desirable that the chief police officer should play a part in determining complaints against the members of his service to uphold discipline. Yet, so long as complaints are determined exclusively within the police service (criminal charges apart), the view will be held that police are judges in their own cause.

As a solution, the Commission recommended the creation of a special branch within police to investigate complaints subject to external review, including by the federal Ombudsman and a proposed Australia Police Tribunal:

The independent element is to be infused by using a number of organisations. A special branch of police, on the pattern of the A.10 Section [of New Scotland Yard] in England should be formed, small in number with regular turnover of personnel, to investigate complaints whether originating internally; or externally. These will be, in effect, the ‘incorruptibles’. If the English model is any guide, this proposal will attract the special police skills in investigation whilst at the same time ensuring that proper complaints are thoroughly investigated.

The Law Reform Commission also emphasised the importance of appropriate public information and community education with respect to the complaints system, which took account of non-English–speaking complainants and those facing literacy challenges. The Commission observed that

[the] importance of an imaginative distribution of this information is underlined by submissions made to the Commission concerning special difficulties of illiteracy in the Northern Territory. It will simply not be sufficient to have a pamphlet available in police offices. It will be vital to utilise police public relations facilities, government departments, legal aid offices, civil liberties organisations and community groups. The legal profession must be informed. It will probably be the first port of call in the many cases where redress is sought.

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72 Ibid., Foreword.
73 Ibid.
74 Ibid.
Australia, like the United States and to a greater degree than the United Kingdom, has large numbers of its community with less than perfect command of the English language. Accordingly the pamphlet material to explain the procedure available should be prepared in a number of the major languages. This is done overseas.\(^75\)

The themes of this 1975 report were echoed twenty years later in an Australian Law Reform Commission report examining the systems for handling complaints against the Australian Federal Police and the National Crime Authority. While defending a place for police involvement in the handling of complaints, the Commission criticised the effectiveness of the existing arrangements for internal police investigations:

> The record of internal units is generally inadequate in terms of the effective conduct of investigations and there are excessive delays. A siege like mentality of police officers and their own police culture means that there are strong risks they will not be able to conduct thorough and fair investigations.\(^76\)

### New South Wales

The Wood Royal Commission, appointed in 1994, found there was entrenched corruption in the New South Wales Police Service.\(^77\) The Commission also concluded that the police complaints and disciplinary system and internal investigations were ineffective.\(^78\)

The Commission found that New South Wales Police Service’s complaints and discipline system was:

- complex, inconsistent and inflexible;
- counter-productive because of its adversarial nature and its concentration on punitive, rather than remedial action;
- directed towards command and control, rather than management of its members;
- characterised by substantial delay;
- prone to leaks, collaboration and ineffective investigations;
- affected by bias;
- typified by an almost instinctive reaction to defend any charge, no matter how indefensible, and to appeal any decision made;
- conducive to fear and want of openness in dealings between members and the organisation; and
- productive of anxiety and uncertainty during the long waiting period, sometimes leading to genuine stress-related illness.\(^79\)

The deficiencies of police internal investigations identified by the Commission included the following:

- the difficulty of police investigating police—a concept which ran headlong into the adverse aspects of police culture;

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\(^75\) Ibid., Report No. 1, p. 27. See also Report No. 9, p. ix.


• an inherent bias in investigations as the result of which the [New South Wales Police] Service has failed to carry out impartial investigations or to pursue allegations with the same rigour or approach seen in ordinary criminal inquiries (it often seemingly having been the case that the innocence of the officer in question was assumed, with the inquiry being directed more towards finding justification for his or her conduct, rather than a search for matters which might corroborate the complaint);

• the lack of security in relation to corruption investigations, with information and warnings being promptly passed on to police under investigation which compromised the investigations, and a general lack of trust on the part of potential informants (both internal and external) in the confidentiality of any information provided, and consequently in their own safety;

• the use of ineffective investigative techniques, for example, the issue of directive memoranda calling for an explanation in writing which allowed groups of police under investigation to be forewarned of the inquiry, and to manufacture a watertight defence in collaboration;

• the lack of protection and support for internal informants.

The Commission summarised the faults of the system as follows:

• internal investigations have been affected by bias, leaks of information and collaboration, and by an approach that is very much less thorough and convincing than conventional law enforcement;

• internal informants have been harassed and discouraged; and

• investigations have often given the appearance of being conducted with the objective of writing them off as unsustained as soon as decency permits.

Moreover, the existing oversight bodies, including the Independent Commission Against Corruption and the Ombudsman, were unable to adequately combat systemic police corruption. On that basis, the Commission recommended the creation of a Police Integrity Commission to independently investigate serious misconduct and oversee internal investigations by police.

However, despite the Royal Commission’s criticisms of the New South Wales Police Service’s systems for complaint handling, discipline and internal investigations, it considered that police should continue to be involved in order to have a ‘direct responsibility’ to respond to corruption and misconduct in its ranks. Such an involvement was, however, conditional upon fundamental reforms to the police and the introduction of a more robust oversight system. The Commission emphasised

the importance of establishing a model in which:

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• the [New South Wales Police] Service retained a direct responsibility to combat corruption within its ranks; and

• an external agency, staffed by skilled lawyers and investigators independent of the Service, assumed an oversighting role and a capacity to undertake direct investigations into selected cases.

... Retention of a role within the Service to respond to corruption was seen as essential, otherwise there was a risk that it might abandon all responsibility and interest in maintaining high standards of integrity. On the other hand, external oversight was seen as advantageous in enhancing police accountability, guaranteeing independent and aggressive pursuit of serious corruption, and increasing public confidence in the Service.84

In addition to these recommendations, the Commission highlighted the option of conciliating certain disputes and complaints, the need to accurately record and report complaints and discipline data and the importance of better communication with complainants.85 With respect to communication with complainants, the Commission observed that

... Public confidence in the [New South Wales Police] Service and in the integrity of its complaints system requires the process to be transparent. It must, as a consequence, include ways of:

• informing complainants of the progress of investigations and of any managerial or disciplinary outcome; and

• involving them in the resolution of appropriate complaints.86

In 2015, Mr Andrew Tink AM was commissioned to review the oversight of police in New South Wales, focusing on the options for the introduction of a single oversight body.87 The Tink Review found that there would be a number of advantages in consolidating the oversight functions of the Police Integrity Commission, the Police Division of the Office of the Ombudsman and the Inspector of the Crime Commission:

With the benefit of hindsight, it seems to me that among the advantages of moving to a single oversight model, three stand out even more than they did 19 years ago [at the time of the Wood Commission’s first interim report]: better transparency and accountability; the more effective use of intelligence; and an improved investigative capacity.88

While the Tink Review endorsed the creation of a single police oversight body with enhanced powers, it followed the Wood Commission in trying to strike a balance between independent oversight and investigation and continued police responsibility for misconduct and complaints-handling.89 Tink stated that he agreed with Commissioner Wood’s ‘fundamental principles’:

a) That there should be an independent body with royal commission type powers to detect, investigate and prevent police corruption and other serious misconduct;

84 Ibid.
87 Andrew Tink, Review of police oversight, NSW Department of Justice, Sydney, 2015 (‘Tink report’); NSW Department of Justice, The Tink review into police oversight and the NSW Government’s response (n.d.).
88 Tink report, p. 2.
89 Ibid., pp. 3, 6, 17.
b) That the Police Force itself should continue to have management of the assessment and investigation of complaints, with the Police Commissioner having responsibility for disciplinary decisions and performance management;

c) That there should be an independent body to oversight the management by police of their assessment and investigation of complaints.\(^\text{90}\)

The continued role of police in relation to complaints-handling was justified to ‘reflect the reality that people will complain directly to the NSW Police Force no matter what legislation provides … [and] the long-standing principle that the Police Force must take responsibility for the management of its own conduct’.\(^\text{91}\)

As other inquiries into police in Australia have done, the Tink Review also emphasised that clear information needs to be available so that complainants and other stakeholders are able to understand the relevant entitlements and processes:

To enable stakeholders to navigate the new civilian oversight system easily, clear online information about the integrity and complaints process … should be available.\(^\text{92}\)

**Queensland**

The Fitzgerald Inquiry exposed long-running, systemic and far-reaching corruption in the Queensland Police Force, in the face of which internal investigations by police of complaints about the Force and the existing Police Complaints Tribunal were impotent.\(^\text{93}\)

Of the Force’s Internal Investigations Section the Inquiry observed:

The approach of the Internal Investigations Section is a good indicator of the inability of police without external independent supervision to act objectively and effectively when investigating each other.

... The Internal Investigations Section has been woefully inadequate, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralized whatever prospect there might have been that allegations against police would have been properly investigated. The Section’s effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.

The Internal Investigations Section has provided warm comfort to corrupt police. It has been a friendly, sympathetic, protective and inept overseer.\(^\text{94}\)

The Police Complaints Tribunal was regarded by the Inquiry as similarly ineffectual:

The Tribunal is regarded by corrupt police officers as impotent. It has lost all public confidence. It is seen as an apologist for the Police Force. Notably not one complaint of corruption has been made to the Police Complaints Tribunal.

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\(^{90}\) Ibid., p. 17.
\(^{91}\) Ibid., p. 6.
\(^{92}\) Ibid., p. 6.
\(^{94}\) Ibid., p. 289.
There is no doubt that it should be abolished. It is ineradicably tarnished with a deservedly poor reputation.\(^{95}\)

Consequently, the Inquiry recommended that all police officers be required to report misconduct to a new body independent of police:

- All misconduct or suspected misconduct by police officers other than of purely disciplinary significance should be required to be reported to an independent body.
- All ranks should have an obligation to report.
- No police officer should have a discretion whether or not to refer any allegation of police misconduct (other than of purely disciplinary significance) for investigation by the independent body.\(^{96}\)

In contrast to the later Wood Commission in New South Wales, the Fitzgerald Inquiry also concluded that ‘the Queensland Police Force cannot, in general, be made responsible for the control of a system to address official misconduct.’\(^{97}\)

Instead, the Inquiry recommended

- laws which:
  - provide for an independent body to investigate official misconduct;
  - oblige public officials to report all official misconduct or any reasonable basis of suspicion of misconduct by any person;
  - forbid any action by any person to disadvantage any other person because he disclosed official misconduct or reasonable suspicion of misconduct;
  - require public officials to provide all reasonable help in investigations of misconduct.\(^{98}\)

The Inquiry further recommended that complainants be informed of any action taken, and any outcome resulting, from the investigation of a complaint.\(^{99}\)

**South Australia**

In 2014, the Attorney-General for South Australia asked the South Australian Independent Commissioner Against Corruption, the Hon Bruce Lander QC, to review the state’s integrity legislation, including the legislative scheme for making, assessing, investigating and reviewing complaints about police corruption and other misconduct.\(^{100}\)

The Commissioner found that the then current system was too complex and confusing:

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95 ibid., p. 292.
96 ibid., pp. 295–296.
97 ibid., pp. 299–300.
98 ibid., p. 300.
99 ibid., p. 386.
The Commissioner recommended the streamlining of the system by retaining South Australia Police’s (SAPOL) primary responsibility for assessing complaints, abolishing the office of the Police Ombudsman and conferring enhanced external police oversight functions on the Office for Public Integrity (South Australia). Under the Hon Bruce Lander QC’s recommendations, the Independent Commissioner Against Corruption (ICAC SA) would also have oversight and investigative functions. In response to the Lander report, a new complaints system for South Australia was created consistent with the tenor of its recommendations.

While the Lander report recommended that SAPOL have primary responsibility for assessing, investigating and resolving complaints about police, it recognised the need to strike an appropriate balance between police responsibility for complaints-handling and robust, external, independent oversight. This would involve the Office for Public Integrity having complete and unrestricted access to SAPOL’s complaint-handling systems along with powers to audit and review SAPOL’s handling of complaints. The Office for Police Integrity would also have the power to send certain matters to ICAC SA. The Hon Bruce Lander QC wanted to continue to have police involved in investigating police, subject of course to appropriate and rigorous safeguards in the form of a strong and independent oversight agency capable of overseeing, directing and intervening in police conduct matters.

... The total involvement of the oversight agency in all matters, no matter how minor, is not practicable. On the other hand, mere review is insufficient. An independent agency must have the power to carry out an investigation or to take over an investigation.

Two other aspects of the Lander report are noteworthy: its emphasis on the importance of comprehensive, accurate and useful collection, management and publication of data about complaints (explored further in Chapter 4 of this report) and involving the complainant throughout the complaint-handling process. The report recommended that the

... OPI [Office for Public Integrity] ... be empowered to make use of statistical data obtained through complaints and reports to identify and act on trends and issues arising in particular complaints or reports, or in a number of complaints or reports, and to make recommendations to SAPOL concerning training, changes in policy or procedure or other proactive interventions.

101 Lander report, p. 16 (see also p. 37).
102 Ibid., pp. 3, 5–7; Tink report, pp. 57–58.
103 Office for Public Integrity (South Australia), New police complaints scheme, Adelaide, September 2017.
105 Ibid., pp. 5–7, 30–31; Office for Public Integrity (South Australia), Making a complaint against a police officer, Adelaide, n.d. (c. 2017–2018); Office for Public Integrity (South Australia), New police complaints scheme, Adelaide, September 2017.
107 Ibid., pp. 6, 31–32, 41, 46–47.
108 Ibid., p. 6.
The report also endorsed the principle of appropriately involving complainants throughout the complaints process:

An effective complaints system should involve the complainant in the process so far as is appropriate. However, the extent to which the complainant is involved is itself a source of debate.

The opportunities for complainant involvement vary across jurisdictions. Most systems will, at a minimum, require communication with the complainant throughout the process where possible. A failure to communicate with complainants is very likely to lead to complainant dissatisfaction and will affect public perception of the complaints process.

...

One of the most common causes of dissatisfaction amongst complainants is that they do not feel that their complaint is treated seriously and that they are not kept informed as to the action taken as a result of their complaint. Accordingly, a fundamental requirement in the management resolution process is that the complainant is fully informed of the steps taken to deal with his or her complaint.109

Victoria

Putting to one side Office of Police Integrity and Independent Broad-based Anti-corruption Commission (IBAC) reviews and audits of Victoria Police—which the Committee draws on as relevant later in this report—there have been four major reviews that have evaluated aspects of Victoria’s police complaints-handling systems: the St Johnston (1971), Beach (1976), Norris (1978) and Richardson (1987) reviews.110

Colonel Sir Eric St Johnston, who had been Her Majesty’s Chief Inspector of Constabulary for England and Wales in 1967–1970, was invited

to examine the administration and organization of the Police Force of Victoria and to report on the means by which the efficiency of the Police Force can be improved.111

As part of his report, St Johnston emphasised the importance of proper investigation of complaints about police to help maintain public confidence in the police force and recommended that:

[m]inor complaints against Police brought to the attention of the Superintendent in charge of a District should be investigated by an officer from a different Division from the one in which the officer complained about is serving.112

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111 St Johnston report, p. 9.
112 Ibid., p. 199.
Chapter 2 Models and best practice principles

The report also recommended improved recording of data about complaints and their outcomes, as well as their publication in Victoria Police annual reports:

A summary of complaints received and a statement of the number substantiated and the number withdrawn or not substantiated should be included in the Chief Commissioner’s Annual Report. This is a useful means of publicising the importance attached by the Chief Commissioner to complaints received from the public.113

Like other inquiries before it, the Beach report emphasised the importance of an effective system for handling complaints about police for the public’s confidence in the Victorian police force and their readiness to cooperate with it in carrying out its functions:

The number of investigations and inquiries into this vexed topic ... [of complaints against police in] recent years, indicates it is an area of increasing public concern, and the accountability of the Police Force to the society it is employed to serve, and, in particular, the resolution of complaints by members of the public against individual Officers has assumed great importance. I have little doubt that one reason for this concern is the growing appreciation that the effectiveness of any Police Force depends in the final analysis upon the degree of public trust and co-operation it enjoys. There is probably nothing more destructive of this relationship than a Force unconcerned with or hostile to an efficient resolution of complaints about its conduct or the service it provides.114

The Hon Justice Barry Beach concluded that until 1 August 1975, when an internal investigations unit was established to investigate complaints about Victoria Police,115 there had been ‘no satisfactory avenue through which a citizen could lodge a complaint against a member of the Victoria Police force’116 and that ‘the shortcomings of a system whereby Police investigate complaints against Police, have become all too apparent’.117 Beach’s findings and recommendations for external investigation and review of complaints about police were strongly opposed at the time by Victoria Police.118

Subsequently, the Victorian Government of the day appointed a committee (the Norris Committee) to examine the Hon Justice Beach’s recommendations. The Norris report emphasised, as had the Hon Justice Beach, that a significant element in the maintenance of public confidence in, and respect for, the police is the existence of a proper system for investigating complaints by members of the public against the police.119

However, the Norris Committee concluded that management of complaints about police should remain with Victoria’s police force:

[We] ... do not believe that the effective management of the complaints procedure should be transferred from the Chief Commissioner, who has the responsibility for the superintendence and control of the Victoria Police, to an outside authority which has no such responsibility.120

113 Ibid., p. 170 (see also p. 199).
114 Beach report, p. 104.
115 Ibid., pp. 105, 107.
116 Ibid., p. 105.
117 Ibid., p. 108.
120 Ibid., p. 56.
With regard to public information about the complaints system, the Norris Committee agreed with the Hon Justice Beach ‘that there should be a standard explanatory leaflet setting out the procedure a complainant can adopt’, which should be ‘prepared not only in English but in other appropriate languages … [and] widely distributed’.

In 1987, Professor Jack Richardson, who had been the Commonwealth’s founding Ombudsman, reviewed the investigation of complaints about police by the Internal Investigations Department of Victoria Police (IID), which was the successor to the Bureau of Internal Investigation (BII). Professor Richardson found that investigations were insufficiently systematic, open to distortion through collaboration between subject police officers and police witnesses and often not completed in a timely fashion.

The Richardson report also included an illuminating critique of the IID’s inadequate communication of the reasons for an investigation outcome to complainants, worsening any frustrations already felt by them:

I have seen letters to complainants from the IID informing them of the results of an investigation which, in my opinion, do little to encourage a complainant to think that although his complaint was not sustained he/she was given a fair run in the investigation. Rigid formalism expressed in … phraseology which makes few concessions to human feelings and has little to say about how the complaint was investigated and how the various witnesses’ statements were evaluated is not good enough …

According to the PCA [Police Complaints Authority], most IID complainants who have got in touch after receiving the IID letter conveying the result have been dissatisfied with the form and substance of the letter and not the outcome of the enquiry [sic]. Successful complaint resolution is at the end point an exercise in communication.

A feature of public accountability is that government agencies, including the Force should be able to give an adequate account of their actions. Australian Ombudsmen all found in their earliest years that the most frequent cause of complaint was about government agencies not giving sufficient, or any, reasons for decision.

Consequently, Professor Richardson made the following recommendation in relation to communication with complainants:

I recommend that the written advice to a complainant should:

a) contain a sufficient statement of the reasons for the result to enable a reasonable complainant to understand the nature and extent of the investigation;

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121 Ibid., pp. 59–60.
123 Richardson report, p. 3.
124 Ibid., pp. 13, 15, 32–37, 45.
125 The PCA exercised a very modest form of review over the IID—see Richardson report, pp. 12–14, 18–20, 51–59. See also Kennedy report, vol. I, pp. 52–53 (‘In 1986, the … [PCA] was established to investigate complaints against police. The PCA was disbanded in 1988 due to perceptions that it was not working …’); Tim Prenzler, ‘Scandal, Inquiry, and reform: the evolving locus of responsibility for police integrity’ in Tim Prenzler and Garth den Heyer (eds), Civilian oversight of police: advancing accountability in law enforcement. CRC Press, Boca Raton, 2016, p. 21.
126 Richardson report, pp. 43–44.
b) set out the findings of material facts relied upon; and

c) contain a reference to the evidence and other materials on which the findings of
fact were based.\textsuperscript{127}

\textbf{Western Australia}

After surveying police corruption and other misconduct exposed by Fitzgerald, Mollen and Wood inquiries, among others, the Kennedy Royal Commission into the Western Australian Police Service (WAPS), established in 2001, reported that the evidence obtained by this Royal Commission has revealed the existence of similar practices by officers of ... [WAPS] since 1985. Examples of the full range of corrupt or criminal conduct from stealing to assaults, perjury, drug dealing and the improper disclosure of confidential information have been examined. That in itself is not surprising. The inquiry has covered a period of nearly 19 years and in the light of experience elsewhere, it would have been quite remarkable if that evidence had not emerged.\textsuperscript{128}

However, the Hon GA Kennedy QC further found that WAPS had been ‘ineffective in monitoring those events and modifying its procedures in order to deal with that conduct and to prevent its repetition’.\textsuperscript{129} Moreover, ‘the existing oversight agency for WAPS, the Anti-Corruption Commission ... was ineffective, essentially by reason of its lack of the necessary powers’.\textsuperscript{130}

With respect to the handling of complaints and the conduct of internal investigations, the Hon GA Kennedy QC noted the complexity of the system, the risk of duplication and inconsistencies in complaint handling, delays and the need for a customer service orientation towards complainants.\textsuperscript{131} The report emphasised that a major issue in internal investigations is customer satisfaction. If the process is to be fully effective it should create in the complainant a feeling that the procedure has been conducted thoroughly and impartially. Community confidence in the system is vital. It may not matter to some complainants that the allegation has not been sustained if there is engendered a feeling of satisfaction that at least the investigation was carried out properly.\textsuperscript{132}

\section*{2.2.5 Key themes and lessons}

A number of key themes and lessons can be identified from this survey of past inquiries into police corruption, misconduct and complaints systems.

First, all the inquiries in their own way highlighted that an effective and fair system for the receipt, handling, assessment and investigation of complaints was essential to prevent the erosion of public confidence in police.

\textsuperscript{127} Ibid., p. 44.
\textsuperscript{129} Ibid., vol. I, p. 2.
\textsuperscript{130} Ibid., vol. I, p. 2.
\textsuperscript{131} Ibid.: vol. I, pp. 12–13; vol. II, pp. 191, 221–227. See also GA Kennedy, Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian police officer: interim report, Western Australian Government Printer, Perth, December 2002, p. 31 (‘The current procedures for making complaints with respect to misconduct on the part of Western Australian police officers are unnecessarily complex.’).
Second, many of the inquiries emphasised the great complexity of the legislative and policy frameworks within which the complaints systems operated. This made comprehension of the system difficult not only for complainants but for police and oversight agencies. Simplification and clarification of how to make a complaint, and about what kinds of misconduct and to whom, is therefore essential. This applies equally to the processes involved in the receipt, handling, assessment and review of a complaint.

Third, almost all of the inquiries insisted that, to borrow a phrase from the 1975 Australian Law Reform Commission report, there be an ‘independent element’ in any system for the handling of complaints about police.\textsuperscript{133} The problems most of these inquiries detected with internal police investigations reinforce the need for robust, independent and impartial oversight. However, a number of inquiries—particularly Wood, Kennedy, Tink and Lander—recognised the importance of striking an appropriate balance between police responsibility for addressing misconduct and maintaining professional standards and external oversight. How that balance ought to be struck in Victoria is one of the key issues examined in this report.

Fourth, a number of the inquiries stressed the importance of comprehensive and accurate collection and management of data about complaints, as well as its rigorous analysis and transparent reporting. Such an approach not only enhances the capacity of oversight bodies to monitor and review the handling of complaints but also enables police and oversight bodies to identify patterns and trends that can help them improve their systems in an informed fashion. This issue is discussed further in Chapter 4 of this report.

Fifth, all the inquiries recognised the importance of effective public information about the complaints system and better communication with complainants, from the making of a complaint to its finalisation, as part of involving the complainant throughout the process.\textsuperscript{134} This thread has run through much of the evidence received by the Committee and is discussed throughout the report.

2.3 Models of complaints systems

There are three main models for the handling of complaints about police: Internal Affairs, Civilian Review and Civilian Control.\textsuperscript{135} It should be noted, however, that existing complaint and oversight systems will incorporate aspects of these models and therefore overlap to some degree.\textsuperscript{136}

\begin{footnotesize}
\begin{enumerate}
\item[134] See Section 2.4 of this chapter.
\item[136] Ibid., p. 26.
\end{enumerate}
\end{footnotesize}
2.3.1 Internal Affairs

The Internal Affairs approach was the dominant model in the common law world until the 1970s.137 Under this model, police are almost exclusively responsible for receiving, handling and investigating complaints about them.138 Depending on the gravity of the conduct complained about, complaints are allocated to a more or less senior supervisor.139

In response to the identification of more systemic forms of corruption or other misconduct through inquiries that called for greater accountability, in time many police forces developed specialised internal investigations units, sometimes called ethical or professional standards units.140 The rationale was to try to ensure greater consistency in complaint handling and investigation across police forces and to achieve at least some independence from 'local affiliations' that could compromise fairness and impartiality.141 These internal investigations units would commonly report directly up the chain of command to a police chief or police commissioner.142

Although complaints about police were, under this model, mainly dealt with by police themselves, their handling and investigation were nevertheless usually subject to some political and legal accountability processes.143 For example, a police force, especially in the American context, was accountable to a degree to local elected officials such as mayors.144 Within Westminster systems, such as the United Kingdom, Canada and Australia, police forces were accountable to the relevant police minister.145 In addition, the wider legal system subjected police forces to scrutiny through criminal and civil courts, for example in relation to wrongful arrest, false imprisonment, assault and excessive force, and improper evidence-gathering.146 As previously discussed, police have also been subject to ad hoc judicial, quasi-judicial and parliamentary inquiries that have investigated and exposed corruption and other misconduct and recommended improvements to police culture and governance, internal investigations and complaint-handling.147

However, these accountabilities are partial and limited.148 For example, many matters will not be pursued successfully in the courts or will not reach the courts at all.149 There is also evidence that potential complainants can be deterred from making

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137 See, for example, ibid., pp. 4–5.
139 Ibid.
140 Ibid.
141 Ibid.
142 Ibid.
143 Ibid.
144 Ibid.
145 Ibid.
146 Ibid.
147 Ibid. See also the discussion in Section 2.2 of this chapter.
complaints about police to internal affairs units that are not subject to dedicated external oversight, and that complainants are often dissatisfied with the handling of their complaint by police.\(^{150}\) Further, as discussed in this chapter, many inquiries into internal investigations units have found problems of partiality, lack of thoroughness, an unhealthy scepticism, or even hostility, towards complainants and a lack of transparency regarding processes and outcomes.\(^{151}\)

Researchers and inquiries have also noted two distinctive, if not unique, characteristics of police forces: the great power they are entrusted with and the particular challenges of investigating police officers compared with other citizens. With respect to the combination of powers conferred on police to enforce the laws and protect the community, the Wood Royal Commission observed:

The powers entrusted to police to carry arms, to use coercive force in the proper course of their duties (and, in extreme circumstances, to take lives), to inquire into personal affairs and to eavesdrop (pursuant to a warrant) on private conversations, to deprive citizens of their liberty, to enter and search their premises, to seize and hold their property, and to initiate proceedings that will require them to defend themselves before the courts, are very substantial powers—possessed by no other class of employee.\(^{152}\)

With respect to the particular challenges of investigating police corruption and misconduct, a review of Victoria’s integrity system in 2010 observed:

Investigating potentially corrupt police is a particularly complex task as they:

- know the system and potentially have early warning of interest in their activities;
- are skilled in investigation techniques and counter-surveillance;
- may have corrupt associates willing to cover for them;
- are not easily fazed by interview and are experienced in giving evidence;
- are readily assumed to be credible by jurors and tribunals; and
- can exert considerable influence over internal informants and investigators, particularly if they hold senior rank.\(^{153}\)

Given these extensive powers, and the particular challenges of investigating police, it has been argued that there is an even greater need for internal investigations units to be subject to robust, independent, external oversight.\(^{154}\)

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153 State Services Authority, Review of Victoria’s integrity and anti-corruption system, Melbourne, 2010 (‘Proust review’), p. 29. See also Fitzgerald report, pp. 200–205, 288–289; Lander report, p. 27.

154 Wood report, vol. II, pp. 481–482; Proust report, p. 29; Lander report, p. 26; Tink report, p. 3. See also the discussion in Section 2.2 of this chapter.
In support of aspects of the Internal Affairs model it has been argued that it is beneficial for police to take responsibility for addressing corruption and misconduct within its ranks and for upholding professional standards. It has been argued that police can effectively and efficiently employ their special skills, knowledge and resources to investigate complaints.\textsuperscript{155}

The Wood, Kennedy, Tink and Lander inquiries all recognised the importance of police taking responsibility for exposing and addressing corruption within their organisation and for being involved in the handling of complaints. However, it is important to note that this recognition was not an endorsement of a pure Internal Affairs model, but rather of a ‘mixed model’\textsuperscript{156} in which police had complaint-handling and investigation responsibilities subject to robust, independent oversight exercised by an external civilian agency.\textsuperscript{157} Nevertheless, Wood, Kennedy, Tink and Lander did support the continued involvement of police in managing their own conduct, enforcing their disciplinary systems and handling a range of complaints about (particularly less serious) misconduct.\textsuperscript{158} The principle of police responsibility, as interpreted particularly by Wood and Tink, has also been endorsed in a qualified form by IBAC:

\begin{quote}
IBAC seeks to strike the right balance in determining the most serious and/or systemic matters for IBAC to investigate, while enabling Victoria Police to retain primary responsibility for the integrity and professional conduct of their own employees. This requires careful judgement as to how IBAC’s powers, expertise and resources are best directed.
\end{quote}

... 

Mr Tink noted that in NSW [New South Wales], it was important for the emphasis to be on professionalism, openness and honesty which includes the [New South Wales Police] Service taking responsibility for its officers’ mistakes.\textsuperscript{159}

With regard to the special investigative skills of police officers, IBAC has argued that some more serious complaints are more effectively or efficiently investigated by Victoria Police such as those requiring specialist expertise or that engage the full powers of police officers (e.g. in relation to sexual offences), those relevant to existing police task forces (e.g. Operation Salus) or coronial investigations (e.g. in relation to deaths following police contact).\textsuperscript{160}

The Hon Bruce Lander QC’s review also argued that police investigators have distinctive strengths and are able to undertake thorough and effective investigations:

\begin{quote}
One significant argument in favour of police investigations ... is that the police have access to information, skills and expertise which an outside organisation would lack.\textsuperscript{161}
\end{quote}

\textsuperscript{155} Wood report; Kennedy report; Tink report; Lander report; Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, pp. 13–14; Victoria Police, Submission 52, 1 May 2018; The Police Association of Victoria, Submission 28, 8 August 2017, p. 5.


\textsuperscript{157} The Civilian Review Model is discussed in the next section of this chapter.


\textsuperscript{159} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, pp. 13–14.

\textsuperscript{160} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, pp. 13–14.

\textsuperscript{161} Lander report, p. 25.
2.3.2 Civilian Review

The Civilian Review model has been described by Professor Prenzler as a compromise between an Internal Affairs approach and a fully-fledged Civilian Control approach like that of PONI.\(^{162}\) The Civilian Review approach was developed as a response to criticism and scandals within police forces, many of which were exposed in the inquiries surveyed in this chapter.\(^{163}\) According to Professor Prenzler,

> Civilian review takes diverse forms, but the principal idea is to provide an independent check on possible bias without excessive interference in police management.\(^{164}\)

Under a minimalist Civilian Review model, police carry out investigations into complaints with the external body monitoring them, sometimes only after an investigation has been completed.\(^{165}\) The external body can range from a citizen board appointed by government to a fully independent body established under legislation.\(^{166}\) It will often be headed by a director with a legal background and staffed by civilians.\(^{167}\) Review bodies under this approach will typically audit police complaint files and respond to complainant appeals from police investigations.\(^{168}\)

However, it should be recognised that the Civilian Review model is not limited to this minimalist approach.\(^{169}\) It can encompass fully independent bodies with robust investigative powers, own motion investigation jurisdiction, the capacity and will to investigate police corruption and other serious misconduct, the power to take over police investigations and the authority to conduct public and private inquisitorial hearings and to prosecute or refer matters for prosecution.\(^{170}\) In some jurisdictions, they may also decide appeals against police disciplinary determinations.\(^{171}\)

Professor Prenzler recognises that Civilian Review, which has been followed in all Australian states, is the ‘dominant model internationally’ and has a range of strengths:

> Available performance indicators—such as public confidence, complainant satisfaction, complaint substantiation rates, and police conduct indicators—suggest some achievements.\(^{172}\)

However, he considers that Civilian Review approaches are open to subversion by police and that often the promise of a robust investigative review body is not delivered:

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\(^{163}\) Ibid.

\(^{164}\) Ibid.

\(^{165}\) Ibid.

\(^{166}\) Ibid.

\(^{167}\) Ibid.

\(^{168}\) Ibid.

\(^{169}\) Ibid.

\(^{170}\) Ibid.

\(^{171}\) Ibid., pp. 5–6.

\(^{172}\) Ibid.
[Most] review systems allow too much scope for police to control or subvert the process. One major problem is that civilian review holds out a false promise. Agencies look like they will investigate and adjudicate allegations against police. It is hardly surprising, then, that complainants’ anger and disillusionment with authorities are compounded when the oversight agency refers the complaint to police.\footnote{Ibid., p. 6.}

\section*{2.3.3 Civilian Control}

Under the Civilian Control model, the governing principle is that police ‘should not investigate nor adjudicate complaints against their own’, and that to do so involves an intrinsic conflict of interest and partiality.\footnote{Ibid.}

This basic principle is increasingly being applied to organizations outside police—whether it be churches, charities, defense forces, trade unions, or corporations—where victims of abuse and other stakeholders call for fully independent and transparent investigations. Independent regulatory agencies are now de rigeur for a wide range of occupations, including the health sector, construction, consumer and financial services, and the security industry.\footnote{Ibid.}

It should be noted, however, that all these industries also have internal complaints-handling, grievance resolution and investigation processes.

According to one view, the Civilian Control would require that all complaints about police be received, handled, assessed, investigated and reviewed by a fully independent external agency. While Professor Prenzler detects a ‘trend internationally ... in the direction of the civilian control model’, the only system that he identifies as embodying it is Northern Ireland’s PONI—‘the one agency that has gone the furthest in putting independence into practice across all aspects of the complaints and discipline process’.\footnote{Ibid., p. 7.} In this regard, it is interesting to note that the \textit{Hayes report} recommended a ‘mixed model’ for Northern Ireland, though in practice PONI has not ‘remitted’ (referred) complaints back to the police:

Having carefully considered the various models, the experience of other jurisdictions and the views of those I met … I have reached the conclusion that a variant of the ‘mixed model’ would be best for Northern Ireland in the longer term.

Under this arrangement complaints would be categorised under three headings: serious complaints possibly involving criminal action (such as death in custody, serious injury etc.), which the [external] Complaints Body has a statutory duty to investigate; less serious but still substantial complaints which might, at the discretion of the Complaints Body, be remitted to the police for investigation and report, either supervised or unsupervised; and quality of service type complaints which would be remitted to police for informal resolution.

However, this might be the ideal towards which the [police] service should develop. The lack of confidence in the system in Northern Ireland ... suggests that in the initial stages the Ombudsman should probably investigate all but those complaints considered appropriate for informal resolution.

An important element of the arrangements would be constant monitoring and systematic audit of police investigations and informal resolutions.\footnote{Hayes report, p. 55.}
Criticisms of the Civilian Control model have included the cost of requiring an external agency to handle and investigate complaints about police, that the agency will lose the particular investigative skills of police that could be applied to complaints investigations and that it would erode the fundamental responsibility of police forces to manage their own members and uphold standards.\(^{178}\)

The issue of cost and the resources available to an external agency compared with a police professional standards unit was recognised by Lander, South Australia’s Independent Commissioner Against Corruption:

> There are also resource considerations. Any integrity system must be constructed in such a way that it can operate effectively within the confines of finite resources. An agency that has the exclusive jurisdiction to investigate all allegations of police misconduct would require significant resources. It is a fallacy to suggest that such resources could simply be transferred from the police to the oversight agency because many of the police investigations undertaken are carried out by officers who also carry out other policing duties.

> It would be unrealistic to excise from police a group of experienced investigators, capable of contributing to core police functions as well as investigating internal misconduct issues and remove them to a new agency that has the responsibility of investigating police.\(^{179}\)

However, other analysts contend that this is not unrealistic provided that the external agency develop its civilian capacity to conduct investigations into complaints about police, and, indeed, own motion investigations:

> An additional argument against civilian control concerns the supposed unique investigative expertise of police. This is an argument that ignores the wide range of investigative functions carried out in the public and private domains and the long-term capacity of oversight agencies to train nonpolice investigators.\(^{180}\)

The argument that the Civilian Control approach would undermine police responsibility for addressing corruption and other misconduct within its ranks was discussed earlier. One possible answer to this argument is that under the Civilian Control model police responsibility could sit comfortably alongside the external agency’s control functions.\(^{181}\) Police would still be able to take responsibility for improving its governance, management, discipline and culture:

> [It] is argued that external regulation will undermine police internal authority and strip police managers of their responsibility to keep their house in order. ... The simple rejoinder is that, under the civilian control model, police retain responsibility for the primary prevention of misconduct—through recruitment, training, supervision, and other standard integrity management techniques. The outside agency assesses the effectiveness of these methods and provides a safety net when the internal system fails or underperforms ...\(^{182}\)

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181 Ibid., pp. 7–8.

182 Ibid.
2.3.4 Relevance of the models to Victoria

The foregoing section summarised three key models of complaints-handling and police oversight. Each has, as we have seen, various strengths and weaknesses. The current Victorian system draws on elements of each model, but is best described as a relatively strong civilian review approach, drawing on a number of features of civilian control. For example, IBAC, as a legally independent body, is informed of most complaints about police, monitors and reviews those complaints and police investigations, can carry out its own investigations (including through its own motion jurisdiction), has a range of covert and coercive investigation powers, can take over a police investigation, can audit Victoria Police and can recommend improvements.

The Hon Bruce Lander QC has recognised that none of the models is perfect:

The reality is that neither internal regulation nor external accountability can provide complete control or guarantee complete integrity. Perhaps because of that the various models of oversight across Australia do not fit fully into either the civilian control model or the minimal review model but have characteristics of both ... However, the roles of these [oversight] agencies go beyond mere monitoring and many of them have the ability to conduct investigations into police conduct themselves. 183

Both the United Nations Office on Drugs and Crime (UNODC) and the Council of Europe’s Commissioner for Human Rights have recognised the importance of taking account of local circumstances in developing and improving complaints systems and police oversight. 184 Moreover, neither has argued that a Civilian Control model along the lines of PONI must be adopted if best practice principles are to be met (see the discussion of best practice principles in Section 2.4 of this chapter).

With respect to local circumstances, the Commissioner for Human Rights recognised that

Naturally the constitutional arrangements and policing systems, along with historical, political and cultural influences, prevailing in each member state will play a major part in determining the institutional arrangements for an IPCB [Independent Police Complaints Body]. 185

As an illustration of other countries’ approaches to complaints-handling and police oversight, the next section briefly discusses bodies in North America and Northern Ireland that a number of witnesses to this Inquiry have been identified as relevant and suggested that the Committee investigate.

2.3.5 Selected overseas examples

Law Enforcement Review Agency, Manitoba, Canada

The Law Enforcement Review Agency (LERA) is an ‘independent non-police agency’ that investigates complaints ‘about municipal police performance arising out of the execution of duties’. 186

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Chapter 2 Models and best practice principles

LERA takes a modest civilian control approach. It is required to:

- promote a high standard of professional conduct among police officers in Manitoba
- guarantee each citizen in Manitoba the opportunity for an independent investigation and review of their complaints against on duty municipal police officers
- provide a mechanism for the resolution of complaints in a manner that is fair both to the complainant and the respondent police officer(s)
- ensure that the conduct of police officers is consistent with the rule of law and the ideas of a democratic and open society.\(^\text{187}\)

Complainants can make complaints in their own right or on behalf of another person within 30 days of an incident (this time limit can be extended). Complaints must be in writing and, naturally, within LERA’s jurisdiction.\(^\text{188}\) LERA has jurisdiction to handle and investigate complaints about a wide range of alleged ‘disciplinary defaults’ by police, including:

- improper arrest; use of excessive force
- ‘oppressive or abusive conduct or language’
- improper pursuit of ‘pecuniary or personal advantage’
- discrimination
- false statements or the destruction, concealment or alteration of official documents or records
- ‘improper disclosure of information’ they have accessed as an officer
- damage to property
- failure to assist a person in danger
- violation of someone’s privacy.\(^\text{189}\)

LERA has the benefit of professional, civilian investigators who interview witnesses and review police records and medical reports.\(^\text{190}\) Following an investigation, LERA is required under legislation to ‘screen’ the complaint to determine whether further action is warranted.\(^\text{191}\) Like many external agencies, LERA can determine that no further action is warranted if the complaint is not within its jurisdiction, ‘frivolous or vexatious’, has been ‘abandoned’ by the complainant or when there is insufficient evidence for the complaint to be referred to a provincial judge for a public hearing.\(^\text{192}\) A complainant has the right to ask the Commissioner within 30 days to refer the matter to a provincial judge to review a decision not to take further action.\(^\text{193}\)

The Commissioner is required to seek to resolve a complaint by means of mediation with the consent of the complainant and police officer. If a complaint is resolved in this way, the complaint will not appear on the officer’s record. A complaint may also be disposed of through the subject police officer’s admission to the alleged disciplinary default. A penalty can be applied by the Commissioner after consulting

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188 Ibid.
189 Ibid.
190 Ibid.
191 Ibid.
192 Ibid.
193 Ibid.
with the officer’s police chief. Finally, if a complaint has not been disposed of in these ways, the Commissioner must refer it to a provincial judge for a hearing. The penalties that may be applied at this final stage are dismissal, request to resign, reduction in rank, suspension without pay (or loss of pay), loss of leave and a range of ‘reprimands’ or admonitions. These sanctions are similar to penalties within most police force disciplinary schemes, including Victoria’s.

The claimed virtues from a Civilian Control viewpoint are clear: independent, non-police handling and investigation of the complaint; professional, civilian investigators; a right of appeal against the Commissioner’s decision not to take action; and a judicial review and adjudication avenue. However, in practice LERA has not escaped a number of criticisms, some of which are also levelled at civilian review external agencies from time to time: that too many complaints are dismissed for want of evidence; that very few complaints are successful before the provincial judge; that complainants often cannot afford legal representation, while police officers are invariably represented; and that investigations take too long.195

**Office of Police Complaints—Washington, DC**

The Office of Police Complaints (OPC) combines aspects from the Civilian Review and Civilian Control models. The OPC is a government agency of Washington, DC. It can receive complaints in person or in writing about on-duty Metropolitan Police Department (MPD) police officers or DC Housing Officers carrying out their duties within the District of Columbia within 90 days of an alleged incident. The OPC does not accept anonymous complaints and complainants must either be eyewitnesses to the alleged misconduct or directly affected by it. The OPC describes itself as a ‘fair and impartial forum for the review and resolution of police conduct complaints’. Complaints can be made to the OPC about harassment; ‘unnecessary or excessive force’; ‘insulting, demeaning or humiliating’ conduct; discrimination; retaliation for making a complaint to the OPC; or failure of an officer to identify themselves to a member of the public.

Once a complaint is received, the OPC reviews it to decide whether it will try to conciliate the complaint, refer it to an independent mediator or investigate it. Should the OPC decide to investigate, the following actions are involved:

When a complaint is sent for investigation, it is assigned to one of OPC’s staff investigators. The investigator interviews the complainant, subject officer, and any witnesses the complainant identifies, in addition to attempting to locate and interview any other police or non-police witnesses who may be able to provide relevant information. The investigator also collects and reviews other evidence, including MPD documents, hospital records, materials from other sources, the scene of the incident, and any other relevant information. When the investigation is complete, the investigator drafts an

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194 Ibid.
199 Ibid.
investigative report, which, along with all the evidence gathered in the investigation, is reviewed by a supervisor. The executive director then reviews the report of the findings of the investigation, and determines if the complaint should be dismissed, which requires the concurrence of one PCB [Police Complaints Board] member, or referred to a complaint examiner for review and a decision on the merits of the complaint.\(^{201}\)

If the complaint is referred to a complaint examiner, a hearing is held to determine the merits of the complaint. If the complaint is sustained, it is referred to the Chief Commissioner of Police to take ‘appropriate action’ against the subject officer, including disciplinary sanctions such as a reprimand or termination. If the Chief of Police disagrees with the determination of the complaint examiner, the complaint is reviewed by a panel of three complaint examiners. If the original determination is upheld, the Chief of Police is then required to appropriately discipline the subject officer. The OPC has the authority to dismiss a complaint at any stage.\(^{202}\)

The involvement of the Chief of Police in the OPC complaints process clearly reflects aspects derived from the Civilian Review, and even Internal Affairs, models, while the employment of independent OPC investigations and reviews are relatively modest features of a Civilian Control approach.

**The Office of the Police Ombudsman for Northern Ireland**

As noted earlier, the Office of the Police Ombudsman for Northern Ireland (PONI) was established in 2000, following the Hayes and Patten reports, to restore public confidence in policing, and the complaints system, in Northern Ireland in the midst of the political settlement of the country’s long history of sectarian conflict and violence commonly known as The Troubles.\(^{203}\) It replaced the Independent Commission for Police Complaints. As part of the peace process reforms, the Protestant-dominated Royal Ulster Constabulary was transformed into the newly established Police Service of Northern Ireland.\(^{204}\) The IBAC Committee had the benefit of visiting PONI in 2016 to learn firsthand about its experiences in handling complaints about police in a very challenging political and social environment.

PONI is often regarded as the ‘gold standard’ in complaints-handling and oversight systems, an exemplary Civilian Control system. For example, Professor Prenzler concluded that ‘the office appears to have been successful and it remains the standout agency internationally.’\(^{205}\) This view was reflected in much of the evidence the Committee received in this Inquiry.

**The complaints PONI handles**

PONI is an independent civilian body that receives all complaints about police officers’ conduct:

\(^{201}\) Ibid.  
\(^{202}\) Ibid.  
\(^{203}\) See, for example, Stephen White, *Policing reforms in the aftermath of conflict: justice and security sector reform lessons from Northern Ireland for peacebuilding and countering violent extremism—a practitioner’s perspective (Policy Brief)*, Global Center on Cooperative Security, Washington DC, January 2018 (the author was a senior police officer in the Royal Ulster Constabulary and the Police Service of Northern Ireland for 26 years, ‘including as Head of Community Policing and Program Director of the Change Management Team’—p. 16).  
\(^{204}\) PONI, *The police complaints system in Northern Ireland*, Belfast, n.d.  
Unlike most other police complaints systems, all complaints about the conduct of police officers come to the Police Ombudsman’s Office. It therefore investigates the full range of complaints, including the use of force by officers, allegations that officers failed to do their jobs properly, or that they were rude during the course of their duties.206

The main types of complaints PONI receives can be categorised as follows:

- **Failure in duty**—allegations that police failed to perform the duties required of them or breached the police Code of Ethics.
- **Oppressive behaviour**—allegations of assault, intimidation or harassment by police officers.
- **Incivility**—allegations of rudeness
- **All other** allegations.207

PONI has also investigated complaints about historic deaths during The Troubles.208

**The complaints PONI does not handle**

However, it should be noted that there are some complaints it does not handle. According to PONI, it cannot:

- Investigate complaints about an off-duty police officer, unless the fact he or she works for the police is relevant e.g. if they produce their warrant card or tell you they are a police officer
- Investigate complaints about off-duty police employees
- Investigate complaints about operational matters such as how many police officers are assigned to your area, the way police prioritise their work, or how they manage their operation
- Investigate complaints about traffic wardens
- Investigate complaints about retired police officers or employees, unless it is alleged that they broke the law while working for the police.209

**Complaint outcomes and alternative dispute resolution options**

Once a complaint has been investigated, there are a range of complaint outcomes, including a recommendation by PONI that a police officer be formally or informally disciplined or prosecuted for a criminal offence.210

However, PONI notes that 10–15% of complaints are informally resolved, provided the complainant consents to the process. PONI considers that informal resolution of complaints can be beneficial. It has described the process as follows:

Informal Resolution is a way of dealing with less serious complaints without the need for a full investigation.

...
The process is designed to help the complainant and the police officer reach an agreement about the best way to deal with the complaint. It can only be used with the agreement of the complainant.

The process involves a senior police officer speaking to both the complainant and the officer and trying to reach a way of resolving the complaint. This might include:

- The police officer or police service apologizing
- An explanation being given
- Steps being taken to prevent the issue happening again
- The officer might be advised how to behave in the future.\(^{211}\)

There is also an option for complaints to be resolved through mediation, which engages the police officer, the complainant and PONI.\(^{212}\)

**Other jurisdiction: non-complaint investigations, research, public information and prevention**

In addition to handling complaints, PONI investigates:

- *all* discharges of police firearms (including those used in riot situations)
- *all* fatal road traffic collisions involving peace officers
- And *any* death that may have occurred as a result of the actions of a police officer.\(^{213}\)

PONI has dedicated civilian investigation teams who gather and assess evidence to determine whether police have conducted themselves improperly: \(^{214}\)

> In many ways investigations by the Police Ombudsman’s Office are similar to those undertaken by the police themselves. Police Ombudsman investigators use the same techniques to identify witnesses and gather evidence. They also have access to the full range of modern forensic and computerised investigative technology.\(^{215}\)

In addition, PONI investigators can secure incident scenes, such as the scene of fatal car accident or a fatal police shooting, seize property and documents, require information from police, arrest police officers and search premises.\(^{216}\)

Finally, like many other external oversight, integrity and anti-corruption bodies, PONI has research, public information, community engagement and preventive functions (for example, it can make recommendations for improvements to policing).\(^{217}\)

**Criticisms**

While PONI continues to be highly regarded internationally, it has not escaped criticism, especially in Northern Ireland. For example, in 2005, the Criminal Justice Inspection Northern Ireland (CJINI) found that PONI’s communication of outcomes to complainants could be improved:

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\(^{212}\) See *Police (Northern Ireland) Act 1998* (UK) s 58A.

\(^{213}\) PONI, *The police complaints system in Northern Ireland*, Belfast, n.d., p. 5.

\(^{214}\) Ibid.

\(^{215}\) Ibid., p. 14.

\(^{216}\) Ibid., pp. 9, 14–15.

\(^{217}\) Ibid., pp. 5, 9, 16–17, 21.
Inspectors found that there is an awareness in OPONI [the Office of the Police Ombudsman for Northern Ireland] that the closure letter sent to complainants at the end of investigation does not always adequately satisfy customer requirements. It can be too bureaucratic in nature and at times does not explain in sufficient detail the reasons for closure. Improvements in satisfaction levels even where the decision is not what the complainant would have wished, are possible through the development of a more customer focused system of closure.218

The report also recommended that PONI reduce its reliance on seconded police officers.219

In 2011, another CJINI inspection expressed serious concerns over ‘a lowering of the operational independence’ of PONI.220 It was highly critical of PONI’s conduct of investigations into historical cases regarding possible police misconduct during The Troubles. The CJINI found

an inconsistent investigation process, a varied approach to communication with stakeholders and differences in quality assurance ... a fractured approach to governance and decision-making. The handling of sensitive material was also considered problematic ... [There was a] lack of confidence among many involved in the process including some investigators themselves, victims’ families and their representatives, and the police ...

The investigation of historic cases has the capacity to undermine the entire work of the OPONI and serve to decrease public confidence in the work that it undertakes.221

Professor Dermot Walsh, a lawyer and researcher at the University of Kent, has also noted that

[e]ven the Police Ombudsman in Northern Ireland, generally considered to be the most advanced of the independent systems, has ... been rocked by concerns from diverse quarters over its alleged lack of independence in practice. Its own chief executive resigned in 2011 citing frustration over its diminishing operational independence from the police. Ultimately this led to an inspection of the operational independence of the Ombudsman’s from the police force by the ... [CJNI], and the early retirement of the Ombudsman.222

Professor Walsh has also criticised the low success rates of complaints:

The rate of successful complaints remains pitifully and unrealistically low. In the Republic of Ireland, less than 3% of complaints result in a recommendation for some form of criminal or disciplinary action. In Northern Ireland, the figure is 5%. In England and Wales, the figure is 12%, while in Scotland it is 13%. It should be noted that these figures only represent recommendations. The actual number of complaints that result in some form of criminal or disciplinary sanctions is much lower.223

220  Ibid., p. v.
221  Ibid., pp. v–vi.
2.4 Best practice principles

The most authoritative statement of best practice principles relating to complaints about police and police oversight—cited in many submissions to this Inquiry and endorsed by the United Nations Office on Drugs and Crime (UNODC)—comes from the Council of Europe’s Commissioner for Human Rights.224 The Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police identifies five essential principles:

- **Independence**: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
- **Adequacy**: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- **Promptness**: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
- **Public scrutiny**: procedures and decision-making should be open and transparent in order to ensure accountability; and
- **Victim involvement**: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.225

The Opinion is based on, and complemented by, the broader context of international human rights law and other international standards, such as the following

- International Covenant on Civil and Political Rights (UN)
- Code of Conduct for Law Enforcement Officials (UN)
- Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (UN)
- International Code of Conduct for Public Officials (UN)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN)
- The Global Standards to Combat Corruption in Police Forces/Services (INTERPOL—the International Criminal Police Organization)
- European Code of Police Ethics (Council of Europe).226

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224 Opinion of the Commissioner for Human Rights concerning police 2009: UNODC, Handbook on police accountability, oversight and integrity, New York, United Nations, 2011. With respect to submissions to this Inquiry, see, for example, International Commission of Jurists (Victoria), Submission 35, 18 August 2017; St Kilda Legal Service, Submission 36, 18 August 2017; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017; Ms Tamar Hopkins, Submission 4, 18 July 2017.

225 Opinion of the Commissioner for Human Rights concerning police 2009, p. 3.

Chapter 2 Models and best practice principles

The principles identified by the Commissioner for Human Rights are also reinforced by standards on customer service and satisfaction developed by the International Organization for Standardization (ISO).227

The Commissioner for Human Rights gave the following account of the rationale for the principles and their relevance to complaints systems and police oversight:

An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service.

Independent and effective determination of complaints enhances public trust and confidence in the police and ensures there is no impunity for misconduct or ill-treatment.

A complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant’s grievance and the implications for the officer complained against.

A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, race, ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be properly resourced, and contribute to the development of a caring culture in the delivery of policing services.228

The key themes and lessons from past inquiries are also evident in the best practice principles. To reiterate: that the complaints system is comprehensible and accessible so that complainants can have confidence in it; that there is robust, independent, external oversight; that there is high quality public information and communication with complainants; and that there is best practice collection and use of complaints data (under the principle of public scrutiny).229 The spirit of one of the key themes of the inquiries, attention to the needs of complainants, is well reflected in the Commissioner’s account of the principle of victim involvement:

It is important that the victim involvement principle is meaningful and effectively applied and not empty and rhetorical. The interests of the complainant, who may have been traumatised by their experience, lacks confidence or does not understand how the complaints system works, are not safeguarded if he or she has difficulty communicating with police or the IPCB [Independent Police Complaints Body] about his or her complaint.230

It is important to note that these principles are compatible with a range of complaint and police oversight systems on the spectrum from the Civilian Review to Civilian Control; they do not, for instance, prescribe (or require) that a fully-fledged PONI-style system be adopted.231 For example, the Commissioner for Human Rights states:

The Independent Police Complaints Body [IPCB] should have oversight of the police complaints system and share responsibility with the police for:

228 Opinion of the Commissioner for Human Rights concerning police 2009, p. 3.
229 On the importance of the effective collection, management, analysis and reporting of complaints data, see Opinion of the Commissioner for Human Rights concerning police 2009, pp. 10, 15; UNODC, Handbook on police accountability, oversight and integrity, New York, United Nations, 2011, pp. v, 35, 43–44, 69–70. See also the discussion in Chapter 4.
• visibility and oversight of the system;
• procedures for the notification, recording and allocation of complaints;
• mediation of complaints that are not investigated;
• investigation of complaints; and
• resolution of complaints and review.

... An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. ... [An] IPCB ... should form a pivotal part of such a system.

... The IPCB should respect police operational independence and support the head of police as the disciplinary authority for the police service. There should be adherence to a clear division of responsibility between the IPCB and the police with full co-operation from the police, which will help maintain high standards of conduct and improve police performance.232 [Emphasis added]

The UNODC has similarly recognised that mixed systems for complaints-handling and police oversight can comply with these best practice principles:

External oversight is complementary to internal mechanisms: it can reinforce them and sustain police managers in their efforts to enhance police integrity and performance.

... Enhancing police accountability must not be limited to establishing a new (independent) structure but must include strengthening the capacity, capability and competence of existing internal and external accountability structures.233

The Committee considers that in interpreting and employing these best practice principles, discussed above, it is therefore important to bear in mind the following points:

• Police need not be excluded from managing discipline or handling certain complaints.
• Not all complaints need to be investigated (for example, some might be resolved through ‘informal resolution', conciliation and so on)—but they all need to be monitored by the independent, external oversight body.
• The oversight body need not investigate all complaints about police (although the Commissioner for Human Rights recommends that it investigate all complaints about ‘serious misconduct').
• The oversight body must be fully independent and exercise oversight over the entire police complaints system and be informed about all complaints.
• The oversight body must be able to intervene and take over police investigations when that is justified and review and audit police complaint-handling and investigations.
• The oversight body must be given robust investigative powers and be able to initiate investigations on its own motion.

Chapter 2 Models and best practice principles

2.5 Improving IBAC

The Committee heard from a considerable number of witnesses who called for Victoria to introduce an entirely new complaints-handling, oversight and investigative body based on the Civilian Control model to take over the roles of both IBAC and Victoria Police.\(^{235}\) It is valuable to set out a representative statement of these views from the submission of Robinson Gill Lawyers, a Melbourne law firm with long experience representing clients with complaints about Victoria Police:

The European Court of Human Rights has described five principles for the investigation of police misconduct:

- Independence
- Adequacy of investigation
- Promptness
- Public scrutiny
- Victim involvement.

The Victorian system fails to meet any of these principles. Reform in this area should be guided by these principles.

**Call for a new complaint body**

A police accountability system is not capable of complying with these principles where investigations are conducted by Victoria Police. We call for Parliament to establish a new body for the investigation of police misconduct complaints. IBAC’s priority of being a corruption-focused body creates an inherent and problematic tension with the fourth principle; public scrutiny. In most circumstances, it will not be appropriate for a corruption body to be transparent as this would hinder investigation. However, transparency is at the heart of an effective police misconduct complaints body.\(^{236}\)

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\(^{235}\) See, for example, Joint Submission: Flemington & Kensington Community Legal centre (FKCLC); Drum Youth Services (DYS); Australian Lawyers Alliance (ALA); Loddon Campaspe Community Legal Centre (LCLC); Ethnic Communities Council of Victoria (ECCV); Federation of Community Legal Centres (FCLC); Victorian Aboriginal Legal Service (VALS); Africa Media Australia (AMA); Synod of Victoria and Tasmania, Uniting Church in Australia (UCA); Northern Community Legal Centre (NCLC); Islamic Council of Victoria (ICV); Springvale Monash Legal Service (SMLS); Drummond Street Services (DSS); Eastern Community Legal Centre (ECLC); Goulburn Valley Community Legal Centre (GVLC), Submission 20, 3 August 2017; Youthlaw, Submission 39, 26 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017; Fitzroy Legal Service, Submission 43, 31 August 2017; St Kilda Legal Service, Submission 36, 18 August 2017; Robinson Gill Lawyers, Submission 44, 4 September 2017; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017.

\(^{236}\) Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 6.
Many submissions argued that such a body would receive, handle, assess, investigate and review all complaints about police. Others recommended that the new independent body should investigate all complaints, bar customer service issues or (possibly) lower-level misconduct. Victoria Police would, according to this view, have a role to play in handling these minor matters, making use, perhaps, of local, informal resolution approaches.

The main justifications given for these suggested reforms were that:

- while IBAC is formally legally independent from Victoria Police, it is culturally and practically too close to police, undermining the independence and impartiality of its complaint handling and investigations.
- IBAC has prioritised its anti-corruption mission (and, within that mission, ‘serious and systemic corruption’), neglecting the oversight, investigation, review and audit of police corruption and misconduct.
- a combination of inadequate resourcing, lack of civilian in-house investigative capacity and cultural orientation has meant that IBAC is over-reliant on police (or ex-police) investigators, undermining in their view the impartiality of IBAC/Victoria Police investigations of complaints.
- in part because of these factors, IBAC is more an oversight and review body than a complaints-handling and investigative body, evidenced by the small number of complaints it investigates itself and the overwhelming proportion of complaints it refers back to Victoria Police, including in IBAC’s view, serious misconduct, for investigation.
- in summary, a complaints-handling and police system in Victoria can only comply with best practice principles if an entirely new, PONI-style body is established to take over Victoria Police’s and IBAC’s complaint-handling and oversight functions.

It is not intended to try to address these justifications in depth in this section. They will be thoroughly explored as the Committee examines the various stages of the receipt, handling, assessment, referral, investigation and review of complaints and disclosures about police in Victoria. Nevertheless, the section will address the fundamental critiques in a general way.

**Application of best practice principles in Victoria**

The best practice principles outlined by the European Commissioner for Human Rights do not prescribe or require the establishment of a PONI-style body to investigate all complaints about police, excluding police from any involvement in complaints-handling. Indeed, the Opinion of the Human Rights Commissioner introduced and contextualised the best practice principles in the following way:

> The European Court of Human Rights has developed five principles for the effective investigation of complaints against the police that engage Article 2 or 3 of the European Convention on Human Rights. [Emphasis added]

Article 2 of the Convention concerns the right to life and Article 3 concerns the prohibition of torture.

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237 See the discussion in Section 2.4 of this chapter.
238 *Opinion of the Commissioner for Human Rights concerning police 2009*, p. 3.
Consistent with the particular reference to Articles 2 and 3 of the Convention, the Commissioner further explains:

These five principles must be adhered to for the investigation of a death or serious injury in custody or as a consequence of police practice. They also provide a useful framework for determining all complaints. Best practice is served by the operation of an Independent Police Complaints Body working in partnership with the police.

... The minimum requirement is that a member state must ensure arrangements are in place to comply with the five principles in the event that Article 2 or 3 of the ECHR [European Convention on Human Rights] is engaged. In furtherance of this aim the CPT [Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment] has strongly encouraged the creation of a fully-fledged independent investigative body.

More broadly, the five principles also serve as helpful guidelines for the handling of all complaints. The existence of an independent police complaints body ... with comprehensive responsibilities for oversight of the entire police complaints system will reinforce the independence principle. Practices are suggested in this Opinion in support of a human rights compliant system which will allow for appropriate and proportionate responses to all complaints.

... Arrangements in the form of, for instance, secondary legislation, regulations, statutory guidance and protocols, will be required to enable the police and the IPCB [Independent Police Complaints Body] to work together in partnership and ensure that all complaints are handled fairly, independently and effectively.

... Naturally, the constitutional arrangements and policing systems, along with historical, political and cultural influences, prevailing in each member state will play a major part in determining the institutional arrangements for an IPCB.\[240\] [Emphasis added]

It is evident therefore that the Commissioner for Human Right’s Opinion does not prescribe a fully-fledged PONI-style body. As discussed earlier, a robust Civilian Review system can be consistent with the best practice principles. As noted, the same view has been taken by the UNODC, which recognises that police have a part to play in taking responsibility for addressing corruption and misconduct within its ranks and for handling a range of complaints subject to effective independent oversight. To recall, the UNODC emphasised that:

External oversight is complementary to internal mechanisms: it can reinforce them and sustain police managers in their efforts to enhance police integrity and performance ... Enhancing police accountability must not be limited to establishing a new (independent) structure but must include strengthening the capacity, capability and competence of existing internal and external accountability mechanisms.\[241\]

The UNODC elaborated how a mixed system of Civilian Review complaints-handling and oversight, with features of the Civilian Control model, can meet best practice:

Although in general it is considered good practice for the independent body to have investigative powers and the capacity to initiate an investigation, this does not mean that it needs to investigate all complaints. It is considered good practice for it to investigate serious complaints only and monitor the rest ... 

[It] ... is good practice for the independent body to have oversight over the entire complaints system. It needs to monitor complaints, including the investigations conducted by the police, and complaints filed directly with the police must be forwarded to the independent body. The independent body must also be authorized to intervene in police investigations that are not conducted properly. This means that the independent body needs to have access to police reports (the outcome of the investigation, the information considered and the decision) and inform the police if the investigation has not been performed satisfactorily. This may result in the independent body repeating the investigation. The monitoring function of the independent body should be well defined.\textsuperscript{242}

This mixed Civilian Review system is the dominant one internationally and within the Australian states. It balances the role of police in managing their workforce and upholding standards with rigorous, independent, external oversight. The importance of striking the right balance in this regard has been recognised in a number of inquiries, including the Wood, Kennedy, Lander and Tink inquiries.

The UNODC has provided a checklist of requirements for independent oversight and investigative bodies to carry out their functions rigorously:

As a minimum, the independent body must [be able to] do the following:

- Have the capacity to receive complaints directly from the public (as well as from members of the government)
- Record all complaints filed against police (whether submitted at the police station, police headquarters, prosecutor’s office or directly to the independent body)
- Have the capacity to start an investigation on its own initiative
- Have sufficient investigative powers to make an assessment of the case in hand, including:
  - The power to hear any person and subpoena powers
  - The power to obtain any information required, including the power to access police dockets and to conduct search and seizures
  - The power to compel the presence of witnesses including police
  - The capacity to offer witness protection
- Have the capacity to recommend further penal or disciplinary action
- Have the capacity to make recommendations for structural change, hence enabling the police to prevent the recurrence of misconduct
- Have the capacity to follow up on its recommendations. For example, it must have the capacity:
  - To publish its findings and recommendations, including the response received from the police
  - To compel police to disclose the reasons for not following up on the recommendations
  - To make public a failure by the police to follow up on its recommendations.\textsuperscript{243}

\textsuperscript{242} Ibid., pp. 52–53.
\textsuperscript{243} Ibid., p. 53.
IBAC meets these minimum requirements in relation to police given its jurisdiction and powers under the IBAC Act 2011 (Vic), Victoria Police Act 2013 (Vic) and the Protected Disclosure Act 2012 (Vic).

It is important, then, to reiterate the following conclusions:

• Robust Civilian Review complaints systems can comply with best practice principles.
• IBAC is legally and institutionally independent from Victoria Police.
• IBAC has the jurisdiction and capacity to investigate and oversee complaints.
• IBAC can recommend improvements to Victoria Police.
• It is important for Victoria Police to continue to have a role with respect to upholding its professional standards and in handling and investigating complaints.

Given these conclusions, the Committee recommends the retention of IBAC’s complaints-handling, investigative and oversight roles. It does not consider that a PONI-style body is required in Victoria. This is not to say that the concerns raised by stakeholders during this Inquiry are not valid. They will be closely examined in the remainder of this report.

FINDING 1: A robust Civilian Review complaints system can comply with the best practice principles for the receipt, handling, investigation and oversight of complaints and disclosures about police.

FINDING 2: A balance needs to be struck between police’s own responsibility for addressing wrongdoing and upholding professional standards and the responsibility of an independent, external agency to exercise effective oversight over police.

FINDING 3: Compliance with the best practice principles for the receipt, handling, investigation and oversight of complaints and disclosures about police does not require the establishment of a complaints and police oversight system along the lines of the Office of the Police Ombudsman for Northern Ireland.

RECOMMENDATION 1: That IBAC, as an independent body, retain its role in receiving, handling, investigating and overseeing complaints and disclosures about police; it is not necessary to create a new body in addition to IBAC to undertake these tasks.

However, this does not, of course, mean that improvements to IBAC’s and Victoria’s Police’s role and performance within the complaints and oversight system are unnecessary. The Committee accepts that there need to be improvements not only to the legislative framework governing the complaints and oversight system but also to IBAC’s and Victoria Police’s handling, investigation, review and oversight of complaints about police. The next section outlines some key measures to improve IBAC’s performance within the complaints system. Further recommendations are made throughout the report.

The need for a new Police Corruption and Misconduct Division in IBAC

While a mixed Civilian Review system such as Victoria’s can meet best practice, it can only do so if the systems for Victoria Police complaint investigations and reviews, and IBAC oversight and complaint investigations, are sufficiently robust and effective. In
particular, while it is prudent for Victoria Police to take responsibility for handling a range of forms of misconduct, this must always be subject to rigorous oversight, not only by Professional Standards Command, but also by IBAC. In this regard, the Committee makes a number of recommendations to strengthen not only the impartiality of police investigations of complaints but also IBAC’s oversight of them.

In addition, the Committee considers that serious police misconduct has been neglected by IBAC relative to its functions of identifying, exposing, investigating and preventing corruption and misconduct in other parts of the public sector. In part, this has been due to the lack of a certain and transparent definition in the legislation of what ‘serious police misconduct’ is (see Chapter 5). Further, in its public reports and in its evidence to the Committee until fairly recently, IBAC consistently maintained that it ‘retained’ all complaints about serious and systemic police misconduct to investigate itself, while judging it ‘appropriate’ to refer, under s 73 of the IBAC Act 2011 (Vic), all other matters—which it characterised as consisting of customer service or low-level misconduct or performance matters—to Victoria Police to investigate.

For example, in an IBAC report published in December 2017, the then IBAC Commissioner, Mr Stephen O’Bryan QC, stated:

[In] … practice, we oversee Victoria Police’s handling of the bulk of complaints which have been referred to them for investigation. Most complaints involve minor misconduct or customer service issues, and it is appropriate that police managers retain responsibility for addressing performance and disciplinary issues within their workforce.

However, IBAC only investigates around 2% of allegations it receives about police misconduct that it considers warrant investigation, and, until recently, police were not formally reporting lower-level matters at all to IBAC. More recently, IBAC has argued that it is required under s 73 to refer all complaints it considers are more appropriately dealt with by police to police for investigation, and that a significant proportion of those matters currently referred to police are, in IBAC’s own judgement, serious matters (for example, serious assaults). In light of these circumstances, the Committee considers that the role of IBAC, in both the oversight and investigation of police misconduct, should be strengthened.

For a mixed Civilian Review complaints system to maintain the confidence of the public, the oversight agency must therefore, unless there are exceptional circumstances, investigate all complaints about serious police misconduct and prioritise not only the investigation and exposure of serious or systemic corruption but also serious police misconduct. These issues are discussed further in chapters 7 and 8.

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244 See the discussion in Section 2.2.5 of this chapter. See also Lander report; Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to the Committee’s questions), 24 May 2018, pp. 9–13.


247 See the discussion in chapters 3 (Section 3.2.5), 4 (Section 4.4.1) and 5 (Section 5.6.1) in this report.

In order for IBAC to prioritise not only serious or systemic corruption but also serious police misconduct, it needs to modify its governance arrangements and the resource allocations to make these new arrangements work effectively, both in terms of its own investigations and its global police oversight functions. Therefore, the Committee recommends that IBAC formally establish a new Police Corruption and Misconduct Division to handle the varied dimensions of its investigative and oversight functions in relation to police wrongdoing. The establishment of such a division will not only ensure that IBAC devotes sufficient attention to police misconduct but strengthen its relevant expertise and capacity, including its capacity to meet best practice with respect to the handling of complaints about police, and, indeed, to help improve the performance of Victoria Police itself with respect to these matters. IBAC has informed the Committee that it is planning to appoint a Deputy Commissioner with particular responsibilities regarding IBAC’s police oversight and related functions. It is important to note that the Committee recognises the need for IBAC to retain the discretion to allocate resources between divisions within its organisation.

RECOMMENDATION 2: That IBAC should formally establish a dedicated Police Corruption and Misconduct Division to increase public confidence in Victoria’s system for the handling of complaints about police corruption and other misconduct, improve its capacity to conduct effective investigations, enhance its independence, develop its expertise and improve its overall performance. This division should consolidate IBAC’s legislated functions that relate to complaints and disclosures about police corruption and other misconduct in Victoria. It should have dedicated teams for:

- Complaint receipt and assessment
- Investigations and referrals (including reviews and audits of investigations and own motion investigations)
- Public information and communications
- Welfare management (of complainants and those subject to investigation)
- In-house and external training (with respect to IBAC and Victoria Police personnel)
- Research and prevention.

IBAC should retain the discretion to allocate resources, including staff, between divisions in its organisation.

RECOMMENDATION 3: That IBAC increase the number of staff dedicated to the investigation of complaints and disclosures about police within the proposed Police Corruption and Misconduct Division. In addition, IBAC should increase the number of civilian specialists it recruits from a diverse range of backgrounds and disciplines.

RECOMMENDATION 4: That the Victorian Government adequately resource the Police Corruption and Misconduct Division in IBAC to ensure that it can independently and effectively investigate complaints and disclosures about Victoria Police.

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250 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to the Committee’s questions), 24 May 2018, pp. 14–17.
2.6 Conclusion

In this chapter, the Committee has explored the key themes and lessons from a wide range of past inquiries into police corruption and other misconduct as well as the complaint and oversight systems that have been designed to address them. It examined the key inquiries since the 1970s in the United States of America, United Kingdom including Northern Ireland and the Australian states. One of the main purposes of this examination was to discern themes and lessons which would assist the Committee in identifying best practice principles for complaints and police oversight systems. Again and again the themes of the complexity of legislative frameworks, the limitations of internal police investigations, the importance of independent oversight, the value of high quality public information, the need for effective communication with complainants and the capacity to track patterns and trends in complaints data were evident.

In addition to a detailed survey of past inquiries, an analysis of the main models for complaints and police oversight systems—Internal Affairs, Civilian Review and Civilian Control—has revealed that each has distinctive strengths and weaknesses.

The chapter then discussed best practice principles for complaint and police oversight systems. The most authoritative statement of best practice principles is the Opinion of the Council of Europe’s Commissioner for Human Rights, endorsed by the United Nations and supported by a range of international laws and standards. Compliance with these principles does not require the establishment of a complaints and police oversight system along the lines of PONI—a robust Civilian Review system can also comply with them.

Finally, in light of the evidence, the Committee considered whether in Victoria the establishment of an entirely new body along the lines of PONI was warranted. The Committee concluded that, given the robust civilian review system in place in Victoria, the establishment of such a body to replace IBAC was not necessary. IBAC is legally and practically independent from police and has relatively strong oversight powers and investigative capacities. IBAC is therefore towards the robust end of the spectrum that ranges from civilian review to civilian control.

However, the Committee recognises that both the perception and reality of IBAC’s independent oversight, investigation, monitoring and review of complaints and disclosures about police can be improved. Considering that IBAC has given insufficient attention to its police oversight and investigative functions relative to its broader public sector anti-corruption functions, the Committee has recommended that IBAC establish an adequately resourced and staffed Police Corruption and Misconduct Division to carry out these police-related functions more effectively. This will help to increase public confidence in Victoria’s system for the handling of complaints about police corruption and other misconduct, improve IBAC’s capacity to conduct effective investigations, enhance its independence, develop its expertise and improve its overall performance in relation to police oversight. The Division will also allow IBAC to prioritise its attention to not only serious or systemic corruption but also serious police misconduct.

Following a detailed account of the current complaints and oversight system in Victoria in the next chapter, the remainder of the report is devoted to identifying issues with the system and how best to address them in order to ensure public confidence.
3 The current system

3.1 Introduction

The current system in Victoria allows for the making of complaints and disclosures of information about police wrongdoing, including corrupt conduct and other misconduct. Members of the public, police officers and Protective Services Officers (PSOs) can make complaints and disclosures about police officers, PSOs and other Victoria Police personnel. Depending upon the circumstances, complaints may be made to Victoria Police, the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Equal Opportunity and Human Rights Commission (VEOHR). Complaints are governed by the:

- Independent Broad-based Anti-corruption Commission Act 2011 (Vic) (‘IBAC Act 2011 (Vic)’)
- Victoria Police Act 2013 (Vic)
- Victoria Police Regulations 2014 (Vic)
- Equal Opportunity Act 2010 (Vic) and the Racial and Religious Tolerance Act 2001 (Vic) (for complaints to the VEOHRC).

In addition, disclosures of information about alleged improper conduct on the part of police are governed in an overlapping fashion by the:

- Protected Disclosure Act 2012 (Vic) (‘PD Act 2012 (Vic)’)
- Protected Disclosure Regulations 2013 (Vic).

3.1.1 The complexity of the current system

The legislative framework is extremely complex, involving parallel but nevertheless interacting systems for the receipt, handling, investigation, oversight and review of both complaints and disclosures from members of the public and police personnel about police. The complexities of this system are evident in the flowchart IBAC provided to the Committee, which depicts the laws and processes involved in the handling of complaints and disclosures by IBAC and Victoria Police (see Figure 3.1).
Chapter 3 The current system

Figure 3.1 Complaints handling process concerning Victoria Police

Complaints handling process concerning Victoria Police

The Independent Broad-based Anti-Corruption Commission (IBAC) is Victoria’s independent police oversight agency. As detailed below, our oversight role includes receiving complaints and notifications about Victoria Police personnel conduct. IBAC assesses complaints and notifications to determine whether matters will be referred to Victoria Police for action, which will be dismissed, or which will be investigated.

Our oversight role also includes:

• receiving and monitoring the outcomes of all investigations referred to Victoria Police
• reviewing investigations of selected matters referred to Victoria Police to ensure they were handled appropriately and fairly
• overseeing deaths and serious injuries associated with police contact pursuant to a standing ‘own motion’ determination
• conducting investigations on our ‘own motion’ into serious or systemic police corruption or misconduct
• ensuring police officers have regard to human rights as set out in the Charter of Human Rights and Responsibilities Act 2006
• undertaking audits of how Victoria Police handles its complaints, and other strategic research and initiatives to prevent police misconduct and corruption.

For more information about IBAC’s police oversight role, visit www.ibac.vic.gov.au.

1 Notifications from other public sector agencies include notifications from the Victorian Ombudsman concerning police corruption and misconduct (s16E of the Ombudsman Act 1973), and from the Victorian Auditor-General’s Office concerning suspected corrupt conduct (s15A of the Audit Act 1994).

2 All complaints made by a Victoria Police officer about another officer are deemed to be PDs under s3 of the PD Act.

3 IBAC’s assessment process includes consideration of whether Victoria Police officers have had regard to the rights set out in the Charter of Human Rights and Responsibilities Act 2006.

4 Notifications from other public sector agencies include notifications from the Victorian Ombudsman concerning police corruption and misconduct (s16E of the Ombudsman Act 1973), and from the Victorian Auditor-General’s Office concerning suspected corrupt conduct (s15A of the Audit Act 1994).

5 IBAC notes these matters can still assist IBAC to develop a greater understanding of potential risks of police misconduct, and inform prevention and education activities.

6 IBAC primarily investigates police matters that involve serious, systemic and/or sensitive allegations, and which we have the capacity and capability to best handle. Under s73 of the IBAC Act, IBAC must refer complaints to Victoria Police if circumstances of the complaint are determined by IBAC not to be PDs, do not engage the IBAC Act for assessment and are returned to Victoria Police for further consideration or action.

7 Under IBAC determinations not to investigate a particular report and determines that it would be appropriate for Victoria Police to continue its investigation, IBAC may determine to receive Victoria Police’s investigation and may investigate, or review Victoria Police’s investigation (s59 of the IBAC Act).

8 IBAC’s oversight role includes receiving complaints and notifications about Victoria Police personnel conduct. IBAC assesses complaints and notifications to determine whether matters will be referred to Victoria Police for action, which will be dismissed, or which will be investigated.

9 For more information about IBAC’s police oversight role, visit www.ibac.vic.gov.au.
A further challenge is that there is little secondary literature available on the current Victorian system for handling complaints about police, so coming to an understanding of it requires piecing together and analysing information from a variety of sources, such as the relevant legislation and regulations, IBAC reports, the Victoria Police manual and other policy documents. In coming to understand the current system, the Committee has also had the benefit of submissions, evidence at hearings and other communication from stakeholders, including Victoria Police and IBAC.

A thorough explanation of the current system is needed in order to appreciate the complexities involved in making, handling and investigating complaints about police. These complexities must be understood in order to clearly identify any problems and to coherently lay out any necessary improvements.

This chapter therefore provides a foundation for understanding and responding in an informed fashion to the evidence the Committee has received in relation to the key issues with the current system for the external oversight and investigation of complaints and disclosures about police in Victoria. As such, this chapter does not examine the wide range of issues, concerns and problems that stakeholders and witnesses have identified in their evidence to the Committee; they are examined in subsequent chapters of the report.

This chapter examines and explains the following aspects of the current complaints system:

- the threshold: what kinds of police conduct may be complained about and how they are defined under the relevant legislation
- how to make a complaint (or, as appropriate) disclosure to Victoria Police, IBAC or the VEOHRC
- who may make a complaint or disclosure (including members of the public, police officers and PSOs) to Victoria Police, IBAC or the VEOHRC
- how Victoria Police receives, handles and investigates complaints and disclosures
- how IBAC receives, handles and investigates complaints and disclosures
- how the VEOHRC resolves disputes and investigates systemic issues
- the oversight of police by IBAC
- the oversight of IBAC by the Victorian Inspectorate (VI).

### 3.2 The threshold: What kinds of police conduct may be complained about?

Under the current system, complainants may make a complaint about ‘corrupt conduct’ and police misconduct, as well as discrimination, sexual harassment, vilification and victimisation (see Figure 3.2).
3.2.1 Corrupt conduct

‘Corrupt conduct’ is defined in s 4 of the *IBAC Act 2011* (Vic) as conduct that:

- ‘adversely affects the honest performance’ by a public officer or public body of their official functions; or
- involves public officers or public bodies performing their official functions dishonestly; knowingly or recklessly breaching public trust; or misusing information or other material; or
- is ‘intended to adversely affect the effective performance’ by a public officer or public body of their official functions in order to gain a benefit.

In addition, the conduct described above must ‘constitute a relevant offence’. Under s 3(1) of the *IBAC Act 2011* (Vic), ‘relevant offence’ means an indictable offence under an Act or one of the following common law offences:

- perverting (or attempting to pervert) the course of justice
- ‘bribery of a public official’
- ‘misconduct in public office’.

3.2.2 Police misconduct

Police misconduct is defined in the *IBAC Act 2011* (Vic) and the *Victoria Police Act 2013* (Vic). Police behaviour that may be the subject of a complaint is classified under the Acts using complex and overlapping categories of ‘police personnel conduct’,
‘police personnel misconduct’, ‘conduct’ and ‘misconduct’ that apply to various Victoria Police personnel—police officers, PSOs, employees (public servants) and police recruits.\(^\text{254}\)

While there are differences in the legislative definitions of police behaviour that can be complained about (depending, for example, on who is subject to the complaint), the main types of police wrongdoing\(^\text{255}\) are as follows:

- police refusals or failures to perform their duties, sometimes called ‘duty failure’\(^\text{256}\)
- offences punishable by imprisonment
- conduct likely ‘to bring Victoria Police into disrepute or diminish public confidence in it’
- ‘disgraceful or improper conduct’.

The following sections explain in more detail the kinds of police behaviour that may be complained about under the relevant legislation.

**Under the IBAC Act 2011 (Vic)**

Section 5 of the *IBAC Act 2011* (Vic) defines two types of police behaviour that may be complained about: ‘police personnel conduct’ and ‘police personnel misconduct’.

### Police personnel conduct

With respect to a police officer or PSO, ‘police personnel conduct’ means

- conduct in connection with one of their powers, functions or duties (which includes ‘duty failure’); or
- ‘conduct which constitutes an offence punishable by imprisonment’; or
- ‘conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it’; or
- ‘disgraceful or improper conduct (whether in ... [their] official capacity or otherwise) ...’\(^\text{257}\)

With respect to a Victoria Police employee or police recruit, ‘police personnel conduct’ means:

- conduct in connection with one of their powers, functions or duties (which includes ‘duty failure’); or
- ‘conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it ...’\(^\text{258}\)

\(^{254}\) *IBAC Act 2011 (Vic) s 3(l) (definition of ‘Victoria Police employee’: ‘has the same meaning as it has in the Victoria Police Act 2013 ((Vic))’); Victoria Police Act 2013 (Vic) s 3(l) (definition of ‘Victoria Police employee’: ‘means a person employed in Victoria Police under Part 3 of the Public Administration Act 2004 ((Vic))’).

\(^{255}\) *IBAC Act 2011 (Vic) s 5 (definitions of ‘police personnel conduct’ and ‘police personnel misconduct’); Victoria Police Act 2013 (Vic) s 166 (definitions of ‘conduct’ and ‘misconduct’). See also Figure 3.2.

\(^{256}\) See *IBAC Act 2011 (Vic) s 5; Victoria Police Act 2013 (Vic) s 166.

\(^{257}\) *IBAC, IBAC and oversight of Victoria Police*, Melbourne, June 2016, p. 1.

\(^{258}\) *IBAC Act 2011 (Vic) s 5: definition of ‘police personnel conduct’—(a) (i) (‘... an act or decision or the failure or refusal by the ... [police officer or PSO] to make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the ... [police officer or PSO] has as, or by virtue of being, a police officer or protective services officer ...’), (ii)–(iv).

\(^{259}\) *IBAC Act 2011 (Vic) s 5: definition of ‘police personnel conduct’—(b) (i)–(ii).*
Police personnel misconduct

With respect to a police officer or PSO, ‘police personnel misconduct’ means:

- ... conduct which constitutes an offence punishable by imprisonment; or
- ... conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- ... disgraceful or improper conduct (whether in ... [their] official capacity or otherwise)...

With respect to a police recruit or Victoria Police employee, ‘police personnel misconduct’ means ‘conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it’.

Under the Victoria Police Act 2013 (Vic)

The Victoria Police Act 2013 (Vic) only governs the behaviour of police officers and PSOs.

Conduct

With respect to a police officer or PSO, ‘conduct’ means:

- conduct in connection with one of their powers, functions or duties (which includes ‘duty failure’); or
- ‘conduct which constitutes an offence punishable by imprisonment’; or
- ‘conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it’; or
- ‘disgraceful or improper conduct (whether in ... [their] official capacity or otherwise...)’

Misconduct

In relation to a police officer or PSO, ‘misconduct’ means:

- ... conduct which constitutes an offence punishable by imprisonment; or
- ... conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- ... disgraceful or improper conduct (whether in the officer’s official capacity or otherwise).

IBAC has provided a range of concrete examples of police wrongdoing that can come within the relevant categories, broadly conceived, of ‘corrupt conduct’, ‘conduct’ and ‘misconduct’ under the legislation (see Box 3.1).

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260 IBAC Act 2011 (Vic) s 5: definition of ‘police personnel misconduct’—(a).
261 IBAC Act 2011 (Vic) s 5: definition of ‘police personnel misconduct’—(b).
263 Victoria Police Act 2013 (Vic) s 166 (definition of ‘conduct’).
264 Victoria Police Act 2013 (Vic) s 166 (definition of ‘misconduct’).
Chapter 3 The current system

BOX 3.1: Examples of police wrongdoing

- unauthorised access, use and disclosure of police information
- drink driving or traffic offences
- using, selling or dealing drugs
- theft
- accepting bribes
- not declaring or managing declarable associations or conflicts of interest
- unauthorised secondary employment
- misuse of police resources and breaches of information security
- stalking, family violence, sexual offences, assault
- circulating offensive material
- racist behaviour
- breaches of human rights
- excessive use of force
- duty failure
- misrepresentation of log books, time sheets or registers
- incivility.


3.2.3 Discrimination, sexual harassment, victimisation and vilification

Complaints alleging discrimination and related forms of wrongdoing on the part of police may be made to the VEOHRC. In addition, Victoria Police’s Taskforce Salus investigates alleged sex discrimination and sexual harassment by police personnel against their current or former colleagues.265

VEOHRC

The Committee has been informed that under the Equal Opportunity Act 2010 (Vic) (‘EO Act 2010 (Vic)’), a person may make a complaint to the Commission alleging ‘discrimination by a police member, police employee or Victoria Police on the basis of an attribute covered by ... [the Act], sexual harassment, victimisation or vicarious liability for such conduct (section 113)’.266 ‘Victimisation’ means treating another person detrimentally because they have either:

- asserted their rights under equal opportunity law
- made a complaint
- helped someone else make a complaint [or]


266 Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 1.
• refused to do something because it would be discrimination, sexual harassment or victimisation.\textsuperscript{267}

Discrimination is prohibited under the \textit{EO Act 2010} (Vic) on the basis of any of 19 attributes, including sex and race.\textsuperscript{268} Discrimination is prohibited with respect to various domains of ‘public life’, including ‘education, employment ... [and] the provision of goods and services’.\textsuperscript{269}

The provision of services is the area that is most relevant to complaints about police. If the police activity that is the subject of the complaint can be construed by the Commission as the provision of a service, it may come within the Commission’s jurisdiction.\textsuperscript{270} After reviewing the relevant legislation and case law,\textsuperscript{271} the Commission has explained that

- if the alleged discrimination occurred in the course of arrest, searches, laying charges or initiating prosecution it will not fall within the area of ‘provision of a service’. Victoria Police have declined to participate in dispute resolution where of the view that the alleged discrimination occurred in these areas of activity.

In summary the Commission can receive complaints where, on consideration of the alleged conduct of police within the particular factual context, the discrimination is claimed to have occurred \textit{in the provision of a service}.

Examples where discrimination may be claimed to have occurred in the provision of a service include if it occurred: during police attending a scene following a request for assistance, in the course of police preventing and detecting crime, in asking a person to leave an area or move on when handling a situation, or in the course of protecting persons from injury or death or maintaining public order.\textsuperscript{272} [Emphasis added]

A person may also make a complaint to the Commission under the \textit{Racial and Religious Tolerance Act 2001} (Vic) (‘\textit{RRT Act 2001} (Vic)’) which alleges that they have been subject to racial or religious vilification.\textsuperscript{273} This is defined under the Act (pt 3) as ‘behaviour that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person or group of people because of their race or religion ...’.\textsuperscript{274}

Complaints made under the authority of the \textit{EO Act 2010} (Vic) or the \textit{RRT Act 2001} (Vic) may name \textit{Victoria Police} as ‘the primary respondent’—since it is vicariously liable for its sworn and unsworn members’ actions. In addition, individual police respondents may be named.\textsuperscript{275}


\textsuperscript{268} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 1; \textit{EO Act 2010} (Vic) s 6.

\textsuperscript{269} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 1; \textit{EO Act 2010} (Vic) pt 4.

\textsuperscript{270} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, pp. 1–2.

\textsuperscript{271} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, pp. 2–3.

\textsuperscript{272} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 4 (see also p. 3: ‘Services are not provided when police investigate an alleged offence, question an alleged offender, deal with a bail application, decide whether or not to lay charges, decide whether or not to prosecute charges and decide how a matter will proceed in court ... [or] when police serve summonses and execute search warrants and take other steps in respect of the laying of charges and their prosecution.’).

\textsuperscript{273} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 2.

\textsuperscript{274} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 2.

\textsuperscript{275} Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 2; \textit{EO Act 2010} (Vic) s 109; \textit{RRT Act 2001} (Vic) s 17.
Section 3.8 discusses VEOHRC’s dispute resolution and investigation powers.

**Taskforce Salus**

In December 2014, Taskforce Salus was established as an independent investigative unit within Victoria Police.276 As noted, the Taskforce investigates allegations of sex discrimination and sexual harassment by Victoria Police personnel against former or current personnel.277

Its establishment coincided with Victoria Police commissioning the VEOHRC to conduct an independent review of sex discrimination and sexual harassment, including predatory behaviour within the force. The review examined this kind of behaviour directed at Victoria Police personnel rather than members of the public.278

**3.2.4 Breaches of discipline**

The current system in Victoria also allows for complaints about behaviour that might amount to a breach of discipline by police officers and PSOs. This is the case whether or not the conduct also qualifies as misconduct prohibited under the relevant legislation279 and/or a criminal offence.

Breaches of discipline that do not amount to conduct or misconduct (discussed in Section 3.2.2, above) are generally handled internally by Victoria Police. However, breaches of discipline may also involve the possible commission of criminal offences dealt with through the courts.280

**What is a breach of discipline?**

Breaches of discipline are defined in s 125 of the *Victoria Police Act 2013* (Vic). They cover a wide range of behaviour by police officers and PSOs, as shown in Table 3.1, below.

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279 See the discussion in Section 3.2.2 of this chapter.
Table 3.1 Breaches of discipline

<table>
<thead>
<tr>
<th>Breach</th>
<th>Legislative provision(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contravening a provision of the Victoria Police Act 2013 or Victoria Police Regulations 2014 (Vic)</td>
<td>Victoria Police Act 2013 (Vic) (‘VPA’) s 125(1)(a)</td>
</tr>
<tr>
<td>Failing to comply with a direction to undergo drug or alcohol testing</td>
<td>VPA s 125(1)</td>
</tr>
<tr>
<td>Failing to comply with the Chief Commissioner’s instructions</td>
<td>VPA s 125(1)(c)</td>
</tr>
<tr>
<td>Failing to comply with a direction under pt 5 (‘Drug and alcohol testing’) of the Victoria Police Act 2013 (Vic)</td>
<td>VPA s 125(1)(d)</td>
</tr>
<tr>
<td>Refusing to consent to the use of evidence derived from a sample (under the authority of the IBAC Act 2011 (Vic))</td>
<td>VPA s 125(1)(e)(g); IBAC Act 2011 (Vic) ss 87, 174</td>
</tr>
<tr>
<td>Failing to comply with a direction given under div 1 pt 9 (drug and alcohol testing) of the IBAC Act 2011 (Vic)</td>
<td>VPA s 125(1)(f)</td>
</tr>
<tr>
<td>Engaging in conduct likely to bring Victoria Police into disrepute or diminish public confidence in it</td>
<td>VPA s 125(1)(h)</td>
</tr>
<tr>
<td>Failing to comply with a lawful instruction given by the Chief Commissioner, a police officer of or above the rank of senior sergeant or another authorised person</td>
<td>VPA s 125(1)(i)</td>
</tr>
<tr>
<td>Being guilty of disgraceful or improper conduct (whether in his or her official capacity or otherwise)</td>
<td>VPA s 125(1)(j)</td>
</tr>
<tr>
<td>Being negligent or careless in the discharge of his or her duty</td>
<td>VPA s 125(1)(k)</td>
</tr>
<tr>
<td>Without approval, applying for—or holding—a licence or permit to conduct any trade, business or profession; conducting any trade, business or profession; or accepting any other employment</td>
<td>VPA s 125(1)(l)</td>
</tr>
<tr>
<td>Acting in a manner prejudicial to the good order or discipline of Victoria Police</td>
<td>VPA s 125(1)(m)</td>
</tr>
<tr>
<td>Having been charged with an offence (whether under a Victorian law or under a law of another place) and the offence has been found proven</td>
<td>VPA s 125(1)(n)</td>
</tr>
</tbody>
</table>

3.2.5 Other conduct?

Under s 57(2) of the IBAC Act 2011 (Vic), Victoria Police must notify IBAC of ‘any complaint’ they have received ‘about corrupt conduct or police personnel misconduct’ by Victoria Police officers and employees.281 Under s 169(2) of the Victoria Police Act 2013 (Vic), Victoria Police ‘must as soon as practicable after a complaint of misconduct is made give to the IBAC in writing the prescribed details of the complaint’.282

However, not all complaints, in the ordinary sense of that word, are recognised by Victoria Police as a ‘complaint’ under the law that they must then report to IBAC.283

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282 The ‘prescribed details’ include details of the complainant, the subject of the complaint, the nature of the incident, witnesses (if any) as well as ‘any action taken by Victoria Police in response’—Victoria Police Regulations 2014 (Vic) reg 61.
283 IBAC, correspondence, 30 November 2017, p. 3; IBAC Act 2011 (Vic) s 57(2). See also Victoria Police Act 2013 (Vic) s 169(2).
Victoria Police’s definition of ‘complaint’ and its relevance for Local Management Resolution matters and Management Intervention Model matters

Victoria Police defines complaints as verbal or written statements ‘which, prima facie and without further investigation, could subject any member of police personnel to any legal or disciplinary action’ 284 Victoria Police’s approach has been explained by IBAC in the following terms:

Victoria Police technically considers complaints as matters which involve allegations of disciplinary breaches or criminal offences, or a combination of both. Lower level matters, generally described as customer service issues that may involve minor breaches of rules and procedures, are referred to as ‘incidents’ rather than complaints and are dealt with by way of local management resolution. 285

Local management resolution (LMR) is a form of alternative dispute resolution that aims to resolve these ‘incidents’ within seven days of their referral by Victoria Police’s Professional Standards Command (PSC) to a ‘relevant work area or police station’. 286

LMR was introduced by Victoria Police in April 2014 to supplement the existing Management Intervention Model (MIM), another form of alternative dispute resolution within which matters were to be resolved within 40 days. 287 Before the introduction of MIM in 2004, all complaints had to be formally investigated by Victoria Police. 288

There are no legislative definitions of LMR or MIM. They are creatures of Victoria Police policy. As noted, MIM was introduced in 2004 as part of a less punitive approach to police wrongdoing combined with local handling of minor ‘complaints’ about Victoria Police members. 289 It was hoped that this approach would be more efficient, improve engagement between the police and local communities and enhance the professional standards and performance of both Victoria Police members and the organisation as a whole. 290 However, it should be noted that, while the Office of Police Integrity (OPI) supported the MIM approach in principle, it strongly criticised the implementation and operation of MIM in practice. 291

MIM and LMR are presently governed by Victoria Police’s procedures and guidelines on management intervention and local management resolution, which are in the Victoria Police manual. 292 The procedures and guidelines explain that MIM can be ‘applied to the resolution of communication and customer service complaints and performance management’. 293 The manual explains that the ‘model should be viewed as an options framework supplying an array of either formal action,

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284 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9 (quoting the Victoria Police integrity management guide, April 2015, p. 8).
285 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 11.
286 Ibid.
287 Ibid.
288 Ibid.
289 OPI, Improving Victorian policing services through effective complaint handling, Melbourne, July 2008, pp. 7, 10–13, 18–19, 22, 25, 27, 33.
290 Ibid., especially p. 7.
291 Ibid., pp. 10–14. See, also, IBAC’s criticisms of the operation of LMR in its Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016.
performance management and other statutory or resolution techniques'. LMR is described as ‘a process that can be applied to the resolution of public (external) minor communication and customer service complaints’, which ‘would not require punitive or formal performance outcomes’. In short, while both MIM and LMR are intended to be employed in relation to low-level issues, LMR is meant to be reserved for the least serious issues. This is reflected in both the minimal formality of LMR and the time lines for resolving disputes (a 7-day turnaround compared with a 40-day turnaround for MIM). A useful, practical account of LMR is given in a Victoria Police brochure:

The intention of the [LMR] process is to resolve the complaint at a local level by encouraging discussion between you, the resolution officer (who is a local police supervisor) and police personnel involved.

The resolution officer will ask you what outcome you are seeking and will talk to you and the police personnel with a view to resolving your complaint.

The process deals with complaints thoroughly and its aim is to resolve complaints between the parties quickly.

At its conclusion, you will receive written advice of the outcome and if you are not happy with how your complaint was handled you can contact IBAC.

The *Victoria Police manual* lists the following ‘resolution techniques’ which can be employed in both MIM and LMR:

Resolution techniques could include:

- an apology
- a meeting with the complainant
- explanation of Victoria Police policies, procedures or training
- action on any identified deficiency in Victoria Police policies, practices, procedures or training
- welfare
- assistance in the referral of any participant to specialist services
- direction to attend Police Medical Officer
- self-resolution
- workplace guidance
- no action.

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294 Ibid., pp. 1–2.
295 Ibid., p. 2.
296 Ibid.
In addition, the manual identifies a number of measures that may be employed only in MIM. These are performance management in accordance with Victoria Police’s ‘Managing underperformance’ policy, admonishment, change in duties by agreement or under direction, and transfer.300

MIM and LMR are intended to meet three common goals in resolving disputes:

- to facilitate the expedient resolution of communication and customer service complaints
- to maintain and enhance professional standards of conduct and the ethical health of Victoria Police and its employees
- to promote and encourage a flexible approach to resolve communication and customer service complaints.

All complaints and incidents received by Victoria Police are classified.302 Victoria Police’s classifications for Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) are described in Table 3.6.

**Reporting Local Management Resolution and Management Intervention Model matters to IBAC?**

Until January 2018, only complaints that met Victoria Police’s definition of ‘complaint’ (discussed above) were reported to IBAC, not LMRs and MIMs. As IBAC explained,

[LMRs and MIMs] ... are Victoria Police classifications that are intended to deal with customer service and low level performance issues.

Because LMRs and MIMs deal with low level matters, Victoria Police does not consider them to be complaints. Therefore, such matters fall outside the scope of section 169 of the Victoria Police Act 2013 ([Vic]) which requires the Chief Commissioner of Police to provide IBAC with written details of all complaints made to a police officer or protective services officer about the misconduct of a police officer or protective services officer.

Consequently, LMRs ... [and] MIMs are not included in the reported number of notifications or allegations received [by IBAC] from Victoria Police.

It should also be noted that Victoria Police does not notify IBAC of CI-5 (preliminary enquiry) and CI-7 (receipt of civil process) files, which might be relevant to the complaints system.303 These files are briefly described in Table 3.2.

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302 IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016, p. 11.

303 IBAC, correspondence, 30 November 2017, p. 3.

304 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 11 May 2018, p. 3. IBAC has noted that it could ‘view details of LMRs and MIMs on ROCSID [Victoria Police’s Register of Complaints, Serious Incidents and Discipline]’—Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4. See also IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016, p. 11.
Table 3.2 Other Victoria Police files not notified to IBAC

<table>
<thead>
<tr>
<th>Classification</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cl-5</td>
<td>Preliminary enquiry file</td>
</tr>
<tr>
<td></td>
<td>Includes audits of LEAP [Law Enforcement Assistance Program database] access, usage of email and other data, identification of fingerprints of police officers found at crime scenes</td>
</tr>
<tr>
<td>Cl-7</td>
<td>Receipt of civil process</td>
</tr>
<tr>
<td></td>
<td>Civil process against a police officer such as intervention orders, family violence orders, bankruptcy orders and contested infringement notices</td>
</tr>
</tbody>
</table>

Source: Adapted from IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 12.

IBAC’s monitoring of LMRs and MIMs

Since January 2018, on the basis of an informal understanding reached with IBAC, Victoria Police has been sending LMRs and MIMs to IBAC so it can monitor the receipt, classification and handling of LMRs by Victoria Police.305 This change of policy has come as a response to concerns expressed by this Committee, and IBAC, over the classification, reporting and handling of LMRs and MIMs.306 IBAC has recently reported its findings from this monitoring program to the Committee.307 The findings are referred to in chapters 4 and 5 of this report.308

3.3 How to make a complaint

In particular circumstances, complaints about police may be made to Victoria Police, to IBAC or to the VEOHRC.

Complaints made to IBAC must be in writing unless IBAC determines there are exceptional circumstances for a complainant to use another method.309

In contrast, complaints made to Victoria Police do not have to be made in writing. They can be made in a variety of ways, including:

- to a police officer or PSO (Victoria Police Act 2013 (Vic) s 167(1))
- in person at any police station
- by contacting any police station by telephone or in writing
- by contacting the Police Conduct Unit (Conduct and Professional Standards Division, PSC) by telephone or in writing

305 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4.
307 Earlier IBAC made a commitment to report on the findings of its monitoring of LRM and MIMs to the IBAC Committee: Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4.
308 See Section 4.4.1 of Chapter 4, Section 5.6.1 of Chapter 5 and Appendix 10 in this report.
309 IBAC Act 2011 (Vic) s 53.
• by filling out a complaint form that can be submitted through the Victoria Police website, presented at a police station or emailed/mailed to the Police Conduct Unit.\footnote{310}

Anyone may make a complaint about alleged discrimination, sexual harassment, vilification or victimisation to the VEOHRC by sending them a letter or email message or by submitting an online or hard-copy complaint form.\footnote{311} The VEOHRC has noted that complaints can be received in different formats but must be in writing. There is the ability for a person to submit a complaint online at the Commission’s website or download a hardcopy complaint form. In some cases the Commission’s Information Officers will provide assistance to complete a complaint form to those who are unable to do so due to disability or where English is their second language.\footnote{312}

While there is no time frame within which a complaint may be lodged with the VEOHRC, the Commission has advised that it prefers to receive complaints within 12 months of the alleged wrongdoing.\footnote{313} Under s 116(a) of the EO Act 2010 (Vic), the Commission ‘may decline to provide … resolution’ for a dispute which has been brought more than 12 months after the wrongdoing is alleged to have taken place.\footnote{314}

### 3.4 Complaints and disclosures by members of the public

There are particular laws and processes governing complaints or disclosures by members of the public about police.

#### 3.4.1 Complaints

**Complaints made to IBAC**

Under s 51 of the IBAC Act 2011 (Vic), members of the public may make a complaint to IBAC about the alleged corrupt conduct of police. Section 51 provides as follows:

A person may make a complaint to the IBAC about conduct the person believes may be corrupt conduct.

Under s 52 of the IBAC Act 2011 (Vic), members of the public may also make a complaint to IBAC about ‘police personnel conduct’, which is defined in s 5 of the Act.\footnote{315}


\footnote{312}{Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 6.}

\footnote{313}{Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 6.}

\footnote{314}{Ms Catherine Dixon, Executive Director, VEOHRC, correspondence, 3 April 2018, p. 6.}

\footnote{315}{Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 1. This is discussed in Section 3.2.2 of this chapter.
Members of the public may also make a complaint to IBAC about the ‘conduct’ of a police officer or PSO under the authority of s 167(1)(b) of the *Victoria Police Act 2013* (Vic).

### Complaints made to police

Under the *Victoria Police Act 2013* (Vic), members of the public may complain about a police officer’s or PSO’s ‘conduct’ to another police officer or PSO. Section 167(1) of that Act provides, in part, that:

> A complaint about the conduct of a police officer or protective services officer may be made—
> (i) to another police officer or protective service [sic] officer ...

A complaint may be made by a person or body of persons and ‘on behalf of another person’.

### 3.4.2 Disclosures

In addition to complaints, under the *PD Act 2012* (Vic) members of the public can make protected disclosures about ‘improper conduct’ by police to IBAC or to an officer with the rank of sergeant or above and be given a range of protections under the law. These protections include various immunities against civil and criminal liability for making the disclosure, not being liable in defamation, being protected against reprisals, and having their identity protected. However, disclosures of information relating to the Chief Commissioner of Police must be made to IBAC directly.

‘Improper conduct’ covers corrupt conduct as defined under the *IBAC Act 2011* (Vic) as well as ‘specified conduct’. Specified conduct covers a similar range of conduct to corrupt conduct. However, unlike corrupt conduct, specified conduct need only amount to conduct which, if proved, would constitute a criminal offence or reasonable grounds for dismissal. In addition, specified conduct encompasses conduct of a public officer or public body in their official capacity that involves substantial:

- mismanagement of public resources; or
- risk to public health or safety; or
- risk to the environment.

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317 *Victoria Police Act 2013* (Vic) s 167(2)(b)–(c).
320 *PD Act 2012* (Vic) s 14(a); Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 1.
A person may also make a disclosure about a reprisal (‘detrimental action’) they have suffered for making a disclosure or cooperating with an investigation of a disclosure. Detrimental action includes:

- action causing injury, loss or damage;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.\textsuperscript{324}

\section*{3.5 Complaints and disclosures by police officers and Protective Services Officers}

There are particular laws and processes governing complaints or disclosures by police officers and Protective Services Officers (PSOs) about police.

\subsection*{3.5.1 Complaints}

There are two types of complaint that can be made by police officers and PSOs about other officers.

First, like members of the public, under s 167(1) of the \textit{Victoria Police Act 2013} (Vic) a police officer or PSO \textit{may} make a complaint about the ‘conduct’\textsuperscript{325} of an officer to another officer.\textsuperscript{326}

Second, unlike members of the public, under s 167(3) of the \textit{Victoria Police Act 2013} (Vic), an officer \textit{must} make a complaint about another officer where they have reason to believe that the officer is guilty of ‘misconduct’.\textsuperscript{327} Under the Act, ‘misconduct’ means:

- conduct which constitutes an offence punishable by imprisonment; or
- conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- disgraceful or improper conduct (whether in the officer’s official capacity or otherwise).\textsuperscript{328}

\textsuperscript{324} \textit{PD Act 2012 (Vic) s 3} (definition of ‘detrimental action’).
\textsuperscript{325} \textit{Victoria Police Act 2013} (Vic) s 166 (definition of ‘conduct’).
\textsuperscript{326} \textit{Victoria Police Act 2013} (Vic) s 167(1), (2) (‘A complaint about the conduct of a police officer or protective services officer … may not be made to the IBAC by a police officer or protective services officer except as set out in subsection (3) …’), (3) (a police officer or PSO must make a complaint to a more senior officer, or to IBAC, about an officer they have reason to believe is guilty of misconduct).
\textsuperscript{327} Mr Stephen O’Brien QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 2.
\textsuperscript{328} \textit{Victoria Police Act 2013} (Vic) s 166 (definition of ‘misconduct’: (a)–(c)).
The complaint must be made to IBAC or to a police officer or PSO who holds a more senior rank than the complainant. A complaint made in this way is defined as a protected disclosure, which gives the complainant certain whistleblower protections. These include, under particular conditions, protection of a discloser’s identity and the content of the disclosure.

A senior police officer or PSO who has received a complaint they consider may be a complaint under s 167(3) must refer it to the Chief Commissioner. The Chief Commissioner must, under particular conditions, notify it to IBAC for assessment as a possible protected disclosure complaint.

The effect of s 167 of the Victoria Police Act 2013 (Vic) is that, while a police officer or PSO may make a complaint about the ‘conduct’ of a fellow officer to the police, they may not make such a complaint directly to IBAC.

Police officers and PSOs can only make a direct complaint to IBAC about another officer if ‘misconduct’ is suspected. This follows from the combined effect of s 167(2) (a) and (3):

(2) A complaint about the conduct of a police officer or protective services officer—

(a) may not be made to the IBAC by a police officer or protective services officer except as set out in subsection (3)

...

(3) A police officer or protective services officer must make a complaint to a police officer or protective services officer of a more senior rank to that officer, or to the IBAC, about the conduct of another police officer or protective services officer if he or she has reason to believe that the other officer is guilty of misconduct. [Emphasis added].

IBAC has provided the following account of these provisions:

Under s 167(2)(a) of the Victoria Police Act 2013 (Vic) … police officers and PSOs are not permitted to report conduct of another police officer or PSO to IBAC, except in accordance with s 167(3). Section 167(3) provides only that a report may be made to IBAC where a police officer or PSO has reason to believe that an officer is guilty of misconduct (but not conduct) directly to IBAC.

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329 Victoria Police Act 2013 (Vic) s 167(3); Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 2.
330 PD Act 2012 (Vic) s 3 (definition of ‘protected disclosure’); Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 2 and 31 July 2017, pp. 1–2. Note also that, under s 167(4) of the Victoria Police Act 2013 (Vic), a disclosure by a police officer or PSO under Part 2 of the PD Act 2012 (Vic) satisfies the requirement in s 167(3) of the Victoria Police Act 2013 (Vic) that police officers and PSOs make a complaint to police or IBAC if they have ‘reason to believe’ that an officer is ‘guilty of misconduct’.
331 PD Act 2012 (Vic) pt 6; IBAC, Guidelines for making and handling protected disclosures, Melbourne, October 2016, p. 6.
332 Victoria Police Act 2013 (Vic) s 168.
333 PD Act 2012 (Vic) s 22; Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 2. See also PD Act 2012 (Vic) ss 3 (definitions of ‘assessable disclosure’ and ‘police complaint disclosure’), 5, 26.
334 As defined in s 166 of the Victoria Police Act 2013 (Vic) (see Section 3.2.2 in this chapter).
335 As defined in s 166 of the Victoria Police Act 2013 (Vic) (see Section 3.2.2 in this chapter).
3.5.2 Disclosures

A police officer or PSO may also disclose information about another officer’s alleged improper conduct in accordance with Part 2 of the *PD Act 2012 (Vic).*[^337] As already noted, and as IBAC explains, ‘to be entitled to make a complaint directly to IBAC, the police officer or PSO making the complaint must have reason to believe that the other officer is guilty of misconduct.’[^338] In addition, as IBAC has explained, ‘any disclosure that meets the definition of improper conduct under s 4 of the *PD Act 2012 (Vic)* will also fall within the definitions of both conduct and misconduct.’[^339]

Under s 18 of the *PD Act 2012 (Vic)*, disclosures regarding a member of Victoria Police personnel must be made to a police officer with the rank, including acting rank, of sergeant or above or to IBAC.[^340] Disclosures made to police under s 18 must be notified to IBAC for assessment ‘no later than 28 days after the disclosure is made’.[^341] Note that disclosures relating to the Chief Commissioner of Police must be made to IBAC directly.[^342]

**Complaints by police about police can qualify as disclosures**

In certain circumstances a *complaint* by a police officer or PSO about another police officer or PSO can qualify as a disclosure that must be notified to IBAC (an ‘assessable disclosure’).[^343] The complaint must have been made to the Chief Commissioner of Police, IBAC or to an officer of more senior rank who refers it to the Chief Commissioner.[^344] If the Chief Commissioner ‘considers that the disclosure may be a protected disclosure’ s/he must notify it to IBAC ‘no later than 28 days’ after receiving it.[^345]

However, while these ‘police complaint disclosures’ qualify as assessable disclosures, unlike police complaints about police *misconduct* under s 167(3) of the *Victoria Police Act*, they are not deemed to be *protected* disclosures, which are then handled by IBAC as protected disclosure complaints. These distinctions are further discussed in Box 3.2.

[^337]: Mr Stephen O’Bryan QC, Commissioner, IBAC, correspondence, 24 October 2016, p. 2. See also IBAC, *Guidelines for making and handling protected disclosures*, Melbourne, October 2016, pp. 2, 6, 13, 15, 18 and the discussion in Section 3.4.2 in this chapter.
[^338]: Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 6 June 2018; *Victoria Police Act 2013 (Vic)* ss 167(2)(a) and 167(3).
[^339]: Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 6 June 2018; *Victoria Police Act 2013 (Vic)* s 166.
[^340]: *PD Act 2012 (Vic)* s 18; *Protected Disclosure Regulations 2013 (Vic)* reg 13; Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 6 June 2018.
[^341]: *PD Act 2012 (Vic)* s 21.
[^342]: *PD Act 2012 (Vic)* s 14(a).
[^343]: *PD Act 2012 (Vic)* 3 (definition of ‘assessable disclosure’): ‘(f) a police complaint disclosure that, under section 22, must be notified to the IBAC; or (g) a police complaint disclosure made directly to the IBAC,’ 5 (meaning of police complaint disclosure), 22 (Chief Commissioner’s notification of police complaint disclosures to IBAC).
[^344]: *PD Act 2012 (Vic)* s 5 (meaning of police complaint disclosure).
[^345]: *PD Act 2012 (Vic)* s 22.
**3.6 Victoria Police: receipt, handling, assessment and investigation of complaints and disclosures**

Under the *Victoria Police Act 2013* (Vic) and the *IBAC Act 2011* (Vic), when Victoria Police receives a complaint about police it has a range of obligations towards IBAC. The legislation—together with the *Victoria Police manual*[^346] and other policies—also governs how Victoria Police receives, handles, assesses and investigates complaints about police. There are some additional requirements in relation to protected disclosures of alleged improper conduct by police, which are sometimes loosely termed ‘whistleblower complaints’. Protected disclosures are governed by the *Victoria Police Act 2013* (Vic), the *IBAC Act 2011* (Vic) and the *PD Act 2012* (Vic), as well as relevant regulations.[^347]

### 3.6.1 Complaints

**Obligations to inform IBAC**

The Chief Commissioner is required to investigate any complaint about the misconduct of a police officer or PSO unless the complaint could qualify as a protected disclosure complaint (‘whistleblower complaint’).[^348]

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[^347]: For example, the *Victoria Police Regulations 2014* (Vic) and the *Protected Disclosure Regulations 2013* (Vic).
[^348]: *Victoria Police Act 2013* (Vic) s 169(1).
complaints are investigated by IBAC unless they are referred back to Victoria Police for investigation (see Section 3.6.3, below). Under the law, once Victoria Police receive a complaint about police a range of obligations towards IBAC are triggered.\textsuperscript{349}

Under the \textit{Victoria Police Act 2013} (Vic), Victoria Police must give IBAC details in writing of any complaint about alleged misconduct by a police officer or PSO ‘as soon as practicable’ after it has been made.\textsuperscript{350} There is a similar requirement in relation to any investigation by the Chief Commissioner into any alleged misconduct by a police officer or PSO. Victoria Police must as soon as practicable after starting an investigation provide IBAC in writing with the details of the investigation.\textsuperscript{351} The ‘details’ for complaints and investigations that Victoria Police must provide to IBAC are as follows:

- (a) the date and time the complaint was received; and
- (b) the details of the person or persons making the complaint; and
- (c) the details of the person or persons against whom the complaint is being made; and
- (d) the date, time and location of the incident; and
- (e) the nature and details of the incident; and
- (f) the details of any witnesses or persons present at the incident; and
- (g) the details of any action taken by Victoria Police in response.\textsuperscript{352}

Under the \textit{IBAC Act 2011} (Vic), Victoria Police has similar obligations to notify IBAC of any complaints alleging that a Victoria Police employee (public servant)\textsuperscript{353} or police recruit has engaged in ‘corrupt conduct or police personnel misconduct’:

... The Chief Commissioner of Police must notify the IBAC of any complaint received by the Chief Commissioner of Police about corrupt conduct or police personnel misconduct by a Victoria Police employee or police recruit.\textsuperscript{354}

Victoria Police must notify IBAC of these complaints ‘as soon as practicable’ after their receipt.\textsuperscript{355}

In addition, IBAC must be notified of any complaint about the conduct of the Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner that has been made to an officer in accordance with the \textit{Victoria Police Act 2013} (Vic):

[Victoria Police] ... must notify the IBAC of any complaint made to a police officer or protective services officer under section 167 of the \textit{Victoria Police Act 2013} about conduct of—

- (a) the Chief Commissioner of Police; or

\begin{flushleft}
\textsuperscript{349} IBAC, \textit{Audit of Victoria Police complaints handling systems at regional level}, Melbourne, September 2016, p. 9.
\textsuperscript{350} \textit{Victoria Police Act 2013} (Vic) s 169(2).
\textsuperscript{351} \textit{Victoria Police Act 2013} (Vic) s 169(3).
\textsuperscript{352} \textit{Victoria Police Regulations 2014} (Vic) reg 61.
\textsuperscript{353} IBAC Act 2011 (Vic) s 3(1) (definition of ‘Victoria Police employee’: ‘means a person employed in Victoria Police under Part 3 of the \textit{Public Administration Act 2004}’ (Vic)).
\textsuperscript{354} IBAC Act 2011 (Vic) s 57(2). Note that, in contrast, under s 57(6) of the IBAC Act 2011 (Vic), the Chief Commissioner ‘may notify the IBAC about police personnel conduct of a member of Victoria Police personnel’ [Emphasis added].
\textsuperscript{355} IBAC Act 2011 (Vic) s 57(5).
\end{flushleft}
(b) a Deputy Commissioner of Police; or
(c) an Assistant Commissioner of Police. 356

The notification must be made ‘as soon as practicable’ after it has been received by the Chief Commissioner. 357

Under the Victoria Police Act 2013 (Vic), Victoria Police is obliged to inform IBAC of any plan to resolve a complaint by conciliation and of any attempted resolutions using conciliation. 358

Victoria Police has additional obligations to inform IBAC with respect to investigations while they are in progress and at their completion. 359

**Receipt and handling of complaints**

When an officer receives a complaint, or if they are making a complaint themselves, a Form 918 (complaint/incident/issue form) must be filled out. 360 Form 918 requires details of ‘the employee submitting the form’, of the complainant and of the officer(s) subject to the complaint. 361 The form also requires a complaint summary, including an account of persons interviewed and/or examined, as well as any documents that have been obtained. 362 The form must then be sent to the Police Conduct Unit of PSC, which acts as the triage unit for all complaints received by Victoria Police. 363

**Classification of complaints**

As part of its triage function, the Police Conduct Unit classifies the nature of a complaint. 364 There are currently 11 classifications, as described in Table 3.3. 365 How a complaint is classified determines time lines for outcomes and who the complaint is allocated to. 366

IBAC’s summary of the file classifications are provided in Table 3.3, below.

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356 IBAC Act 2011 (Vic) s 57(4).
357 IBAC Act 2011 (Vic) s 57(5).
358 Victoria Police Act 2013 (Vic) s 170(2); IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9.
359 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9; Victoria Police Act 2013 (Vic) s 170(1)(3); IBAC Act 2011 (Vic) ss 160, 161.
360 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9.
361 Ibid.; Victoria Police Act 2013 (Vic) s 169(2); Victoria Police Regulations 2014 (Vic) reg 61.
362 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9; Victoria Police Act 2013 (Vic) s 169(2); Victoria Police Regulations 2014 (Vic) reg 61.
363 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 11.
364 Ibid.
365 Ibid. In February 2018, Victoria Police tabled one version of the classification matrix it said PSC uses (see Appendix 6) and included another version (see Appendix 7), which differed in some significant respects, as part of its May submission to this Inquiry (Victoria Police, Submission 52, 1 May 2018, Appendix G, p. 62).
366 Ibid.
### Table 3.3 Victoria Police Professional Standards Command file classifications: IBAC’s summary

<table>
<thead>
<tr>
<th>Classification</th>
<th>Complaint type</th>
</tr>
</thead>
</table>
| C1-0 | Work file  
*Allegations that require preliminary enquiries before a full investigation can be conducted* |
| C1-5 | Preliminary enquiry file  
*Includes audits of LEAP [Law Enforcement Assistance Program database] access, usage of email or other data, identification of fingerprints of police officers found at crime scenes* |
| C1-6 | Internal management (correspondence)  
*Matters received from complainants where further information is required before determining if reclassification is required* |
| C1-7 | Receipt of civil process  
*Civil process against a police officer such as intervention orders, family violence orders, bankruptcy orders and contested infringement notices* |
| C1-8 | Incident investigation/oversight  
*Files created for oversight of specific incidents. At the regional level, incidents include deaths following police contact, escape from custody, injuries to prisoner [sic], and police collisions involving minor injuries* |
| C2-1 | Minor misconduct  
*Includes minor assault at time of arrest, infringement notice received on duty, lower level discrimination under the Equal Opportunity Act, and lower level breaches of the Charter of Human Rights Act* |
| C2-4 | Local management resolution (LMRs)  
*No formal policy currently available but LMRs aim to resolve low level incidents within seven days of the matter being forwarded to the relevant work area* |
| C2-5 | Management interventions [sic] model (MIMs)  
*Allegations of a minor nature regarding service delivery, performance management or professional conduct* |
| C3-2 | Misconduct connected to duty  
*Includes serious assault, conduct punishable by imprisonment, alcohol or drug offences on duty, improper use of LEAP or other databases, higher level discrimination under the Equal Opportunity Act, and higher level breaches of the Charter of Human Rights Act* |
| C3-3 | Criminality (not connected to duty)  
*Includes off duty conduct punishable by imprisonment, off duty alcohol or drug offences, criminal associations, and summons to court for any traffic matter* |
| C3-4 | Corruption  
*Includes encouraging others to neglect duty or to be improperly influenced in exercising any function, fabricating or falsifying evidence, using excessive force or other improper tactics to procure confession or conviction, improperly interfering with or subverting a prosecution, concealing misconduct by other officers, and engaging in serious criminal conduct* |

Source: IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 12.

In classifying complaints and determining what first steps should be taken, the Police Conduct Unit follows the guidelines and procedures in PSC’s Accountability and Resource Model and the *Victoria Police manual*. The Police Conduct Unit’s classification of a complaint determines whether it is addressed through Management Intervention (MIM) or Local Management Resolution (LMR), departmental or...

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According to these guidelines and procedures, complaints concerning more serious matters should generally be investigated by the PSC itself, specifically by its Investigations Division. This includes corrupt conduct (‘illegal use of police power for personal gain in some form, not necessarily financial’) and misconduct, whether on or off duty. Victoria Police descriptions of these file classifications on its ROCSID (Register of Complaints, Serious Incidents and Discipline) database are provided in Table 3.4, below. It should be noted that Victoria Police also uses an electronic system known as Interpose for its management of complaints and investigations.

### Table 3.4 Misconduct and corruption file classifications on Victoria Police’s ROCSID database: usually investigated by PSC

<table>
<thead>
<tr>
<th>Classification</th>
<th>Description</th>
<th>Investigation</th>
<th>Notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>C3-2 Misconduct (On Duty)</td>
<td>Serious Misconduct as defined by Sec 86A of PRA [sic—repealed provision of Police Regulation Act 1958 (Vic) cited instead of the current s 166 Victoria Police Act 2013 (Vic), which refers to ‘misconduct’ not ‘serious misconduct’]. Usually investigated by PSC. Conduct which constitutes an offence punishable by imprisonment, conduct which is likely to bring the force into disrepute or diminish public confidence in it, or disgraceful or improper conduct (whether in the member’s official capacity or otherwise). Complaints encompassing serious assault, excessive force, etc. Complainant and subject employee notified of outcome by letter.</td>
<td>Investigated by PSC.</td>
<td>Complainant and subject employee notified of outcome by letter.</td>
</tr>
<tr>
<td>C3-3 Misconduct (Off Duty)</td>
<td>Serious misconduct as defined by Sec 86A of PRA [sic—repealed provision of Police Regulation Act 1958 (Vic) cited instead of the current s 166 Victoria Police Act 2013 (Vic) which refers to ‘misconduct’ not ‘serious misconduct’]. Usually investigated by PSC. Conduct which constitutes an offence punishable by imprisonment, conduct which is likely to bring the force into disrepute or diminish public confidence in it, or disgraceful or improper conduct (whether in the member’s official capacity or otherwise). Criminal offence committed while off duty. Complainant and subject employee notified of outcome by letter.</td>
<td>Investigated by PSC.</td>
<td>Complainant and subject employee notified of outcome by letter.</td>
</tr>
<tr>
<td>C3-4 Corruption</td>
<td>The illegal use of police power for personal gain in some form, not necessarily financial.</td>
<td>Investigated by PSC.</td>
<td>Complainant and subject employee notified of outcome by letter.</td>
</tr>
</tbody>
</table>

Less serious conduct may be investigated by PSC, or by Victoria Police regions, departments and commands with PSC oversight.\(^{374}\) The Victoria Police description of the relevant file classification is provided in Table 3.5, below.

### Table 3.5 Misconduct file classification on Victoria Police ROCSID: investigated by PSC or Region

| C2‑1   | Misconduct | PSC or regions may investigate depending on circumstances. Includes: Minor assault at time of arrest; Traffic Infringement Notice on duty (not for .05 Infringement Notice); internal discipline; outstanding matters at Sheriff’s Office; off-duty traffic and election to appear at court |


During 2014/15, PSC referred the overwhelming majority of complaints it had received, approximately 90%, to regions, departments and commands for investigation.\(^{375}\) The PSC itself therefore investigated only around 10% of the complaints it received.\(^{376}\) This trend has continued, with PSC investigating around 12% during 2016/17.\(^{377}\)

As discussed, Victoria Police usually deals with complaints that are characterised as low-level performance or customer service matters through MIM or LMR, generally without a formal investigation.\(^{378}\) According to the *Victoria Police manual*, these matters are:

- [low-level] misconduct
- minor breaches of police rules or procedures
- correspondence-related issues
- complaints/allegations, where an employee’s performance has failed to achieve appropriate service or behavioural standards and could be most efficiently and effectively resolved using the MIM, or LMR, or VPMG *Managing underperformance* [a policy in the *Victoria police manual*]
- other matters assessed as suitable by a specialist area.\(^{379}\)

This account of matters considered suitable by Victoria Police for management intervention or local management resolution is supplemented by the relevant file classification descriptions on ROCSID, extracted in Table 3.6.

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377 For analysis of these statistics, see the discussion of Table 4.2 in Chapter 4 of this report.


Chapter 3 The current system

Table 3.6 LMR and MIM file classifications on ROCSID

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>C2-4</td>
<td>LMR</td>
<td>Low-level customer service complaints (Local Management Resolution)</td>
</tr>
<tr>
<td>C2-5</td>
<td>MIM</td>
<td>Allegations made against members of a minor nature regarding service delivery, performance management or professional conduct e.g. rudeness, over-zealousness; that may be resolved promptly. No formal investigation is conducted and the matters are resolved through conciliatory processes and Management Intervention (MIM). May be reclassified, usually to C2-1 and an investigation conducted.</td>
</tr>
</tbody>
</table>


It is important to note that Victoria Police excludes from the classification process matters it considers frivolous or vexatious. In addition, if a complainant is satisfied with a police explanation that their complaint is based on a misunderstanding of the law or police procedures then Victoria Police does not treat it as a formal complaint requiring any further action.

Investigation of complaints

If PSC decides to investigate a complaint itself, it is carried out by its Investigations Division. The Assistant Commissioner, PSC, ‘is responsible for the recording, control and supervision of all investigations reported ... including those that are forwarded for investigation or resolution at Region or Department level’. Further, all ‘investigation files must be returned to the Assistant Commissioner, PSC, for review.’ The investigation process will usually involve interviews of police subject to allegations, as well as witnesses and complainants, and may also involve searches of police premises and forensic medical examinations. However, there is very little information available on how PSC conducts investigations. The Victoria police manual, for example, only discusses PSC investigations in brief and general terms.

There is somewhat more information available on the way investigations are conducted at the regional level of Victoria Police, due mainly to the VEOHRC’s 2015 report and IBAC’s 2016 audit of regional complaints-handling systems. In addition, the Victoria Police manual provides some further detail regarding investigations at the regional or departmental level. The manual states that PSC notifies the ‘relevant...
Local Professional Standards Committee’ so that it can allocate the complaint to ‘an appropriate investigator’. The investigation, including compliance with required time frames (discussed below), is supervised by a Senior Manager.

Victoria Police has stated that the establishment of a Local Professional Standards Committee (LPSC) in every command is in response to a range of recommendations from bodies such as the former Office of Police Integrity, IBAC and the VEOHRC. It is intended to be part of a move within Victoria Police ‘from a sanctions-based approach to professional standards and discipline to one that is focused on rehabilitation, restorative justice and performance management’. One of the functions of LPSCs is to assist in the management of conflict of interest matters and complaints files given to the command to investigate and resolve.

Writing in 2015, the VEOHRC noted that there were no dedicated investigator positions at the regional level and that, therefore, divisional investigators had to undertake an allocated investigation in addition to their usual policing duties. The VEOHRC did acknowledge, however, that PSC could make available a number of its investigative teams to assist divisional investigators.

IBAC has provided the following, more detailed, account of the process (although it is unclear from the available information whether it diverges in any respect from current Victoria Police policy and practice):

> Complaints are allocated to regions by way of a physical file. The file is sent by the Ethics and Professional Standards Officer (EPSO) to the regional superintendent who either refers it to the relevant inspector for nomination of suitable investigator (usually a senior sergeant or sergeant) or directly to an investigator.

> The nominated investigator undertakes an investigation and prepares ... a ... final report. These reports should detail each allegation, the evidence evaluated in relation to those allegations, findings or determinations, and recommendations.

> The ... final report is then referred back up the line to the inspector and superintendent for review and endorsement. The report is also reviewed by the EPSO who may identify concerns with an investigation or report ...

> Once endorsed by the superintendent, the file is returned to PSC for a quality check (essentially a check that necessary action has been taken and relevant documents are on the file) and for recording of final outcomes on ROCSID.
When a nominated investigator is allocated a complaint they are expected to declare any 'potentially inappropriate' associations they have as well as any conflicts of interest that could have any bearing on the investigation.\(^\text{397}\) As IBAC has explained,

It is incumbent on investigators to disclose associations that are potentially inappropriate or that may involve a conflict of interest prior to any investigation commencing. When conducting oversight or investigation files, there is a requirement for the investigator to complete a formal conflict of interest questionnaire (form 1426). This form identifies actual, potential or perceived conflicts of interest between the investigator and the subject officers, and requires the approval of the investigator’s supervisor as well as the development of a conflict management plan if appropriate.\(^\text{398}\)

The Victoria Police policy rules on 'Managing conflict of interest' provide that:

Police members must not undertake any duties in relation to a police operation, investigation or prosecution in which:

- they are the victim
- their relatives or friends are involved
- they have a connection to a party in the matter
- they undertake secondary employment or a reportable outside interest at the location.\(^\text{399}\)

Consistent with these policies on conflict of interest and impartiality, IBAC has explained that Victoria Police policy prohibits the allocation of complaint files, except LMRs and MIMs, to ‘an investigator from the same work area as the subject officer or to a line manager of the subject officer’.\(^\text{400}\)

In investigating a complaint that could amount to a breach of discipline, the Chief Commissioner may direct a police officer or PSO to ‘give any relevant information, produce any relevant document or answer any relevant question’.\(^\text{401}\) It is a breach of discipline to disobey such a direction.\(^\text{402}\) Similarly, it is an offence to hinder an investigation\(^\text{403}\) or make ‘false or misleading’ statements in connection with an investigation.\(^\text{404}\) The Chief Commissioner must report in writing to IBAC on an investigation’s progress as often as IBAC requests.\(^\text{405}\)

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\(^{398}\) IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 34.


\(^{400}\) IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 11.

\(^{401}\) Victoria Police Act 2013 (Vic) s 171(1).

\(^{402}\) Victoria Police Act 2013 (Vic) s 171(2).

\(^{403}\) Victoria Police Act 2013 (Vic) s 174(1) (‘A person must not, without reasonable excuse, hinder or obstruct a person who is performing a function or exercising a power under this Part [Part 9—Complaints and investigations]’).

\(^{404}\) Victoria Police Act 2013 (Vic) s 174(3).

\(^{405}\) Victoria Police Act 2013 (Vic) s 170(1).
The *Victoria Police manual* requires that Victoria Police keep complainants and those subject to investigation informed throughout the investigation process. This is mainly the responsibility of the investigator. With regard to complainants, the manual provides as follows:

It is a requirement of the *Victims’ Charter Act* that complainants and members of the public who are directly involved in an incident are:

- given clear, timely and consistent information about their rights and entitlements
- referred to victim or legal support services
- treated with courtesy, respect and dignity
- informed of the progress of the investigation, unless the disclosure may jeopardise the investigation or the person requests not to be informed
- informed of any key stages of the investigation such as the charging of an offender, bail proceedings, outcomes of any court proceedings, appeals or discipline proceedings...

Communication must only include information relevant to the particular matter involving the complainant or member of the public.

The manual also provides that sworn police employees subject to investigation be informed of its progress except when it would jeopardise the investigation. There are also a range of other circumstances when an employee must not be informed of the progress of an investigation depending on the classification of the file. Further, as with complainants, only ‘information relevant to the particular matter involving the complainant or member of the public’ can be included in any investigation update.

As noted earlier, the classification of a complaint file determines the time frames within which it must be completed (see Table 3.7). In certain circumstances, the investigator may request an extension. However, extensions must not be granted because the

- subject employee is on leave or rest days
- investigator or resolution officer is on leave or rest days
- complaint [sic—complainant] failed to make or return contact with the investigator or resolution officer
- complainant is refusing to co-operate.

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409 Victoria Police, *Victoria Police manual, Melbourne, 5 February 2018 edition* (‘Procedures and guidelines: complaint management and investigations’, p. 9)—no requirement to inform employees about C1-0 (Work file requiring preliminary enquiries) or C3-4 (Corruption) files.


411 Ibid.

412 Ibid.

### Table 3.7 Time frames for investigation management

<table>
<thead>
<tr>
<th>Classification</th>
<th>Description</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1-0</td>
<td>Work file</td>
<td>152</td>
</tr>
<tr>
<td>C1-6</td>
<td>Correspondence</td>
<td>90</td>
</tr>
<tr>
<td>C1-5</td>
<td>Preliminary enquiry</td>
<td>28</td>
</tr>
<tr>
<td>C1-7</td>
<td>Receipt of civil process</td>
<td>90</td>
</tr>
<tr>
<td>C1-8</td>
<td>Incident oversight</td>
<td>90</td>
</tr>
<tr>
<td>C2-1</td>
<td>Minor misconduct</td>
<td>90</td>
</tr>
<tr>
<td>C2-5</td>
<td>Management intervention</td>
<td>40</td>
</tr>
<tr>
<td>C2-4</td>
<td>Local management resolution</td>
<td>7</td>
</tr>
<tr>
<td>C3-2</td>
<td>Misconduct connected to duty</td>
<td>90</td>
</tr>
<tr>
<td>C3-3</td>
<td>Criminality not connected to duty</td>
<td>90</td>
</tr>
<tr>
<td>C3-4</td>
<td>Corruption</td>
<td>152</td>
</tr>
</tbody>
</table>


### Investigation outcomes

Once the investigation is complete, the investigator’s report is required to record a single determination with respect to every allegation in the complaint about a police officer or PSO. Victoria Police has 10 determination types in relation to investigations and 2 (‘resolved’ or ‘not resolved’) for LMRs and MIMs, which, as noted earlier, do not require formal investigation. Descriptions of the determinations for investigations relating to police officers and PSOs are set out in Table 3.8.

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Table 3.8 Victoria Police determinations for investigations relating to police officers and PSOs

<table>
<thead>
<tr>
<th>Determination</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantiated</td>
<td>Complaint found to be true</td>
</tr>
<tr>
<td>Lesser deficiency</td>
<td>A matter uncovered during an investigation not forming part of the complaint laid, requiring remedial action, such as a failure to complete an official document</td>
</tr>
<tr>
<td>Unable to determine</td>
<td>The available evidence does not permit the investigator to establish whether the complaint is true or not</td>
</tr>
<tr>
<td>Not proceeded with</td>
<td>The complaint is recorded as a file initially but is not proceeded with, due to the unwillingness of the complainant to supply information and is unwilling to withdraw the complaint or there is some other reason for being unable to take the complaint further</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>A complainant having made a formal complaint, of their own volition makes a request that the complaint investigation cease</td>
</tr>
<tr>
<td>No complaint</td>
<td>A query or complaint by a person that is subsequently found to be an action sanctioned by law, or a complaint lodged by a third party which is denied by the alleged victim who has no complaint to make</td>
</tr>
<tr>
<td>Not substantiated</td>
<td>The weight of available evidence does not support the account of events as described by the complainant, but is weighted in favour of the account given by the employee</td>
</tr>
<tr>
<td>Unfounded</td>
<td>The available evidence clearly establishes that there are no grounds for the complaint whatsoever</td>
</tr>
<tr>
<td>Exonerated</td>
<td>The evidence clearly establishes that a particular employee is not involved in a complaint or is completely free from blame</td>
</tr>
<tr>
<td>False report</td>
<td>There is sufficient evidence to charge the complainant with making a false report to police</td>
</tr>
</tbody>
</table>


If, after the investigation, Victoria Police considers that action should be taken in relation to the subject police officer or PSO, the following are the main options. First, it may be thought that non-punitive measures are appropriate. This may involve what has been variously described as ‘workplace guidance’, ‘management intervention’, or management of ‘underperformance’. Second, if an investigator has found that a substantiated allegation could amount to a breach of discipline, a hearing into the alleged breach will usually be held (an alternative to a hearing is an admonishment of the officer by a PSC investigator or line manager). Sanctions that can be applied if a breach of discipline charge is found proven are ‘reprimands, good behaviour bonds, fines’; restrictions on promotions and transfers; reduced seniority,
remuneration or rank; and dismissal.\textsuperscript{420} Third, if there is a reasonable belief that an officer has committed a criminal offence, criminal charges may be laid (disciplinary action may also be pursued after any criminal matter has been dealt with in the courts).\textsuperscript{421} The \textit{Victoria Police manual} describes these possible outcomes as follows:

- management intervention—this can include the provision of education, advice and guidance to positively address an employee performance issue. It is not a discipline process or punitive measure.
- no actions
- admonishment—refer to VPMG [\textit{Victoria police manual}] Admonishments
- discipline charges
- criminal charges
- action in accordance with VPMG Managing underperformance
- action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures
- a combination of these actions.\textsuperscript{422}

Once determinations and actions are finalised they are recorded on ROCSID.\textsuperscript{423}

Under the \textit{Victoria police manual}, the investigator is responsible, on behalf of the Chief Commissioner, for providing the complainant and subject officer with written advice regarding the result of the investigation and any action taken or planned.\textsuperscript{424} The advice must only include information relevant to the particular complaint.\textsuperscript{425} According to the manual, the advice must:

- contain a detailed overview of the investigation to enable the complainant to understand the nature of the investigation and any action taken or proposed, as required by s 172(1), \textit{Victoria Police Act}
- be appropriately drafted considering the language abilities of the complainant. Interpreters, home visits and other means of communication with the complainant may be required.
- advise complainants that any queries in relation to their investigation may be raised with the investigator or the relevant manager. Complainants are also advised that such issues may be raised with IBAC.
- the letter of advice must be reviewed by the investigator’s manager prior to being sent.\textsuperscript{426}

It should be noted that the requirement in s 172(1) of the \textit{Victoria Police Act 2013} (Vic) to advise the complainant is a qualified one. The Chief Commissioner does not have to advise the complainant in these terms if s/he considers that it would not be in the public interest to do so:

\textsuperscript{420} IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 14; \textit{Victoria Police Act 2013} (Vic) pt 7.
\textsuperscript{421} IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 14. See also VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase One Report, Melbourne, December 2015, pp. 321–325.
\textsuperscript{423} IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 14.
\textsuperscript{425} Ibid.
\textsuperscript{426} Ibid.
Further, some special conditions apply to communication with whistleblowers (protected disclosers). These are addressed briefly in the next section on Victoria Police’s handling of disclosures.

In addition to informing the complainant and subject officer, Victoria Police is required to report in writing to IBAC with respect to ‘the results of the investigation and the action (if any) taken or proposed to be taken’.

After receiving an investigation report from Victoria Police, IBAC may make a written ‘request’ that the Chief Commissioner ‘take any action that the IBAC considers is appropriate’ in addition to, or as a substitute for, any action the police have taken or plan to take. Under the authority of this provision, IBAC may request that the Chief Commissioner carry out ‘a further investigation’ under the Victoria Police Act 2013 (Vic). The Chief Commissioner ‘must ... take the requested action’ or provide a report to IBAC explaining why it does not intend to take the requested action.

### 3.6.2 Disclosures

As discussed earlier, members of the public, police officers and PSOs may make disclosures about the alleged improper conduct of police, which IBAC, as the clearing house, then assesses as possible protected disclosures. Since much of the process for handling complaints and disclosures overlaps, this section focuses on the distinctive features of the receipt, handling and investigation of disclosures by Victoria Police. Section 3.7.2 examines IBAC’s role in relation to disclosures.

**Receipt, handling and assessment of disclosures**

When a member of Victoria Police receives a protected disclosure they must:

- ensure confidentiality of the information and the identity of the person making the disclosure
- take initial action as detailed in VMP Complaints and discipline [Victoria Police manual] only as far as necessary to prevent further harm or risk to property
- not notify other persons, such as [a] divisional patrol supervisor, unless immediate action is required to prevent harm or risk to property
- forward all information about the complaint on a Form 918 to the Police Conduct Unit or direct to the Deputy Protected Disclosure Coordinator

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427 *Victoria Police Act 2013 (Vic) s 172(2).*
429 *Victoria Police Act 2013 (Vic) s 170(3); IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9.*
430 *IBAC Act 2011 (Vic) s 160(1).*
431 *IBAC Act 2011 (Vic) s 160(2).*
432 *IBAC Act 2011 (Vic) s 161; IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 9.*
433 See sections 3.4.2 and 3.5.2 in this chapter.
• report to PSC any matters that are required to be immediately reported according to VMP Complaints and discipline.434

Under the Victoria Police manual, all potential protected disclosure complaints must be sent to the Police Conduct Unit.435 The Police Conduct Unit is obliged to assess whether the disclosure may be a protected disclosure.436 The two main questions the Unit’s assessment must address are whether the disclosure has been made in the appropriate way (for example, to the right body) and whether the disclosure concerns improper conduct or detrimental action (a reprisal) as defined in the PD Act 2012 (Vic).437 Victoria Police’s guidelines on protected disclosures explain that

[when] Victoria Police receive your complaint we need to identify whether your disclosure is about improper conduct or detrimental action. To do this we will look critically at all the information about the alleged conduct. We may look at

• What is your connection to the alleged conduct—are you a victim, a witness or a participant?
• How did you come to know about the conduct—were you directly involved, did you see it happening or did someone else tell you about it?
• How much detail can you provide—is there sufficient information for us to consider whether there is improper conduct or detrimental action?
• How reliable is the information—is it supported by other information?438

If Victoria Police considers that a disclosure may be a protected disclosure, it must notify it to IBAC, which determines whether the disclosure is in fact a protected disclosure—one which IBAC must then deal with as a ‘protected disclosure complaint’ by dismissal, referral or investigation.439

If Victoria Police considers that a disclosure may be a protected disclosure, it will write to the discloser within 28 days after the receipt of the disclosure, informing them that the disclosure has been notified to IBAC.440 Victoria Police will also write to IBAC within 28 days after receiving the disclosure, informing them that it ‘considers the disclosure may be a protected disclosure’ and that it is being notified to IBAC.441

If Victoria Police considers that the disclosure is not a protected disclosure, it will write to the discloser within 28 days after receipt of the disclosure to the effect that it

434 Victoria Police, Victoria Police manual, Melbourne, 5 February 2018 edition, Melbourne (Procedures and guidelines: protected disclosures, p. 4). Note also, Victoria Police Act 2013 (Vic) pt 10 div 3, which prohibits the disclosure of any ‘restricted matter’, which includes ‘the subject matter of a protected disclosure complaint being investigated’ under pt 10—see Victoria Police Act 2013 (Vic) s 183 (definition of ‘restricted matter’).
437 IBAC, Guidelines for making and handling protected disclosures, Melbourne, October 2016, pp. 6–8, 12–22; Victoria Police, Guidelines for making, handling and investigating protected disclosures, Melbourne, v. 2—issued 1 July 2014 (note, however, that the law in these guidelines had not, at the time of issue, been updated to reflect significant amendments in 2016 and thereafter).
438 Victoria Police, Guidelines for making, handling and investigating protected disclosures, Melbourne, v. 2—issued 1 July 2014, p. 10. The Victoria Police guidelines mirror IBAC’s suggested questions—see IBAC, Guidelines for making and handling protected disclosures, Melbourne, October 2016, p. 20.
441 Ibid., p. 14.
• [does not] consider the disclosure to be a protected disclosure
• That the disclosure has not been notified to IBAC as a protected disclosure; and
• The protections under Part 6 of the PD Act [2012 (Vic)] apply, regardless of whether the disclosure is notified to IBAC for assessment ... 442

However, Victoria Police has stated that it will only communicate this information to a discloser/complainant who has ‘indicated’ that they want the protections or if it ‘otherwise appears’ to Victoria Police that they wish to be protected in this way.443 The legislative basis for this qualification is not stated.

Investigation of protected disclosure complaints

Victoria Police may only investigate a protected disclosure complaint if it has been referred to it by IBAC in accordance with s 73(3) the IBAC Act 2011 (Vic). Section 73(3) provides as follows:

(3) A protected disclosure complaint may only be referred to—
(a) in the case of a protected disclosure complaint relating to the conduct of a member of Victoria Police personnel—the Chief Commissioner of Police ...

Upon referral of a protected disclosure complaint, Victoria Police must investigate it in accordance with pt 10 of the Victoria Police Act 2013 (Vic).445 Part 10:

• authorises the Chief Commissioner to direct any police officer or PSO to provide ‘any relevant information’ or document or ‘answer any relevant question’446
• allows a discloser to request information about the investigation, which (subject to a range of exceptions) the Chief Commissioner may provide to them447
• requires the Chief Commissioner, following an investigation, to take all reasonable steps to prevent any proved wrongful ‘conduct from continuing or occurring in the future’ (This includes the option of remedying any harm or loss due to the conduct and taking disciplinary action against an officer responsible for the conduct.)448
• requires (with some qualifications) the Chief Commissioner, after an investigation, to report in writing to IBAC ‘the findings of the investigation’ and any steps taken or planned in response449
• gives the Chief Commissioner the option of writing to the Premier or relevant Minister about any matter that has arisen from the investigation450

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442 Ibid., p. 13.
443 Ibid., p. 13.
444 See also IBAC Act 2011 (Vic) ss 73(1)(a)–(b) (IBAC must refer a complaint or notification to another person or body if ‘the subject matter ... is relevant to the performance of the duties and functions or the exercise of powers of that person or body’ and ‘it would be more appropriate for the complaint or notification to be investigated by that person or body rather than by the IBAC’), 73(2) (referral to the Chief Commissioner of Police).
445 IBAC Act 2011 (Vic) s 73(5)(b); Victoria Police Act 2013 (Vic) s 175 (‘The Chief Commissioner must investigate, in accordance with this Part [pt 10], every protected disclosure complaint that the IBAC has referred to the Chief Commissioner under Division 4 of Part 3 of the Independent Broad-based Anti-corruption Commission Act 2011 (Vic)’).
446 Victoria Police Act 2013 (Vic) s 176.
447 Victoria Police Act 2013 (Vic) s 177.
448 Victoria Police Act 2013 (Vic) s 178.
449 Victoria Police Act 2013 (Vic) s 179.
450 Victoria Police Act 2013 (Vic) s 179.
• requires (subject to a range of exceptions) that the Chief Commissioner provide a discloser with information about the outcome of the investigation

• authorises IBAC to review Victoria Police investigation procedures and their implementation and make recommendations in relation them (The Chief Commissioner must adopt the recommendations or explain to IBAC in writing why they will not be adopted.)

• authorises the Chief Commissioner to request that IBAC withdraw the referral of a protected disclosure complaint from Victoria Police if the Chief Commissioner considers that the investigation is being obstructed ‘or for any other reason’.

Division 4 of pt 10 of the *Victoria Police Act 2013* (Vic) requires Victoria Police to establish procedures for the conduct of investigations into protected disclosure complaints. The procedures must be consistent with the *PD Act 2012* (Vic) and IBAC’s guidelines on the handling of protected disclosures issued under the authority of that Act. In particular, the procedures must explain ‘how procedural fairness will be accorded’ and ‘how arrangements for legal representation and other support and assistance for witnesses will be managed’. The *Victoria Police Act 2013* (Vic) also requires the Chief Commissioner of Police to ‘ensure that the procedures … are readily available to the public and to each member of Victoria Police personnel’. It appears that Victoria Police has sought to satisfy these requirements by issuing its *Guidelines for making, handling and investigating protected disclosures* and by developing policies published in the *Victoria Police manual*.

There are three distinctive areas of focus in the Victoria Police procedures developed in accordance with the relevant legislation: confidentiality, natural justice and welfare (including prevention of reprisals).

Victoria Police has stated that it ‘will take all reasonable steps to ensure the confidentiality of information about … [a] disclosure or the identity’ of the discloser. It will also ensure that information relating to the disclosure is properly secured, including when any information is exchanged with IBAC or another investigating entity. In this regard, the *Victoria Police manual* provides as follows:

- The Protected Disclosure Coordinator will mark all assessable disclosure and protected disclosure complaint files as such.
- Any person who handles the complaint must ensure the confidentiality of the content and identity of the person making the disclosure. This includes:

451 *Victoria Police Act 2013* (Vic) s 181.
452 *Victoria Police Act 2013* (Vic) ss 188–189.
453 *Victoria Police Act 2013* (Vic) s 190. See also *IBAC Act 2011* (Vic) s 79.
454 *Victoria Police Act 2013* (Vic) s 187(3); *PD Act 2012* (Vic) (especially s 57); IBAC, *Guidelines for making and handling protected disclosures*, Melbourne, October 2016. See also *PD Act 2012* (Vic) s 58(3).
455 *Victoria Police Act 2013* (Vic) s 187(2)(b).
456 *Victoria Police Act 2013* (Vic) s 187(4).
460 *Victoria Police, Guidelines for making, handling and investigating protected disclosures*, Melbourne, v. 2—issued 1 July 2014, p. 17.
461 Ibid.
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Under the Victoria Police guidelines on protected disclosures, Victoria Police

will only disclose the identity of the discloser or information about the content of the disclosure where required or allowed to do so by law. For example, we may disclose information to relevant persons for the purposes of conducting a criminal or discipline investigation. This reasonable exchange of information is necessary to enable us to take action in relation to this disclosure.463

In terms of ensuring natural justice for officers subject to investigation, the Victoria Police manual provides as follows:

- All employees under investigation must be:
  - informed of the substance of the allegations against them
  - given the opportunity to answer the allegations before a final decision is made
  - informed about the substance of any adverse comment that may be included in any report arising from an investigation
  - have their defence set out fairly in any report
  - advised of the outcome of any investigation.464

However, a subject officer need not be informed in this way if the protected disclosure complaint was dismissed without any investigation.465

With regard to welfare concerns, both the relevant legislation and Victoria Police policy recognise that there is a responsibility to look after the welfare of disclosers as well as officers subject to investigation.466 This includes informing and liaising with Victoria Police’s Internal Witness Support Unit, complying with laws ensuring confidentiality, prohibiting reprisals and taking appropriate management action to protect and support disclosers, subject officers and investigators.467

It should be noted that IBAC has the power to monitor, review and oversee police investigations (see Figure 3.1), to withdraw a referred protected disclosure complaint from police and to undertake its own investigation of the complaint.468 IBAC’s general oversight functions are discussed further in Section 3.9.

463 Victoria Police, Guidelines for making, handling and investigating protected disclosures, Melbourne, v. 2—issued 1 July 2014, p. 17.
465 Ibid.
466 Victoria Police Act 2013 (Vic) s 173 (prohibition of victimisation), pt 10 div 3 (disclosure of information); PD Act 2012 (Vic); Victoria Police, Guidelines for making, handling and investigating protected disclosures, Melbourne, v. 2—issued 1 July 2014, p. 19; Victoria Police, Victoria Police manual, Melbourne, 5 February 2018 edition, Melbourne (‘Procedures and guidelines: protected disclosures’, pp. 6, 7–8, 10).
468 On IBAC’s power to withdraw a referred protected disclosure complaint and undertake its own investigation, see IBAC Act 2011 (Vic) s 79.
3.7 IBAC: receipt, handling and investigation of complaints and disclosures

IBAC receives and handles complaints and disclosures about police, either directly or as notifications, which it must then dismiss, or investigate itself or refer to Victoria Police for investigation.\(^{469}\) This section gives an overview of IBAC’s processes with respect to complaints and disclosures, while Section 3.9 discusses IBAC’s overarching police oversight functions (see also Figure 3.1).

3.7.1 Complaints

There is little detailed information on how IBAC handles complaints about police (there is more on its handling of disclosures) that is publicly available.\(^{470}\) Therefore, the following account relies on material that IBAC provided to the Committee together with the relevant legislative provisions.

IBAC may receive complaints and disclosures (including notifications) about police corruption and police misconduct, broadly conceived.\(^{471}\) IBAC assesses these complaints and disclosures, examining as a matter of course whether a complaint amounts to a protected disclosure complaint that gives the complainant a range of protections.\(^{472}\) In making these assessments, IBAC also considers whether police have had regard, as required, to the rights included in the *Charter of Human Rights and Responsibilities Act 2006* (Vic).\(^ {473}\)

In response to a complaint or disclosure, IBAC must dismiss it, or refer it back to police or investigate it themselves.\(^ {474}\) In preparation for these determinations, IBAC has the power to conduct a preliminary inquiry.\(^ {475}\)

**Dismissal of complaints**

IBAC has noted the following key reasons for its dismissal of a complaint:

- Reasons for dismissed complaints include matters that: are withdrawn; have insufficient information; are too old; have already been investigated; or are frivolous or vexatious.\(^ {476}\)

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\(^{469}\) IBAC Act 2011 (Vic) ss 58, 73–78.


\(^{471}\) See the discussion in Sections 3.4.1, 3.4.2, 3.5.1 and 3.5.2 of this chapter and Figure 3.1. See also IBAC Act 2011 (Vic) ss 15, 51–52.

\(^{472}\) Figure 3.1; Dr John Lynch PSM, General Counsel, IBAC, Law Institute of Victoria Police Accountability Roundtable, Melbourne, 25 July 2017.

\(^{473}\) Figure 3.1; IBAC Act 2011 (Vic) s 15(2)–(3)(b)(ii).

\(^{474}\) Figure 3.1; Dr John Lynch PSM, General Counsel, IBAC, Law Institute of Victoria Police Accountability Roundtable, Melbourne, 25 July 2017; IBAC Act 2011 (Vic) ss 15(4), 58.

\(^{475}\) Figure 3.1; IBAC Act 2011 (Vic) ss 15(3)(ba), 59A.

\(^{476}\) Figure 3.1; IBAC Act 2011 (Vic) ss 65(2), 67.
IBAC has emphasised, however, that it may still gain useful information from dismissed complaints that can help it ‘develop a greater understanding of potential risks of police misconduct, and inform [its] prevention and education activities’. 477

**Referral of complaints**

With respect to the referral of complaints back to Victoria Police, IBAC points to s 73 of the *IBAC Act 2011* (Vic), which requires IBAC to refer complaints to a listed person or body, including Victoria Police, when it considers that ‘it would be more appropriate for the person or body to investigate’. 478 While it is mandatory for IBAC to make these referrals in these circumstances, the judgement of when it is more appropriate to make a referral is left to IBAC—it is only required to make such a referral ‘when it considers’ that it is more appropriate to do so. This is evident from the relevant parts of s 73:

... (1) The IBAC must refer to a person or body specified in subsection (2) a complaint or notification to the IBAC if, at any time, the IBAC considers that—

(a) the subject matter of the complaint or notification is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and

(b) it would be more appropriate for the complaint or notification to be investigated by that person or body rather than by the IBAC.

(2) For the purposes of subsection (1) ... the following persons and bodies are specified—

(a) the Chief Commissioner of Police ...

IBAC has advised that it receives and monitors ‘the outcomes of all investigations referred to Victoria Police’. 480

**Investigation of complaints**

Under the *IBAC Act 2011* (Vic), IBAC is required to prioritise the investigation of serious and systemic corruption. However, the Act makes it clear that IBAC has the jurisdiction to investigate any corrupt conduct, not just serious or systemic corruption, as well as police misconduct broadly conceived. Section 15 of the *IBAC Act 2011* (Vic) provides in part that:

(1) The IBAC has the functions conferred on the IBAC under this Act or any other Act.

(1A) In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious or systemic corrupt conduct.

(1B) Subsection (1A) does not restrict the IBAC’s discretion to determine to investigate any matter that the IBAC considers may constitute corrupt conduct.

(2) Without limiting the generality of subsection (1), the IBAC has the following functions:

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477 Figure 3.1.
478 Figure 3.1.
479 But note *IBAC Act 2011* (Vic) s 73(4) (‘... the IBAC must not refer to the Chief Commissioner of Police any complaint or notification to the IBAC to the extent that ... [it] relates to conduct of ... the Chief Commissioner of Police ... or ... a Deputy Commissioner of Police ... or an Assistant Commissioner of Police.’).
480 Figure 3.1.
(a) to identify, expose and investigate corrupt conduct;
(b) to identify, expose and investigate police personnel misconduct.\footnote{481}

IBAC has explained that it ‘primarily investigates police matters that involve serious, systemic and/or sensitive allegations, and which … [it has] the capacity and capability to best handle’.\footnote{482} IBAC has elaborated on how it determines whether a complaint is about ‘serious or systemic corrupt conduct’ as follows:

Under section 15(1A) of the IBAC Act \cite{481}, IBAC must prioritise the investigation and exposure of serious or systemic corrupt conduct. The IBAC Act \cite{481} does not define ‘serious’ or ‘systemic’.

In determining whether conduct is serious or systemic corrupt conduct, IBAC assesses each complaint or notification on a case by case basis having consideration of the nature of the alleged conduct, the maximum penalty of any potential offences and other factors including:

- the severity of any alleged or potential harm
- the likelihood the alleged conduct will continue if no action is taken
- whether the alleged conduct has the potential to diminish public confidence in the public sector
- whether there are systemic issues or the conduct has broader impacts on the public sector (including Victoria Police)
- the presence of any aggravating circumstances
- whether there is evidence of wilfulness or culpability.

The above considerations are not exhaustive and other factors could be considered depending on the circumstances and context of the complaint.\footnote{483}

It should be noted that under s 69 of the \textit{IBAC Act 2011} (Vic), IBAC ‘may discontinue an investigation at any time’.

IBAC has also advised that it considers complaints reported to it under s 169 of the \textit{Victoria Police Act 2013} (Vic).\footnote{484} IBAC ‘notes’ these matters ‘and may investigate or review’ a Victoria Police investigation of the matter.\footnote{485} As part of this review function, if IBAC decides not to investigate a matter, and considers it appropriate for Victoria Police to continue their investigation of it,

... IBAC may monitor the progress of the investigation and otherwise will await an outcome report at the completion of action taken by Victoria Police. IBAC may determine to review Victoria Police’s investigation at any time including following the completion of the investigation.\footnote{486}

IBAC’s activities in this area naturally overlap with its overarching oversight roles, which are discussed in Section 3.9.
Informing complainants

With regard to complaints that are not protected disclosure complaints, IBAC may inform (‘notify’) the complainant of the action it has taken under s 58 of the IBAC Act 2011 (Vic), whether that is dismissal, investigation or referral.487 However, IBAC is not required to inform the discloser about the action it has taken.488 Further, if IBAC provides information to a complainant about the action it has taken it must also advise them that it is an offence to ‘disclose’ what action IBAC has taken.489

With respect to the results of an investigation of a regular complaint, IBAC has, subject to a number of prohibitions, a discretion to inform a complainant about them.490 Section 163(1) provides, in part, as follows:

(1) Subject to subsection (4), the IBAC may provide a complainant with information about the results of an investigation, including—

(a) any action taken by the IBAC; and
(b) any recommendation by the IBAC that any action or further action be taken. [Emphasis added]

However, under s 163(2) of the IBAC Act 2011 (Vic), information about the above matters must be provided to a complainant

(2) ... if the investigation relates to—

(a) a corrupt conduct complaint or police personnel conduct complaint in relation to a police officer or protective services officer; or
(b) a protected disclosure complaint.

The legislation therefore mandates that IBAC inform complainants about investigation results when it relates to the alleged police corruption or police misconduct (broadly conceived) of police officers or PSOs or when it is a protected disclosure complaint.

However, these IBAC obligations and options to inform complainants about the results of an investigation are affected by a number of prohibitions. These prohibitions are found in s 163(4) and (7). Section 163(4) states that [the] ... IBAC must not provide any information under this section if the IBAC considers that the provision of the information would—

(a) not be in the public interest or in the interests of justice; or
(b) put a person’s safety at risk; or
(c) cause unreasonable damage to a person’s reputation; or
(d) prejudice an investigation under this Act or an investigation by Victoria Police; or
(e) be likely to lead to the disclosure of any secret investigative method used by IBAC or members of police personnel; or
(f) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.

487 IBAC Act 2011 (Vic) s 58(1). The treatment of protected disclosure complaints is discussed in Section 3.7.2 of this chapter.
488 IBAC Act 2011 (Vic) s 59(1).
489 IBAC Act 2011 (Vic) ss 59 (1), (5); 184.
490 IBAC Act 2011 (Vic) ss 163, 164(1)(d) (‘[a]fter conducting an investigation, the IBAC may ... advise a complainant or other person in accordance with section 163 ...’).
Further, s 163(7) states that s 163 (which concerns advice to complainants)

(a) does not apply to a police personnel conduct complaint if—
(b) the complaint has been investigated as a protected disclosure complaint under Part 10 of the *Victoria Police Act 2013* [(Vic)]; and

(b) the IBAC has, in relation to, or in relation to a matter arising out of, an investigation, decided not to—

(i) take further action; or

(ii) request the Chief Commissioner of Police to take action. [Emphasis added]

Moreover, when any information is provided to a complainant about investigation results, IBAC must advise the complainant in writing that disclosure by the complainant of that information is an offence.  

### 3.7.2 Disclosures

IBAC is the clearing house for disclosures about public sector wrongdoing in Victoria, including disclosures about police corruption and other misconduct. IBAC assesses all these disclosures, whether made to it directly or notified to it by Victoria Police, to determine whether they are protected disclosures and therefore to classify them as protected disclosure complaints, which it must then dismiss, or refer or investigate itself. It is important to recall that complaints by a police officer or PSO about another officer’s misconduct under s 167(3) of the *Victoria Police Act 2013* (Vic) automatically qualify as protected disclosure complaints.

In assessing whether an assessable disclosure is a protected disclosure, IBAC may call for further information from the entity that has notified the disclosure or the discloser themselves. As noted, if IBAC determines that the disclosure is a protected disclosure it is classified as a ‘protected disclosure complaint’. Under the legislation, IBAC must dismiss, refer or investigate protected disclosure complaints.

**Dismissal of protected disclosure complaints**

Under s 68(2) of the *IBAC Act 2011* (Vic), a protected disclosure complaint is dismissed by IBAC if it determines that it does not warrant investigation. IBAC may determine that a protected disclosure complaint does not warrant investigation if, for example:

- it is frivolous or vexatious or trivial,
- it ‘lacks substance or credibility’,
- has already been investigated or disposed of,

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491 *IBAC Act 2011* (Vic) ss 163(8), 184.
492 *Figure 3.1; IBAC, Guidelines for making and handling protected disclosures*, Melbourne, October 2016; *PD Act 2012* (Vic), especially ss 21–22; *IBAC Act 2011* (Vic) ss 15, 60, 64–66.
493 See the discussion in Section 3.5 of this chapter.
495 Ibid.; *IBAC Act 2011* (Vic) s 58.
496 See also *IBAC Act 2011* (Vic) s 65 (with respect to complaints and notifications about the conduct of the Chief Commissioner of Police, a Deputy Commissioner of Police or an Assistant Commissioner of Police).
497 *IBAC Act 2011* (Vic) ss 68(2)(b); 67(1); 67(2)(b).
498 *IBAC Act 2011* (Vic) s 68(2)(d).
499 *IBAC Act 2011* (Vic) ss 68(2)(b); 67(1); 67(2)(c).
500 *IBAC Act 2011* (Vic) ss 68(2)(b); 67(1); 67(2)(d) (‘the matter has already been the subject of a complaint or notification which has been investigated or otherwise dealt with …’).
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• the relevant conduct complained of occurred too long ago,\(^{501}\) or
• there was undue delay in making the complaint,\(^{502}\) or
• it was ‘not made genuinely or was made primarily for a mischievous purpose’.\(^{503}\)

In addition, IBAC must dismiss a matter if neither it ‘nor another investigating entity’ has the jurisdiction to investigate it.\(^ {504}\)

Referral of protected disclosure complaints

As discussed throughout this chapter, IBAC may determine to refer a protected disclosure complaint to Victoria Police under s 73(3) of the *IBAC Act 2011* (Vic). For a discussion of how Victoria Police handles matters referred to it by IBAC, see Section 3.6.2, above. IBAC has consistently maintained that it only refers complaints about police officers and PSOs that involve low-level customer service, communication and misconduct matters involving police, while it investigates serious or systemic police corruption or misconduct itself.\(^ {505}\) IBAC’s characterisation has, however, been strongly criticised in evidence received by the Committee. These criticisms are addressed later in the report.

Investigation of protected disclosure complaints

If IBAC determines to investigate a protected disclosure complaint, it may do so along similar lines to its investigations of other complaints, bearing in mind the distinctive protections given to whistleblowers (such as confidentiality protections and protections against reprisals) and the well-known risks to their health, safety and welfare.\(^ {506}\)

Informing disclosers

In particular circumstances, IBAC is required to inform (or has the option of informing) a discloser about how IBAC is handling a disclosure. As discussed, under s 58 of the *IBAC Act 2011* (Vic), IBAC must:

(a) dismiss the complaint or notification if there are grounds to do so; or
(b) investigate the complaint or notification; or
(c) make a referral of the complaint or notification.

\(^{501}\) *IBAC Act 2011* (Vic) ss 68(2)(b); 67(1); 67(2)(e) (‘the complaint or notification relates to conduct that occurred too remote a time to justify investigation …’).
\(^{502}\) *IBAC Act 2011* (Vic) ss 68(2)(c); 67(1); 67(3).
\(^{503}\) *IBAC Act 2011* (Vic) ss 68(2)(b); 67(1); 67(2)(f).
\(^{504}\) IBAC, *Guidelines for making and handling protected disclosures*, Melbourne, October 2016, p. 24; *IBAC Act 2011* (Vic) ss 68(3), 73(3) (on referrals). Note, also, that ‘IBAC may dismiss a protected disclosure complaint if … [it] considers that referring the disclosure to any other body would prejudice criminal proceedings, a criminal investigation or an investigation by the IBAC or the Victorian Inspectorate’ (*IBAC Act 2011* (Vic) s 68(4)).
Under s 59(4) of the *IBAC Act 2011* (Vic), IBAC must—subject to a number of prohibitions—inform the discloser who has made a protected disclosure complaint about what action under s 58 it has taken, and ‘in the case of a decision by the IBAC to dismiss the protected disclosure complaint ... the reasons for the decision’. Note that this requirement applies only to protected disclosure complaints, not to other complaints.507 Further, as mentioned, even in relation to protected disclosure complaints there are a number of prohibitions on informing whistleblowers. Under s 59(4) of the *IBAC Act 2011* (Vic), IBAC must not inform (‘notify’) a person, including a discloser, if the IBAC considers that notifying that person would—

(a) not be in the interests of justice; or
(b) put a person’s safety at risk; or
(c) cause unreasonable damage to a person’s reputation
(d) prejudice an investigation under this Act or an investigation by Victoria Police or the person or body to which the referral was made; or
(e) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.

Further, as with other complaints, when IBAC provides information to a discloser under s 59 of the *IBAC Act 2011* (Vic), they must advise the discloser in writing that it is an offence to disclose the information they have received from IBAC.508

IBAC also has a number of obligations or options to inform disclosers who have made protected disclosure complaints about the results of an investigation.509 Under the *IBAC Act 2011* (Vic), IBAC must, subject to a number of prohibitions, provide a discloser who has made a protected disclosure complaint with information about the results of an investigation including—

(a) any action by the IBAC; and
(b) any recommendation by the IBAC that any action be taken.510

IBAC is prohibited, however, from providing a discloser with information about ‘the results of an investigation’ if it considers that providing the information would:

(a) not be in the public interest or in the interests of justice; or
(b) put a person’s safety at risk; or
(c) cause unreasonable damage to a person’s reputation; or
(d) prejudice an investigation under this Act or an investigation by Victoria Police; or
(e) be likely to lead to the disclosure of any secret investigative method used by the IBAC or members of police personnel; or
(f) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.511

507 *IBAC Act 2011* (Vic) s 59(4).
508 *IBAC Act 2011* (Vic) ss 59(2), 59(5).
509 *IBAC Act 2011* (Vic) ss 163–164.
510 *IBAC Act 2011* (Vic) s 163(1)–(2), (4).
511 *IBAC Act 2011* (Vic) s 163(4).
When IBAC provides any information about investigation results to a discloser it must also advise them that it is an offence to disclose that information. Further, s 163 of the IBAC Act 2011 (Vic), which authorises the provision of information to complainants/disclosers in certain circumstances, does not apply if the complaint has been investigated as a protected disclosure complaint by Victoria Police under pt 10 of the Victoria Police Act 2013 (Vic) and IBAC has decided not to 'take further action ... or [to] request the Chief Commissioner of Police to take action'.

### 3.8 Victorian Equal Opportunity and Human Rights Commission: dispute resolution and investigation powers

As noted earlier, the VEOHRC can provide dispute resolution for a range of complaints about police that allege discrimination, sexual harassment, victimisation or vilification. It may also investigate systemic issues in some circumstances.

#### 3.8.1 Dispute resolution

A complainant may bring a dispute to the Commission when they claim a breach of the EO Act 2010 (Vic) or the RRT Act 2001 (Vic) in relation to them. Disputes may be brought on behalf of a person with a disability that prevents them from bringing the claim themselves, on behalf of a child, by a representative person (where a number of people have been affected by the alleged breach) or by a representative body (for example, The Police Association of Victoria on behalf of a member).

Following the acceptance of a complaint by the Commission, any respondents named in the complaint are invited to participate in dispute resolution through the Commission. Participation in dispute resolution is voluntary, so invitees may decline to participate or withdraw from dispute resolution when it is underway.

It should be noted that the Commission may decline to offer or continue to provide dispute resolution when the breach of law was alleged to have occurred more than 12 months before the dispute was brought to the Commission or if it considers that there are more appropriate forums to handle the complaint:

> Considerations to decline include that ... the matter has been or would be more appropriately dealt with by a court or tribunal, or where a person has initiated proceedings in another forum and it is considered it is not appropriate to provide or continue to provide dispute resolution.

The Commission has described the processes involved in dispute resolution as follows (see also Box 3.2 which discusses the Commission’s restorative justice approach to resolving certain complaints about police):

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512 IBAC Act 2011 (Vic) s 163(8).
513 IBAC Act 2011 (Vic) s 163(7).
514 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, pp. 2, 6; EO Act 2010 (Vic) s 111, pts 4, 6, 7, 8.
515 Ms Catherine Dixon, Executive Officer, VEOHRC, Correspondence, 3 April 2018, p. 6; EO Act 2010 (Vic) ss 113–114.
516 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 6; EO Act 2010 (Vic) s 118.
517 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 7; EO Act 2010 (Vic) s 116.
Experienced conciliators ensure that the process is fair for all, transparent, voluntary, accessible, impartial and confidential. The process is designed based on the needs of the parties to ensure no harm occurs to any participant. There is no requirement for written responses or evidence to be provided. Parties consent to participate in dispute resolution with the conciliator setting protocols for discussion, building rapport with parties and exploring alternative ways to engage in dispute resolution. Complainants can attend with a support person or advocate.518

At the request of a party to a dispute, ‘a written record of agreement’ may be produced by either the Commission or the parties themselves, and a party may also seek registration of the agreement with the Victorian Civil and Administrative Tribunal (VCAT).519

**BOX 3.3: Restorative justice approach to dispute resolution**

Since the release of the ... [VEOHRC’s] report on 9 December 2015 in its *Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police*, the Commission [VEOHRC] has received complaints about police involving the type of conduct that was the subject of the report.

Consultation was held with Victoria Police in developing a restorative justice approach to dispute resolution at the Commission [VEOHRC] similar to the process adopted by the Australian Government, Defence Abuse Restorative Program.

Informed by this consultation dispute resolution proceeds in two phases.

A first meeting is held where the complainant provides an outline of their allegations in a safe environment, where they can freely express what had occurred to them, damage caused to their career and hurt experienced. Complainants have attended these meetings with a support person or a representative from the Police Association. A Legal Officer would attend from Victoria Police with a senior ranked member (Inspector, Superintendent or Assistant Commissioner). Particular care was taken as to the suitability of the senior member attending to avoid past involvement or history existing between this person and the complainant.

This first meeting gives Victoria Police the opportunity to respond by acknowledging and expressing regret for what has occurred to the complainant. Importantly this meeting also affords Victoria Police the opportunity to outline its intentions in adopting recommendations from the [VEOHRC] report and commitment to change within its workforce.

A second meeting may be scheduled 2–3 weeks following to explore the negotiation of a settlement or other resolution. This time frame gives complainants an opportunity to process the acknowledgement by Victoria Police in order for them to focus on resolution.

Source: Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, pp. 7–8.

### 3.8.2 Investigation of systemic issues

While the Commission ‘does not investigate individual complaints under the ... [EO Act 2010 (Vic)] and the RRT Act 2001 (Vic)’ it may conduct investigations into ‘serious systemic discrimination’ that it is unreasonable to expect would be resolved ‘by dispute resolution or by an application to VCAT’.520 In accordance with pt 9 of the

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518 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 7.
519 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 7; EO Act 2010 (Vic) ss 119–120.
520 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 8; EO Act 2010 (Vic) s 127.
EO Act 2010 (Vic), the Commission must also find that there are ‘reasonable grounds to suspect’ that a breach of the Act has occurred and that an investigation would ‘advance’ the Act’s objectives. The Explanatory Memorandum for the key provision, s 127 of the EO Act 2010 (Vic), usefully provides as follows:

[Section 127’s intention is] to prevent the Commission from undertaking an investigation in circumstances where an aggrieved individual or individuals could reasonably be expected to bring a dispute to the Commission or make an application to VCAT … of their own volition, which would be likely to resolve the discrimination which may be occurring.

However, section 127 provides scope for the Commission to investigate a matter in a situation where legitimate barriers exist to a person taking action of their own volition, such as in cases where they are in a vulnerable position or there is fear of further victimisation, or when an individual remedy would not be adequate to address the systemic discrimination.521

Under s 129 of the EO Act 2010 (Vic), the Commission ‘may conduct an investigation in the manner it thinks fit’, employing a range of powers outlined in pt 9 of the Act. 522

3.8.3 Outcomes

According to the VEOHRC, there are a variety of outcomes that can be negotiated through the Commission’s dispute resolution process:

Outcomes can range from being complainant and complaint specific—such as an apology, a letter of regret, employment adjustments, or financial compensation—to outcomes of a more systemic nature—such as equal opportunity training for respondents or an agreement to change organisational policies and practice.523

3.9 Oversight of police by IBAC

As discussed, IBAC has a direct monitoring role in relation to complaints about police, including police investigations by police. Police are required to inform IBAC of the details of complaints; of any attempted conciliation by police; and of the commencement, progress and outcome of an investigation. IBAC can also request that Victoria Police take a particular action or undertake a further investigation. Further, IBAC has the power to monitor complaints it has referred to police for investigation as well as the power to withdraw a complaint from the police and investigate the matter itself. In evidence to the Committee in 2016, the then IBAC Commissioner, Mr Stephen O’Bryan QC, said that IBAC had on a number of occasions threatened to withdraw a referral but had not done so.524

In addition to IBAC’s direct monitoring role—and its investigation of a small number of complaints—IBAC has emphasised its global oversight of Victoria Police, which aims to ensure the efficacy and fairness of police investigations; improve the

521 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 8, quoting the Explanatory Memorandum; EO Act 2010 (Vic) ss 122, 127.
522 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 8; EO Act 2010 (Vic) s 129; pt 9.
523 Ms Catherine Dixon, Executive Officer, VEOHRC, correspondence, 3 April 2018, p. 9.
governance, standards and processes of Victoria Police; enhance the understanding and prevention of corruption and other misconduct; and raise ethical and professional standards within the police force.525

In particular, IBAC has identified the following dimensions of this broader oversight role:

• providing or disclosing information to the Chief Commissioner relevant to the performance of the duties and functions of Victoria Police
• reviewing investigations of selected matters referred to Victoria Police to ensure those matters were handled appropriately and fairly
• conducting own motion investigations about police personnel conduct or corrupt conduct
• ensuring police officers have regard to the human rights set out in the Charter of Human Rights and Responsibilities Act 2006 [(Vic)]
• undertaking research and other strategic initiatives, including auditing how Victoria Police handles its complaints
• informing and educating the community and Victoria Police about police misconduct and corruption, and ways it can be prevented.526

Since May 2013, IBAC’s own motion activity has included the exercise of a standing own motion oversight in relation to ‘deaths and serious injuries associated with police contact’, which may involve custody deaths, police shootings or serious collisions.527 Under this arrangement, after such an incident Victoria Police informs IBAC and IBAC decides whether to review the police response or completed police investigation or undertake its own investigation.528 According to IBAC,

this independent oversight helps determine whether police actions and any ensuing investigation met expected standards, whether the incidents were preventable and if changes could be made to strengthen police policies or practices.529

As part of its general legislated functions, IBAC may produce reports that present the findings of its reviews, audits and other research, as well as any recommendations for the improvement of police policies, procedures and practices.530

3.10 Oversight of IBAC by the Victorian Inspectorate

While the Victorian Inspectorate (VI) does not exercise direct oversight over Victoria Police, its legislated oversight of IBAC can bear on matters relevant to the operation of the current system for making complaints and disclosures about police wrongdoing.531

527 IBAC, Exposing and preventing corruption in Victoria. Special report: IBAC’s first five years, Melbourne, December 2017, p. 16.
528 Ibid.
529 Ibid.
530 Ibid, especially pp. 2–3, 9, 23. See also IBAC, Annual report 2016/17, Melbourne, 2017; IBAC Act 2011 (Vic) pt 7 (especially ss 159, agency obligation to respond to formal recommendations; 162 (special reports)); PD Act 2012 (Vic) pts 9, 10.
531 See, for example, VI Act 2011 (Vic) ss 11, 43; Victorian Inspectorate, Submission 34, 14 August 2017; Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, tabled at closed hearing, Melbourne, 5 February 2018.
There are four main ways in which the functions, jurisdiction and activities of the VI are relevant to the current system. First, the VI receives, assesses and investigates complaints and disclosures about IBAC and IBAC personnel (for example, a complaint about IBAC’s handling of complaint or disclosure about police). Second, the VI has important oversight functions in relation to IBAC’s exercise of a range of robust powers—including coercive and covert activities such as the coercive examination of witnesses, the interception of telecommunications and the undertaking of undercover operations. Third, the VI oversees IBAC’s performance of functions under the PD Act 2012 (Vic). Fourth, the VI may review various IBAC policies and procedures, including those relating to the handling of complaints about police. In 2016/17, for example, the VI reviewed a sample of IBAC police complaint files.

The distinctive role of the VI in relation to the current complaints system has been well described in the VI’s submission to this Inquiry:

The VI is responsible for overseeing the compliance of the IBAC with its police oversight functions under the IBAC Act.

... 

External oversight of police misconduct is the responsibility of the IBAC. The VI indirectly plays a role through its oversight of the IBAC, but it is important to understand the nature of the VI’s role. ...

The VI was created as a watchdog to oversee other integrity bodies that are able to exercise coercive powers, particularly the power to summon a person to give evidence about a matter that the other body is investigating.

...

The role of IBAC in relation to police misconduct is to identify and investigate such misconduct; the role of the VI is to monitor that the IBAC is doing lawfully and properly and in compliance with applicable legislation.

3.11 Conclusion

This chapter has explored in detail the current patchwork legislative framework for the making, receipt, handling, assessment, referral, investigation, review and oversight of complaints and disclosures about alleged corrupt conduct and other misconduct on the part of police officers and PSOs. The current system is extraordinarily complex and confusing in terms of:

- who may make a complaint or disclosure (members of the public and Victoria Police personnel)
- the kinds of conduct that may be complained about
- whose conduct may be complained about (for example, police officers and PSOs)
- how a complaint or disclosure may be made
- to whom (for example, IBAC, Victoria Police, VEOHRC) a complaint or disclosure may be made—and how (for example, directly or by indirect report or notification)

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534 Victorian Inspectorate, Submission 34, 14 August 2017, pp. 1–6.
Chapter 3 The current system

- how complaints and disclosures are received, handled, assessed, dismissed, referred or investigated by Victoria Police, IBAC and VEOHRC
- how complaints are monitored, reviewed and overseen
- what information must (or may) be provided to complainants and disclosers from the making of a complaint or disclosure to their conclusion.

FINDING 4: That the legislative regime for complaints and disclosures about police is unnecessarily complex and confusing. In particular, the provisions in the IBAC Act 2011 (Vic), Victoria Police Act 2012 (Vic) and Protected Disclosure Act 2012 (Vic) relating to the making and handling of complaints and disclosures about police corruption and police misconduct are over-complex, as is the interaction of these Acts with each other.

The Committee considers that the legislative regime could be simplified and clarified so that the system for the receipt, handling, assessment, referral, investigation, review and oversight of complaints and disclosures can be made more effective, not only for members of the public, police officers and PSOs, but also for investigating entities such as IBAC and Victoria Police. The Committee also believes that the structure, language and usability of the relevant legislation can be improved by applying plain-language principles.

RECOMMENDATION 5: That the Victorian Government review the legislative regime for complaints and disclosures about police and consolidate, simplify and clarify the legislative provisions on who may make a complaint or disclosure, how they may make a complaint or disclosure and to whom. In addition, the Government should seek to simplify and clarify the provisions in the Victoria Police Act 2013 (Vic), IBAC Act 2011 (Vic), Protected Disclosure Act 2012 (Vic), and relevant regulations, with respect to:

- the legislative definitions of police misconduct
- the reporting of police misconduct by police personnel and its notification to IBAC
- the receipt, handling, assessment, investigation, review and oversight of complaints and disclosures about police misconduct.

In addition, the Committee has made a range of specific recommendations in relation to these matters (see, for example, the recommendations in Chapter 5).

RECOMMENDATION 6: That the Victorian Government apply plain-language principles to improve the design of the IBAC Act 2011 (Vic), Victoria Police Act 2013 (Vic) and the Protected Disclosure Act 2012 (Vic) so that they are easier to use, understand and navigate. This should include better use of headings, notes, examples and tables, as well as useful internal and external hyperlinks in digital versions of the legislation.

The Committee notes that it has in a number of reports recommended improvements to the design and usability of the legislative framework for Victoria’s integrity regime, including most prominently in its review of the Protected Disclosure Act 2012 (Vic).\footnote{Parliament of Victoria, IBAC Committee, The performance of the Independent Broad-based Anti-Corruption Commission and the Victorian Inspectorate, 2015/16, November 2016; Parliament of Victoria, IBAC Committee, Improving Victoria’s whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic), June 2017; Parliament of Victoria, IBAC Committee, The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate—2016/17, December 2017.}
The next chapter provides an overview of best practice principles and examples of data monitoring systems that flow from these principles. It provides a statistical overview of the current Victorian system in practice; assesses the quality of the collection, analysis and reporting of complaints statistics; and identifies some of the key issues for the complaints system that arise from an evaluation of the available statistics.
Complaints data: the need for best practice

4.1 Introduction

Comprehensive statistical information provides important insights into the operation of the Victorian system for handling complaints and disclosures about police and aspects of the Independent Broad-based Anti-corruption Commission’s (IBAC’s) police oversight work. In particular, the systematic collection, analysis, reporting and publication of this information makes an important contribution to the transparency and accountability of the complaints system. It also helps Victoria Police and IBAC identify any important patterns in the complaints, which can help improve both the performance of Victoria Police and IBAC as well as the overall effectiveness of the complaints and oversight system.

This chapter provides an overview of best practice principles and examples of data-monitoring systems that flow from these principles. It provides a statistical overview of the current Victorian system in practice; assesses the quality of the collection, analysis and reporting of complaints statistics; and identifies some of the key issues for the complaints system that arise from an evaluation of the available statistics. The chapter includes the Committee’s recommendations for improving complaints statistics based on best practice principles and evidence from stakeholders, including IBAC and Victoria Police.

4.2 Best practice data

4.2.1 The need for comprehensive data

In Victoria, there have been calls for both IBAC and Victoria Police to provide comprehensive and detailed statistics on police complaints on a regular basis. Stakeholders have argued that making high quality police complaint statistics publicly available will increase transparency by providing meaningful data on how the system is operating, allow for the monitoring of trend data and provide opportunities for early intervention if problems are emerging.

As Ms Merys Williams, from the Law Institute Victoria, explained:

there is very little publicly available data regarding police complaints processes. The accurate recording and publication of complaints of police misconduct are important to maintaining the public confidence in the complaints system, and this data can also be used to identify trends and improve policing in Victoria.

538 Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 28.
Some stakeholders have also suggested that the publication of this information could help to restore public trust in the police oversight mechanisms.\textsuperscript{539} As Ms Tamar Hopkins emphasised, "Transparency and public scrutiny of data and decision-making are not merely best practice, but essential principles of representative democracy."\textsuperscript{540}

4.2.2 \textbf{The benefits of best practice data}

The importance of having access to meaningful public data cannot be underestimated. According to the United Nations Office for Drugs and Crime (UNODC), the disclosure of complaints statistics is good practice, and in fact mandatory where the aim is to establish, restore or enhance public confidence, to disclose the number of complaints received, the nature of the complaints and their consequences, including numbers of officers that have been disciplined and criminally prosecuted. Too often, police try to keep these figures away from the media, under the erroneous impression that this might negatively affect their image. In fact, the opposite is true: displaying transparency with regard to all areas including failures and problems and acknowledging mistakes shows that police are concerned about their legitimacy and thus enhances public trust.\textsuperscript{541}

The UNODC also emphasised that, in a more practical sense, complaints data can be used to ‘identify the operational areas where the abuse of police power is most likely to occur and also which officers are subject to an unusually high number of allegations,’\textsuperscript{542} It can also be used as an indicator of police–community relations.\textsuperscript{543} It is generally thought that high numbers of police complaints can indicate that problems exist within police departments and tensions exist between police and the public, whilst lower numbers of police complaints indicate the opposite.\textsuperscript{544} Though this is not always the case, as Professor Tim Prenzler and Dr Louise Porter point out:

"Low numbers of complaints can also represent problems; for example, inappropriate complaint handling (ignoring, misclassifying or covering up complaints) or lack of public confidence in the complaints system."\textsuperscript{545}

The importance of complaints data is also acknowledged in ISO’s (the International Organization for Standardization) international standard for the management of complaints. Guideline 8.2 states: ‘All complaints should be classified and then analysed to identify systematic, recurring and single incident problems and trends, and help eliminate the underlying causes of complaints.’\textsuperscript{546}

\textsuperscript{539} See, for example, Law Institute of Victoria, Submission 41, 31 August 2017, p. 12; Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 10. The importance of public confidence in the complaints system is discussed in Chapter 5 of this report.

\textsuperscript{540} Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 10.


\textsuperscript{542} Ibid., p. 43.

\textsuperscript{543} Ibid., p. 44.

\textsuperscript{544} Tim Prenzler and Louise Porter, ‘Improving police behaviour and police–community relations through innovative responses to complaints’ in Stuart Lister and Michael Rowe (eds), \textit{Accountability of policing}, Routledge, Milton Park, 2016, p. 54.

\textsuperscript{545} Ibid.

Chapter 4 Complaints data: the need for best practice

The *Hayes report*, which reviewed the police complaints system in Northern Ireland, stressed the important role that the publication of police complaints statistics plays in providing public scrutiny of the system in operation.547

In South Australia, the Lander Review of South Australia’s system of oversight and management of complaints about police also argued that another important purpose of a police integrity system is to provide information that can be used to make informed decisions about any proposed (or any necessary) improvements to the complaint process. According to the report,

[a] key requirement of a police integrity system is the capacity to obtain information through complaints and reports and analyse that information and make use of it if necessary to consider changes within policing generally or police complaints or reports particularly. ...

Complaints and reports are an invaluable source of data which can be used to identify trends, weaknesses in procedure or training, or locations of consistent misbehaviour. The information can be used to direct proactive intervention, training recommendations and specific areas of audit focus. The value of having that information cannot be underestimated.548

Similarly, Professor Prenzler and Dr Porter have argued that identifying and understanding patterns of complaints occurring in an organisation can lead to systemic improvements:

Understanding the underlying patterns of complaints across the organisation can help inform where prevention or response efforts need to be targeted, as well as what might be most effective at identifying and removing the cause of complaints.549

In short, access to such material by the relevant integrity agencies is essential if these agencies are to be effective while maintaining the public’s trust in their processes. This is why it is important to pay close attention to the quality of information that police oversight agencies and police are collecting, analysing and publishing.

**FINDING 5:** Robust police complaint statistics that are easily accessible by the public will increase transparency in the police complaints system by providing meaningful data on how the system is operating. It will also allow for the monitoring of trend data, provide opportunities to improve systems and inform public policy.

### 4.2.3 The best practice principles

**The UN’s approach**

In January 2014, recognising the importance of high quality data, the United Nations General Assembly endorsed the Fundamental Principles of Official Statistics. These principles, developed to ‘enhance the rigor, integrity and competence required for

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549 Tim Prenzler and Louise Porter, *‘Improving police behaviour and police–community relations through innovative responses to complaints’* in Stuart Lister and Michael Rowe (eds), *Accountability of policing*, Routledge, Milton Park, 2016, p. 49.
high quality statistics,550 provide a basic framework for the development of statistics that are accessible and useful for the public. The UN recognised that high quality official statistics that provide reliable, objective and publicly available information are crucial for well-informed decision-making in all areas of the public sector, including police.

The principles that should underpin all public sector statistics are set out in Box 4.1 below.

**BOX 4.1: Fundamental Principles of Official Statistics**

- **Principle 1.** Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens’ entitlement to public information.

- **Principle 2.** To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.

- **Principle 3.** To facilitate a correct interpretation of the data, the statistical agencies are to present information according to scientific standards on the sources, methods and procedures of the statistics.

- **Principle 4.** The statistical agencies are entitled to comment on erroneous interpretation and misuse of statistics.

- **Principle 5.** Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Statistical agencies are to choose the source with regard to quality, timeliness, costs and the burden on respondents.

- **Principle 6.** Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.

- **Principle 7.** The laws, regulations and measures under which the statistical systems operate are to be made public.

- **Principle 8.** Coordination among statistical agencies within countries is essential to achieve consistency and efficiency in the statistical system.

- **Principle 9.** The use by statistical agencies in each country of international concepts, classifications and methods promotes the consistency and efficiency of statistical systems at all official levels.

- **Principle 10.** Bilateral and multilateral cooperation in statistics contributes to the improvement of systems of official statistics in all countries.


This Committee’s review of police oversight agencies in Australia and overseas reveals that there are several external police oversight agencies overseas providing up-to-date and comprehensive statistical information on their handling of police complaints.

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This includes statistics published in their annual reports and on their websites. The Office of the Police Ombudsman for Northern Ireland (PONI), however, provides the most useful example of best practice.

**PONI as an example of best practice**

PONI provides a range of comprehensive user-friendly statistics on their website. The collection, analysis and distribution of that material follows the United Kingdom’s Statistics Authority’s Code of Practice for Statistics. The code of practice is designed to guide and inform bodies who produce official statistics about what practices are required to produce and release high quality official statistics. The Code, which has been modelled on the UN Principles of Official Statistics (discussed above), is based on three pillars: trustworthiness, quality and value. As the United Kingdom’s Statistics Authority explains:

- **Trustworthiness** is about having confidence in the people and organisations that produce statistics and data.
- **Quality** is about using data and methods that produce assured statistics.
- **Value** is about producing statistics that support society’s needs for information.

Each of these pillars contains a number of principles and detailed practices to guide users in producing and releasing statistics that will improve the public’s confidence in them.

According to the UK Statistics Authority, this code ensures that the statistics published by government serve the public. When producers of official statistics comply with the Code, it gives users of statistics and citizens confidence that published government statistics are of public value, are high quality and are produced by people and organisations that are worthy of trust.

The principles are detailed in Figure 4.1

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551 See, for example, the Office of Police Complaints in Washington, DC; the Law Enforcement Review Agency (LERA) in Manitoba, Canada; and the Independent Police Conduct Authority in New Zealand.


555 Ibid.
PONI produces provision of data

PONI produces statistics and provides public access, via its website, to a broad range of statistics relating to complaints and allegations it receives. It also reports on other research and surveys it regularly undertakes. The information, which can be accessed via clicking on the web page navigation tabs for each heading, includes:

- *Complaint statistics in Northern Ireland:* An annual statistical report, which details complaints and allegations about police received in Northern Ireland. It includes:
  - the number of complaints received
  - the types of complaints received
  - the number of matters referred to PONI
  - the number of complaints per region, the number of complaints received per month

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Chapter 4 Complaints data: the need for best practice

- the source of complaints, the situation giving rise to complaints, and a breakdown of the number of allegations received by type
- the number of complaint closures and the outcomes of complaints. It also includes the rank of the officer complained about and the number of officers with three or more complaints that were formally dealt with.

- **Complaint statistics by area:** Published information about the number and nature of complaints about the police by sector or region. This is done by providing an external link to the Northern Ireland Statistics and Research Agency: Northern Ireland Neighbourhood Information Service.

- **Quarterly reports:** Bulletins published on a quarterly basis, which provide details of complaints and allegations received by PONI.

- **Public awareness of the Office:** An annual statistical report presents the findings from PONI’s module in the Omnibus Survey, which is conducted annually by the Northern Ireland Statistics and Research Agency. Results from the survey are used to monitor public awareness and confidence in PONI.

- **Youth awareness of the Office:** A published report on school pupils’ awareness of PONI. The report presents the results on questions relating to PONI from the 2013 Northern Ireland Young Persons’ Behaviour and Attitudes Survey (YPBAS), a school-based survey of pupils in Years 8 to 12.

- **Profile of complainants:** To ensure it is meeting its objectives in terms of serving all of the community, PONI collects data on the range of people who use its services. Complainants are invited to complete a confidential ‘equality monitoring’ survey and the information obtained is analysed for statistical purposes only. The findings are published annually on its website.

- **Complainant Satisfaction Survey:** This optional survey allows complainants to rate their satisfaction with the service PONI provides. PONI uses this data to improve its service. It publishes the results of the survey in its annual Complainant Satisfaction Report.

- **Police Officer Satisfaction Survey:** Officers who have undergone investigation by PONI are able to rate their experience. The findings of the survey are published annually.

- **Official Statistics compliance:** All publicly available statistical information produced by PONI are considered ‘Official Statistics’. These statistics, which are produced in line with the UK Statistics Authority Code of Practice for Official Statistics, are used to ‘inform officials, politicians and wider public debate’ on issues of national or regional importance.

- **Statistical Feedback:** This is an online questionnaire which allows users of PONI statistics to give feedback on the statistics section of PONI’s website. It asks respondents how they have used the statistics and what, if any, recommendations they have to improve them.557

A screenshot from the web page shows how accessible and user-friendly the information is. See Figure 4.2.

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Clearly Victoria can learn valuable lessons from PONI with respect to the collection, accessibility and quality of its statistics on complaints about police. These lessons will be discussed later in the chapter.
4.3 Complaints data in Victoria: public access and limitations

In light of the best practice principles identified above, the following discussion reviews the publicly accessible statistical data on complaints provided by IBAC and Victoria Police. The Committee sought data initially from Victoria Police and IBAC annual reports in order to develop an accurate and meaningful overview of the current police complaints system and to make comparisons between IBAC and Victoria Police activity regarding their investigation and oversight of complaints about police.

4.3.1 IBAC data

Public access to IBAC data

When undertaking its review of IBAC’s Annual report 2016/2017, the Committee found that it provided only limited statistical information relating to the handling of complaints about police. It also tended to present aggregated statistics for all complaints made across the public sector.558

The Committee believes that comprehensive statistical information should be made available to the public because it provides important insights into IBAC’s police oversight work. In a report in 2017, the Committee expressed concern that IBAC did not provide such information in its annual report.559

Instead, IBAC’s annual report is structured around its strategic goals for 2015–2018, which includes the goal of ‘investigating and exposing corrupt conduct and police misconduct’.560 The Committee understands IBAC’s logic in structuring its annual report around its strategic goals. However, this means that material relating to the investigation and oversight of Victoria Police is presented in a number of places in the annual report across a number of chapters. The Committee found that this fragmented approach makes it difficult for readers to gain an overall understanding of IBAC’s work in one of its key legislated functions.561 The Committee recommended that:

- IBAC include in its annual report a dedicated chapter on the work it undertakes in relation to police, including investigation and oversight work.
- IBAC provide comprehensive and detailed statistical information in its annual report, including analysis of complaints, notifications and allegations about police and how they were handled, across previous financial years. These should be provided publicly on an annual basis.562

IBAC has welcomed these recommendations and will provide a dedicated chapter on police, including the requested statistical information, in its annual report for 2017/18.563 As the present IBAC Commissioner, the Hon Robert Redlich QC, explained:

559 Ibid., p. 66.
561 Ibid., p. 13.
562 Ibid., p. 13.
• In relation to external reporting, IBAC agrees with the recommendations of the IBAC Committee (in its report *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate—2016/17*) to enhance our reporting. IBAC is committed to including in our 2017/18 and future annual reports:
  – a dedicated section on work undertaken in relation to police, which will include information on how we undertake independent oversight through investigations, audits, research, and other prevention work focussed on Victoria Police, and
  – statistical information on police complaints, notifications and disclosures and how they were handled during the financial year.
• IBAC will continue to refine our annual reporting, to ensure transparency in our oversight of Victoria Police.\(^\text{564}\)

In light of the limited data that is publicly available, the Committee sought further statistical information from IBAC and Victoria Police. IBAC was asked to provide data across the previous four financial years, with detailed analysis of complaints, allegations and notifications about police, as well as IBAC’s handling of them—for example, statistics on IBAC investigations, referrals to Victoria Police and dismissals. It also requested data about protected disclosures (‘whistleblowing’) in relation to police.\(^\text{565}\)

**Limitations with the IBAC data**

In reviewing the material provided by IBAC in response to the Committee’s requests, the Committee identified a number of deficiencies and discrepancies in the reporting and analysis of statistics provided. These matters included that the data was inconsistent when the Committee requested it at different times and that not all complaints received by IBAC were included in the overall statistical analysis provided for 2015/2016. These problems have been confirmed by IBAC and explained as follows:

Numbers of cases, complaints, notifications and allegations drawn from IBAC’s CMS [electronic Complaints Management System] are accurate at the date they are generated. Changes to allegation numbers can occur due to additional information being received at a later date resulting in subsequent assessments. For example, cases may be merged following the receipt of additional information: as CMS does not allow for multiple assessment dates to be recorded against an allegation, any previous assessment dates are superseded by subsequent assessments. Therefore there can be small changes (less than one per cent) in allegation numbers over time.\(^\text{566}\)

IBAC attributed the problems, along with other limitations of its reporting, to technical deficiencies with IBAC’s electronic complaints management system (CMS).\(^\text{567}\) These limitations are not new. IBAC inherited the current complaints management system from the Office of Police Integrity (OPI).\(^\text{568}\)


\(^{565}\) For details of the specific information the Committee requested from IBAC, see Appendix 8.

\(^{566}\) Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 11 May 2018, p. 7.

\(^{567}\) Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 12.

\(^{568}\) Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 12.
Indeed, IBAC has acknowledged to the Committee the problems it has inherited with the OPI system and is currently procuring a new CMS to replace the existing system.\textsuperscript{569} This system will enable IBAC to have accurate user-friendly information. Commissioner Redlich has assured the Committee that IBAC is ‘designing specifications for a new CMS aimed to enhance our statistical reporting of complaints, notifications and allegations.’\textsuperscript{570} There is funding to develop and implement a fully integrated CMS within IBAC’s current budget allocation\textsuperscript{571} and IBAC has recently reported that the project is progressing well.\textsuperscript{572}

\textbf{4.3.2 Victoria Police data}

\textbf{Public access to Victoria Police complaints data}

The Committee found that Victoria Police does not publish robust, easily accessible, comprehensive complaint-handling data in its annual report or on its website and had not done so for a number of years. Information that is available to the public is found in an appendix in their annual reports and, until the 2016/2017 annual report, was limited to disciplinary outcomes of complaints. Those complaints may or may not have been reported to IBAC, depending on the allegations involved. This limitation was noted by IBAC in its audit of Victoria Police’s regional complaints handling processes and it recommended that Victoria Police should:

Publicly release aggregated information on a regular basis (such as in the Victoria Police annual report) on the number of complaints received, their classifications, determinations and recommendations to improve transparency and accountability for outcomes.\textsuperscript{573}

Subsequently, in its 2016/2017 annual report, Victoria Police published aggregated statistics of complaints made by the public against police employees and internal complaints made by employees of Victoria Police, allegation determination rates for investigations and recommended outcomes of investigations. This information is not easily accessible. It is found in Appendix T, and the contents page of the annual report does not list appendices. The data is provided in such a way that complaint classifications are collapsed into smaller categories and, because each table reflects different variables, comparisons or cross-referencing between tables is not possible. Hence it is difficult to get an overall picture of the system in operation. The data also included complaints against all Victoria Police employees not just police officers. The data is provided in Appendix 9 of this report.

Given these issues and the limited data that is published in an easily accessible form, the Committee requested that Victoria Police provide a statistical breakdown of the types of complaints about police corruption and misconduct dealt with by Victoria Police for the past three financial years as Local Management Resolution matters (LMRs), Management Intervention Model matters (MIMs) and formal complaints. It also requested data on police complaints investigated by Professional Standards Command (PSC), regions, departments and commands for the same period. The data provided to the Committee will be discussed later in the chapter.

\textsuperscript{569} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 13.

\textsuperscript{570} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 13.

\textsuperscript{571} Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 19 July 2018, p. 2.

\textsuperscript{572} Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 19 July 2018, p. 2.

\textsuperscript{573} IBAC, \textit{Audit of Victoria Police complaints handling systems at regional level}, Melbourne, September 2016, p. 3.
Chapter 4 Complaints data: the need for best practice

Limitations with Victoria Police data and data management systems

As will be discussed in Section 4.4.2, the Committee found that Victoria Police’s complaints data was not readily available, lacked reliability, and was therefore difficult to interpret. In part, this could also be due to longstanding problems with Victoria Police’s IT complaint management system, which is comprised primarily of ROCSID (Register of Complaints, Serious Incidents and Discipline) and Interpose. ROCSID, introduced in 1999, is a stand-alone complaints management system used and managed by PSC employees. It is also available to a limited number of other staff.

According to Victoria Police, ROCSID is used to record:

- Each complaint with a brief narrative
- Numbers of complaint files
- Numbers and types of allegations
- The movement of files
- Determinations
- Disciplinary or performance outcomes for proven matters
- Critical incidents such as police shootings or vehicle pursuits.

ROCSID is also used to generate statistical data for analysis and reporting purposes relating to complaints.

Interpose, Victoria Police’s IT application for the management of investigations, ‘provides a mechanism for investigators, intelligence practitioners and specialist support members (such as those providing forensic services) to collect, store, analyse and disseminate investigation information.’ While some cross-referencing of records between ROCSID and Interpose is possible, they are not integrated. Victoria Police does not believe integration is necessary.

Since 2007, there have been a number of reports and reviews identifying serious problems with ROCSID, and more recently Interpose, and there have been calls for them to be substantially improved or replaced. In his 2013/2014 annual report, the Commissioner for Law Enforcement Data Security (CLEDS) reported that

from an information management and security perspective, the most significant current challenge for Victoria Police involves the replacement of ageing and over-stretched law enforcement data systems. Core systems such as the Law Enforcement Assistance Program (LEAP) and the Interpose intelligence database are out-dated and stretched to capacity. They also lack the range of functionality needed to support a large, integrated and modern law enforcement capability.
In 2007, the then Director of the OPI, Mr George Brouwer, raised concerns about Victoria Police’s IT complaint management system, ROCSID. The Director recommended the urgent implementation of a more efficient, user-friendly and secure information technology system to:

- enable local managers to enter data and assess complaints;
- reduce the time taken to contact complainants and resolve complaints;
- monitor complaint resolution processes;
- monitor complaint trends;
- provide early warning systems for police at risk of serious misconduct or corrupt behaviour;
- follow up recommendations to improve behaviour;
- identify best practices; and
- generally improve the management outcomes associated with the process. 581

In the following year, the OPI reiterated the problems and recommendations identified in its 2007 report. 582

As Mr Michael Strong, Director of the OPI, noted in a 2011 report reviewing the extent to which Victoria Police implemented the recommendation of its previous reports,

[In] both 2007 and 2008, OPI reported that the data collection and information management system used by Victoria Police to track complaints and incidents was inadequate. It captured only very limited data and did not allow the data to be easily interrogated. Access to the system was limited to the Ethical Standards Department. OPI reported that obtaining data from Victoria Police regarding complaints and incidents was difficult and slow. 583

Victoria Police has acknowledged the problems with ROCSID and Interpose identified by the OPI and CLEDS. 584 For example, in relation to ROCSID, in 2008 Victoria Police explored ‘funding options for a new system ... but this did not progress due to competing priorities’. 585 Subsequently, Victoria Police enhanced ROCSID in an effort to address the concerns identified in OPI and CLEDS reports. 586 In June 2016, Victoria Police made improvements to Interpose, which was upgraded to deliver greater system stability and ensure future enhancements can be more readily supported. Following the upgrade, a number of system enhancements also became available to improve the way intelligence is managed ... [which] has enhanced the police response to planned and unplanned incidents. 587

The need for contemporary case management systems

Victoria Police has acknowledged the importance of having contemporary case management systems. As the Chief Commissioner of Victoria Police, Mr Graham Ashton AM, explained to the Committee,

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584 Mr Graham Ashton AM, Chief Commissioner, Victoria Police, correspondence, 15 June 2018, p. 3.
585 Mr Graham Ashton AM, Chief Commissioner, Victoria Police, correspondence, 15 June 2018, p. 3.
586 Mr Graham Ashton AM, Chief Commissioner, Victoria Police, correspondence, 15 June 2018, p. 3.
Chapter 4 Complaints data: the need for best practice

Like any ICT system, these applications were developed at a point in time to meet the business requirements of the day. While ROCSID and Interpose have continued to serve Victoria Police well, a changing operating environment and the rapid evolution of technology have meant that there is an ongoing need to manage and modernise our complaint management systems to meet changing business requirements. Victoria Police is acutely aware of this requirement, and through its ICT modernisation program, BlueConnect, is currently exploring options for the development of a new, contemporary Case Management system.

A new system would incorporate replacement of Interpose and ROCSID, and provide increased functionality and the potential for integration, to enable an enhanced approach to case and investigations management.588

The Committee has been recently informed that the development of the complaints management system is well underway and that Victoria Police is funding a test of the capability of the current system to replace Interpose and ROCSID:

Victoria Police has currently internally funded a $900k Proof of Concept to test the capability of the current Intelligence solution (Visual Investigator) to replace Interpose, as the Investigation Management System. This system would have the requirements to also replace ROCSID.589

In the meantime, the Chief Commissioner has informed the Committee that ROCSID will continue to be the main complaint management database used by Victoria Police. However, it will be ‘refined and simplified’ to meet the needs of the new streamlined complaints system that Victoria Police is developing. As he explained:

[R]e-design of the existing system will provide for better complaint management and a reduction in allegation categories, classifications and determinations, which will better align to current ROCSID capability. Organisational wide adoption of data entry of complaints by employees will also support better integration.590

IBAC has also advised the Committee that it has experienced some issues regarding access to certain Victoria Police databases, such as ROCSID, and that IBAC is resolving these issues with Victoria Police.591

**FINDING 6:** The collection, analysis and publication of statistics on complaints and disclosures about police corruption and other misconduct by IBAC and Victoria Police are inadequate.

### 4.4 The handling of complaints and disclosures: a statistical snapshot

The following analysis utilises the most recent data the Committee has received from IBAC and Victoria Police for 2016/2017. Statistical information relating to 2017/2018 financial year will be provided in IBAC’s annual report when it is tabled in Parliament later this year.

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588 Mr Graham Ashton AM, Chief Commissioner, Victoria Police, correspondence, 15 June 2018, p. 4.
589 Victoria Police, correspondence, 20 July 2018.
590 Mr Graham Ashton AM, Chief Commissioner, Victoria Police, correspondence, 15 June 2018, p. 3.
591 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 29 June 2018.
4.4.1 IBAC data

The Committee requested statistical information and analysis from IBAC in relation to complaints, allegations and allegation outcomes in relation to police. For details of the specific information the Committee requested from IBAC, see Appendix 8. The following section of the report presents selected IBAC’s responses to the Committee’s requests in November 2017.

The following descriptive statistical overview of IBAC’s complaint handling and investigative processes and outcomes does not represent the total number of complaints, in the ordinary sense of that word, that have been made against police. As will be discussed later in this chapter, a range of complaints such as LMRs and MIMs are not classified as complaints by police and are therefore not sent to IBAC for assessment. The Committee has also received evidence from different stakeholders that, for a range of reasons discussed in the next chapter, many people who wish to make a complaint about police do not do so.

IBAC’s handling of complaints about police compared with complaints about other agencies

During 2016/17, IBAC received 2098 complaints/notifications and assessed 4990 allegations in relation to them. While the number of complaints/notifications received was comparable to the previous year, the number of allegations assessed by IBAC increased from 4576 in 2015/16. It should be noted that a single complaint may contain a number of allegations and that IBAC’s CMS identifies and works on the basis of ‘allegations’.

IBAC referred most (1264) complaints and notifications to agencies that it considered were best-suited and able to respond to them. For example, public sector maladministration complaints were referred to the Victorian Ombudsman and most complaints about police were referred to Victoria Police for action as they were considered less serious matters. In this regard, the IBAC Commissioner, Mr Stephen O’Bryan QC, noted that

the current model of [police oversight] is similar to that of other Australian jurisdictions, with IBAC assessing all police complaints, received directly or via mandatory notifications from Victoria Police, and retaining the most serious or systemic matters that we have the capacity to handle for investigation. The remaining matters are referred to Victoria Police to investigate.

IBAC’s annual report for 2016/2017 also identified the subjects of allegations by sector (see Figure 4.3), including allegations against Victoria Police, State Government bodies and local councils. Sixty-three per cent of allegations were made against sworn police officers.
Investigations

In 2016/17, IBAC started 26 investigations and finalised 18. The average duration of an investigation was 367 days. During 2016/17, IBAC had 46 investigations that were active, which was a 35 per cent increase from the previous year. Forty-four per cent of investigations were with respect to Victoria Police (see Figure 4.4).

Figure 4.3 Allegations by sector


IBAC reporting on complaints against police

As explained previously, the Committee requested statistical information and analysis from IBAC in relation to complaints, allegations and allegation outcomes in relation to police. Box 4.2 presents selected IBAC responses in November 2017 to the Committee’s requests, along with comments from the Committee.

600 Ibid., pp. 22–3.
601 IBAC, correspondence, 30 November 2017. Note: The material in Box 4.4 quotes directly from IBAC’s responses to the Committee’s requests.
BOX 4.2: Police: further information from IBAC

Complaints made against police

IBAC records cases, complaints, notifications and allegations on its Case Management System (CMS). A case is a complaint or a notification addressing a particular subject, individual(s) or agency. Complaints are made by individuals directly to IBAC whereas notifications are made by public bodies. An individual complaint or notification may be comprised of multiple allegations.

It is important to note that police do not consider Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) to be complaints. As IBAC explained:

Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) are Victoria Police classifications that are intended to deal with customer service and low level performance issues.

Because LMRs and MIMs deal with low level matters, Victoria Police does not consider them to be complaints. Therefore, such matters fall outside the scope of section 169 of the Victoria Police Act 2013 which requires the Chief Commissioner of Police to provide IBAC with written details of all complaints made to a police officer or protective services officer about the misconduct of a police officer or protective services officer.

Consequently, LMRs or MIMs are not included in the reported number of notifications or allegations received from Victoria Police.

IBAC’s ‘Audit of Victoria Police complaints handling systems at the regional level’ identified some issues with the way Victoria Police handles MIMs and LMRs. IBAC is currently examining a sample of LMR files closed during 2017 which includes a consideration of whether such matters were appropriately classified.

Allegations

… IBAC's CMS records information about the notifying body and the allegation body at the allegation level, not the complaint or notification level. This provides greater clarity as, for example, a single complaint or notification may contain multiple allegations relating to different public bodies.

The table below outlines allegations assessed that relate to Victoria Police for the last four financial years.  

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<tr>
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<tbody>
<tr>
<td>Complaints made by individuals directly to IBAC ²</td>
<td>1803</td>
<td>50%</td>
<td>1635</td>
<td>55%</td>
</tr>
<tr>
<td>Notifications and protected disclosure notifications from Victoria Police ³</td>
<td>833</td>
<td>23%</td>
<td>1083</td>
<td>36%</td>
</tr>
<tr>
<td>Notifications from other sources ⁴</td>
<td>947</td>
<td>26%</td>
<td>261</td>
<td>9%</td>
</tr>
<tr>
<td><strong>Total allegations about Victoria Police</strong></td>
<td><strong>3583</strong></td>
<td><strong>2979</strong></td>
<td><strong>2958</strong></td>
<td><strong>3164</strong></td>
</tr>
</tbody>
</table>

¹ Note that percentage columns may not total 100 per cent because of rounding.
² This includes all complaints made by individuals to IBAC under the IBAC Act 2011 and section 167 of the Victoria Police Act 2013. It includes complaints made directly to IBAC by individual Victoria Police officers.
³ This includes all notifications from Victoria Police made under section 57 of the IBAC Act 2011, section 169 of the Victoria Police Act 2013, section 86M of the Police Regulation Act 1958, sections 21 and 22 of the Protected Disclosure Act 2012.
⁴ This includes notifications from the Victorian Ombudsman under section 16E of the Ombudsman Act 1973 and notifications from the Victorian Auditor General’s Office under section 19A of the Audit Act 1994.
Numbers of cases, complaints, notifications and allegations drawn from IBAC’s CMS are accurate at the date they are generated. Changes to allegation numbers can occur due to additional information being received at a later date resulting in subsequent assessments. For example, allegations subject to preliminary enquiries that run across financial years may have their assessment changed at the conclusion of those enquiries (eg from dismiss to refer). Other cases may be merged following the receipt of additional information: as CMS does not allow for multiple assessment dates to be recorded against an allegation, any previous assessment dates are superseded by subsequent assessments. Consequently, there can be small changes (less than 1 per cent) in allegation numbers over time.

IBAC is currently procuring a new CMS to replace the existing system inherited from the Office of Police Integrity. IBAC is designing specifications for its new CMS aimed to enhance our statistical reporting of complaints, notifications and allegations.

**Allegations made by police about police**

Since changes to the Protected Disclosure Act 2012 which took effect on 1 July 2015, all allegations of misconduct and corrupt conduct made by police about other police are recognised as protected disclosures.

The table below lists the number of allegations assessed as protected disclosures due to the allegations coming from a police officer and relating to another police officer as per section 5 of the Protected Disclosure Act 2012.

<table>
<thead>
<tr>
<th>Source of allegations</th>
<th>2015/2016</th>
<th>2016/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints (ie made directly to IBAC)³</td>
<td>121</td>
<td>172</td>
</tr>
<tr>
<td>Notifications (ie made via Victoria Police)⁶</td>
<td>231</td>
<td>202</td>
</tr>
<tr>
<td>Total</td>
<td>352</td>
<td>374</td>
</tr>
</tbody>
</table>

**Assessments**

IBAC receives complaints directly from individuals and notifications from public bodies. Under the IBAC Act 2011 and the Victoria Police Act 2013, the Chief Commissioner of Victoria Police is required to notify IBAC of complaints about corrupt conduct or police personnel misconduct.⁷

IBAC assesses all complaints, notifications and allegations that are received. This includes all complaints, notifications and allegations about police.

The Committee notes that, as discussed earlier, police do not consider Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) to be complaints.

³ This is a count of all allegations that come via complaints made directly to IBAC by police officers under the IBAC Act 2011 and section 167 of the Victoria Police Act 2013.

⁶ This is a count of all allegations that come via notifications from Victoria Police made under section 57 of the IBAC Act 2011, section 169 of the Victoria Police Act 2013, section 86M of the Police Regulation Act 1958, sections 21 and 22 of the Protected Disclosure Act 2012.

Outcomes of allegations

The table below outlines allegation outcomes for allegations relating to Victoria Police for the last four financial years. Percentages reflect the percentage of total allegations against Victoria Police in that financial year.

Because a single complaint or notification can include multiple allegations relating to different public bodies, IBAC links allegations (rather than complaints or notifications) to public bodies. Furthermore, because a single complaint or notification can include multiple allegations, outcomes such as dismissed, referred and investigated are recorded against allegations, not complaints or notifications.

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<tr>
<td>Investigated(^a)</td>
<td>23 (0.6%)</td>
<td>17 (0.6%)</td>
<td>7 (0.2%)</td>
<td>18 (0.6%)</td>
</tr>
<tr>
<td>Referred</td>
<td>1414 (39.5%)</td>
<td>863 (29%)</td>
<td>1109 (37.5%)</td>
<td>921 (29.1%)</td>
</tr>
<tr>
<td>Dismissed(^a)</td>
<td>1422 (39.7%)</td>
<td>1074 (36.1%)</td>
<td>1044 (35.3%)</td>
<td>1432 (42.3%)</td>
</tr>
<tr>
<td>Total</td>
<td>3583</td>
<td>2979</td>
<td>2958</td>
<td>3164</td>
</tr>
</tbody>
</table>

As per the standard approach adopted in IBAC’s Annual Reports, the above figures are based on the date allegations were assessed. Other outcomes not included in the above table include ‘noted’ and ‘returned’.

‘Noted’ is an outcome used by IBAC when IBAC receives notifications from Victoria Police under section 169 of the *Victoria Police Act 2013*. Unless determined by IBAC to investigate, these matters are managed by Victoria Police. IBAC ‘notes’ them, writes to Victoria Police advising of IBAC’s assessment, and awaits an outcome report at the completion of action taken by police, following which IBAC may review Victoria Police’s investigation.

‘Returned’ is an outcome used when IBAC receives a notification under section 21 or 22 of the *Protected Disclosure Act 2012* and determines the disclosure is not a ‘protected disclosure complaint’. Because the notification does not engage the *IBAC Act*, it does not result in an assessment under section 57 of the *IBAC Act* to refer, dismiss or investigate. These notifications are returned to the notifying agency (including Victoria Police) and captured on the IBAC records as ‘returned’.

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\(^a\) ’Investigated’ does not include investigations conducted under IBAC’s own motion under section 64(1)(c) of the *IBAC Act 2011*.
\(^a\) Dismissed includes matters that are withdrawn or have no further action because they have insufficient information, are too old, have already been investigated or are frivolous or vexatious.

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Note: The Committee notes that during 2016/2017 793 Victorian Police allegations were ‘noted’ or ‘returned’, which represents 25.1% of allegations for that period.

Source: IBAC, correspondence, 30 November 2017.
General comments and recent developments

The data presented highlights a range of issues that require further discussion.

**Figure 4.5** IBAC allegation outcomes relating to Victoria Police 2016/2017

![IBAC allegation outcomes diagram]

Source: Devised from data provided in IBAC correspondence, 30 November 2017.

**IBAC investigates only a small proportion of the allegations received**

It is important to note that, as shown in the table on the preceding page, IBAC only investigated 0.6% of 3164 allegations it received in 2016/2017, and this is consistent with the proportion of allegations it investigated in 2013/2014 and 2014/2015. The proportion of investigations undertaken was lower in 2015/2016, with only .02% being investigated by IBAC. When the number of dismissed allegations are taken into consideration, in 2016/2017 IBAC investigated 1.8% of all allegations that it determined warranted investigation.

**PSC only investigates a small proportion of the complaints it receives**

IBAC refers those allegations that it does not dismiss or investigate back to PSC at Victoria Police to investigate. PSC triages the complaints along with others it has received, investigates what it considers to be the most serious matters and refers the remainder to a region, command or department for investigation.\(^{602}\) The Victoria Police data discussed in the section below shows that approximately 90% of complaints are sent to regions, commands or departments.\(^{603}\) This reflects Victoria Police’s view that complaints, except for the most serious matters, should be handled at a regional or similar level to encourage police managers to understand issues with their officers and take responsibility for dealing with misconduct.\(^{604}\)

However, regional handling of complaints has been shown to be problematic. The IBAC Commissioner explained to the Committee that

> IBAC has identified issues with Victoria Police’s classification system and processes for handling complaints, including those identified in our 2016 Audit of Victoria Police complaints handling systems at regional level. These issues include delays in complaint investigations, the identification and management of conflicts of interest,

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Chapter 4 Complaints data: the need for best practice

an unduly complicated system of final determinations, a failure to systematically consider a subject officer’s complaint history, poor record keeping, and a lack of clarity in communicating outcomes to complainants and subject officers. 605

The problems associated with regional-level police investigating police complaints have been raised by a number of stakeholders, including IBAC and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), and will be discussed further in chapters 5 (complaints), 6 (assessments), 7 (referrals) and 8 (investigations).

Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) not reported to IBAC

In November 2017, when IBAC provided the Committee with statistics for 2016/2017, the Committee noted that Victoria Police did not consider LMRs and MIMs as ‘complaints’ that it was legally required to report to IBAC on the basis that they concerned customer service and low-level performance matters (see the discussion in Section 3.2.5 in Chapter 3). As a result, Victoria Police did not notify LMRs and MIMs to IBAC and therefore they were not included in IBAC’s data on complaints/allegations received. However, since that time IBAC has requested that Victoria Police report all LMRs and MIMs to IBAC for review. As Commissioner Redlich explained to the Committee:

- IBAC has identified issues with the classifications of LMRs and MIMs in audits of how Victoria Police handles complaints. This has included matters classified as LMRs which IBAC believes should have been classified as minor misconduct, according to the Victoria Police classification system. In our 2016 report on how Victoria Police handles complaints at the regional level, we recommended that Victoria Police develop a policy for LMR files including clear parameters for their use, to address this issue. This recommendation has been implemented by Victoria Police.

- IBAC is currently auditing a sample of 50 LMRs closed by Victoria Police in 2017 and is looking at whether the classification was used correctly. A preliminary finding is that, applying Victoria Police’s classification system, IBAC disagreed with the classification of files on 11 occasions. In two of these matters, IBAC considers that the complaint met the definition of misconduct in section 166 of the Victoria Police Act and therefore should have been reported to us under section 169 and investigated by Victoria Police. All matters meet the definition of police personnel conduct (section 5 of the IBAC Act) and would have engaged IBAC’s jurisdiction if they had been received directly from members of the public.

- Following a recent request from IBAC, Victoria Police is now advising IBAC of all incidents which it classifies as LMRs and MIMs. This will provide IBAC with a further opportunity to examine matters categorised by Victoria Police as LMRs and MIMs.

- It is proposed that pursuant to the present arrangement with the Chief Commissioner, IBAC will monitor the LMRs and MIMs that we are receiving for a period. At the conclusion of our monitoring period, we will report to the Committee as to whether the matters have been appropriately classified within the Victoria Police system of classification. Secondly, we will report as to whether any of those matters constituted ‘misconduct’ which should have been reported to IBAC under section 169 of the Victoria Police Act. In addition to those findings

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605 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 2. See also IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 13.
we will make recommendations regarding the appropriateness of the existing classification, and any further action that is needed in relation to classification of matters to more effectively ensure adequate reports to IBAC.

- Further to this, IBAC has received reports from Victoria Police under section 169 of the Victoria Police Act via an automated process from ROCSID (the Register of Complaints, Serious Incidents and Discipline), Victoria Police’s complaints database. IBAC will engage further with Victoria Police for these reports to be in the form outlined in Regulation 61 of the Victoria Police Regulations 2014 to ensure IBAC has all the relevant information.

IBAC has subsequently provided the results of the audit of MIMs and LMRs mentioned above (see Appendix 10 for a full account of the audit). Results relevant to this discussion are provided in Box 4.3.

**BOX 4.3: IBAC Audit of LMRs and MIMs**

IBAC monitored LMRs and MIMs received over a three month period (23 January to 30 April 2018) to determine whether any LMRs or MIMs involved allegations of ‘misconduct’ and therefore should have been notified to IBAC under section 169 of the Victoria Police Act. As highlighted by the Commissioner in his evidence before the Committee, IBAC has identified some concerns with Victoria Police’s classification of complaints and therefore has monitored matters classified as LMRs and MIMs to ensure the appropriate use of this classification.

Over the three month period, 180 LMRs and 81 MIMs were monitored. Of this number, five LMRs and 15 MIMs were considered to have involved allegations of potential misconduct—and therefore were considered to have been inappropriately classified by Victoria Police. This represents a small proportion (7.6 per cent) of the total number of LMRs and MIMs monitored.

Some matters were considered to constitute possible misconduct on the basis that the allegation concerned potential breaches of the Equal Opportunity Act 2010 or the Charter of Human Rights and Responsibilities Act 2006. This reflects Victoria Police’s approach to classification of complaints (i.e. that such matters should be classified as C2-1, being misconduct on or off duty).

... 

IBAC also reviewed 50 LMR files closed by Victoria Police between 1 January 2017 and 31 March 2017. Ten files were randomly selected from each region, and the remaining ten were randomly selected from departments and commands.

One issue examined was the appropriateness of classification. The review found that two of the fifty matters (4 per cent) would have been more appropriately classified as ‘misconduct on duty/off duty’ (Victoria Police’s C2-1 classification) as the matters involved allegations of racial discrimination. It was considered that a further nine matters should have been classified as MIMs because they were considered somewhat more serious than a minor customer service type matter.

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606 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, pp. 3-4.
IBAC also provided examples of matters that it identified as involving allegations of misconduct. These are provided in Appendix 10 along with aspects of the LMR process that IBAC considers needs improvement. For further discussion of IBAC’s proposals for streamlining Victoria Police classification system by consolidating current categories of LMRs and MIMs, see Chapter 5.

‘Noted’ and ‘Returned’ complaints

Two other categories of complaints that IBAC does not investigate, and which are not included in IBAC’s statistical reporting, are its ‘Noted’ and ‘Returned’ Outcomes. As the IBAC Commissioner explained in correspondence to the Committee:

- ‘Noted’ is an outcome used by IBAC when we receive reports from Victoria Police under section 169 of the Victoria Police Act. Where IBAC determines not to investigate a particular report and determines that it would be appropriate for Victoria Police to continue its investigation, IBAC ‘notes’ receipt and awaits an outcome report at the completion of action taken by Victoria Police. IBAC may determine to review Victoria Police’s investigation at any time including following the completion of the investigation.

- ‘Returned’ is an outcome used when IBAC receives a notification under section 21 or 22 of the Protected Disclosure Act and determines the disclosure is not a ‘protected disclosure complaint’. Because the notification does not engage the IBAC Act, it does not result in an assessment under section 58 of the IBAC Act to refer, dismiss or investigate. Such matters are recorded as being ‘returned’ to the notifying agency, including Victoria Police. 607

The Commissioner has assured the Committee that IBAC will report on the number of allegations noted and returned in IBAC’s 2018/19 annual report. 608

While IBAC’s reporting of data about complaints is limited, it does demonstrate clearly that it investigates only a small proportion of the complaints about police that they receive.

The Committee makes a number recommendations at the end of this chapter to improve the collection, analysis and reporting of data about the operation of the complaints system.

4.4.2 Victoria Police data

Complaints

The Committee requested that Victoria Police provide a statistical breakdown of types of corruption and misconduct dealt with by Victoria Police for the past three financial years as LMRs, MIMs and formal complaints. Victoria Police provided the following data from the ROCSID complaints database.

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607 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 5.
608 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 5.
### Table 4.1

Complaints received by Victoria Police 2014/2015 to 2016/2017 according to Victoria Police Professional Standards Command file classifications

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<tbody>
<tr>
<td>C1-0</td>
<td>Work file&lt;br&gt;Allegations that require preliminary enquiries before a full investigation can be conducted</td>
<td>15</td>
<td>40</td>
<td>103</td>
<td>90</td>
</tr>
<tr>
<td>C1-5</td>
<td>Preliminary enquiry file&lt;br&gt;Includes audits of LEAP [Law Enforcement Assistance Program database] access, usage of email or other data, identification of fingerprints of police officers found at crime scenes</td>
<td>242</td>
<td>78</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>C1-6</td>
<td>Internal management (correspondence)&lt;br&gt;Matters received from complainants where further information is required before determining if reclassification is required</td>
<td>25</td>
<td>94</td>
<td>158</td>
<td>33</td>
</tr>
<tr>
<td>C1-7</td>
<td>Receipt of civil process&lt;br&gt;Civil process against a police officer such as intervention orders, family violence orders, bankruptcy orders and contested infringement notices</td>
<td>83</td>
<td>71</td>
<td>114</td>
<td>60</td>
</tr>
<tr>
<td>C1-8</td>
<td>Incident investigation/oversight&lt;br&gt;Files created for oversight of specific incidents. At the regional level, incidents include deaths following police contact, escape from custody, injuries to prisoner [sic], and police collisions involving minor injuries</td>
<td>142</td>
<td>134</td>
<td>199</td>
<td>109</td>
</tr>
<tr>
<td>C2-1</td>
<td>Minor misconduct&lt;br&gt;Includes minor assault at time of arrest, infringement notice received on duty, lower level discrimination under the Equal Opportunity Act, and lower level breaches of the Charter of Human Rights Act</td>
<td>170</td>
<td>361</td>
<td>406</td>
<td>225</td>
</tr>
<tr>
<td>C2-4</td>
<td>Local management resolution (LMRs)&lt;br&gt;No formal policy currently available but LMRs aim to resolve low level incidents within seven days of the matter being forwarded to the relevant work area</td>
<td>575</td>
<td>721</td>
<td>590</td>
<td>573</td>
</tr>
<tr>
<td>C2-5</td>
<td>Management interventions [sic] model (MIMs)&lt;br&gt;Allegations of a minor nature regarding service delivery, performance management or professional conduct</td>
<td>313</td>
<td>261</td>
<td>350</td>
<td>159</td>
</tr>
<tr>
<td>C3-2</td>
<td>Misconduct connected to duty&lt;br&gt;Includes serious assault, conduct punishable by imprisonment, alcohol or drug offences on duty, improper use of LEAP or other databases, higher level discrimination under the Equal Opportunity Act, and higher level breaches of the Charter of Human Rights Act</td>
<td>366</td>
<td>173</td>
<td>145</td>
<td>91</td>
</tr>
<tr>
<td>C3-3</td>
<td>Criminality (not connected to duty)&lt;br&gt;Includes off duty conduct punishable by imprisonment, off duty alcohol or drug offences, criminal associations, and summons to court for any traffic matter</td>
<td>227</td>
<td>197</td>
<td>155</td>
<td>101</td>
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</table>
Chapter 4 Complaints data: the need for best practice

### Table 4.1

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<tbody>
<tr>
<td>C3-4</td>
<td>Corruption</td>
<td>19</td>
<td>22</td>
<td>6</td>
<td>11</td>
</tr>
</tbody>
</table>

*Includes encouraging others to neglect duty or to be improperly influenced in exercising any function, fabricating or falsifying evidence, using excessive force or other improper tactics to procure confession or conviction, improperly interfering with or subverting a prosecution, concealing misconduct by other officers, and engaging in serious criminal conduct.*

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<tbody>
<tr>
<td>Total</td>
<td>2177</td>
<td>2152</td>
<td>2232</td>
<td>1456</td>
</tr>
</tbody>
</table>

**Note:** Numbers reflect total files classified each year. Data extracted from ROCSID on 16/02/2018.

- Data that related to file classifications during the time period covered by this table will result in double-counting and should not be relied upon in forming a view about the number of complaints and their classification within the relevant time period.

- Further, significant shifts in data are principally driven by changes in policy relating to classifications, rather than any underlying change in the number of complaints received or their type.

**Source:** Victoria Police, Submission 52, 1 May 2018, p. 59. Note that the table has been amended. The italicised text in the second column is drawn from an explanation of the complaint type in IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 12.

Table 4.1 indicates that LMRs and MIMs constitute approximately 50% of the complaints received by Victoria Police.

However, the Committee has found it extremely difficult to gain any meaningful understanding of the data provided given Victoria Police's caveats about its reliability (see the table above).

Furthermore, the Committee was aware of the concerns raised by IBAC in its 2016 audit into complaints handling by police at the regional level that:

- Allegations were not always accurately characterised (for example, serious allegations in relation to inappropriate use of force were sometimes categorised as minor) or were not always accurately recorded in Victoria Police's ROCSID complaints database. This was identified in eight per cent of all files (including LMRs).

- Some files did not accurately identify the number of allegations or inappropriately rolled up multiple allegations into a smaller number (11 per cent of files).

- The wrong classification was applied in 11 per cent of all files (including LMRs). In particular, the LMR classification was inappropriately used for matters that were more serious than minor customer service issues.

- There were inaccuracies in the identification of subject officers (eight per cent of files), including subject officers being incorrectly recorded on ROCSID so that the complaint was not recorded on their ROCSID complaint history. There were also instances where an officer was recorded as a subject officer when they had no direct involvement in an incident.

- Concerns were also identified with the overuse of the C1-6 correspondence classification. This classification is intended to be used where a complaint is lacking information. In 10 of the 16 C1-6 files examined (63 per cent) the auditor disagreed with the complaint classification as clear allegations were made. An officer who is the subject of a C1-6 file will not have that matter recorded on their complaint history on ROCSID.\(^{609}\)

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If ROCSID is to be utilised to identify trends and patterns in complaints data and provide a robust foundation ‘on which a complaint investigation is built,’ then complaints must be recorded correctly from the outset.

**Complaint investigations undertaken**

In addition, the Committee requested that Victoria Police provide a statistical breakdown of police complaints investigated by PSC, departments, commands and regions, for the past three financial years (2014/2015 to 2016/2017). Table 4.2 provides the information requested. Whilst data is aggregated in this table for the category ‘Other Commands /Departments’, an additional Table 4.3 details the actual commands and departments included in this category.

Table 4.2 shows that PSC only investigated a small number of complaints in the time under review: 8% (2014/2015), 11.3% (2015/2016), 11.7% (2016/2017) and 10.5% (2017/2018 YTD) to 12-Feb-2018). These findings are consistent with those reported by IBAC and VEOHRC.

**Table 4.2**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PSC</td>
<td>180</td>
<td>244</td>
<td>263</td>
<td>153</td>
</tr>
<tr>
<td>North West Metro Region</td>
<td>486</td>
<td>461</td>
<td>496</td>
<td>324</td>
</tr>
<tr>
<td>Southern Metro Region</td>
<td>354</td>
<td>313</td>
<td>335</td>
<td>215</td>
</tr>
<tr>
<td>Eastern Region</td>
<td>348</td>
<td>401</td>
<td>378</td>
<td>253</td>
</tr>
<tr>
<td>Western Region</td>
<td>334</td>
<td>327</td>
<td>300</td>
<td>183</td>
</tr>
<tr>
<td>Other Commands/Departments</td>
<td>469</td>
<td>392</td>
<td>429</td>
<td>224</td>
</tr>
<tr>
<td>(Breakdown at Table 4.3 below)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>4</td>
<td>13</td>
<td>26</td>
<td>103</td>
</tr>
<tr>
<td>External</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>2177</td>
<td>2152</td>
<td>2232</td>
<td>1456</td>
</tr>
</tbody>
</table>

Source:  Victoria Police, Submission 52, 1 May 2018, p. 6.

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611  YTD is year to date
Table 4.3 Investigation breakdown of category ‘other Commands/Departments’ total from Table 4.2

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Services Department</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Corp Strategy &amp; Operational Improvement</td>
<td>14</td>
<td>2</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Counter Terrorism Command</td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Crime Command</td>
<td>55</td>
<td>42</td>
<td>30</td>
<td>22</td>
</tr>
<tr>
<td>Enterprise Program Management Department</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Family Violence Command</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Forensic Services</td>
<td>4</td>
<td>11</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Human Resource Department</td>
<td>35</td>
<td>21</td>
<td>23</td>
<td>13</td>
</tr>
<tr>
<td>Information, Systems &amp; Security Command</td>
<td>8</td>
<td>4</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Intelligence &amp; Covert Support Command</td>
<td>26</td>
<td>17</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>Legal Services</td>
<td>21</td>
<td>21</td>
<td>25</td>
<td>12</td>
</tr>
<tr>
<td>Media &amp; Corporate Communications</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Operational Infrastructure Department</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>People Development Command</td>
<td>37</td>
<td>35</td>
<td>22</td>
<td>13</td>
</tr>
<tr>
<td>Public Support Services Department</td>
<td>9</td>
<td>13</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Road Policing Command</td>
<td>32</td>
<td>30</td>
<td>40</td>
<td>15</td>
</tr>
<tr>
<td>State Emergencies &amp; Security Command</td>
<td>5</td>
<td>3</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Strategic Investment, Reporting &amp; Audit</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Taskforce Resources Department</td>
<td>2</td>
<td>26</td>
<td>28</td>
<td>26</td>
</tr>
<tr>
<td>Transit &amp; Public Safety Command</td>
<td>207</td>
<td>155</td>
<td>198</td>
<td>101</td>
</tr>
<tr>
<td>Victoria Police Executive</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>469</strong></td>
<td><strong>392</strong></td>
<td><strong>429</strong></td>
<td><strong>224</strong></td>
</tr>
</tbody>
</table>

Source: Victoria Police, Submission 52, 1 May 2018, p. 61.

4.5 Key issues arising for the complaints system

The above discussion highlights some of the limitations of Victoria’s complaints management systems and the data about the handling of complaints about police generated by those systems. Of particular concern is the paucity of published complaints data produced and analysed by IBAC and Victoria Police.

4.5.1 Need for publicly available robust data

If the police complaints system in Victoria is to be transparent and accountable, and retain the trust of the community, then IBAC and Victoria Police need to follow the best practice principles outlined in the United Nations General Assembly–endorsed Fundamental Principles of Official Statistics (2014). Public access to robust data on the Victoria Police complaints system will assist in making the system more transparent and accountable and can be used to inform policy and practice. The Commissioner for
Chapter 4 Complaints data: the need for best practice

Human Rights and the UNODC have emphasised the importance of public access to robust data as part of the best practice principle of public scrutiny. The UK Statistics Authority Code of Practice and PONI’s publication of statistical data provide valuable examples of the application of these best practice principles.

Throughout the Inquiry, a number of stakeholders pointed to the importance of the publication of a robust data collection that would be regularly updated and would provide data on the complaints and allegations across a range of variables including age, gender, ethnicity and Aboriginality of complainants. For example, the Victorian Aboriginal Legal Service (VALS) explained:

> Accurate and transparent data collection on police complaints generally, and on complaints made by Aboriginal and Torres Strait Islander people, is crucial in monitoring the effectiveness of any reforms, and in identifying areas for improvement. Transparency of a police complaints system, including to the general public, is also one of the key principles under international human rights law.

> ... Greater work needs to be done to obtain and publish accurate data on complaints made by Aboriginal and Torres Strait Islander people, so that their relationship with police can be more accurately monitored.

VALS identified in its audit of police complaint files that a small number of police tend to be the subject of the majority of complaints made. Accurate data collection would enable Victoria Police to monitor patterns of complaints against police ‘who, had their complaint history been tracked, could easily have been identified as developing a complaint trend and proactive behaviour management could have been addressed earlier.’

As discussed, PONI provides an excellent example of a police complaints-handling agency providing best practice, comprehensive, publicly available statistics regarding the complaints and allegations they have received.

**RECOMMENDATION 7:** That IBAC and Victoria Police draw on the United Nations General Assembly–endorsed Fundamental Principles of Official Statistics (2014) in order to meet best practice in relation to the collection, analysis, reporting and publication of statistics. This includes statistics relating to the making, handling, assessment, dismissal, investigation and nature of complaints and disclosures about police corruption and other misconduct.

This data should be provided across a range of variables, including age, gender, ethnicity and Aboriginality of complainants, and published in IBAC and Victoria Police annual reports and websites. The Office of the Police Ombudsman for Northern Ireland provides an excellent example of best practice with respect to the comprehensive collection, management, analysis and publication of statistics.


614 See, for example, Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, pp. 25–26; Law Institute of Victoria, Submission 41, 31 August 2017, p. 41; St Kilda Legal Service, Submission 36, 18 August 2017, p. 11; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 6; Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 9.

615 Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 23.


617 Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 17.
4.5.2 Need for modernised data collection and complaint management systems

Both IBAC and Victoria Police have acknowledged that the complaint management systems they are operating with were developed at a time when the business requirements were different and technology was not as developed. If these agencies are to produce accurate, comprehensive statistics on the operation of the complaints-handling system, then it is crucial that they have new and improved data management systems.

RECOMMENDATION 8: That IBAC and Victoria Police fast-track the implementation of new and improved data collection and complaint management systems that are compatible with each other.

4.5.3 Learning from complaints and complainants

Strategies to reduce complaints can encompass both systemic lessons, including streamlining processes such as assessment and investigation, and those directly based on complainants’ experience of the system. The Committee has received substantial evidence that complainants can play a crucial role in providing information about their experiences, which can be used to reduce complaints and improve police conduct.

As the Lander report explained:

> Agencies should look upon complaints as a valuable source of information about performance which can be used to identify poor, inappropriate or unacceptable behaviour. The information can be used for training or education. In an intelligence led environment, all complaints (even those where no action is taken) can assist in identifying trends, enabling proactive intervention and de-escalation of the issues that might invite unacceptable behaviour.

However, complainants must be willing to come forward and they will only do so if they have confidence that the system will treat them seriously and impartially.

As the Lander report noted,

> [C]omplainants must be empowered to make complaints through an accessible and effective complaints system and because they must be satisfied that their complaints are being treated seriously they must be engaged wherever practicable in the resolution process and kept informed at all stages.

One way that complainant’s satisfaction of the system can be gauged is through complainant surveys.

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619 See, for example, Victorian Aboriginal Legal Service, Submission 46, 15 September 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Ms Tamar Hopkins, Submission 4, 18 July 2017. See also Chapter 5 of this report for a discussion of the importance of a complainant-centric approach to complaint handling.

620 Lander report, p. 47.

621 See Chapter 5 of this report for a discussion of the importance of public confidence for complaint systems.

622 Lander report 2015, p. 47.
The ISO states:

There should be regular action taken to determine the levels of satisfaction of complainants with the complaints-handling process. This can take the form of random surveys of complainants and other techniques.\textsuperscript{623}

As discussed in Chapter 2, among the best practice principles for a complaints-handling system are a complainant-centred approach as well as transparency and openness to public scrutiny.\textsuperscript{624} Seeking feedback from complainants on their expectations and experiences of the system is in line with these principles.

Complainant surveys can fulfil a range of functions. They provide a mechanism to assess the complainant’s satisfaction with the process and to identify unacceptable behaviour and practices that can be improved. According to the UNODC, they also provide valuable insight into the perceived integrity of the system and whether ‘complainants and police officers regard the process as fair, thorough and objective’.\textsuperscript{625} The use of complainant surveys is not new. Researchers and police oversight bodies such as the OPI and PONI have used complainant surveys to gauge satisfaction with the system and to identify areas for improvement.\textsuperscript{626}

PONI’s complainant satisfaction survey fulfils the requirements of best practice principles for the provision of statistical data as outlined by both the UN principles for Official Statistics and the United Kingdom Statistics Authority’s, Code of Practice for Statistics.\textsuperscript{627} It allows complainants whose complaints have been closed to express their views on the service they received from PONI. The results of the survey are published annually on PONI’s website.\textsuperscript{628}

Box 4.4 below shows how complainants rated PONI’s performance against its targets for 2017/2018.


\textsuperscript{624} Opinion of the Commissioner for Human Rights concerning police 2009'), pp. 15, paragraph 87 (learning from complaints data, research and analysis), 13–14 (public scrutiny).

\textsuperscript{625} UNODC, \textit{Handbook on police accountability, oversight and integrity}, United Nations, New York, p. 68.


\textsuperscript{628} See \textless https://www.policeombudsman.org/Statistics-and-Research/Complainant-Satisfaction-Survey \textgreater , accessed 4 April 2018.
**BOX 4.4: PONI’s performance against targets**

**Performance against Targets:**

Information from this survey is used by the Office to measure compliance against four key performance indicators which deal with improving delivery against our published standards. The Office aims to maintain or improve performance against its Service Charter and in particular aims to ensure that:

Target 1: 90% of complainants thought they were treated with respect

*In 2017/18, the Office failed to meet this target as 86% of complainants felt they were treated with respect*

Target 2: 90% of complainants thought staff were easy to understand

*In 2017/18, the Office failed to meet this target as 82% of complainants felt staff were easy to understand*

Target 3: 80% of complainants thought staff were knowledgeable

*In 2017/18, the Office failed to meet this target as 74% of complainants felt staff were knowledgeable*

Target 4: 60% of complainants consider that the Office has dealt with their issue in an independent manner

*In 2017/18, the Office failed to meet this target as 54% of complainants felt that their issue was dealt with independently*


However, the UNODC has cautioned that the complaints process cannot be judged on the basis of complainant satisfaction alone.\(^{629}\) A combination of evaluative strategies must also be used to gain an understanding of the quality of service delivery, the effectiveness of the system and its impact on police. The UNODC has suggested that, along with surveys of alleged police offenders, the following measures:

- Audits of complaints files
- Audits of training and recruitment of investigators
- Audits of implementation of the recommendations of the oversight body
- Surveys of public awareness of the oversight body and the complaints process
- Surveys of public confidence
- Analysis of data on police activities (such as arrests, stops, searches and complaints) and observations of police practice.\(^{630}\)

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630 Ibid., p. 69.
**RECOMMENDATION 9:** That IBAC and Victoria Police establish best practice standards and key performance indicators in relation to complainant satisfaction with their systems for receiving, handling, assessing, investigating and reviewing complaints and disclosures about police corruption and other misconduct.

That IBAC and Victoria Police arrange for the conduct of regular independent complainant surveys, the results of which are publicly reported on their websites.

That IBAC and Victoria Police use the results of these surveys to improve how they receive, handle, assess, investigate and review complaints and disclosures about police corruption and other misconduct.

### 4.6 Conclusion

The importance of having official, comprehensive, publicly available statistics to improve systems and inform public policy has been identified within Australia and overseas. As the UK Office for Statistics Regulation explained:

> Official statistics are an essential public asset. They provide a window on society, the economy and on the work and performance of government. They are fundamental to the judgements and decisions made by the public, by government and by an enormous range of other organisations.\(^{631}\)

This is particularly the case for systems that handle complaints about police. The *Lander report* emphasised the importance of having a robust data collection system in place to analyse police complaints. Back in 1991, Monash University researcher Professor Andrew J Goldsmith identified the potential that such a system has:

> Given that policing is likely to remain a relatively visible as well as contentious topic, complaints need to be seen not simply as threats to existing policies and procedures or individual officers, but more importantly as opportunities for re-examination of organisational policies and practices, particularly in terms of their implications for good community relations. The issue then is not whether or not complaints should be discouraged or tolerated, but whether there are adequate mechanisms and resources to ensure that citizens’ complaints are fully stated, and systematically collected and analysed for the administrative lessons they provide for the future organisation and conduct of police work.\(^{632}\)

However, the Committee has found that the collection, analysis and publication of statistics on complaints and disclosures about police corruption and other misconduct by IBAC and Victoria Police are inadequate and has therefore made recommendations for their improvement.

The next chapter evaluates the current system for making complaints and discusses issues that have been raised regarding public confidence in the system, challenges faced by complainants, the kinds of police wrongdoing covered, the quality of public information, Victoria Police’s and IBAC’s communication with complainants and what support they need.

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5 Making complaints and disclosures

5.1 Introduction

As this report has so far shown, there is a range of ways that members of the public and police may make complaints and disclosures about police wrongdoing, including at a police station, by communicating with the Police Conduct Unit of Professional Standards Command (PSC) of Victoria Police or directly to the Independent Broad-based Anti-corruption Commission (IBAC). This chapter examines issues with the making of complaints and disclosures about police identified by stakeholders and recommends improvements based on relevant best practice principles.

As emphasised throughout this report, public faith, trust and confidence in the system for handling, investigating and overseeing complaints is essential. This is vital, not only for the effectiveness of the complaints system itself, but also for ensuring that policing is founded on community consent, confidence and cooperation.633 The Committee heard from a range of stakeholders who believe there has been loss of confidence in the complaints system. In addition, the Committee received evidence that there are challenges in making complaints, that better public information and communication are needed, that there needs to be greater clarity about what wrongdoing can be complained about and that complainants and disclosers should be better supported. These issues are addressed here and revisited where relevant throughout the rest of the report.

5.2 The importance of public confidence for complaints systems

The importance of the maintenance of confidence in any system for the handling of complaints about police has been recognised in the United Nations Office on Drugs and Crime’s (UNODC) Handbook on police accountability, oversight and integrity634 and by a number of inquiries and reviews in the United Kingdom and Australasia. According to the UNODC,

[one] feature of an effective accountability system is a procedure for dealing with complaints against police officers, as filed by the public as well as by fellow police officers. While accountability comprises more than a complaints system alone, an effective system that enjoys the confidence of the public and the police alike is an important indicator of high standards of accountability and is likely to help police in restoring or enhancing public confidence. The procedure must ensure that complaints are dealt with appropriately and proportionally.635

635 Ibid., p. 33.
The *Hayes report* in Northern Ireland similarly noted that

While the complaint of an individual may not seem to be of great significance, it does matter to the complainant. Complainants share their experiences with their friends, and a series of unsatisfied complainants can colour the attitude of whole communities to the police.636

A United Kingdom Home Office report in 2014 agreed. As the Rt Hon Theresa May MP said:

Complaints must be responded to in a way that restores trust, builds confidence, and allows lessons to be learned. The handling of police complaints must be customer focused, simple to understand and transparent throughout. In addition, police forces must be able to deal, fairly and robustly, with police officers and staff who fall short of the standards the public expect and deserve. Both systems must be fair and transparent, both in the eyes of the police and the public they serve. The public have a right to expect that those who uphold the law on their behalf are properly held to account when their actions fall below the standards expected.637

A similar sentiment was earlier expressed in New Zealand’s *Bazley report* (2007),638 emphasising how scandals and the high profile neglect or mishandling of complaints about serious police misconduct undermines the accountability of, and public confidence in, police:

Effective police accountability is a cornerstone of democracy and the rule of law, and how complaints against the police are handled is crucial to public perceptions of that accountability. This means that any perceived failure in the handling of complaints can severely undermine public confidence in New Zealand Police.

The headlines that prompted this inquiry themselves demonstrate the level of public interest and concern that arises when the suggestion is made that police might protect their own in the face of complaints of criminal offending.

The emphasis on public accountability across Government, particularly in the past 20 years, has meant that New Zealanders have a low tolerance for inefficiency, bias, or lack of transparency with respect to the handling of complaints regarding police officers’ behaviour.639

Further, in this regard, the assessment of the Kennedy Royal Commission into policing in West Australia should be noted:

Police officers have available to them powers and discretions that are unique in the community. It is inevitable that, in exercising those powers and discretions, there will be occasions when there is an abuse of the authority or even simply a mistake. It is essential, in order to maintain public confidence in the exercise of the powers available, that there must be an efficient process by which members of the public can complain and be satisfied that their complaint will be fairly resolved.640

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639 Bazley report, p. 33.

640 GA Kennedy, *Royal Commission into whether there has been corrupt or criminal conduct by any West Australian police officer: final report*, Western Australian Government Printer, Perth, 2004 (‘Kennedy report’), vol. ii, p. 191.
The importance of public confidence in the complaints system was also recognised in evidence provided to this Inquiry.\textsuperscript{643} As Victoria Legal Aid explained:

It is a truism that we now live in an era where more and more trust is placed in the hands of police to keep us safe. Not only is public confidence in policing important for the community to feel safe, public confidence is also critical to effective law enforcement given that the public are often a key source of information for the police. They go hand in hand together.\textsuperscript{642}

In particular, Mr Tim Marsh from Victoria Legal Aid argued:

... [P]ublic confidence in the police and their ability to manage complaints, whatever level they occur at, is crucial to people actually having the courage to complain. When you consider the act of complaining as a form of agency or courage on the part of the complainant, any further barriers that might stand between a complainant and the decision to complain about police has the capacity to effectively disenfranchise those people from feeling as though they have an accountable police system.\textsuperscript{645}

In a concrete sense, the complaints system needs to be well-publicised, accessible, readily comprehensible and simple enough to use.\textsuperscript{644} Moreover, it needs to instil a well-founded confidence that complaints will be treated seriously and impartially; that complainants will be involved, kept informed and protected against reprisals; and that complaints will be finalised in a timely fashion. These requirements reflect the Commissioner for Human Rights Opinion’s principles of independence, adequacy, promptness, public scrutiny and victim involvement, which were discussed in Chapter 2.\textsuperscript{645} They are also evident in ISO’s (the International Organization for Standardization) international standard for the management of complaints.\textsuperscript{646} This standard provides that a best practice complaints-handling system will:

\begin{itemize}
  \item provide a complainant with access to an open and responsive complaints-handling process
  \item enhance the ability of the organization to resolve complaints in a consistent, systematic, and responsive manner, to the satisfaction of the complainant and the organization
\end{itemize}

\textsuperscript{641} Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 80; Centre for Multicultural Youth, Submission 18, 3 August 2017, p. 2; Victoria Legal Aid, Submission 19, 3 August 2017, pp. 1–2; Victoria Legal Aid, supplementary evidence, 2 March 2018; Joint Submission: Flemington & Kensington Community Legal Centre (FKCLC), Drum Youth Services (DYS), Australian Lawyers Alliance (ALA), Loddon Campaspe Community Legal Centre (LCCLC), Ethnic Communities Council of Victoria (ECCV), Federation of Community Legal Centres (FCLC), Victorian Aboriginal Legal Service (VALS), Africa Media Australia (AMA), Synod of Victoria and Tasmania, Uniting Church in Australia (UCA), Northern Community Legal Centre (NCLC), Islamic Council of Victoria (ICV), Springvale Monash Legal Service (SMLS), Drummond Street Services (DSS), Eastern Community Legal Centre (ECLC), Goulburn Valley Community Legal Centre (GVCLC), Submission 20, 3 August 2017, p. 2; The Police Association of Victoria, Submission no. 28, 8 August 2017, p. 8; Harm Reduction Victoria, Submission 29, 9 August 2017, p. 8; Victorian Inspectorate, Submission 34, 14 August 2017, p. 8; Aboriginal Family Violence & Legal Service Victoria, Submission 37, 18 August 2017, p. 11; Youthlaw, Submission 39, 26 August 2017, p. 4; Law Institute of Victoria, Submission 41, 31 August 2017, p. 2; Assistant Commissioner Luke Cornelius, Victorian Equal Opportunity and Human Rights Commission Review, Partnerships and Innovation, Victoria Police, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 44–46; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 10–11.

\textsuperscript{642} Victoria Legal Aid, Submission 19, 3 August 2017, p. 1.

\textsuperscript{643} Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 10.

\textsuperscript{644} Deborah Glass, Towards greater public confidence: a personal review of the current police complaints system for England and Wales, March 2014, p. 27.

\textsuperscript{645} Commissioner for Human Rights, Council of Europe, Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police (CommDH (2009) 4), 12 March 2009 (‘Opinion of the Commissioner for Human Rights concerning police 2009’), p. 3.

• enhance the ability of an organization to identify trends and eliminate causes of complaints, and improve the organization’s operations
• help an organization create a customer-focused approach to resolving complaints, and encourage personnel to improve their skills in working with customers ...
• provide a basis for continual review and analysis of the complaints-handling process, the resolution of complaints, and process improvements made.

5.2.1 Victoria Police’s recognition of the importance of public confidence

The principle of policing by consent and the importance of the maintenance of public confidence in policing, including the complaints system, are not external values imposed on Victoria Police but ones it has recognised in range of official statements, policies and procedures. Victoria Police’s Blue paper: a vision for Victoria in 2025 (‘Blue paper’), for example, declares that the ‘principle of policing by consent of the public remains at the heart of a modern Victoria Police’. One of the essential ‘dimensions of the public value of policing’ that it identifies is ‘quality services/customer satisfaction’. The Blue paper goes on to emphasise that the Victorian community expects police to uphold the highest ethical and professional standards. With public authority—including powers that are unique to police (such as the use of force)—comes a requirement to exercise it with integrity.

Specifically, the Blue paper acknowledges that the community must have confidence that Victoria Police not only deals with complaints seriously and appropriately, but is proactive through early intervention, and, where required, termination of employment ...

Despite greater efforts to build deeper and broader partnerships [with the Victorian community], it should be recognised that citizens dissatisfied with Victoria Police’s service or conduct will continue to make complaints, both directly to the organisation and to external accountability bodies. The nature of the process for making a formal complaint to Victoria Police, and the way that the organisation responds to complaints, has a significant effect on its ability to forge the partnerships that are necessary. Public trust can be increased in a number of ways: a complaints process that...

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647 Ibid., p. vi. See also Deborah Glass, Towards greater public confidence: a personal review of the current police complaints system for England and Wales, March 2014, p. 27 (‘An effective police complaints system needs to be simple, accessible, and fundamentally fair. It needs to operate within a culture that is not defensive about complaints, but recognizes them as valuable feedback.’).

648 See, for example, Victoria Police, Blue paper; Victoria Police, Victoria Police Capability Plan 2016–2025: Capability Framework, Melbourne, September 2016, p. 31; Victoria Police, Victoria Police Corporate Plan 2015–18—Year 1, Melbourne, September 2015, pp. 13 (‘Improve confidence in police’); 19 (‘To increase priority communities [sic] confidence in police by ensuring their needs remain a focus in frontline service delivery (including youth)’); Victoria Police, Future directions for victim-centric policing, Melbourne, August 2015; Victoria Police, Victoria Police manual, Melbourne, 5 February 2018 edition (‘Policy rules: professional and ethical standards’, p. 1); Victoria Police, Submission 52, 1 May 2018, pp. 6–7, 32–33, 37, 38. See also Police Registration and Services Board, Towards a shared vision of police professionalism in Victoria, Melbourne, March 2017, pp. 15, 28 (‘Professionalisation can deliver better and more consistent services to the community ... Professionalisation can increase “community confidence” in policing, raise or ensure consistent standards of policing and ensure police are more responsive to community needs.’), 52–53; Victorian Government, Community safety statement 2017, Melbourne, December 2016, pp. 8, 28–29.

649 Victoria Police, Blue paper, Melbourne, May 2014, p. 10.
650 Ibid.
651 Victoria Police, Blue paper, Melbourne, May 2014, p. 41.
system that is more accessible and transparent; alternative options for dispute resolution (such as mediation); better communication with complainants during the investigation of a complaint; and more timely responses.\[^{652}\] [Emphasis added]

It is noteworthy that a number of these value commitments align with several best practice principles already discussed in this report: accessibility, transparency, complainant-involvement and promptness.

Most recently, in its submission to this Inquiry, Victoria Police has again acknowledged the importance of policing by consent and the maintenance of public confidence, as well as their relevance to a legitimate and effective complaints system. With regard to the complaints system, the submission accepts that if

the Victoria Police complaints handling and discipline system [is] to engender complainant and community confidence, it must have at its foundations a focus on complainant needs and external accountability.

... 

The effectiveness of any police oversight model will be enhanced by a complaints handling and discipline system which is responsive and designed to meet the needs of victims and the community.\[^{653}\]

Assistant Commissioner Luke Cornelius also emphasised that

Victoria Police has the clear expectation that accountability for good conduct and maintaining the confidence of the community we serve is the responsibility of every Victoria Police employee. An effective oversight framework must therefore strike a balance between the Chief Commissioner [of Police] having the authority and accountability to secure the good conduct of police officers while at the same time ensuring the Victoria Police response to complaints about police is transparently accountable to the community we serve. This is a key theme and the key means to securing public confidence in the conduct of Victoria Police.

...

[I]n terms of accountability, the key piece for us is that Victoria Police wants there to be an effective and transparent accountability framework. A transparent and independent accountability framework is critical to the maintenance of public confidence in policing, because it is through transparency, accountability and external scrutiny that we are able ultimately to satisfy the community that we are here for them rather than being there for ourselves.\[^{654}\]

FINDING 7: Public confidence in the Victorian system for handling complaints and disclosures about police is essential to its effective operation.

FINDING 8: Victoria Police recognises that public confidence in the system for handling complaints and disclosures about police is essential to its effective operation.

\[^{652}\] Ibid., pp. 45, 56.


5.3 Loss of public confidence in the current Victorian complaints system

The Committee has received evidence from a range of stakeholders during this Inquiry who believe there has been a loss of public confidence in the current system for handling complaints and disclosures about police. Moreover, the maintenance of confidence in the current system has not been helped by a number of scandals and high profile allegations of serious misconduct on the part of some police officers, including a leading officer, in Victoria Police.

The causes of this loss of confidence, they believe, include that:

- the investigation of complaints and disclosures about police misconduct is not sufficiently independent
- IBAC does not investigate enough complaints (including complaints about serious misconduct)
- too many complaints are referred back to police for investigation
- IBAC’s oversight role is not sufficiently robust
- there is insufficient awareness in the community about how to make complaints
- police investigations are sometimes insufficiently thorough and/or affected by conflicts of interest or other forms of partiality
- complainants are not kept properly informed and supported throughout the process and can be exposed to a range of reprisals
- complaints are not processed in a timely fashion.

Further, they believe there has been a loss of confidence in the complaints system because people often do not know how to make a complaint or do not believe it is worth making a complaint. These stakeholders have reported that this is because those potential complainants think their complaints will not be taken seriously and investigated impartially—or, worse still, in some cases, that making a complaint will expose them to reprisals or other forms of victimisation.

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656 Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 80; Centre for Multicultural Youth, Submission 18, 3 August 2017, p. 2; Victoria Legal Aid, Submission 19, 3 August 2017; Victoria Legal Aid, supplementary evidence, 2 March 2018; Joint Submission: FKCLC, DYS, ALA, LCCCLC, ECCV, FCLC, VALS, AMA, UCA, NCLC, ICV, SMLS, DSS, ECLC, GVCLC, Submission 20, 3 August 2017; Harm Reduction Victoria, Submission 29, 9 August 2017; Victorian Inspectorate, Submission 34, 14 August 2017; Aboriginal Family Violence & Legal Service Victoria, Submission 37, 18 August 2017; Youthlaw, Submission 39, 26 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 10–11.

657 Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 80; Centre for Multicultural Youth, Submission 18, 3 August 2017, p. 2; Victoria Legal Aid, Submission 19, 3 August 2017; Victoria Legal Aid, supplementary evidence, 2 March 2018; Joint Submission: FKCLC, DYS, ALA, LCCCLC, ECCV, FCLC, VALS, AMA, UCA, NCLC, ICV, SMLS, DSS, ECLC, GVCLC, Submission 20, 3 August 2017; Harm Reduction Victoria, Submission 29, 9 August 2017; Victorian Inspectorate, Submission 34, 14 August 2017; Aboriginal Family Violence & Legal Service Victoria, Submission 37, 18 August 2017; Youthlaw, Submission 39, 26 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence.
Victoria Legal Aid described the loss of confidence in the complaints system in the following way:

> What we are talking about is not a failure through catastrophe but a failure through rust, a failure through the gradual erosion of public confidence by the people who are the most vulnerable and the most needy of protection. In our view to have this distinction between some matters go to IBAC, some matters go back to VicPol [Victoria Police] create a situation where complainants may feel with some real certainty that their subjective circumstances are not being taken as seriously.

> ...This is really at the heart of what I was saying earlier about the erosion in police confidence through rust rather than catastrophe. This is where people, through their daily interactions with policing, lose confidence that it is a system designed to protect their rights ... 658

Mr Jeremy King, a partner in a law firm that represents complainants about police misconduct, argued that public confidence is undermined when police officers investigate each other since there will always be ‘a clear risk for a conflict of interest’ and that ‘[e]ven a perception of a conflict of interest is sufficient to undermine public confidence in the investigatory process’. 659 Mr King further reported that his law firm [has] seen hundreds of cases of police misconduct ... [involving] people from different backgrounds, ages and regions. We often conduct litigation after people have been through the complaints system, and so have seen this system’s shortcomings firsthand.

The collective experience of our clients’ engagement with the complaints system has been one of uniform dissatisfaction and disempowerment.

> ...An effective investigatory body must be first and foremost, independent. Without independence, public confidence will always be lacking, and citizens will be left questioning whether their police force is subject to real accountability. 660

A joint submission from a number of key community legal centres and community organisations and institutions emphasised that, in their view, oversight by an independent body was not sufficient. Oversight had to be accompanied by the investigation of complaints by an independent body:

> 'Oversight', even by an independent body, cannot compensate for a lack of effective and independent investigation. Evidence needs to be obtained in the critical window in which it is available and must be obtained and held by an independent expert body, not by the institution under scrutiny. Oversight cannot cure deficiencies in investigations and cannot restore community confidence in an investigative process that is overshadowed by a conflict of interest and/or defective investigation. 661

The Law Institute of Victoria largely agreed:

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658 Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 11, 13.
661 Joint Submission: FKLC, DYS, ALA, LCLC, ECCV, FCLC, VALS, AMA, UCA, NCLC, ICV, SMLS, DSS, ECLC, GVCLC, Submission 20, 3 August 2017, p. 2.
Victoria’s inadequate response to complaints of misconduct by police has been a recurring issue ... for decades and is damaging to not only community trust in police but also public confidence.


A police oversight system must be transparent if it is to meet human rights standards. Transparency encourages accountability and fosters public confidence. The current police complaints system is not transparent for complainants or for the public generally.


[It] has been the experience of our members that practitioners are advising complainants not to make complaints to IBAC, partly because they do not have confidence in the system.  


While The Police Association of Victoria expressed confidence in the current complaints system it argued that certain reforms were needed to maintain the confidence of police members:


In our submission, police need faith and confidence in an oversight system as much as the broader community. Considering the broad and sweeping coercive powers vested in the IBAC to scrutinise police conduct (and punish where appropriate) one view is that a police member’s faith and confidence in an oversight system should be exponentially higher than an ordinary member of the public.


We remain entirely unconvinced that the present system is failing, and indeed our research indicates that the IBAC is in its current form and with its current authority is achieving its statutory objectives.


We do, however, believe the Inquiry should consider reviewing areas of the IBAC Act that have provided for significant angst and concern among our membership.


FINDING 9: A range of stakeholders who presented evidence to this Inquiry consider that there is a lack of confidence in the current system for handling complaints and disclosures about police in Victoria.


While the Victorian Inspectorate’s (VI’s) submission to this Inquiry in August 2017 said that the ‘view of the VI is that the current legislative regime for the oversight of police corruption is basically sound’ (albeit that there was the ‘difficult question ... [of] where to draw the line between the lower level and the more serious complaints’), the current Victorian Inspector, Mr Eamonn Moran PSM QC, presented a more sceptical view at a hearing in February 2018:


[D]oes the current system meet community expectations? I understand the figures are around about 99 per cent of matters that merit investigation that relate to police misconduct are referred to the Chief Commissioner, which is a very high number. While the VI itself has not done any surveys of community views, but just based on your own feeling and your own intuition about what community members would feel when they make a complaint that is then referred to the body that they are complaining about, together with the literature review which we have conducted, 


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662 Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 26, 28, 30.
663 The Police Association of Victoria, Submission 28, 8 August 2017, p. 8.
we feel it is reasonable to say that the community is not comfortable with police investigating police... [C]learly there is a view being expressed there [in some of the submissions to the Inquiry] that it is not in line with community expectations. There is always going to be a perception of bias when police are investigating police, and justice must not only be done but seen to be done. It is understandable that community members would feel that there could be a perception of bias in that.

... [It] would stand to reason I think that the community would feel that having an independent investigation of more issues would be something that was desirable to achieve. But the resourcing and skills—there are lots of issues involved.665

Victoria Police itself has acknowledged a number of community concerns in relation to the legitimacy and effectiveness of the complaints system and the need to do more to instil and enhance the community’s confidence in it. Community concerns include those in relation to potential conflicts of interest, partiality and unfairness in police investigations of complaints; the transparency of the complaints system; the quality of communication with, and support for, complainants throughout the process; and the issue of the timely handling and finalisation of complaints.666 As Assistant Commissioner Luke Cornelius explained at a public hearing, with particular attention to the needs of marginalised Victorians:

Victoria Police acknowledges that there is certainly more we can do to help affected persons—people affected by police behaviour—to understand but also have the confidence that their concerns have been adequately considered and addressed. Further, access to the complaint system is problematic for Indigenous, CALD [culturually and linguistically diverse] community members, people living with mental health or a disability, and more needs to be done to work effectively with third-party advocates and entities in order to ensure that people who do not speak English, have access to the internet or a telephone or other means to self-help may through effective advocacy via third parties more effectively engage with the complaints process.

I guess the final piece is we would certainly acknowledge there appear to be concerns in relation to the lack of visibility and clarity in the community around what a complaint or indeed what police misconduct actually is.667

The distinctive challenges faced by a range of sometimes marginalised and vulnerable complainants are discussed later in this chapter.

Victoria Police’s submission to this Inquiry also acknowledges, in broader terms, a range of defects in the current system and the need for reforms if confidence in it is to be strengthened:

Victoria Police... acknowledges... that in light of recommendations made by IBAC pertaining to improvements to police accountability measures and practice, as well as submissions made to this Inquiry, it needs to make improvements to transparency, accountability, quality assurance and the management of conflicts of interest. Victoria Police intends to undertake this work in consultation with key stakeholders, including community advocacy groups.

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... [The] current system is not sufficient and requires significant improvement. ...

The effectiveness of any police oversight model will be enhanced by a complaints handling and discipline system which is responsive and designed to meet the needs of victims and the community. Victoria Police recognises that our existing internal systems are in need of improvement and must be changed to incorporate important elements of good practice that we have identified, and that have been highlighted in submissions to this Inquiry.668

These acknowledgements are significant and encouraging.

5.3.1 Why some potential complainants do not make complaints

One symptom of the loss of confidence in the current complaints system according to a range of stakeholders is potential complainants who have experienced police misconduct not making a complaint against police. It is true, of course, that the nature of policing is likely to give rise to a number of complaints and that not all of them will have merit. As The Police Association of Victoria submitted:

The Association is alive to the requirement to have a degree of oversight of the conduct and activities of police and accept that community confidence in any such oversight is a significant consideration of the Inquiry. We also acknowledge that in certain cases complaints against police are meritorious. That said, there should be an equal degree of acceptance that police work is inherently susceptible to allegations of misconduct and as such any oversight body would be well served by acknowledging that at times complaints may be lodged simply as a way of obfuscating the complainant’s own criminal conduct.669

These inherent challenges and risks of policing have been acknowledged in other quarters as well:

It could ... be argued that complaints against police ‘come with the territory’, in that the exercise of state-sanctioned police powers, especially in restraining and arresting offenders, inevitably entails conflict and alienation.670

Even taking these factors into account, however, the research nevertheless supports the conclusion that police misconduct is under-reported, that most complainants are genuine and not vindictive and that there are significant deterrents against making

668 Victoria Police, Submission 52, 1 May 2018, pp. 12, 38.
669 The Police Association of Victoria, Submission 28, 8 August 2017, pp. 8-9.
670 Tim Prenzler and Louise Porter, ‘Improving police behaviour and police–community relations through innovative responses to complaints’ in Stuart Lister and Michael Rowe (eds), Accountability of policing, Routledge, Milton Park, 2016, p. 50. See also Tim Prenzler, Troy Allard, Steven Curry and Stuart Macintyre, ‘Complaints against police: the complainants’ experience’, The Journal of Criminal Justice Research, vol. 1, no. 1, 2010, p. 3 (‘[Police] work involves stopping offenders doing what they want to do. Offenders may complain as a form of retaliation. Police interventions in situations of conflict or crisis involving heightened emotions may also create confusion amongst innocent third parties.’); Deborah Glass, Towards greater public confidence: a personal review of the current police complaints system for England and Wales, March 2014, p. 27 (‘a small minority of complaints are vexatious or malicious and can take up an inordinate amount of time’).
a complaint—deterrents magnified for marginalised people, those more exposed to frontline policing and, indeed, those suspected or accused of criminal conduct. For example, a number of scholars have explained that

Many citizens who are unhappy about their experiences with police do not complain as a result of fear of reprisal or the belief that complaining will not make a difference. For example, a national study in the USA found that 75 per cent of persons who experienced force by police thought the force was excessive, while only 11 per cent claimed to have lodged a complaint ...

Research highlights the apparent honesty and sincerity of most complainants.

These conclusions have been endorsed by other researchers:

... [S]urveys indicate that most complainants are sincere. One of the most extensive studies of complainant satisfaction was performed as part of the evaluation of the complaints system for England and Wales conducted after the establishment of the Police Complaints Authority in 1985. Maguire and Corbett (1991) found that the large majority of complainants appeared honest and genuinely aggrieved. This was partly gauged by the reluctance of many to complain and that complainants on the whole were not vindictive—most sought an apology or official acknowledgement of their complaint.

Another important aspect of complaints is they represent only the ‘tip of the iceberg’ of public dissatisfaction. Public opinion surveys indicate that as many as 90% of people who have felt they wanted to complain about police did not do so because they felt it would not achieve anything or because they could not be bothered or they were afraid of the repercussions. This ‘dark figure’ includes persons who have committed crimes but who might also have a legitimate complaint about police.

Dr Graham Smith, a scholar who assisted the Council of Europe’s Commissioner for Human Rights in drafting the Opinion on police complaints, has observed that

[it] takes courage and determination for an individual to speak out and complain against a powerful and respected state institution and to carry it through to the end. There are many reasons why a person with a legitimate grievance against the police may not have the self-confidence to complain.

...
It takes a lot of self-confidence to proceed with a complaint in the knowledge that there may be adverse repercussions. In addition to the deterrent effect of criminal proceedings, complainants are also likely to be fearful of unofficial responses—that they will be subjected to harassment, or that police will not come to their assistance if called on for help.

Finally, it takes determination and confidence to find out how to complain, complete a form and cope with the demands that procedures place on the complainant. ... Whereas there is an increasing amount of information available to victims of crime, and they are now automatically referred to victim support by the police, persons with a grievance against the police commonly have to rely on their own efforts to discover how to complain.674

The findings of this research are corroborated by the evidence received by the Committee during this Inquiry.

Decisions by potential complainants not to make, or to persist with, a complaint are often based on their loss of confidence in the police complaints system and their conviction that their complaint will not be investigated impartially.675 These potential complainants also often fear police reprisals—from harassment in their daily lives (over-policing) to malicious prosecution—as well as the fear that they will not be able to rely on police assistance and protection if they need it (under-policing).676 These common reasons why people do not make a complaint against police even when they consider that they have been mistreated by them are corroborated in the research by scholar and lawyer Ms Tamar Hopkins submitted to this Inquiry.677

These concerns are particularly relevant for potential complainants who are marginalised or vulnerable in some way, including members of CALD (culturally and linguistically diverse) communities, Aboriginal and Torres Strait Islander people, women experiencing family violence, people with disability, a range of young people who have everyday contact with police and residents of small towns and similar locations.678 While the Committee received only limited evidence regarding the experience of members of the LGBTI community,679 the challenges they often face in

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675 Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 80; Centre for Multicultural Youth, Submission 18, 3 August 2017, p. 2; Victoria Legal Aid, Submission 19, 3 August 2017; Victoria Legal Aid, supplementary evidence, 2 March 2018; Joint Submission: FKCLC, DYS, ALA, LCCCL, ECCV, FCLC, VALS, AMA, UCA, NCLC, ICV, SMLS, DSS, ECLC, GVCLC, Submission 20, 3 August 2017; Harm Reduction Victoria, Submission 29, 9 August 2017; Victorian Inspectorate, Submission 34, 14 August 2017; Aboriginal Family Violence & Legal Service Victoria, Submission 37, 18 August 2017; Youthlaw, Submission 39, 26 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence.
676 See, for example, Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 3, 5, 7, 15, 16, 17, 23, 25; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 33–34; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 36.
678 See, for example, Ms Tamar Hopkins, Submission 4, 18 July 2017; Joint Submission: FKCLC, DYS, ALA, LCCCL, ECCV, VALS, AMA, UCA, NCLC, ICV, SMLS, DSS, ECLC, GVCLC, Submission 20, 3 August 2017; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017; Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017; International Commission of Jurists (Victoria), Submission 35, 18 August 2017, p. 13; Youthlaw, Submission 39, 26 August 2017; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 13.
679 St Kilda Legal Service, Submission 36, 18 August 2018, p. 3
their contacts with police forces have been well documented.\textsuperscript{680} The Committee notes that Victoria Police has recognised these challenges and is committed to improving its approach to policing in relation to diverse Victorian communities.\textsuperscript{681}

**CALD communities**

The Committee received evidence from a number of organisations that the current complaints system is ‘overly complex ... and extremely difficult to navigate’.\textsuperscript{682} Victoria Legal Aid, for example, observed that it can be difficult for a potential complainant to work out the appropriate body to make a complaint to:

> There are real issues associated with the lack of clarity about the complaints pathway. A simple online search shows two pathways to making a complaint—through Victoria Police or through IBAC. It’s unclear what the benefit or detriment is to either pathway.\textsuperscript{683}

The challenge of this complexity is increased for Victorians from CALD backgrounds and those with low literacy. In her submission, lawyer and researcher Ms Tamar Hopkins noted that

> Language barriers and illiteracy are ... critical barriers to complaint bodies. On-line [complaint] forms do not sufficiently manage this accessibility issue.\textsuperscript{684}

This view was supported in the submission of the International Commission of Jurists (Victoria) (ICJ), who concluded that

> evidence suggests that people who are most vulnerable to police misconduct are from a culturally and/or linguistically diverse (CALD) community. At present, the system in place for lodging a police complaint in Victoria is overly complex and resource-intensive. Navigating through the complaints system as a CALD individual can also be extremely difficult due to the added perception of institutionalised racism.\textsuperscript{685}

The adequacy of public information and communication with respect to the complaints system will be further discussed in Section 5.5.

Even where Victorians from CALD communities are able to understand the complaints system, and receive legal advice and support in relation to making a complaint, the Committee has received evidence that there are a number of factors

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\textsuperscript{683} Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 2.

\textsuperscript{684} Ms Tamar Hopkins, *Submission 4*, 18 July 2017, p. 86.

that often deter them from doing so. As suggested in the ICJ’s submission, these include harassment, racist attitudes, prejudice and racial profiling on the part of some police towards members from CALD communities, including people of African or Afghani descent and/or who are culturally and ethnically diverse migrants or asylum-seekers.686

For example, the Committee received accounts of an African youth being racially abused by police when in custody, a Somali youth who faced unsuccessful charges for hindering police after making a complaint about being assaulted with a torch by police, of an Eritrean taxi driver being unlawfully grabbed around the neck by a police officer, an African youth unlawfully arrested and assaulted by police for not giving his name and address, a Sudanese boy’s house that was unlawfully searched and damaged and African youths who complained about being unlawfully sprayed with capsicum spray who afterwards faced (later withdrawn) charges.687

To Victoria Police’s credit, it has recognised issues with respect to racism and the need for better informed, culturally competent, respectful and human rights–compliant community policing.688 The Committee welcomes its efforts to improve its policing along these lines. Assistant Commissioner Luke Cornelius, who heads Victoria Police’s response to the Victorian Equal Opportunity and Human Rights Commission’s (VEOHRC) review of sexual harassment and other predatory sexual behaviour within the Police, emphasised the importance of Victoria Police itself taking responsibility for changing the way it identifies, addresses and prevents wrongdoing within its ranks:

[The] point I am making is that a lot more thought needs to be given to: How do we approach culture change and how do we do that in a way where police actually identify and recognise the need for change and, from there, commit to it? That is not going to be serviced by having a bunch of carpetbagger lawyers swooping in on our organisation and giving us 101 on … [human rights] or what the United Nations reckons human rights looks like.689

It is encouraging, in this regard, that, in its submission to this Inquiry, Victoria Police announced it will be undertaking closer consultation with a range of relevant stakeholders to improve its engagement and relationships with them and the wider community.690

**Aboriginal and Torres Strait Islander people**

Aboriginal and Torres Strait Islander Victorians under-report alleged police misconduct.691 According to the Victorian Aboriginal Legal Service (VALS),

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687 Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 22; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 11–12.
688 Victoria Police, Submission 52, 1 May 2018, pp. 8, 29, 31, 34, 50, 51, 54. See also Victoria Police, Equality is not the same: Victoria Police response to community consultation and reviews on field contact policy and data collection, Melbourne, 2013; Victoria Police, Equality is not the same: year two report—2015, Melbourne, 2015; Victoria Police, Equality is not the same: year three report—2016, Melbourne, 2016.
690 Victoria Police, Submission 52, 1 May 2018, p. 37.
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the data shows that Aboriginal and Torres Strait Islander people tend to under-report complaints of police misconduct. A likely explanation is that this underreporting occurs because potential complainants are too disenfranchised with the complaints system to report police misconduct and are afraid of facing reprisals from police, due to their high contact and the fact that it may lead to police charges against them.692

This has been due not only to a lack of knowledge and understanding of the workings of the complaints system693 but also doubt about the value of making a complaint.694 These doubts are rooted in historical and more recent experiences of incidents of racist policing and are amplified by fears of over-policing or under-policing.695 Over-policing can involve police harassment or undue scrutiny of the everyday lives of Aboriginal and Torres Strait people as well as the threat of unfounded charges being laid.696 The Committee has received evidence that under-policing has manifested itself in inadequate police responses to reports of family violence or to complaints about police misconduct.697

Moreover, like other potential complainants, Aboriginal and Torres Strait people considering making a complaint are often disillusioned when they learn their complaint will be investigated by police.698 Aboriginal and Torres Strait Islander advice and advocacy organisations expressed their further concern about IBAC referrals back to police at the regional level, and even to investigators at police stations, including in country towns, where the subject police officer works.699 As the Aboriginal Family Violence Prevention & Legal Service (AFVPLS) noted,

[their] direct experience with Aboriginal communities indicates that many people will not complain to Victoria Police because of the perception that it is not independent. This is compounded by the practice of IBAC referring complaints to police at the local level—a system that may serve as a particular disincentive for wronged complainants in regional areas where the local police station only has a small number of serving officer[s].700

Similarly, VALS observed that complaints ‘were overwhelmingly investigated by a police officer from the same station or region where the alleged incident took place’.701

The Committee also heard that the negative experience of many Aboriginal and Torres Strait Islander complainants is amplified for Aboriginal women, who have been described as one of the most disadvantaged groups in Victoria:

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693 Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37; 18 August 2017, p. 18.
695 Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37; 18 August 2017, p. 6, 7–8; 9; Victorian Aboriginal Legal Service, Submission 46; 15 September 2017, pp. 5, 7–9, 13, 15–16, 17, 25.
698 Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37; 18 August 2017, p. 18.
700 Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37; 18 August 2017, p.18.
701 Victorian Aboriginal Legal Service, Submission 46; 15 September 2017, p. 10. See also St Kilda Legal Service, Submission 36; 18 August 2017, p. 2.
Aboriginal women … have been identified as the most legally disadvantaged group in Australia and face additional barriers to reporting violence due to multiple compounding factors such as fear of child removal, poverty, homelessness, over-policing and criminalisation, lack of awareness of legal rights and—in many areas—lack of access to culturally safe services and supports.\textsuperscript{702}

Aboriginal and Torres Strait Islander women have often been reluctant to make complaints in cases of family violence, not only because they fear being wrongly blamed as the aggressor, but also because of racist or sexist abuse and the minimisation of the harm they have experienced.\textsuperscript{703} Further, given the history of the intervention of police and other state agencies in Aboriginal and Torres Strait Islander families, Indigenous women may fear the additional scrutiny that a report of family violence, and/or a complaint about alleged police misconduct, might bring, including the fear these actions could trigger the involvement of child protection agencies:

The fear of child protection involvement means that some Aboriginal women … are reluctant to invite the added scrutiny that may follow—or be perceived to follow—making a complaint about police misconduct. This fear is entirely understandable given family violence is the leading contributor to child protection intervention and child removal in Victoria.\textsuperscript{704}

Additional disincentives for Aboriginal and Torres Strait Islander complainants include incorrect classification by police of serious complaints, including assault, as minor or management matters\textsuperscript{705} and the ‘extremely low substantiation rates’ of their complaints overall.\textsuperscript{706}

**Women experiencing family violence**

The Committee has received evidence that the reluctance of Aboriginal and Torres Strait Islander women experiencing family violence to make a complaint about police, though it has distinctive features, is also shared by other women facing it.\textsuperscript{707} For example, an ongoing research project, drawing in part on the findings and recommendations of the Victorian Royal Commission into Family Violence (2016), has so far identified:

- Victims/survivors being reluctant to or feeling dissuaded from making complaints due to fear of repercussions and knowledge that police will likely self-investigate.
- … [M]any victims of family violence have deep-seated and specific concerns about the implications of complaining about police conduct, and subsequently the majority of women are electing for advocacy, support and testimonial options outside the formal complaints system to remedy issues and achieve accountability.

\textsuperscript{702} Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, p. 8.
\textsuperscript{703} Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, especially pp. 6–7, 16; Prof Jude McCulloch, Director, Monash Family Violence Prevention Centre, School of Social Sciences, Monash University, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 3.
\textsuperscript{705} Victorian Aboriginal Legal Service, supplementary evidence, 16 March 2018, pp. 5–6.
\textsuperscript{706} Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 8, 11, 14. On some of the distinctive features of family violence experienced by Aboriginal and Torres Strait Islander women, see State of Victoria, Royal Commission into Family Violence: Volume II Report and recommendations, Parl Paper No 132 (2014–16), Melbourne, 2016, p. 222 (‘Aboriginal and Torres Strait Islander women report higher levels of all kinds of violence.’).
\textsuperscript{707} Ms Lauren Caufield, Advocacy & Law Reform Officer and Ms Erin Buckley, Family Violence Police Complaints Officer, Flemington & Kensington Community Legal Centre—Police Accountability Project, correspondence, 10 April 2018; St Kilda Legal Service, Submission 36, 18 August 2017, pp. 3–5; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 20–21.
Chapter 5 Making complaints and disclosures

This demonstrates the serious systemic barriers facing complainants, and also precludes Victoria Police from gathering and accurately monitoring the extent of issues via the complaints system.

- Victims/survivors reporting facing punitive responses, or a reduction or change in response to family crisis call-outs and/or IO [intervention order] breaches by police as a result of having made the complaint.
- Victims/survivors not seeking further police response and/or not pursuing additional complaints as a consequence of having the response to and handling of a prior complaint.
- The time-consuming nature of the police complaints system and the low prospects of success mean that steps to redress police misconduct are not taken. This is particularly the case given the pressing and urgent safety concerns for many victims/survivors.\textsuperscript{708}

According to a number of stakeholders, these circumstances are further symptoms of the loss of confidence in the complaints system by women facing family violence in Victoria.

**People with disability**

People with disability can sometimes be marginalised and be more vulnerable to police misconduct and face distinctive challenges in making complaints about police misconduct.\textsuperscript{709} Professor Jude McCulloch, from Monash University, for example, found in one of her co-authored reports—*Women, disability, violence and barriers to accessing justice: key findings and future directions*—that women with disability who complained about the police response to their complaints about male violence ... found that they were sometimes threatened with being charged themselves ... ...

There are multiple reasons why this misidentification occurs, but one of them appears to be that the woman persists in complaining about the violence in the face of police indifference or the woman, as the primary victim, complains about the police response and then is charged as the primary aggressor.\textsuperscript{710}

She argued that women who have a disability, including a cognitive disability, who make complaints about family violence, or the police response to that violence, were sometimes regarded by the police as nuisances whose complaints would cause too much trouble and take too much time,

above and beyond what was considered reasonable to deal with their complaints. But also I think they are a very vulnerable group and the police felt they could get away with not responding ...


\textsuperscript{709} Prof Jude McCulloch, Director, Monash Family Violence Prevention Centre, School of Social Sciences, Monash University, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, p. 2.

\textsuperscript{710} Prof Jude McCulloch, Director, Monash Family Violence Prevention Centre, School of Social Sciences, Monash University, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, p. 3.
I think one of the reasons is because police felt they could get away with it with impunity, and part of that is because the complaints mechanisms are not robust enough, are not easily accessible ... [so] there were no consequences for the police for not responding adequately to those women’s complaints. Often there were consequences for the women in that they were seen as troublemakers and they were threatened with or they were indeed charged themselves.\textsuperscript{711}

Victoria Legal Aid also provided evidence about the particular challenges facing complainants with intellectual disabilities or mental illness who may well have reason to believe that their complaints will not be taken seriously by virtue of their impairments. They may have mistrust of police for reasons that are related to mental illness, for example, and choose not to make complaints for that reason. So, again, our experience is that these are people who are really falling between the stools when it comes to being able to access effective complaints mechanisms.\textsuperscript{712}

This is a particular concern given that the Police Accountability and Human Rights Clinic, in its report on its activities in 2016, stated that ‘48% of [its] complainants reported having a disability’, with 51% reporting a mental illness and 21% a physical disability.\textsuperscript{713}

**Young people**

With regard to marginalised young people, a number of organisations have noted their common reluctance to make complaints about police even when they allege that they have been significantly mistreated by them.\textsuperscript{714} Ms Ariel Couchman from Youthlaw provided a representative account of this reluctance:

> Our experience is that vulnerable and marginalised young people do experience significant mistreatment by police at times—and other authorities—and yet overwhelmingly they do not make a complaint. The abuse they experience is often disturbing, and yet when advised of the complaints process they are extremely reluctant to lodge a complaint. In general they have no confidence their complaint will be taken seriously. They fear consequences of complaining about police officers given they have so much power over their daily lives. In our experience they rarely exaggerate the abuse or seek to complain for vexatious or flippant reasons. Most believe it is just a fact of life that they will be treated this way and there is little they can do about it. Overwhelmingly they are unaware that they can make a complaint, once again fearing criminal charges, retribution by police, and they are not confident their complaint will be taken seriously.\textsuperscript{715}

Dr Graham Smith has observed in this regard that police can use ‘a range of techniques to discredit and disarm complainants’:

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\textsuperscript{711} Prof Jude McCulloch, Director, Monash Family Violence Prevention Centre, School of Social Sciences, Monash University, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, p. 8.

\textsuperscript{712} Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, p. 13.

\textsuperscript{713} Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 9.

\textsuperscript{714} Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, pp. 33–34; Youthlaw, Submission 39, 26 August 2017, p. 2; Centre for Multicultural Youth, Submission 18, 3 August 2017; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, p. 36.

\textsuperscript{715} Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, pp. 33–34.
Chapter 5 Making complaints and disclosures

One of these techniques, arresting the complainant, also presents the police with an opportunity to negotiate with the potential complainant and decide not to bring charges if a complaint is not made.716

The reluctance to make complaints is also common among a number of other potential complainants in Victoria. For example, Harm Reduction Victoria noted that their peer educators, who advise and support a range of clients, including younger clients, who use drugs

refer community members to VicPol’s [Victoria Police’s] Professional Standards Command if they choose to make a complaint and, almost unanimously, these community members express their lack of confidence in the VicPol’s ability to manage such complaints internally and without conflict of interest because of insufficient independence ...

[If] … young people [who feel they have been mistreated by police at music events and festivals] seek to make a complaint, their confidence in Victoria’s integrity system wanes or ceases entirely when referred to VicPol to make such a complaint.717

People living in small towns

The reticence on the part of some people to make complaints about police, especially when they are likely to be investigated by police, is made more acute if they live in a small country town or similar area with a small population. The Committee has received evidence that there is a greater risk that a complainant’s identity will be revealed, increasing the risk of either a partial investigation (if, for example, an investigation is allocated to a police officer who is a friend of the subject officer) or police reprisals (since people are more likely to know each other and interact with each other on a daily basis).718

In its submission to this Inquiry, Loddon Campaspe Community Legal Centre (LCCLC) and Goulburn Valley Community Legal Centre (GVCLC), which are located in country Victoria, stated that:

Particular issues arise for people living in a rural or regional location who seek to make a complaint against a member(s) of a local police station. The casework experience of the LCCLC indicates that the idea of simple participation in police accountability processes is hampered by the reality of small-town life in rural locations. Anonymity is also at risk in small communities—LCCLC has found clients are reluctant to complain because they feel they will be the objects of targeted treatment by local police. Client instructions often are ‘they know where I live, they will harass me if I complain’.719

LCCLC also provided a case study of a vulnerable woman from a small town in Victoria who made a complaint about police to illustrate the issues that can arise for rural and regional complainants (see Box 5.1)

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717 Harm Reduction Victoria, Submission 29, 9 August 2017, pp. 8, 11.
718 Ms Tamar Hopkins, Submission 4, 18 July 2017, pp. 80–81; Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017; Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 5.
719 Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017, p. 1.
BOX 5.1: Case study of a small-town complainant

Case Study 1: Sandra’s Case

Sandra* was arrested and charged for drinking in public by members of her local police station in the small regional town in which she lives. She informed police that she was not drunk and that she suffered from a mental illness and was medicated for this. Their observations of her behaviour, assessed as drunkenness, were actually side-effects of her medication. Despite her explanation, she was still charged. When being transported to the police station, Sandra was roughly treated and sustained bruising. During her interaction with police they made sexist and racist remarks. Sandra instructed that during interview, police referred to Sandra’s father, who had previously made a complaint about local police. She felt targeted. Sandra was not given water, was left in a cold cell in a wet dress and police refused to provide her their names.

Local police made an offer to LCCLC to withdraw the drunk in a public charge, but said the charge would proceed if Sandra intended to make a complaint about police conduct.

LCCLC lodged a formal complaint. IBAC’s involvement began in November 2013. Sandra’s complaint was referred back to the local police station for investigation by the same police officer that her father’s earlier Office of Police Integrity complaint pertained to, despite repeated requests by LCCLC highlighting the conflict. LCCLC raised the following issues in the complaint:

- Evidence not considered
- Complainant not interviewed
- Conflict of interest
- Bruising to claimant
- Racist remark by police
- Sexual remark by police
- Failure to follow basic arrest protocols
- Maltreatment at station
- Length of time complaint took to resolve

IBAC resolved that most elements of her complaint were found either to be ‘unable to be determined’ or ‘not substantiated’ due to lack of material evidence and closed the complaint in late October 2015. The complainant had provided material evidence, including photos of the injuries she sustained, and disappointingly, she was never contacted in the course of the investigation by police or by IBAC.

*not her real name

Source: Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017, pp. 2–3.

The concerns of the LCCLC in relation to rural and regional complainants were also raised by Victoria Legal Aid, which told the Committee:

If a person fears there will be consequences if they make a complaint, they are unlikely to pursue a formal process. This is particularly the case for people in regional communities with small populations and small police stations.720

Summary: why some potential complainants do not make a complaint

In summary, the Committee heard that people avoid making complaints against police for a number of reasons:

720 Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 5.
They do not know how to make a complaint and/or find the system too complex and burdensome.

They think their complaint will not be taken seriously.

They do not believe their complaint will be investigated thoroughly and impartially (especially if investigated by police).

They think they will be treated unfairly due to their race, or on similar illegitimate grounds.

They do not think the complaint will make any difference, either to their own situation or to the standard of policing generally.

They fear police reprisals, including malicious prosecution or future harassment (‘over-policing’) by police.

They fear they might not receive adequate police assistance in the future when it matters (‘under-policing’, for example in relation to family violence).

That, overall, they think that making a complaint is more trouble than it is worth.\textsuperscript{721}

## 5.4 Public information

### 5.4.1 Importance of high quality public information

The importance of high quality public information explaining the workings of Victoria’s integrity and anti-corruption system, and how to make a complaint or disclosure within it, has been an issue emphasised by the Committee in a number of its previous reports, on the whistleblowing regime as well as on the performance of IBAC and the VI.\textsuperscript{722} It has also been recognised by past inquiries, in best practice principles and research, as well as in evidence to this Inquiry.\textsuperscript{723}

\textsuperscript{721} Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 80; Centre for Multicultural Youth, Submission 18, 3 August 2017, p. 2; Victoria Legal Aid, Submission 19, 3 August 2017; Victoria Legal Aid, supplementary evidence, 2 March 2018; Joint Submission: FKCLC, DYS, ALA, LCCLC, ECCV, FCCL, VALS, AMA, ICA, NCLC, ICV, SMLS, DSS, ECLC, GVCLC, Submission 20, 3 August 2017; Harm Reduction Victoria, Submission 29, 9 August 2017; Victorian Inspectorate, Submission 34, 14 August 2017; Aboriginal Family Violence & Legal Service Victoria, Submission 37, 18 August 2017; Youthlaw, Submission 39, 26 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence.


This section examines issues with the public information about the complaints system currently provided by Victoria Police and IBAC and how it can be improved. It should be noted that not every issue relevant to information is addressed in this section. For example, the kinds of information police should provide complainants during an investigation of a complaint, and what information IBAC should provide complainants when they have assessed, referred or investigated a complaint—including freedom of information issues—will be addressed in subsequent chapters.

Public information needs to be readily accessible, suitable for its intended audience, consistent across the sector, accurate, in plain language and presented in a variety of print and digital formats. High quality information is important in terms of the best practice principles of transparency and complainant-involvement, both of which increase the accountability of police and oversight agencies. Good quality information also enables a potential complainant to be fully informed about what conduct can be complained about (and to whom), what processes are involved, what time lines apply and what the available outcomes are. This means that complainants can make an informed decision about whether to pursue a formal complaint, seek any necessary professional legal advice and support, have more realistic expectations about the process and, overall, better look after their own interests and welfare. Better quality information also saves police and oversight agencies time and resources, since better informed complainants, and potential complainants, are less likely to have to seek clarification from those agencies or express their frustrations to them over an opaque, poorly understood and circuitous process. Further, they are likely to be in a better position to understand any communications from the police or oversight agency throughout the process.

Overall, producing and making available good quality information is part of police and oversight agencies taking an approach which involves the complainant, has an emphasis on customer service and is receptive to learning from complaints as part of a commitment to improved performance. It is notable, in this regard, that one of Victoria Police's performance benchmarks is 'quality services/customer satisfaction'.

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725 On the benefits of good quality information and complaint-handling, see NSW Ombudsman, Managing unreasonable complainant conduct: a manual for frontline staff, supervisors and senior managers, 2nd edn, Sydney, May 2012; Commonwealth Ombudsman, Better practice guide to complaint handling, Canberra, April 2009, pp. 13–14; Ombudsman Western Australia, Guidelines: effective handling of complaints made to your organisation—an overview, Perth, January 2017.


727 Victoria Police, Blue paper, pp. 10, 56.
In terms of best practice principles, the Opinion of the Council of Europe’s Commissioner for Human Rights states that a ‘police complaints system should be understandable, open and accessible.\textsuperscript{728} For a complaints system to be sufficiently visible and accessible, the Commissioner emphasises the need for adequate ‘promotion of public awareness’ of it.\textsuperscript{729}

In its international standard on customer satisfaction and complaints-handling, the International Organization for Standardization (ISO) has given, in the following ‘Guiding principles’, perhaps the most useful account of what good quality public information requires:

4.2 Visibility
Information about how and where to complain should be well publicized to customers, personnel, and other interested parties.

4.3 Accessibility
A complaints-handling process should be easily accessible to all complainants. Information should be made available on the details of making and resolving complaints. The complaints-handling process and supporting information should be easy to understand and use. The information should be in clear language. Information and assistance in making a complaint should be made available ... in whatever languages or formats that the products [or services] were offered or provided in, including alternative formats, such as large print, Braille, or audiotape, so that no complainants are disadvantaged.

... 7.1 Communication
Information concerning the complaints-handling process, such as brochures, pamphlets or electronic-based information, should be made readily available to customers, complainants, and other interested parties. Such information should be provided in clear language and, so far as is reasonable, in formats accessible to all, so that no complainants are disadvantaged. The following are examples of such information:

—where complaints can be made;
—how complaints can be made;
—information to be provided by the complainant ...
—the process for handling complaints;
—time periods associated with various stages in the process;
—the complainant’s options for remedy, including external means ...
—how the complainant can obtain feedback on the status of the complaint.\textsuperscript{730}

\textsuperscript{728} Opinion of the Commissioner for Human Rights concerning police 2009, p. 3.
\textsuperscript{729} Ibid., p. 5.
During this Inquiry, the Committee received substantial evidence highlighting the importance of good public information about the complaints system. This included evidence from Victoria Legal Aid, oversight agencies and a range of generalist and specialist community legal centres.731

5.4.2 Addressing problems with public information

Victoria Police

The Committee received considerable evidence that the information about the complaints system that is publicly available from Victoria Police is inadequate.732

Victoria Police provides a range of public information in English, and a variety of community languages, about making a complaint or disclosure about police to police themselves (including to a local police station, PSC, or Taskforce Salus), to IBAC, and to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). The material is available through the Compliments and complaints page of Victoria Police’s website.733

Victoria Police’s Compliments and complaints web page

The content on the Compliments and complaints page briefly covers issues under the following headings:

- Compliments and Complaints against police
- Making a Compliment
- Disputing an infringement notice
- Making a Complaint
- Easy English—Making a complaint
- Assistance with Communication
- Helpful information to include in your complaint
- Support and Assistance
- Taskforce Salus
- Alternate organisations to whom you can make a complaint
- Compliment and Complaint Form
- Feedback Option.734

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731 Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 12; Victoria Legal Aid, supplementary evidence, 2 March 2018, pp. 2, 6; St Kilda Legal Service, Submission 36, 18 August 2017, p. 11; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 20; Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 10; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 5–6, 21, 32.

732 Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 12; Victoria Legal Aid, supplementary evidence, 2 March 2018, pp. 2, 6; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5–6, 21, 32; St Kilda Legal Service, Submission 36, 18 August 2017, p. 11; Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 10.


While the page provides useful material about complaints and disclosures, and the language and tone are generally appropriate for a public audience, it is evident from the list of headings quoted above that the content needs to be more coherently organised, the terminology needs to be made consistent and the information architecture and design needs to be improved.

For example, it is confusing for information about compliments and complaints to be on the same page. While it is sensible to provide members of the public with a channel to compliment police personnel on their good work, this should be on a separate web page with a separate navigation tab taking users to it. A member of the public who is considering making a complaint about police should not have to sift through irrelevant material—only material about complaints should be included on a complaints page.

Further, the material provided on complaints should be more coherently organised by relevant themes that take a potential complainant through the logical steps of making a complaint and how it is handled by police (or another body). The content could, for instance, be organised in the following way:

- I’m thinking of making a complaint—where can I get help and support?
- Who can make a complaint or disclosure about police? (includes what a ‘complaint’ and ‘disclosure’ are)
- What things can I complain about? (describes the relevant conduct under the law in plain language)
- Who can I complain to? (covers Victoria Police, IBAC, VEOHRC, etc.)
- How do I make a complaint? (includes material on people needing special assistance and support)
- What happens after my complaint is received?
- How will my complaint be handled and how long will it take?
- What do formal investigations involve?
- What is Local Management Resolution?
- How will I be kept informed?
- What are the available outcomes for my complaint?
- What if I am unhappy with the outcome?

In addition to these plain-language issues of design, navigation and information architecture (and the thematic organisation of the content), another issue with the Compliments and complaints page is that it only mentions the option of making a complaint directly to IBAC under the heading ‘Alternate organisations to whom you can make your complaint’:

*Independent Broad-based Anti-corruption Commission (IBAC)*

Complaints made about Victoria Police are subject to external oversight, review and/or audit by the IBAC.

If you are not happy with the outcome or the manner in which your complaint was handled [by police], you can contact IBAC who may take further action or refer the matter back to police for consideration of [sic] further investigation.

Alternatively, you may prefer to complain directly to IBAC, who can be contacted: [IBAC contact details follow.] ...
Chapter 5
Making complaints and disclosures

The nature of this text and its placement is confusing and liable to lead members of the public to think that the usual way to make a complaint to IBAC is to first make a complaint to police, see how it is handled by police and only then contact IBAC, after, for example, the completion of a police investigation, for a possible review. While taking such a course is an option for a complainant, information about making a complaint directly to IBAC should be included much higher up the page, and more prominently, under the logical heading ‘Making a Complaint’. This problem is repeated in Victoria Police’s fact sheet Making a complaint about police, which is downloadable from the Compliments and complaints page:

Taking a complaint further

If you are not happy with how your complaint was handled, there are organisations that can review or investigate your complaint further.

The investigation that these organisations might conduct about your complaint is separate from any review or governance process that takes place inside Victoria Police … [Contact details for IBAC and VEOHRC follow, although no information is provided about the VEOHRC.]

Another issue with the complaints web page—in terms of Victoria Police communicating that it welcomes complaints as part of its accountability, customer service and commitment to improved performance—is that one of the most prominent features on it is a warning just above the online form for making a compliment or complaint that making a false complaint about police may be a criminal offence:

****WARNING****
Making a false complaint or creating a false belief may be an offence under the Crimes Act 1958 or the Independent Broad-based Anti-corruption Act 2011.

While this warning should be included, it should not be stated so crudely, but, rather, as a contextualised part of the section on making a complaint, with a fuller explanation in plain language—it is unclear, for instance, what ‘creating a false belief’ would mean to a layperson or even to a lawyer who has not examined the legislation closely.

There are also problems with the present online ‘Compliment and Complaint’ form. First, there should be separate forms on separate web pages (‘Making a compliment’, ‘Making a complaint’) for compliments and complaints—it is confusing to combine them together. Second, the form has a field you can check if you want to ‘submit your details anonymously’:

Would you like to submit your details anonymously?*

- Yes
- No

However, the fields on the form in relation to a complainant’s first and last names are both asterisked. If you scroll down to the end of the form, the following note is given:

Please note compulsory (*) fields must be completed before the form can be submitted.

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This is likely to cause confusion and anxiety to a potential complainant who wants to make a complaint against police anonymously, since in fact they must first fill in their names in order to submit the form. If it is the case that Victoria Police requires the complainant’s name in order to receive and handle the complaint, and to communicate with the complainant, but their identity is appropriately protected, this should be clearly explained. Third, the ‘Feedback Option’ heading placed directly above the online form is, confusing. Instead, on the proposed separate web pages the online forms should simply be named ‘Online compliment form’ and ‘Online complaint form’.

In contrast to good examples of high quality digital information about complaints systems (such as the Victorian Ombudsman; the Office for the Police Ombudsman of Northern Ireland, PONI; and the South Australian Office for Public Integrity websites737), the Victoria Police Compliments and complaints page falls well short of best practice. Interestingly, it also falls well short of the quality of Victoria Police’s corporate publications, and, indeed, of the content provided in its submission to this Inquiry.

Two other resources are downloadable (but only with difficulty since the navigation is circuitous) from the complaints page: Guidelines for making, handling and investigating protected disclosures (2018) and the ‘Complaint process map’.738

When you click on the link for the ‘Complaint process map’ you are taken to another page entitled ‘Complaints Process Map’. On that page you have to click another link to open ‘the map’, which is actually a flow diagram named ‘Process for complaints against police’. Unfortunately, this complex navigation process and confusing terminology reflects unsatisfactory technical writing. Further, this flow diagram, which focuses on Victoria Police’s receipt, handling and finalisation of complaints, needs to be better designed and also contextualised. There is presently no text that introduces and explains the processes depicted in the diagram.

Guidelines on protected disclosures

With respect to Victoria Police’s guidelines on protected disclosures, it is a welcome development that they were reviewed, improved and updated in April 2018, and now appear intended for a public audience. For a long while only a 2014 edition of the guidelines was available, which sought, confusingly, to cover in the same document information relevant only to police officer disclosers (whistleblowers) and information relevant to only members of the public as disclosers.739 This meant that members of the public would have to try to work out what material applied to them as disclosers, distinguishing it from information that only applied to police whistleblowers. Further, being issued on 1 July 2014, and not updated since, those guidelines were legally inaccurate; they did not, for example, accommodate a range of significant amendments to the relevant legislation, especially those made in the middle of 2016.

While the April 2018 edition of the guidelines is an improvement, it still needs to be made clear they are intended for members of the public who want to make a disclosure about police. In addition, while the April 2018 guidelines advise police

officers and PSOs to ‘read further specific instructions available internally’ if they want to make a complaint under the Victoria Police Act 2013 (Vic), it would be better to provide them with their own tailored guidelines, publicly available and downloadable from Victoria Police’s complaints web page.

**Victoria Police manual**

Finally, there is the issue of the *Victoria police manual*. The manual contains a wide range of policies, guidelines, rules and procedures relevant to the complaints system, including material on complaints management and investigations, discipline, local management resolution and management intervention, performance management, protected disclosures, management of conflict of interest and victim-centric policing (see Chapter 3). All this information could better inform a complainant, or potential complainant, were it readily accessible. Unfortunately it is not.

While the manual is a public document, it cannot be accessed from Victoria Police’s website; it is only available on a disc that must be specifically ordered and purchased. Moreover, it is difficult even to find information about how to order and purchase the manual on the website. To do so, a user must access the dropdown menu under the ‘About Victoria Police’ tab on the side bar and click on the ‘Policies, Procedures and Legislation’ tab. The ‘Policies and Procedures’ page contains information on how to get a copy of the Victoria Police Manual.

To obtain a copy of the manual on disc, a user must download a form from the website, fill it in and post it back to the Victoria Police Centre with a cheque made out to Victoria Police. The manual costs $A55 for a one-off purchase, $A100 for a half-year subscription or $A200 for an annual subscription. The manual, and the disc, are updated quarterly and mailed out to ‘subscribers’. People with a ‘disability/medical condition’ who require the manual in an accessible format can email the Corporate Policy Manager by clicking on a link. Alternatively, the manual can be accessed free from the Serial Section of the State Library of Victoria.

The manual itself is not user-friendly. It is not an integrated, coherent, searchable publication but rather a collection on a disc of more than 90 discrete folders, within which are a range of files (usually PDFs).

Clearly, the *Victoria police manual* is not as readily accessible for members of the public as it should be, nor is it a user-friendly publication. It should be available in a range of formats, including html, from the complaints page of the Victoria Police website. Victoria Police should also ensure, by consulting with IBAC, that its content on the complaints system, especially any legal content, is accurate and consistent with information provided by IBAC.

**FINDING 10:** The information Victoria Police provides about the system for the making, receipt and handling of complaints and disclosures about police needs improvement.

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742  Ibid.
IBAC

As with Victoria Police, the Committee received evidence that the information about the complaints system provided by IBAC could be improved. As Mr Tim Marsh, Chief Counsel for Victoria Legal Aid, observed:

To pose this problem from a client-centred perspective, if you simply do online searches for ‘I want to make a complaint about police in Victoria’, you will see very readily that there are multiple pathways to making that complaint. There is one web page that is clearly hosted by Victoria Police and one by IBAC. It is entirely unclear on the basis of those two entry points into the system what the benefits or detriments might be to a complainant about initially lodging a complaint with one body or another.

Nevertheless, the information publicly available from IBAC about the complaints system is generally of a good standard in terms of comprehensibility, language, tone and accessibility. However, it does not provide enough information about how the system for handling complaints and disclosures about police works. Nor does it give this material sufficient prominence on its website—for example, by having a prominent tab (known as a ‘fat nav’) for ‘Making complaints about police’. This was noted by law firm Robinson Gill in its submission to this Inquiry:

It is apparent from the website that IBAC prioritises corruption claims. The navigation tabs on its website for example, are ‘Reporting corruption’, ‘Investigating corruption’, ‘Preventing corruption’, ‘Publications’ and ‘More’.

The information provided by IBAC includes a range of pages on its website as well as downloadable fact sheets. In contrast to Victoria’s whistleblowing regime, however, IBAC does not have a clear, detailed, dedicated publication on how to make a complaint or disclosure—if you are a member of the public or Victoria Police—about police and how it will be handled by IBAC (receipt, assessment, investigation, review, and so on). The Committee has previously recommended improvements to the information provided by IBAC with respect to the complaints system, including making better use of short online videos to explain it, something employed usefully, for example, by PONI.
In accordance with the best practice principles of transparency, public scrutiny and accountability, IBAC should also produce and publish information on its website about:

- how, in general terms, it conducts preliminary inquiries in order to decide any further action it might take in relation to a complaint
- the legislated and other criteria it uses, and the processes it follows, in general terms, in assessing whether to dismiss, refer or investigate a complaint
- the criteria it uses and processes it follows, in general terms, in deciding whether to review a Victoria Police investigation
- what is involved in IBAC reviews of Victoria Police investigations.

This will mean there is transparent information for complainants and members of the public about how, in general terms, IBAC carries out its principal inquiry, assessment, investigative and review functions in relation to alleged police corruption and other misconduct.

VI

As explained in Chapter 3, the VI is not directly involved in investigating complaints and disclosures about police. Rather, the VI's role in this regard is principally to investigate complaints about the conduct of IBAC and its staff—which can include its investigations of complaints about police—as well as to exercise oversight with respect to IBAC, including its role in relation to protected disclosures (whistleblowing).

Nevertheless, the public should be provided with good quality information about the VI's role, including how the whistleblowing regime operates, the VI's role in relation to it and what kinds of oversight the VI may exercise over IBAC. The clearer and more consistent that information across the sector is the less likely it is that potential complainants will become confused and frustrated—including when they have unrealistic or mistaken expectations of the role of one of the oversight agencies and/or choose the wrong pathway for their complaint or disclosure.

The publicly available information provided by the VI, including on its website, has previously been criticised by the Committee. However, the Committee welcomes recent improvements to the VI's website and the publications available on it. These include a new plain-language fact sheet entitled *Making a complaint to the Victorian Inspectorate*, a thorough guide on the whistleblowing regime and better


750 See Section 3.10 in Chapter 3 of this report.


information architecture, design and content about the VI on its website. Relevant web pages now include ‘Making a complaint’ and ‘Complaints that can and cannot be investigated’. The Committee notes, however, that the VI could still make better use of a range of digital forms of communication, including short online videos.

VEOHRC

While the VEOHRC provides good general information on its website about how to make a complaint about a range of wrongdoing, including sexual discrimination, sexual harassment, racial and religious vilification and victimisation, it provides neither specific, detailed information about how to make a complaint about police wrongdoing within the VEOHRC’s jurisdiction nor information on how the Commission handles these complaints.

In order to improve the information that Victoria Police, IBAC and the VEOHRC make publicly available to potential complainants so that they are properly informed about the complaints system and how their complaint will be handled, the Committee makes the following recommendations.

**RECOMMENDATION 10:** That IBAC and Victoria Police review the [*Victoria police manual*](https://www.vic.gov.au/vicinspectorate.html) for accuracy, comprehensibility and consistency with information that IBAC provides with respect to the complaints system and that Victoria Police publish the manual in full on its website in a range of accessible formats.

**RECOMMENDATION 11:** That IBAC and Victoria Police collaborate to produce separate, tailored plain-language publications in a range of formats for members of the public and police that explain the operation of the system for making and handling complaints and disclosures about police, and make them available on their websites and in every police station. A useful model for these publications is IBAC’s [*Guidelines for making and handling protected disclosures*, Melbourne, October 2016.](https://www.vic.gov.au/vicinspectorate/complaints/making-complaint.html)

**RECOMMENDATION 12:** That Victoria Police, IBAC and the Victorian Equal Opportunity and Human Rights Commission review the content, usability and consistency of their websites and improve the information publicly available about the nature and operation of the Victorian system for complaints and disclosures about police.

That, in particular, these organisations make use of short online videos to explain the key aspects of the complaints system from receipt of a complaint or disclosure to communication of the outcome to a complainant or discloser.

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RECOMMENDATION 13: That IBAC produce and publish on its website a plain-language document explaining:

• how, in general terms, it conducts preliminary inquiries in order to decide whether to dismiss, refer or investigate a complaint

• what legislated and other criteria IBAC uses, and what processes it follows, in general terms, in determining whether to dismiss, refer or investigate a complaint

• what criteria it uses and what processes it follows, in general terms, in deciding whether to review a Victoria Police investigation

• what is involved in IBAC reviews of a Victoria Police investigation, including the possible outcomes of such reviews.

5.5 A complainant-centred approach: complainant charters, communication and support

One of the key best practice principles is a complainant-centred approach to handling complaints, one which involves and informs the complainant effectively throughout the process.\(^7\) This section discusses the need for IBAC and Victoria Police to set out its commitment to a range of values and standards relevant to best practice complaint handling and examines how communication with, and support for, complainants can be improved. The relevance of the best practice principle of complainant-involvement to the assessment, referral and investigation of complaints is taken up in subsequent chapters.\(^8\)

5.5.1 The need for complainant charters: IBAC and Victoria Police

Both best practice principles and research demonstrate the importance of complaint-handling bodies identifying, committing to and transparently setting out in a public document the values and standards they will adhere to in handling complaints. This commitment by both the police and oversight agencies is related to the need for an orientation towards complainant involvement and satisfaction, one based on longstanding ideas of customer service. In considering the reform of police in Northern Ireland, the *Hayes report* observed that

While a change in the structure of the complaints body is important to its success a change in *ethos* is equally important. ... At present the whole complaints system has tended to focus ... insufficiently on customer service and satisfaction ... The fundamental change in the process I am recommending provides an opportunity to move to a more customer related service ... It would be important, therefore, for the new body to establish shortly after its formation a charter or ethos which should be publicly available.\(^9\)


\(^8\) Respectively, chapters 6, 7 and 8 of this report.

The importance of complaint-handling bodies making explicit commitments to ‘effective and efficient complaints handling’ is also recognised in ISO’s international standard.\(^760\) It is also consistent with the best practice principles of transparency and openness to public scrutiny recognised by the Council of Europe’s Commissioner for Human Rights.\(^761\)

The ‘satisfaction’ being referred to here is the satisfaction of the complainant with the professional handling of their complaint in a fair and efficient manner—it does not mean that the complainant will be satisfied with the outcome. It must be recognised that a small minority of vexatious complainants will never be satisfied, however well their complaint has been handled.\(^762\)

The Committee believes that IBAC and Victoria Police should each develop complainant charters setting out the values and standards they will conform to in handling complaints and disclosures about police. These are likely to include the values of impartiality, courtesy and respect, professional communication, transparency, professionalism and timeliness. One useful model comes from the Commonwealth Ombudsman’s Better practice guide to complaint handling:

- **Culture.** Agencies must value complaints as a means of strengthening their administration and improving their relations with the public;
- **Principles.** An effective complaint handling system must be modelled on the principles of fairness, accessibility, responsiveness, efficiency and integration;
- **People.** Complaint handling staff must be skilled and professional;
- **Process.** The seven stages of complaint handling—acknowledgment, assessment, planning, investigation, response, review, and consideration of systemic issues—should be clearly outlined;
- **Analysis.** Information about complaints should be examined as part of a continuous process of organisational review and improvement.\(^763\)

How these kinds of values are identified and defined in the charters will be a matter for IBAC and Victoria Police, taking account of best practice principles and relevant legislated functions, requirements and restrictions. It is encouraging that some of this customer service ethos has recently been recognised by Victoria Police in its submission to this Inquiry:

Victoria Police plans to develop the following:

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\(^{762}\) See, for example, Deborah Glass, Towards greater public confidence: a personal review of the current police complaints system for England and Wales, March 2014, pp. 17, 27 (‘An effective police complaints system ... should recognize that a small minority of complaints are vexatious or malicious and can take up an inordinate amount of time ...’); Hayes report, pp. 67–70; Home Office, Improving police integrity: reforming the police complaints and disciplinary systems, London, December 2014, p. 12 (‘The review found that ... [t]hose working in the system feel they spend too long dealing with persistent and vexatious complaints, limiting the amount of time they can devote to other, more legitimate complaints.’).

Police Professional Code of Conduct—Victoria Police will develop a professional code of conduct through close consultation with police officers and PSOs [Protective Services Officers], along with the PRSB [Police Registration and Services Board], VEOHRC and community stakeholders. This code will provide a public commitment to professional conduct and service delivery by Victoria Police.

...  

Good practice systems for complaint receipt and management—Victoria Police will consult with other complaint-handling bodies, including VEOHRC and the Victorian Ombudsman, to obtain guidance on implementing better practice for receiving and responding to complaints.764

RECOMMENDATION 14: That IBAC and Victoria Police each develop a concise plain-language charter for complainants, accessible on their websites, setting out the values and standards they will conform to in handling complaints and disclosures about police.

5.5.2 Communication with complainants

How well police and IBAC communicate directly with complainants is an essential dimension of the effective handling of complaints and disclosures about police and of transparent and robust police oversight more generally.765 The importance of high quality communication was emphasised in a diverse range of evidence received by the Committee.766

Much attention was focused on whether Victoria Police and IBAC provided complainants with adequate information, explanations and reasons when assessing, referring or finalising complaints. Specific information and communication issues relating to the assessment, referral and investigation of complaints are discussed in detail in subsequent chapters.767 This section simply sketches some of the broader concerns over communication with complainants and how they might be addressed by a complainant-centred approach.

766 See, for example, Ms Anna Lyons, Acting Principal Solicitor, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, 26 February 2018, pp. 58, 59; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 13, 14; Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 6; Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 86; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 9, 18, 20, 21; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 17; Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017, p. 2; Fitzroy Legal Service, Submission 45, 31 August 2017, pp. 8, 10; Victorian Inspectorate, Submission 34, 14 August 2017, pp. 11–12; Youthlaw, Submission 39, 26 August 2017, p. 12; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 34; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 41; Victoria Police, Submission 52, 1 May 2018, pp. 22, 38.
767 See Chapter 6 on assessments, Chapter 7 on referrals and Chapter 8 on investigations.
Importance of good communication

Best practice principles and research recognise good communication with complainants as an essential dimension of transparent, responsive and accountable systems for the handling of complaints and disclosures about police wrongdoing. As seen in Chapter 2, good quality communication with complainants has been recognised as important in a number of past inquiries into police misconduct in Australia and abroad. Good communication is part of an approach that involves complainants and has been endorsed by the UNODC, the ISO international standard for complaints-handling and the Council of Europe’s Commissioner for Human Rights. It has also been recognised by Victoria Police as part of its commitment to victim-centric policing, since complainants are recognised by police as being owed similar consideration to that received by victims of crime under the Victims’ Charter Act 2006 (Vic):

A person making a complaint about police conduct is regarded by Victoria Police as a victim pursuant to the Victims’ Charter Act 2006 (Vic), ...

It is a requirement of the Victim’s Charter Act that complainants and members of the public who are directly involved in an incident are:

- Given clear, timely and consistent information about their rights and entitlements
- Referred to victim or legal support services
- Treated with courtesy, respect and dignity
- Informed of the progress of the investigation, unless the disclosure may jeopardise the investigation or the person requests not to be informed
- Informed of any key stages in the investigation ...
- Informed in writing of the results and the action taken or proposed to be taken at the completion of the investigation.


769 Kennedy report, vol. II, pp. 225–227; Bruce Lander, Review of legislative schemes: the oversight and management of complaints about police and the receipt and assessment of complaints and reports about public administration, Independent Commissioner Against Corruption, Adelaide, 2015 (‘Lander report’), pp. 6, 41; Section 2.2.5 in Chapter 2 of this report.


Research has shown that complainants are much more likely to be satisfied with the complaints-handling progress if police and/or an oversight agency keeps them regularly informed, as far as practicable, and in a respectful manner. Logically, the inverse is also true: one of the major causes of complainant dissatisfaction is not having a complaint promptly acknowledged, not being kept informed throughout the process in a comprehensible fashion and not having any decisions or outcomes adequately explained. As an in-depth comparative survey research into complainant experiences and complainant satisfaction has shown, communication is particularly crucial to complainants’ satisfaction with the process, both the extent of communication and the manner with which they are dealt. Complainants were often dissatisfied that they received little response to their complaint, few or no updates throughout the often lengthy time taken to investigate the complaint, and often no communication as to the outcome. Complainants were therefore largely left in the dark as to whether their complaint was being taken seriously or ignored.

In this regard, it is not only regular and clear communication that is important but also communication that is respectful and expressed in an appropriate tone, taking account of the common anxieties, and sometimes vulnerabilities, of complainants. High quality communication therefore requires skill, good judgement and sensitivity. Such communication is likely to reduce the risk of escalation that can further frustrate not only the complainant but also the complaint-handling agency, costing both time and resources and risking further harm to public confidence in the complaints system. As Dr Maurice Hayes noted in his review of Northern Ireland policing before the creation of the Office of the Police Ombudsman for Northern Ireland (PONI), there is a human dimension to the complaints system:

Some of the complainants I met felt bruised by a system which they felt treated them badly, had not given them satisfaction and had treated their complaints in a mechanistic way.

... One of the aspects of the current system that complainants involved in formal investigations find unsatisfactory and off-putting was the way that they were treated during the investigation. They did not feel they were involved in the process, let alone kept informed of developments. ... Complainants should know what is happening and why there are delays.

The Committee has heard from a number of complainants, both during this Inquiry and in the course of the Committee’s regular oversight work, who have similarly ‘felt bruised’ by their interactions with Victoria’s complaints system.


These latter issues are taken up in chapters 6, 7 and 8 of this report.


Hayes report, pp. 40, 65.
In a similar vein, the UNODC has recognised the vulnerabilities of complainants and the need for adequate communication with them by police and oversight agencies:

For most complainants, it is not easy to file a complaint against the police, and they may have to overcome various barriers (practical, psychological or emotional). If they never hear about the outcome of the complaint, this can result in demoralization, frustration and a loss of confidence in the police. It is therefore important to establish procedures for informing complainants about the progress of an investigation. In some countries, a special person is appointed for the purpose. While rules for confidentiality criteria usually require that not all information be disclosed to the complainant, some information on the progress of the investigation or on whether a decision has been made can help restore confidence.\footnote{776}{UNODC, Handbook on police accountability, oversight and integrity, United Nations, New York, 2011, p. 36.}

These concerns naturally overlap with issues of the need for support for complainants, which are examined further in Section 5.5.3.

**Better communication with complainants**

The Committee has received substantial evidence that current communication by IBAC and Victoria Police has a number of deficiencies and needs improvement.\footnote{777}{Ms Anna Lyons, Acting Principal Solicitor, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 58, 59; Mr Wayne Muir, CEO, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 59; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 13, 14; Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 6; Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 86; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 9, 18, 20, 21; Fitzroy Legal Service, Submission 43, 31 August 2017, pp. 8, 10; Flemington & Kensington Community Legal Centre, Submission 42, 31 August 2017, p. 17; Australian Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, pp. 11–12; Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017, p. 18; Victorian Inspectorate, Submission 34, 14 August 2017, pp. 11–12; Youthlaw, Submission 39, 26 August 2017, p. 12; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 34; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 41; Assistant Commissioner Luke Cornelius, Victorian Equal Opportunity and Human Rights Commission Review, Partnerships and Innovation, Victoria Police, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 55.}

One of the problems identified by stakeholders is that there is insufficient communication to the complainant at the outset about the entitlements they have to be kept informed throughout the process and what they can expect from Victoria Police and IBAC. Further, a number of stakeholders said that complainants are neither adequately involved in the process, nor kept regularly informed in an appropriate and complainant-centred fashion.

Fitzroy Legal Service said that their clients ‘report a lack of responsiveness, communication and information’ throughout the complaint process.\footnote{778}{Fitzroy Legal Service, Submission 43, 31 August 2017, p. 8.} Similarly, Flemington & Kensington Community Legal Centre stated that ‘IBAC does not involve complainants sufficiently in the complaints process nor safeguard their interests. It is decidedly not victim-centred.’\footnote{779}{Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 17.}

Victoria Legal Aid expressed its concern that there is not really a transparent and communicative process that keeps ... the complainants themselves updated about the progress of the investigation, but there is certainly nothing that communicates those issues more broadly to the
community ... [which] is a very powerful way of building confidence in policing and a very powerful way of communicating what realistic expectations are for how police conduct themselves and how private citizens might conduct themselves in their interactions with police. Those are two areas that we say are really not met by the current system.780

Regular communication is not enough by itself—it must also be communication that is comprehensible to the client and expressed in an appropriate tone. Ms Anna Lyons, from the Victorian Aboriginal Legal Service, emphasised that [it] is essential that there is full communication, not just pro forma templates but using language that our clients can understand, so language that is familiar to them and digestible and meaningful.781

This issue has also been recognised by the VI in relation to IBAC’s use of form letters:

All of the complaints to the VI about the IBAC’s handling of police complaints have arisen from decisions by the IBAC to either dismiss the complaint or refer it to PSC. The IBAC communicates those decisions to the complainants by template letters which state the decision. It is the view of the VI that IBAC’s current process of communicating with complainants is an obstacle to effective communications about its referral practice and its police complaint practice generally, and that community satisfaction with the IBAC’s decisions would be improved if full reasons were given to complainants.782

The problem is not limited to communications from IBAC but also applies to Victoria Police. As Ms Ariel Couchman from Youthlaw said,

Letters to complainants are minimalist with little explanation of the outcome arrived at. I have had conversations with the police command, and they have indicated that they are in agreement with that assessment and they are changing their letters. They agree that they are not helpful and do not provide enough information to complainants.783

Indeed, Victoria Police has recognised the problem of ‘poor communication’ and set out in its submission to this Inquiry a commitment to better communication as an element of good victim-centred practice for handling complaints. This commitment requires Victoria Police to engage with, support and inform complainants throughout the complaints process.784 In particular, it requires that complainants be told ‘how their complaint will be managed and investigated’, be informed about any delays and have any complaint outcomes explained, including how and why Victoria Police reached a particular outcome.785

The need for Victoria Police to improve its communications with complainants was also recognised by Assistant Commissioner Luke Cornelius at a public hearing for this Inquiry:

780 Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 14.
781 Ms Anna Lyons, Acting Principal Solicitor, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 59.
783 Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, Transcript of evidence, 26 February 2018, p. 34. See also Victoria Police, Submission 52, 1 May 2018, p. 12.
I think the first point I would make is that we certainly recognise—and the submissions that have been made before this Inquiry have certainly brought this home to us—that there is a very clear need for us to be a lot more transparent and a lot more fulsome in how we explain our outcomes and our decisions to affected people or people who have made a complaint to us. I have to say we have an over-reliance on form letters, which are very anodyne in their content. We really have to move beyond that and engage at a human level with the individual who has been harmed or has been concerned by our behaviour. We owe it to them. It is a very basic principle of customer service—if not going to a much deeper issue around accountability.

While this report later examines what should be communicated to a complainant at the assessment and investigation stages, the important point to recognise here is that both Victoria Police and IBAC need to improve their communication with complainants based on the principle of complainant-involvement. As explained in the South Australian Lander report:

> Where there has been a complaint, the complainant must be involved. One of the most common causes of dissatisfaction amongst complainants is that they do not feel that their complaint is treated seriously and that they are not kept informed as to the action taken as a result of their complaint. Accordingly, a fundamental requirement in the management resolution process is that the complainant is fully informed of the steps taken to deal with his or her complaint ... Complainants should not be allowed to have expectations that cannot be realised.

With respect to IBAC, the Committee considers that it should publish a clear explanation of what legal obligations it has to inform and advise complainants and disclosers and also how these obligations are implemented and affected by any principles, policies and practices it employs in handling complaints and disclosures. This will enhance transparency and public scrutiny, improve complainant understanding and increase the likelihood of more realistic complainant expectations about the complaint-handling process.

**RECOMMENDATION 15:** That IBAC produce and publish on its website a plain-language policy document explaining any legislated obligations (for example, under the IBAC Act 2011 (Vic) and the Protected Disclosure Act 2012 (Vic)) that IBAC has to inform and advise complainants and disclosers—from the receipt of a complaint or disclosure (including a notification), to its handling and completion (including dismissal, referral, investigation, review and communication of outcomes). The document should also explain any relevant IBAC principles, policies and practices, whether or not these are mandated by legislation or regulations.

There are specific recommendations with respect to Victoria Police informing complainants in Chapter 8 (investigations).

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787 This includes Freedom of Information (FOI) issues and the giving of reasons for decisions and determinations about complaints.

788 Lander report, p. 41.
5.5.3 Making complaints: the need for support

It is clear from the evidence received in this Inquiry that Victorians face many challenges in making a complaint or disclosure about police, including complexity, inadequate information and communication and delays. It is not surprising, then, that complainants can find the experience of making a complaint bewildering and stressful. It is therefore important that complainants be given appropriate assistance to make complaints, be referred to independent professional advice and help and be supported throughout the process by complaint-handling bodies. In particular, it is essential that the complaints system is clearly explained to complainants and they are walked through all the steps involved.

Vulnerable and marginalised Victorians will often need extra support to ensure that their particular backgrounds and needs are taken into account. This will also be the case with complainants who allege they have suffered serious physical or psychological injury due to police misconduct (such as members of the public injured through excessive police force or police whistleblowers suffering reprisals). As the Aboriginal Family Violence Prevention & Legal Service Victoria stated:

[Effective police oversight requires more than just a complaint system. Complainants, especially victims/survivors of family violence and other particularly vulnerable groups, need support to assist them through that system.]

In developing strategies to support complainants, Victoria Police and IBAC should build on their current work.

In its official policies Victoria Police already recognises complainants as ‘victims’, triggering police obligations under its victim-centric approach to policing. This approach involves, for example, sophisticated systems for referring victims to appropriate external professional help. Many of these services would also be beneficial to complainants. With respect to its own personnel, Victoria Police is presently improving its occupational health and safety policies, systems and services to support its staff, including whistleblowers (‘internal reporters’) and victims of workplace harm such as sexual assault, sexual harassment, sexual discrimination.

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789 Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 46, 31 August 2017, p. 8; Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, pp. 5, 10, 11, 14, 18; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 20, 22; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 12, 13; Assistant Commissioner Luke Cornelius, Victorian Equal Opportunity and Human Rights Commission Review, Partnerships and Innovation, Victoria Police, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 52; Fitzroy Legal Service, Submission 43, 31 August 2017, pp. 6, 10; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 18; Remedy Australia, Submission 40, 31 August 2017, p. 5; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 36, 38; Harm Reduction Victoria, Submission 29, 9 August 2017, p. 11; Centre for Multicultural Youth, Submission 18, 3 October 2017, p. 2; Victoria Police, Submission 52, 1 May 2018, pp. 2, 32.

790 On the importance of taking proper account of the needs of vulnerable and minority groups, see UNODC, Handbook on police accountability, oversight and integrity, United Nations, New York, p. 15. See also Commissioner for Human Rights Opinion, p. 14 (‘[The] complainant … may have been traumatised by their experience … Victim support and counselling should be available to help traumatised complainants cope with their ordeal throughout the determination of their complaint.’); Graham Smith, ‘Why don’t more people complain against the police?’, European Journal of Criminology, vol. 5, no. 3, 2009, pp. 255 (noting that post-traumatic stress disorder, PTSD, is ‘common among victims’ of police abuse), 260 (‘[The] unavailability of support will immediately strike a person with a grievance and influence whether or not he/she makes a complaint and sees it through to the end.’)

791 Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, p. 10.

792 Victoria Police, Submission 52, 1 May 2018, pp. 12, 32.

and bullying. Much of this work has been intensified in order to implement recommendations from the VEOHRC’s review of Victoria Police’s workplace and culture.

For its part, IBAC could usefully adapt the guidelines it has developed for the welfare management of whistleblowers (‘protected disclosers’), especially since the systems for complaints and disclosures overlap and interact with each other. This would form part of IBAC embracing and enhancing its role as not only an anti-corruption commission that initiates its own investigations but also a complaints-handling body that regularly engages with complainants, some of whom have already had a frustrating experience in making an initial complaint to Victoria Police. It would be beneficial for both complainants and IBAC itself if the welfare of complainants were managed in a more systematic fashion.

While the beginnings of a framework is in place for police and IBAC to establish coherent approaches to supporting complainants, significant work needs to be undertaken: developing explicit policies, recruiting and training staff with the skills to support complainants and establishing in-house leadership and management to ensure that this support (including referral to external support agencies) is effective. For this reason, the Committee recommends that Victoria Police and IBAC each create dedicated complainant welfare manager roles. The Committee also recognises that the diverse needs of marginalised Victorians need to be taken into account by police and IBAC in supporting complainants as they navigate the complaint-handling process.

**RECOMMENDATION 16:** That in handling complaints and disclosures about police corruption and other misconduct, IBAC and Victoria Police ensure that they take proper account of the particular needs and backgrounds of diverse, and sometimes marginalised and vulnerable, Victorians. This includes taking proper account of the needs and backgrounds of Aboriginal and Torres Strait Islander people, CALD (culturally and linguistically diverse) communities, women (especially those experiencing family violence), people who have a disability, young people, drug users, the LGBTQI community, people experiencing social or economic disadvantage and any other vulnerable complainant. In addition, given the challenges that vulnerable complainants commonly face, IBAC and Victoria Police should not only explain the complaints system to them but also ensure they are supported throughout the complaints process.

**RECOMMENDATION 17:** That Victoria Police and IBAC each create a role for a complainant welfare manager who is authorised, subject to any necessary restrictions, to assist a complainant to make a complaint or disclosure and to provide adequate support throughout the complaint-handling process. This would include, for example, ensuring that the complainant is provided with culturally appropriate information and support.

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795 See VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase One Report, Melbourne, 2017; VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase 2 Audit, Melbourne, 2017.


797 On the need for IBAC to embrace its complaint-handling role, see Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 5.
5.6 The threshold—what conduct can be complained about

The complaints system is extremely complex and confusing.\(^{798}\) This has been recognised by Victoria Police and IBAC, among other stakeholders.\(^{799}\) One aspect of this complexity and confusion is the issue of what kinds of police wrongdoing may be complained about and against whom, with definitions of 'conduct' and 'misconduct' applying to various police personnel in different ways, in different circumstances and in accordance with distinct, but overlapping, Acts of Parliament.\(^{800}\)

This situation makes it harder for a potential complainant to determine whether they should make a complaint at all, and, if so, to whom and under what legislation. These confusing patchwork intricacies also make it harder for Victoria Police to set standards, hold its personnel accountable and comply with the law. And it also makes it more difficult for IBAC and the VI to carry out their oversight and review functions.

The following discussion addresses two main dimensions of this complexity: the nature, status and oversight of Local Management Resolution matters (LMRs) and Management Intervention matters (MIMs) and the definition of police misconduct (including the lack of a definition of serious police misconduct). The issue of what, if any, police corruption and other misconduct IBAC should be \textit{required} to investigate is examined in Chapters 7 (referrals) and 8 (investigations). Here, however, we are principally concerned with the definitions of misconduct in the relevant legislation.

5.6.1 Local Management Resolution and Management Intervention Model matters

Management Intervention, and then, additionally, Local Management Resolution, were introduced as forms of alternative dispute resolution. They were introduced as ways of addressing complaints from members of the public about customer service matters (like rudeness, for example) and low-level performance issues and misconduct.\(^{801}\) Before 2004, Victoria Police was required to formally investigate all complaints,\(^{802}\) including these matters, which was thought to be an inefficient and disproportionate approach.\(^{803}\)

\(^{798}\) See Sections 3.1.1 and the 3.11 in Chapter 3 of this report.


\(^{800}\) See the discussion in Chapter 3 of this report.

\(^{801}\) Section 3.2.5 in Chapter 3 of this report; IBAC, \textit{Audit of Victoria Police complaints handling systems at regional level}, Melbourne, September 2016, especially pp. 11–14; Victoria Police, \textit{Submission 52}, 1 May 2018, pp. 18–19.

\(^{802}\) IBAC, \textit{Audit of Victoria Police complaints handling systems at regional level}, Melbourne, September 2016, p. 11.

Previous inquiries into police corruption, as well as research, have recognised the value of these kinds of local resolution schemes.\(^\text{804}\) Evidence to this Inquiry has also supported the view that some matters may quite reasonably be dealt with by Victoria Police in this fashion, providing benefits to police, complainants and IBAC alike.\(^\text{805}\) While the Hayes report supported the value of ‘informal resolution’ of low-level issues, it also sounded a note of caution:

The informal resolution procedure, therefore, has a great deal to recommend it. It is also a useful example of the principle of subsidiarity of function—of dealing with matters at the lowest level possible consistent with fairness and effectiveness. The question then is could or should it be extended. All my discussions point in the direction of more use of informal resolution with a wider range but with clear safeguards to protect against the allegation that this might be used by police as a convenient means to sweep complaints under the carpet.\(^\text{806}\)

Similarly, in Victoria, while LMR and MIM can be beneficial, it is essential that regular forms of police misconduct, and especially serious police misconduct, are not misclassified as LMRs or MIMs and consequently not formally investigated by police or IBAC when they should be. IBAC’s own 2016 audit of complaints-handling by police at the regional level demonstrated that misconduct was sometimes misclassified as an LMR:

IBAC has identified issues with the classifications of LMRs which IBAC believes should have been classified as minor misconduct, according to the Victoria Police classification system. In our 2016 report on how Victoria Police handles complaints at a regional level, we recommended that Victoria Police develop a policy for LMR files including clear parameters for their use, to address this issue. This recommendation has been implemented by Victoria Police.\(^\text{807}\)

To reduce the risk of this happening, there needs to be global oversight by IBAC of all complaints by members of the public about police.

**The situation until early 2018**

Until early 2018 Victoria Police considered that LMRs and MIMs did not meet the threshold of ‘complaint’ and that it was not required to formally report them to IBAC under s 169 of the *Victoria Police Act 2013* (Vic) and did not do so.\(^\text{808}\) For its part, IBAC read the legislation in the same way, explaining that:

[LMRs and MIMs] ... are Victoria Police classifications that are intended to deal with customer service and low level performance issues.

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\(^{805}\) Hayes report, p. 25 (see also p. 23).

\(^{806}\) See, for example, Victoria Police, *Submission 52*, 1 May 2018, pp. 18–19; Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 9; *Hayes report*, pp. 23, 25.


\(^{808}\) See Section 3.2.5 in Chapter 3 of this report.
Because LMRs and MIMs deal with low level matters, Victoria Police does not consider them to be complaints. Therefore, such matters fall outside the scope of section 169 of the Victoria Police Act 2013 [(Vic)] which requires the Chief Commissioner of Police to provide IBAC with written details of all complaints made to a police officer or protective services officer about the misconduct of a police officer or protective services officer.

Consequently, LMRs ... [and] MIMs are not included in the reported number of notifications or allegations received [by IBAC] from Victoria Police.809 [Emphasis added]

IBAC had been satisfied with being able to ‘view details’ of LMRs and MIMs through the Victoria Police ROCSID (Register of Complaints, Serious Incidents and Discipline) database.810

In undertaking its annual oversight review of the performance of IBAC and the VI for 2016/17, and in requesting further statistical data and analysis from IBAC in relation to the complaints system, the Committee became concerned that LMRs and MIMs were not considered ‘complaints’ and were not specifically legally required to be reported to IBAC. The Committee was also concerned—in terms of transparency and accountability—that LMRs and MIMs were not being reported in IBAC annual reports.811 The rigour of IBAC’s oversight in relation to the complaints system was thus reduced since it would be less likely to detect any wrongdoing that had been wrongly classified as an LMR or MIM.

**The responses of IBAC and Victoria Police**

In response to the concerns expressed by the Committee, and IBAC’s own concerns, since January 2018 Victoria Police has, under an informal arrangement reached with IBAC, been sending LMRs and MIMs to IBAC so it can monitor the receipt, classification and handling of them by police.812 IBAC outlined the following course of action in response to the Committee’s concerns over LMRs and MIMs:

- IBAC is currently auditing a sample of 50 LMRs closed by Victoria Police in 2017 and is looking at whether the classification was used correctly. A preliminary finding is that, applying Victoria Police’s classification system, IBAC disagreed with the classification of files on 11 occasions. In two of these matters, IBAC considers that the complaint met the definition of misconduct in section 166 of the Victoria Police Act and therefore should have been reported to us under section 169 and investigated by Victoria Police. All matters meet the definition of police personnel conduct (section 5 of the IBAC Act) and would have engaged IBAC’s jurisdiction if they had been received directly from members of the public.

- Following a recent request from IBAC, Victoria Police is now advising IBAC of all incidents which it classifies as LMRs and MIMs. This will provide IBAC with a further opportunity to examine matters categorised by Victoria Police as LMRs and MIMs.

- It is proposed that pursuant to the present arrangement with the Chief Commissioner, IBAC will monitor the LMRs and MIMs that we are receiving for a period. At the conclusion of our monitoring period, we will report to the Committee as to whether the matters have been appropriately classified within the Victoria

809 IBAC, correspondence, 30 November 2017, p. 3.
810 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4.
Police system of classification. Secondly, we will report as to whether any of those matters constituted ‘misconduct’ which should have been reported to IBAC under section 169 of the Victoria Police Act. In addition to those findings we will make recommendations regarding the appropriateness of the existing classification, and any further action that is needed in relation to classification of matters to more effectively ensure adequate reports to IBAC.

- Further to this, IBAC has received reports from Victoria Police under section 169 of the Victoria Police Act via an automated process from ROCSID (the Register of Complaints, Serious Incidents and Discipline), Victoria Police’s complaints database. IBAC will engage further with Victoria Police for these reports to be in the form outlined in Regulation 61 of the Victoria Police Regulations 2014 to ensure IBAC has all the relevant information.813

In its submission to this Inquiry, Victoria Police has reported that it is cooperating with IBAC’s course of action with respect to LMRs and MIMs:

... PSC provides IBAC with automated reports of complaints directly from ROCSID. Earlier this year, notifications to IBAC from ROCSID were widened to include all LMR and MIM files, as well as preliminary investigation and oversight files. However, Victoria Police acknowledges that these reports have been inadequate in terms of complying with the specific requirements as laid out in s 169 Victoria Police Act 2013 [(Vic)] and also in Regulation 61 Victoria Police Regulations 2014 [(Vic)].

In recent months PSC have been meeting with IBAC staff to address this issue and work continues, to produce a better, specific report and improve the systems around how these reports may best be provided. The reporting format is intended to meet legislative requirements, however some further fine tuning is required before Victoria Police can ensure that matters reported to IBAC are fully within scope of s 169. This work will be finalised shortly, enabling IBAC to have visibility of the totality of complaints received by PSC, in line with Regulation 61.814

In July 2018, as promised, in correspondence to the Committee IBAC reported the findings of its audit of LMRs and MIMs (see Appendix 10). IBAC gave several case studies of allegations of police misconduct that were wrongly classified as LMRs or MIMs. IBAC also reported that improvements could be made to the classification and treatment of LMRs and MIMs, including with respect to timeliness and the quality of communication with complainants and subject officers. IBAC also recommended the streamlining and simplification of Victoria Police’s system for classifying complaints.

The need for further reform

While the Committee is encouraged by the response of IBAC and Victoria Police to concerns over LMRs and MIMs, it considers the current informal arrangements are insufficient and that legislative amendments are necessary. As discussed above, Victoria Police is not currently legally required to report MIMs and LMRs to IBAC.

813 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 4. See also Hon Robert Redlich QC, Commissioner, Independent Broad-based Anti-corruption Commission, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 3–4, 7; Ms Christine Howlett, Director—Prevention & Communication, Independent Broad-based Anti-corruption Commission, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 7. Regulation 61 in the Victoria Police Regulations 2014 (Vic) describes what details regarding complaints that the Chief Commissioner of Police is required to provide to IBAC.

Chapter 5 Making complaints and disclosures

The Committee considers that Victoria Police should be required to report all MIMs and LMRs to IBAC for assessment, monitoring and review to ensure that they have been correctly classified. In addition, IBAC should include detailed information about LMRs and MIMs in its annual reports.

RECOMMENDATION 18: That the Victorian Government seek to amend relevant provisions of the Victoria Police Act 2013 (Vic) and the IBAC Act 2011 (Vic) to clarify that ‘complaints’ and ‘disclosures’ about Victoria Police include Victoria Police’s categories of Management Intervention Model (MIM) and Local Management Resolution (LMR) matters and that Victoria Police be required to report all these matters to IBAC for assessment, monitoring and review. In addition, the legislation should be amended to clarify that IBAC has the power to investigate a complaint that it considers has been wrongly classified as a MIM or LMR matter by Victoria Police.

RECOMMENDATION 19: That IBAC include in its annual reports an account of the number and nature of Management Intervention Model matters (MIMs) and Local Management Resolution matters (LMRs) they have received from Victoria Police as well as the number of MIMs and LMRs that were incorrectly classified.

5.6.2 Improving the definitions of police misconduct

The Committee has received evidence that the definitions of police misconduct are unnecessarily complex and confusing and also leave a number of gaps in coverage and jurisdiction, especially for IBAC. In terms of transparency and public scrutiny, the kinds of police wrongdoing that can be complained about, and to whom, should be clearly defined. This is especially important in a mixed Civilian Review complaints system where there needs to be a clear demarcation for police and oversight bodies with regard to their respective oversight, investigation, review and audit responsibilities. In particular, best practice principles recommend that various kinds of serious police misconduct should generally be reserved for investigation by an external oversight body rather than by police. These issues are examined further in the remainder of the report. They are raised here only to emphasise the purpose of having clear and consolidated definitions of police misconduct and serious police misconduct.

Problems with the current definitions, and how they can be improved

The Committee has received evidence that the Victoria Police Act 2013 (Vic) and the IBAC Act 2011 (Vic) should be amended so that the provisions defining police wrongdoing are consolidated, simplified and clarified. In particular, the Committee has received evidence that the categories of ‘police personnel conduct’ and ‘police personnel misconduct’ under the IBAC Act 2011 (Vic) and ‘misconduct’ and ‘conduct’ under the Victoria Police Act 2013 (Vic) should be replaced with categories of ‘police misconduct’ under the IBAC Act 2011 (Vic) and ‘misconduct’ and ‘conduct’ under the Victoria Police Act 2013 (Vic).


817 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 5.
misconduct’ and ‘serious police misconduct’. Further, ‘police misconduct’ should include the kinds of conduct covered by the present definitions of ‘police personnel conduct’ under s 5 of the IBAC Act 2011 (Vic) and s 166 of the Victoria Police Act 2013 (Vic). It should also encompass the definition of ‘improper conduct’ under the Protected Disclosure Act 2012 (Vic).

IBAC has argued that

[it] would be important to ensure a consolidated new category of ‘police misconduct’ comprises all current elements of ‘police personnel conduct’ including ‘an officer’s act or decision or failure to act or make a decision in the exercise of a power, function or duty’. Although such ‘duty failure’ matters often present as minor in isolation, the intelligence collected can highlight more serious or systemic issues which may warrant IBAC’s attention.

For a mixed Civilian Review complaints system such as Victoria’s to work effectively, the external oversight agency, rather than police, should generally investigate serious police misconduct. In order for this to work, however, the Committee believes there needs to be a clear delineation between serious police misconduct and other kinds of misconduct. The Committee has received strong evidence during this Inquiry of the need to include the category ‘serious police misconduct’ in the legislation and define it clearly.

IBAC has consistently maintained in public statements and in evidence to the Committee until early 2018 that it has ‘retained’ complaints about serious and systemic police misconduct to investigate and has only, ‘appropriately’ (under s 73 of the IBAC Act 2011 (Vic)) referred back to police for investigation customer service issues and similar performance matters and low-level misconduct. However, it has only investigated around 2% of allegations that it has determined warranted investigation and referred all other matters warranting investigation, including complaints about serious police misconduct (for example, serious assault), back to police for investigation. IBAC has acknowledged this practice in its recent evidence to the Committee.

While these issues will be examined more fully in Chapters 7 (referrals) and 8 (investigations), the important point to recognise here is that a definition of serious police misconduct is necessary if there is to be a clear, transparent and enforceable distinction between complaints that are generally investigated by IBAC and those which should be handled by police subject to IBAC oversight.

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818 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 5; Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, correspondence, 23 February 2018; Ms Tamar Hopkins, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 20.

819 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 4; Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 5.

820 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 5.


822 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, pp. 2, 3, 8. See also sections 2.5 and 2.6 in Chapter 2 and Section 4.4.1 in Chapter 4 of this report.

823 See, for example, Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, pp. 2, 3, 8; Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 24 May 2018 (response to Committee’s questions), pp. 9–13.
IBAC ‘does not consider it desirable to define the conduct which constitutes “serious police misconduct”’, believing that ‘[a]ny attempt to define the circumstances would give rise to difficulties’. However, given that IBAC has sought, in carrying out its oversight and investigative functions, to distinguish between serious and systemic police misconduct matters that it should retain and investigate and other matters that are more appropriately referred to Victoria Police under s 73 of the IBAC Act, it is already employing a definition of ‘serious police misconduct’, albeit one that is not contained in the relevant legislation, and one whose meaning and extent is left to its discretion.

The Victorian Inspector, Mr Eamonn Moran PSM QC, raised with the Committee this important issue of where the line should be drawn between serious and other kinds of police misconduct:

Under the legislation—the IBAC Act—IBAC is required to prioritise the investigation and exposure of serious or systemic corrupt conduct ... Whereas with respect to police personnel misconduct, there is no similar sort of obligation. There is no classification of what might be regarded as serious police personnel misconduct or systemic, where a priority could be given to IBAC to then look at that form of misconduct.

I believe there is ground, and I think it was raised in the [VI’s] submission about where do you draw the line. There has got to be a category of complaint where you say, ‘That is appropriate to go back to the Chief Commissioner [of Police]‘ if it is just a local service issue, some low-level issue.

There has also then got to be a category of complaint where you say, ‘IBAC itself should look at it’. You have the definition of police misconduct. Government and Parliament could look at having a definition of serious police misconduct—conduct that if it was substantiated, could lead to a particular level of imprisonment, so as to raise it up and above the level, and say that IBAC must investigate those matters. Then it seems to me that the third category then has to be a mixture where you exercise discretion as to whether or not this is going to be appropriate for IBAC or go back to the police.

The Committee broadly agrees with these sentiments that there should be three categories of police wrongdoing—customer service (and similar matters) dealt with by generally by police, misconduct (which can be dealt with by IBAC or police) and serious police misconduct (that should generally be dealt with by IBAC). It should be emphasised, however, that IBAC needs to maintain global oversight in relation to all complaints about police within the system.

The main issue therefore becomes where that line should be drawn. How broadly or narrowly should ‘serious police misconduct’ be defined? The Committee received a wide range of evidence on this issue. At the broadest end of the spectrum, Mr Tim Marsh, Chief Counsel for Victoria Legal Aid, told the Committee that it is problematic to even try to distinguish between complaints about serious police misconduct and ‘minor’ misconduct since all of these matters can have a corrosive effect on the public’s confidence in the complaints system and affect complainants personally, especially if they come from a marginalised group:

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824 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 6.

825 See, for example, Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 30 November 2017, p. 4.

826 Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 15, 16, 17.
Whilst it is clear that the current system in Victoria has certain capacities when it comes to investigating large-scale corruption, in our view simply focusing on large-scale corruption—the sort of big-ticket items—elides the fact that there are many other forms of police overreach or misuse of police powers which might well be regarded in a broader sense as being minor but which nevertheless have a profound effect on those ... marginalised groups whom we represent. The reason why we say that is so is that public confidence in the police and in their ability to manage complaints, whatever level they occur at, is crucial to people actually having the courage to complain.

... 

In our view, to make a distinction between serious or particularly egregious examples of police corruption and lesser examples is not a particularly client-centred or complainant-centred way to view police malfeasance or misfeasance. In our view to draw those distinctions is to draw an artificial line between how some things might impact on people and how other things might impact.

...

In our view to have this distinction between some matters go to IBAC, some matters go back to VicPol [Victoria Police] creates a situation where complainants may feel with some degree of certainty that their subjective circumstances are not being taken as seriously.827

However, despite this view, Mr Marsh stated:

In a practical world ... [it] may well not be feasible, for example, to have an independent body investigate whether or not a desk sergeant was rude to somebody. So there may well be some basic nuts and bolts operational-level issues where investigation at the [police] station level, where internal discipline and feedback is sufficient to provide public confidence and provide redress.828

A somewhat narrower and more pragmatic approach was suggested by Flemington & Kensington Community Legal Centre, which recognised the need to define serious police misconduct in the legislation and distinguish it from customer service matters (with the latter able to be dealt with by police under strict conditions, with IBAC oversight and with a complainant right of appeal):

One of the issues that has arisen in the [IBAC parliamentary] Committee’s deliberations relates to the definition of ‘serious misconduct’ by police officers ...

[The] Independent Broad-based Anti-corruption Act 2011 (Vic) (‘IBAC Act 2011’) [should] be amended to require IBAC (or a new independent body or specialist department within IBAC) to investigate ‘serious police misconduct’ and that ‘serious’ should be defined clearly in the Act.

...

In the Act [IBAC Act 2011 (Vic)] a clear direction should be provided that requires the independent body to investigate all complaints that allege ‘serious misconduct’. Serious misconduct should be defined in the Act as conduct that is alleged to involve:

(a) a breach of human rights;
(b) the unjustified use of force or threat of force;

827 Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 10-11.
828 Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 15.
(c) the unjustified use of police powers to investigate, stop, search, move-on, detain or pursue;
(d) discriminatory conduct (as defined under both Federal and State anti-discrimination law)
(e) racial profiling;
(f) sexual violence or harassment, including predatory behaviour;
(g) deaths or near-deaths before, during or immediately after police contact or pursuit;
(h) failure to act in matters including family violence, discrimination, sexual abuse, sexual harassment;
(i) matters that allege criminal or unlawful conduct;
(j) a policy, pattern or practice that breaches human rights or is otherwise unlawful
(k) [corruption].

The narrowest formulation came from IBAC. Although IBAC argued that there should not be a definition of serious police misconduct in the legislation, it submitted that

in the event the [IBAC parliamentary] Committee determines a legislative definition is necessary, then IBAC suggests that an approach similar to section 10 of the Law Enforcement Conduct Commission Act 2016 (NSW) ... could be considered to offer the basis for a definition ... Under relevant parts of this NSW [New South Wales] definition, the nature of any particular conduct is assessed according to the potential disciplinary or prosecutorial outcome of the alleged conduct.

The Committee considers that an appropriate definition is midway between the definition proposed by Flemington & Kensington Community Legal Centre and that of IBAC. Such a definition will ensure that the commonest forms of serious police misconduct will be encompassed, while making sure that the definition is not too broad. The definition recommended by the Committee below ensures that the kinds of misconduct covered are sufficiently grave and, generally, appropriately investigated by IBAC rather than by police. This approach is underpinned by the key themes and lessons from previous inquiries and best practice models and principles examined in depth in Chapter 2. It strikes the right balance between the roles of police and IBAC as an oversight agency in Victoria’s mixed Civilian Review complaints system.

829 Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, correspondence, 23 February 2018, pp. 1–2 (square brackets in the original).
831 See sections 2.2.5, 2.3, 2.5, 2.6 in Chapter 2 of this report.
RECOMMENDATION 20: That the Victorian Government seek to amend the *Victoria Police Act 2013* (Vic) (‘*Victoria Police Act*’) and *IBAC Act 2011* (Vic) (‘*IBAC Act*’) so that the provisions defining police misconduct are consolidated, simplified and clarified. These include s 5 of the *IBAC Act* and Part 9 of the *Victoria Police Act* (especially ss 166–169).

In particular, the categories of ‘police personnel conduct’ and ‘police personnel misconduct’ under the *IBAC Act* and ‘misconduct’ and ‘conduct’ under the *Victoria Police Act* should be replaced with categories of ‘police misconduct’ and ‘serious police misconduct’ that are clearly defined in the legislation.

‘Police misconduct’ should include the kinds of conduct covered by the present definitions of ‘police personnel conduct’ under the *IBAC Act* (s 5) and ‘conduct’ under the *Victoria Police Act* (s 166). It should also encompass the definition of ‘improper conduct’ under the *Protected Disclosure Act 2012* (Vic).

In addition, the *Victoria Police Act* and the *IBAC Act* should be amended to require the Chief Commissioner of Police to notify IBAC of any conduct that falls under the recommended definitions of ‘police misconduct’ and ‘serious police misconduct’.

‘Serious police misconduct’ should be defined in the relevant legislation in terms similar to s 10 of the *Law Enforcement Conduct Commission Act 2016* (NSW) as:

- conduct of a police officer, Protective Services Officer or other police personnel that could result in the prosecution of the officer or employee for a serious indictable offence or serious disciplinary action against the officer or employee for a disciplinary infringement, including:
  - corrupt conduct
  - serious assault and other serious criminal offences
  - wrongful arrest, false imprisonment and malicious prosecution
  - serious mistreatment in police custody
  - the use of excessive force
  - human rights violations (including cruel, inhuman and degrading treatment).
- a pattern of officer misconduct carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of Victoria Police.

The definition of ‘relevant offence’ in the *IBAC Act 2011* (Vic)

The Committee has also received evidence that the definition of ‘relevant offence’ in s 3 of the *IBAC Act 2011* (Vic), which is part of the definition of ‘corrupt conduct’ in the Act, needs to be modified to address a current gap in IBAC’s investigative jurisdiction. As IBAC has explained,

IBAC is subject to a risk of legal challenge in relation to the definition of corrupt conduct that IBAC is empowered to investigate.

The definition of corrupt conduct requires the conduct to constitute a relevant offence. Section 3 of the *IBAC Act* [2011 (Vic)] defines relevant offence as including all statutory indictable offences and four common law offences: attempt to pervert the course of justice, bribery, perverting the course of justice and misconduct in public office. The current formulation raises a risk that IBAC’s investigative jurisdiction may be challenged as a defence to a common law offence that is not one of the four prescribed common law offences.
A number of convictions arising out of IBAC investigations have included the common law offence of conspiracy to defraud, an offence that is not included in the current definition of relevant offence.

It is recommended to modify the definition of relevant offence to include any indictable common law offence committed in Victoria.\footnote{Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 6.}

The Committee agrees that this jurisdictional gap should be addressed.

**RECOMMENDATION 21:** That the Victorian Government seek amendment of the definition of ‘relevant offence’ in s 3 of the \textit{IBAC Act 2011 (Vic)} to include any indictable common law offence committed in Victoria.

## 5.7 Conclusion

This chapter has covered the complex issues associated with making complaints and disclosures about police corruption and other misconduct in Victoria. It took as its starting point the importance of public confidence in a complaints system if it is to operate effectively and ensure that not only it, but the broader institution of policing, is based on community consent, confidence and cooperation within a democratic society. The chapter demonstrated that Victoria Police itself recognises the importance of public confidence in the complaints system. In accordance with best practice principles, a system for handling complaints about police must be well-publicised, accessible, transparent, readily comprehensible, simple enough to use, robust and rigorous.\footnote{Deborah Glass, \textit{Towards greater public confidence: a personal review of the current police complaints system for England and Wales}, March 2014, p. 27; Opinion of the Commissioner for Human Rights concerning police 2009; UNODC, \textit{Handbook on police accountability, oversight and integrity}, United Nations, New York, 2011.} In particular, potential complainants must feel confident that their complaint will be treated seriously and investigated impartially when investigation is warranted, that they will be involved in the process and kept informed throughout and that the complaint will be finalised without undue delay.

The Committee has heard evidence from a range of stakeholders during this Inquiry who believe there has been a loss of confidence in the current complaints system. These stakeholders also consider that complaints are not always treated seriously or investigated thoroughly and impartially and that complainants are not sufficiently involved in the complaints-handling process.

This was reflected in a range of evidence that some potential complainants were not confident enough to make a complaint, or to persist with it, even when advised that their complaint had merit. This was especially true for marginalised Victorians, including people from CALD communities, Aboriginal and Torres Strait Islander people, women experiencing family violence, people with disability, young people and people living in small country towns. Victoria Police has itself recognised the diminution of public confidence in the current complaints system. Moreover, both with respect to these potential complainants, and more generally, the Committee found that the public information explaining the complaints system, and communication with complainants by Victoria Police and IBAC, need to be improved.
The Committee recognises, therefore, that a number of reforms are needed to restore the public’s confidence in the complaints system. The chapter recommended a range of key improvements to information, communication, support and definitions of misconduct, which are complemented by other reforms discussed in the remainder of this report.

The Committee has recommended not only the consolidation and clarification of legislative definitions of police misconduct—reducing them to two simpler categories of ‘police misconduct’ and ‘serious police misconduct’— but the addition of a transparent definition of ‘seriousness’. Best practice principles, key lessons and themes of previous inquiries into police misconduct and evidence received during this Inquiry demonstrate the importance of a clear demarcation between serious police misconduct and other police misconduct. Only if this demarcation is clear can a proper balance be struck between the respective roles of Victoria Police and IBAC within a robust, mixed Civilian Review complaints system. The Committee also emphasised that IBAC must always maintain global oversight of all complaints within the system, including monitoring all LMRs and MIMs to ensure they have not been wrongly classified by police.

Finally, the Committee recognises the human dimension of the complaints process. The Committee understands that making a complaint against the police is rarely an easy thing to do and is often confusing and stressful. If complainants are better supported throughout the complaints process through more systematic welfare management not only they, but also the complaint-handling agencies that engage with them, will benefit significantly.

The next chapter takes up key issues with respect to the assessment of complaints and disclosures about police corruption and other misconduct.
6 Assessing complaints and disclosures

6.1 Introduction

Assessment is the first step in determining whether a complaint will be dismissed, referred to Victoria Police or investigated by the Independent Broad-based Anti-corruption Commission (IBAC) itself. Since, under certain conditions, Victoria Police and IBAC can receive complaints about police, each has assessment (or ‘triage’) functions in relation to them. In addition, IBAC, as the clearing house, receives potential protected disclosures and assesses whether they qualify as protected disclosure complaints that it may then handle.

The Committee received evidence that identified three main concerns with the assessment process: the need for independent assessment of all complaints about police, concerns with the classification of complaints by Victoria Police (including its use of the Local Management Resolution, LMR, and Management Intervention Model, MIM, classifications) and criticisms of the quality of information IBAC provides complainants at the assessment stage. With respect to the first issue, a number of stakeholders called for the assessment of all complaints by either a completely new, independent body along the lines of The Police Ombudsman for Northern Ireland (PONI) or a reformed IBAC.

6.2 The classification of complaints by Victoria Police

As part of its triage function, the Police Conduct Unit (PCU) of Professional Standards Command (PSC) classifies the nature of a complaint. There are currently 11 classifications of files covering:

- Work files and preliminary enquiry (C1-0 and C1-5)
- Internal management (correspondence) (C1-6)
- Receipt of civil process against a police officer (C1-7)

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834 See sections 3.6 and 3.7 in Chapter 3 of this report.
835 See Section 3.7.2 in Chapter 3 of this report.
837 This is discussed in detail in Section 3.6 of Chapter 3 of this report.
Chapter 6 Assessing complaints and disclosures

- Incident investigation/oversight (C1-8)
- Minor misconduct (C2-1)
- Local Management Resolution matters (LMRs) (C2-4)
- Management Intervention Model matters (MIMs) (C2-5)
- Misconduct connected to duty (C3-2)
- Criminality (not connected to duty) (C3-3)
- Corruption (C3-4). 838

For a full description and discussion of these file classifications, see Section 3.6 in Chapter 3 of this report (especially Table 3.4). The classification a complaint receives determines who the complaint is allocated to, the range of responses to the complaint and the time lines for outcomes. 839

Victoria Police has described the triage and classification functions of the PCU in the following terms:

**Complaint triage and administration**

All complaints about police that are not resolved in the first instance are subject to triage, a process conducted by the PCU. Considerations during triage include urgency of the response required, wellbeing of the victim, security of evidence, strength of evidence supporting the complaint, and need to contact the complainant for further information.

Following triage, all complaint matters are recorded on the Victoria Police Records of Complaints and Serious Incidents Database (ROCSID) [sic: Register of Complaints, Serious Incidents and Discipline (ROCSID) database].

**Complaint classification**

The purpose of classifying each complaint is to assist in decision-making regarding allocation and response. Once a complaint is entered on ROCSID, it will be further assessed by members of the PCU and given a classification based on the available information and evidence. There are currently eleven possible classifications which are documented on a classification matrix ... Classifications are not rigid or fixed: if during the investigation or management of a complaint it is determined that the classification is no longer appropriate, application can be made to PCU for this to be changed.

Once the classification is determined and entered in ROCSID, this triggers an automated email notification to IBAC about the complaint. 840

In addition, the PCU will assess whether a complaint or disclosure may be a protected disclosure. 841

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838 For a full description and discussion of these file classifications, see Section 3.6 in Chapter 3 of this report (especially Table 3.3).

839 See the discussion in Section 3.6 in Chapter 3 of this report.


841 Victoria Police, Submission 52, 1 May 2018, pp. 17-18, and see the discussion in Section 3.6.2 in Chapter 3 of this report.
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6.2.1 Concerns over Victoria Police classification of complaints

The focus in the following discussion is on issues relating to Victoria Police’s classification at the ‘pre-investigation stage’ of the complaints-handling process. How issues relating to classification affect referrals and the allocation and conduct of investigations of complaints is addressed in subsequent chapters.

Stakeholders have expressed a number of concerns over Victoria Police’s classification system. In particular, they provided evidence that allegations relating to more serious kinds of police misconduct, such as serious assaults, have been wrongly classified as minor misconduct or even customer service issues. The Victorian Aboriginal Legal Service has highlighted the importance of the classification system for complaints to be handled appropriately, including complaints about serious misconduct:

> The current complaints classification system used by Victoria Police is complex and opaque. Correct classification upon lodgement by the complainant is crucial in ensuring that each complaint is treated with the seriousness it deserves. In the current system, classification of complaints is crucial as it determines whether the complaint will be investigated by local police or by Professional Standards Command.

Ms Ariel Couchman, Director of Youthlaw, stated that many complaints investigated by Victoria Police were more serious than customer service complaints:

> Some of the submissions to this Committee suggest that the bulk of complaints investigated by Victoria Police are customer service-type complaints such as rudeness, lack of follow-up et cetera. However, our experience is that complaints investigated by Victoria Police Professional Standards Command are rarely low-level customer service in nature. The complaints we hear from young people are about abuse, physical assaults, degradation, prejudicial comments to degrade and control, and excessive and intrusive policing. They are human rights abuses and would be unacceptable to any member of the community.

Flemington & Kensington Community Legal Centre emphasised, similarly, that the assessment process needs to ensure that the ‘customer service complaint’ does not allege discriminatory conduct (under State or Federal law, either on its face or by implication) or duty failure in relation to family, discrimination and sexual violence/ harassment or a human rights breach.

The IBAC Commissioner, the Hon Robert Redlich QC, has also addressed the adequacy classification system used by Victoria Police:

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843 See chapters 7 and 8 of this report.
844 Ms Tamar Hopkins, Submission 4, 18 July 2018, pp. 105–106; Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, p. 13; Youthlaw, Submission 39, 26 August 2017, pp. 9, 10–11, 13, 14; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 19, 21; Law Institute of Victoria, Submission 41, 31 August 2017, p. 5; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 4; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 16; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 4; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 20; Ms Kate Browne, Lawyer, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 59.
845 Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 16.
846 Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 34.
847 Flemington & Kensington Community Legal Centre, supplementary evidence, 23 February 2018, p. 2.
[There is the matter of] whether or not the classification of misconduct which Victoria Police employs is adequate. ... [The] answer to that question, in our view, is that it is not; there needs to be a reconsideration of how conduct is classified within VicPol [Victoria Police]. And the ancillary question is: to what extent does Victoria Police correctly apply the classification which it uses? Again ... we have some concerns in the areas we have thus far examined, that Victoria Police do not always correctly apply their classification to the complaints that they are receiving.\footnote{Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 3.}

Some of these stakeholder concerns overlap with issues with Victoria Police’s administration of the system of LMRs and MIMs, which were closely examined in the previous chapter.\footnote{See Section 5.6.1 in Chapter 5 of this report.}

Stakeholders also emphasised the complexity of the legislative framework governing the current complaints system.\footnote{See Chapter 3 in this report.} The IBAC Commissioner, for example, told the Committee that ‘the combination of three Acts interwoven, it is a very difficult scheme, really difficult—and that is to put it kindly, I think’.\footnote{Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, p. 12. See also Victorian Equal Opportunity and Human Rights Commission (VEOHRC), Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase One Report, Melbourne, December 2015, pp. 130, 132, 309, 344; VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase 2 Audit, Melbourne, September 2017, pp. 108, 111-114, 247-251.} This complexity is evident, also, in Victoria Police’s 11 classifications that do not clearly link in a consistent way to provisions in the legislative scheme, that lack precision and that overlap in confusing ways.\footnote{See, for example, Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 16} An indication of this complexity is that Victoria Police provided the Committee with two versions of the ROCSID classification matrix for the 11 classifications, one in February and one in May 2018—see Appendix 6 and Appendix 7.\footnote{Victoria Police, Classification on ROCSID, PSC file classification description, tabled, public hearing, Melbourne, 26 February 2018; Victoria Police complaint classifications included in Victoria Police, Submission 52, 1 May 2018, Appendix G, p. 62.} While each version was provided on the basis they were up-to-date, and then currently used by PSC, each in fact differed from each other in various details (including legal currency), language and organisation.\footnote{For example, the version provided on 26 February 2018 cited a repealed provision from the Police Regulation Act 1958 (Vic) whereas the version provided on 7 May cited a current provision from the Victoria Police Act 2013 (Vic).} In more general terms, Victoria Police has recognised the complexity of the complaints system:

> Victoria Police’s experience is that complexity in our current complaint handling and discipline system is a barrier to the development of good practice. Complexity significantly inhibits the ability of Victoria Police to deliver transparency and accountability in responding to complaints. This in turn has had a negative impact on achieving appropriate and effective outcomes.\footnote{Victoria Police, Submission 52, 1 May 2018, p. 35 (see also p. 12).}

With regard to the classification of complaints, Victoria Police has stated that it is developing a new ‘streamlined’ system in which ‘[e]xisting complaint classifications will be reduced from eleven to three options: criminal, misconduct or performance’.\footnote{Victoria Police, Submission 52, 1 May 2018, p. 36.} However, no further details of this proposed system were given.
6.2.2 IBAC’s 2016 audit of Victoria Police complaints handling at regional level

It is important to examine IBAC’s 2016 audit of Victoria Police’s complaint handling systems at the regional level since it was the first thorough examination of how Police classify complaints and its impact on who handles them and how.

In 2016, IBAC reported on its audit of more than four hundred complaint files, to use a broad description, investigated by Victoria Police in the Western Region and Southern Metro Region during 2014/15. In addition to 354 regular complaint files, IBAC also audited 50 LMR files that were finalised in the regions during 2014/15. Southern Metro Region is comprised of four divisions: Prahran, Moorabbin, Dandenong and Frankston. Western Region has six divisions: Geelong, Ballarat, Horsham, Warrnambool, Bendigo and Mildura. For a snapshot of the methodology used in the audit, see Box 6.1.

**BOX 6.1: IBAC’s 2016 audit of Victoria Police regional complaint handling: methodology**

All complaint files allocated to Southern Metro Region and Western Region and closed during 2014/15 fell within the scope of IBAC’s audit. This represented a total of 367 files of which 354 were audited.

Each file was audited using an instrument comprised of 155 questions covering six broad areas:

- **pre-investigation process**, including classifying and allocating complaints, identification of subject officers, and histories of relevant complaint histories
- **impartiality**, including conflicts of interest between investigators and subject officers
- **timeliness** of registration, classification, allocation and investigation
- **investigative processes utilised** whether all relevant evidence was examined
- **outcomes** including determinations and advice to complainants
- **record keeping**.

In addition to these 354 files, IBAC’s audit also examined a sample of 50 local management resolution (LMR) files closed by the two regions during 2014/15 ...


**Relevant findings in the audit**

The audit found that most allegations and subject officers were ‘correctly identified and recorded’ by Victoria Police and that ‘most complaints were appropriately classified by PSC when they were received.’ However, IBAC identified a number of deficiencies with Victoria Police’s handling of complaints in the pre-investigation stage. For example, in some cases:

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858 For a fuller account of IBAC’s methodology, see IBAC, *Audit of Victoria Police complaints handling at regional level*, Melbourne, September 2016, pp. 15–18.

Chapter 6 Assessing complaints and disclosures

- distinct allegations were inappropriately rolled in together or discarded entirely
- the LMR classification was wrongly used for serious matters
- the 'correspondence' classification was inappropriately used for complaints with identifiable allegations
- allegations were not properly classified (for example, a complaint about improper use of force being classed as minor)
- allegations, and the officers subject to them, were not accurately identified and recorded on ROCSID.

A further issue identified through the audit was the lack of rigour applied by Victoria Police in checking the complaint histories of officers against whom allegations have been made. This issue has also been raised in evidence to the Committee during this Inquiry. When there are failures in identifying, recording and taking into account officer complaint histories there are risks that a complaint will be improperly classified as less serious than it is and/or that appropriate preventive, management and disciplinary action might not be taken against a subject officer. As IBAC explained in 2016, making reference to a key finding of the audit:

Complaint histories are an important source of information on officers who are subject of [sic] a complaint; they provide important intelligence on possible patterns of behaviour. This applies to substantiated and unsubstantiated allegations. Failure to consider a subject officer’s complaint history—from customer service issues through to more serious misconduct and corruption allegations—disregards critical information relevant to complaint classification, the investigation and outcomes.

IBAC’s audit identified only seven per cent of files where there was a clear indication that the complaint history of one or more subject officers had been considered either at the triaging stage by PSC or during the investigation.

The current practice of PSC deciding whether or not to attach a complaint history does not appear to be sufficient, given the small proportion of files where the complaint history was identified or appeared to have been considered.

Improvements recommended by the audit

In response to the deficiencies with Victoria Police’s identification, characterisation and recording of allegations, IBAC recommended:

- that Victoria Police develop a clear, formal policy on when the LMR classification should be used.

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860 Ibid. See also IBAC, Audit of Victoria Police complaints handling at regional level, Melbourne, September 2016, pp. 19–27.
862 Ms Tamar Hopkins, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 18; Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 27; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 17; Robinson Gill Lawyers, supplementary evidence, 19 February 2018, p. 2; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 4; Fitzroy Legal Service, Submission 42, 31 August 2017, p. 11; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 6; Ms Tamar Hopkins, Submission 4, 18 July 2017, pp. 10, 91, 118, 137.
863 IBAC, Audit of Victoria Police complaints handling at regional level—summary report, Melbourne, September 2016, pp. 8–9. See also IBAC, Audit of Victoria Police complaints handling at regional level, Melbourne, September 2016, pp. 27–30.
that Victoria Police review its use of the CI-6 correspondence classification, including whether and when it ought to be used

that PSC identify allegations within a complaint before the complaint file is allocated to a region for investigation

that Victoria Police ensure that all complaint details are accurately and consistently recorded in both the hard copy file and in the ROCSID entry.\textsuperscript{865}

With respect to complaint histories, IBAC recommended that Victoria Police implement a policy ‘requiring … [PSC] to attach a subject officer’s complete complaint history to all complaint files’\textsuperscript{866} although this would be subject to ‘exceptions when attaching a full history may not be appropriate, such as in relation to ongoing sensitive operations’.\textsuperscript{867} For more detail on IBAC’s views, see Box 6.2.

**BOX 6.2: Victoria Police complaint history records: areas for improvement**

Victoria Police could improve its approach by implementing a policy requiring PSC to attach the subject officer’s complaint histories to all complaint files, including for management intervention model (MIM) matters which deal with allegations of a minor nature. Such a policy may incorporate exceptions when attaching a full history may not be appropriate, such as in relation to ongoing sensitive operations.

IBAC understands that attaching complaint histories to LMR matters is problematic, because such matters do not have a physical file and are intended to be resolved quickly and less formally. However, it is important that PSC carefully considers complaint histories before determining a matter is appropriate for resolution through LMR.

Further, IBAC believes that the current (informal) approach where an officer with two previous LMRs in a 12-month period is ineligible to have the third matter dealt with through LMR, is too broad. A sounder policy would stipulate a matter can only be classified as an LMR if the subject officer has not had a complaint (regardless of classification) during the past 12 months.

PSC should also consider a subject officer’s complaint history, to identify officers who may have multiple complaints (either of a serious or minor, customer service nature) over recent years, which would indicate that the LMR process is not suitable for that officer.


**Response of Victoria Police**

In 2016, IBAC acknowledged that Victoria Police had accepted all the recommendations made as part of the audit and was committed to ensuring that it managed complaints better.\textsuperscript{868} In May 2018, Victoria Police reported that it is still working to implement IBAC’s recommendations to develop a formal policy for LMRs as part of ‘current reforms to the Victoria Police complaint handling and discipline system’.\textsuperscript{869} Effectively the same answer was given in relation to implementation of IBAC’s recommendations that Victoria Police review its use of the correspondence

\textsuperscript{865} Ibid., p. 8. See also IBAC, *Audit of Victoria Police complaints handling at regional level*, Melbourne, September 2016, p. 30.

\textsuperscript{866} IBAC, *Audit of Victoria Police complaints handling at regional level—summary report*, Melbourne, September 2016, p. 4.

\textsuperscript{867} Ibid., p. 9.

\textsuperscript{868} Ibid, p. 21.

\textsuperscript{869} Victoria Police, *Submission 52*, 1 May 2018, p. 52.
While these commitments and developments are encouraging, the Committee notes that there seems to have been an unreasonable delay in fully implementing IBAC’s recommendations from 2016.

With regard to implementation of IBAC’s recommendation on complaint histories, on its face it appears that there has been more progress. Victoria Police has stated:

In the new model for the simplified and streamlined discipline and complaint handling system, full complaint histories will be provided to investigators and/or managers to support their decision-making at the initial stage of triage and inquiry into complaints.

In the interim, Victoria Police attaches an officer’s complaint history to complaint files, with the exception of files classified for LMR.

However, a more recent IBAC audit, discussed below, demonstrates that issues persist with Victoria Police’s handling of complaint histories.

**Monitoring Victoria Police’s implementation of IBAC recommendations**

To enhance the transparent monitoring of Victoria Police’s implementation of IBAC recommendations, the Committee considers that IBAC should be required to include in its annual reports detailed information on the progress of Victoria Police in implementing recommendations.

**RECOMMENDATION 22:** That the Victorian Government seek to amend the *IBAC Act 2011* (Vic) to require IBAC to include detailed information in its annual reports on the progress of Victoria Police’s implementation of IBAC recommendations.

### 6.2.3 IBAC’s 2018 audit of Professional Standards Command

In June 2018, IBAC reported on its audit of a sample of PSC 2015/16 investigations of complaints alleging corruption or other serious police misconduct on the part of police officers in order to assess whether they were carried out thoroughly, impartially and in accordance with the law and Victoria Police policy. IBAC’s methodology was not dissimilar to the 2016 audit but examined PSC rather than regional-level classifications and investigations.

The scope of the audit included

- ‘all files classified as work files (C1-0) or corruption complaints (C3-4)’
- ‘any other files that included an allegation of assault investigated and closed by PSC during the 2015/16 financial year.’

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PSC closed 221 files in 2015/16, and 64 of these files came within the intended scope of IBAC’s audit. IBAC audited 59 of these files, which were all the files available to it (5 were not available because of legal or disciplinary proceedings). IBAC audited the hard copy files and accessed relevant information stored on Victoria Police’s ROCSID and Interpose systems. Interpose is ‘Victoria Police’s investigation, intelligence and registry management system’. The sample audited amounted to 27% of the files closed by PSC during 2015/16. For a full description of the kinds of files audited by IBAC, see Table 6.1.

The files audited by IBAC included complaints against police officers that included ‘allegations of improper criminal associations, drug use or possession offences, sexual offences, handling stolen goods, threats to kill, interference in investigation, and misuse of information’.

### Table 6.1 Files audited by IBAC by classification on closure

<table>
<thead>
<tr>
<th>File type</th>
<th>Classification</th>
<th>Number of files audited</th>
<th>Proportion of audit sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work file</td>
<td>C1-0</td>
<td>27</td>
<td>46%</td>
</tr>
<tr>
<td>Allegations that need some preliminary inquiry and assessment by PSC before a full investigation can be conducted.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minor misconduct</td>
<td>C2-1</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>Includes minor assault at time of arrest, infringement notice received on duty, lower level discrimination under the Equal Opportunity Act, and lower level breaches of the Charter of Human Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Misconduct connected to duty</td>
<td>C3-2</td>
<td>7</td>
<td>12%</td>
</tr>
<tr>
<td>Includes serious assault, conduct punishable by imprisonment, alcohol or drug offences on duty, improper use of LEAP [Law Enforcement Assistance Program] or other databases, higher level discrimination under the Equal Opportunity Act, and higher level breaches of the Charter of Human Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminality not connected to duty</td>
<td>C3-3</td>
<td>8</td>
<td>14%</td>
</tr>
<tr>
<td>Includes off-duty conduct punishable by imprisonment, off-duty alcohol or drug offences, criminal associations, and summons to court for any traffic matter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corruption</td>
<td>C3-4</td>
<td>15</td>
<td>25%</td>
</tr>
<tr>
<td>Includes encouraging others to neglect duty or to be improperly influenced in exercising any function, fabricating or falsifying evidence, using excessive force or other improper tactics to procure confession or conviction, improperly interfering with or subverting a prosecution, concealing misconduct by other officers, and engaging in serious criminal conduct</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>59</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: IBAC, *Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018*, p. 8, Figure 1.
Relevant findings in the audit

Overall, IBAC found that there ‘are aspects of PSC’s complaint handling that are concerning and require improvement’. The key findings with respect to complaint classification were as follows:

IBAC’s audit of PSC investigations found that allegations were not adequately characterised in 30 of the 59 files audited (51 per cent) including 21 files that understated the number of allegations. Auditors also disagreed with the initial classification of 16 files.

Of the 27 files classified as work files (C1-0), auditors considered that:

• Ten warranted classification as a criminality or corruption complaint (C3-3 or C3-4) from the outset. This included eight files which were never reclassified and therefore never notified to IBAC even though serious allegations were identified by investigators, including allegations characterised as drug use, assault and criminal association.

• Seventeen warranted preliminary inquiries. This included 15 files that were never reclassified and therefore never notified to IBAC even though serious allegations were identified by investigators, including allegations of rape, receiving/handling stolen goods, threats to kill and interference in an investigation.

With regard to complaint histories, the audit found that 41% of the audited files ‘contained copies of the subject officers’ complaint histories’, compared with the 5% result found in the 2016 audit of regional complaint-handling. Nevertheless, the audit concluded that consideration of complaint histories by PSC was inconsistent.

Improvements recommended by the audit and Victoria Police’s response

While the audit made a number of recommendations that will be examined later in this report, the key recommendations relating to this section are that Victoria Police review ‘the definition and use of the C1-0 work file classification’ and formalise ‘arrangements to notify IBAC of matters classified as work files’. This is in order to address the inappropriate use of the work file classification for complaints alleging serious misconduct and to ensure that IBAC has better oversight of these files.

IBAC reported that Victoria Police has accepted all the recommendations in the report and is reviewing its complaint-handling and discipline systems in response to the Victorian Equal Opportunity and Human Rights Commission’s (VEOHRC) 2015 review of sex discrimination, sexual harassment and predatory behaviour in Victoria.

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879 IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018, p. 4.
880 Ibid., p. 13.
882 IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018, p. 15.
883 Ibid., p. 6.
884 Ibid., pp. 16–17.
Police. IBAC understands that the review by Victoria Police in response to the VEOHRC’s recommendations will ‘address some of the issues identified’ in IBAC’s 2018 audit of PSC.

More recently, IBAC has informed the Committee that, following its further review of Victoria Police’s classification of LMRs and MIMs, IBAC has proposed that they be consolidated into ‘a single category for minor customer service and performance management matters’. Victoria Police has responded that, while it considers that the LMR and MIM classifications relate to distinctive matters, it will take IBAC’s view into account as it streamlines the complaints and disciplinary systems.

6.2.4 The Committee’s view

The Committee notes that Victoria Police has not yet fully implemented a range of recommendations from the 2016 audit in terms of improving its approach to triaging and classifying complaints and taking proper account of subject officer complaint histories. It also notes IBAC’s 2018 audit recommendation that Victoria Police review its definition and use of its work file classification (C1-0) and formalise its notification of these files to IBAC. Further, in chapters 7 and 8 of this report the Committee makes a number of recommendations relevant to officer complaint histories and to the impartiality of Victoria Police investigations, including conflict of interest issues.

The Committee has also received evidence that the present classification matrix used by Victoria Police—which is comprised of 11 often poorly defined and overlapping file classifications—adds to the complexity of the complaints system and makes effective classification of complaints more difficult. Therefore the Committee recommends that Victoria Police consolidate, simplify and clarify the categories of complaint files and disclosures about police it uses when triaging and classifying complaints.

RECOMMENDATION 23: That, since Victoria Police accepted IBAC’s recommendations in 2016 and 2018 to improve Victoria Police’s classification of complaints, it should fully implement the recommendations.

RECOMMENDATION 24: That Victoria Police, in consultation with IBAC, consolidate, simplify and clarify the categories of complaint files it uses when classifying complaints and disclosures about police.

6.3 Information provided to complainants by IBAC at the assessment stage

The preceding chapter emphasised the importance of good quality communication with complainants on the part of police and IBAC so they can meet the best practice principles of transparency, accountability and complainant-involvement. As IBAC explained in its 2016 audit of Victoria Police’s regional complaints handling:

885 Ibid.; VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase One Report, Melbourne, December 2015; VEOHRC, Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police—Phase 2 Audit, Melbourne, September 2017; Victoria Police, Submission 52, 1 May 2018, pp. 36–37, 47, 52–58.


887 See Appendix 10.

888 See Appendix 10.
Communication with complainants is critical. Complainants’ satisfaction with the way in which their complaint is handled will be influenced by how police communicate with them.\(^\text{889}\)

This report has already identified a range of deficiencies with how police and IBAC currently communicate with complainants. This section examines the issue of IBAC’s communication with complainants after it has made an assessment to dismiss, refer or investigate a complaint.

### 6.3.1 The current law

Under s 58 of the *IBAC Act 2011* (Vic),

\[
\text{[i]n relation to any complaint or notification to the IBAC, the IBAC must, in accordance with this Act—}
\]

(a) dismiss the complaint or notification if there are grounds to do so; or

(b) investigate the complaint or notification; or

(c) make a referral of the complaint or notification.

This is the assessment, or ‘gateway’,\(^\text{890}\) stage of the complaints process for IBAC. Section 59 of the *IBAC Act 2011* (Vic) covers the kinds of information IBAC is required to give—or has the option of giving—a complainant after it has assessed a complaint. The ordinary meaning of the word ‘notify’ here is ‘to inform, of something ... to ... give information of’.\(^\text{891}\)

Section 59(1) reads as follows:

\[
(1) \text{ Subject to subsections (2) and (4), the IBAC may notify the person who made a complaint to the IBAC of the action referred to in section 58 which the IBAC has taken. [Emphasis added]}
\]

This provision means that IBAC may notify the complainant whether it has decided to dismiss, investigate or refer the complaint to police; it is not required to do so except in the case of a protected disclosure complaint (s 59(2)).

Further, where IBAC has decided to dismiss a protected disclosure complaint, under s 59(2) it must ‘notify’ the complainant of ‘the reasons for the decision’. However, s 59(2)(b) says nothing about the nature of the reasons that must be given, including how detailed they need to be.

Section 59(1) is also subject to subsection (4), which prohibits IBAC notifying a complainant in certain circumstances, including when it considers that it would ‘not be in the public interest or the interests of justice’ to do so.\(^\text{892}\) Section 59(4) reads, in part that,

\[
(4) \text{ The IBAC must not notify a person under subsection (1), (2) ... if the IBAC considers that notifying that person would—}
\]

(a) not be in the public interest or in the interests of justice; or

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\(^{\text{890}}\) Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, *Transcript of evidence*, p. 11.


\(^{\text{892}}\) *IBAC Act 2011* (Vic) s 59(4)(a).
(b) put a person’s safety at risk; or
(c) cause unreasonable damage to a person’s reputation; or
(d) prejudice an investigation under this Act or an investigation by Victoria Police or the person or body to which the referral was made; or
(e) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person. [Emphasis added]

So, for example, IBAC is prohibited from notifying a complainant if it thinks that this would not be in the public interest to do so. It is evident, therefore, that the prohibitions in s 59(4) are broad and left to IBAC’s consideration.

Moreover, under s 59(5), any notification under s 59(1) or (2)

must include a written statement advising the recipient that it is an offence under section 184 [of the IBAC Act 2011 (Vic)] to disclose the action.893

That is, the complainant must not disclose IBAC’s dismissal, investigation or referral of a complaint.

### 6.3.2 Concerns over the lack of reasons provided to complainants

The issue of whether IBAC should give complainants reasons for their decisions is a matter that the Victorian Inspectorate (VI) has identified and expressed concerns about, both to IBAC and the Committee, over several years.894 Apart from IBAC, the VI is the body that has given the most attention to this issue during the Inquiry. The Inspector, Mr Eamonn Moran PSM QC, informed the Committee:

> It is a longstanding issue about the policy of IBAC not giving complainants reasons for a decision. It would seem natural that if you have made a complaint and you just get back a pro forma letter advising you of the outcome of your complaint, whether it is dismissed or whether it is going to be referred to Victoria Police or whether it is going to be investigated, that you would want some reasons to better understand it. I believe that the VI has been raising this issue of reasons now for some three or four years, and it was first touched on in the 2014–15 annual report.

In discussions that have been had with IBAC, they say that it is at the discretion of the assessment and review officers whether to give reasons but the default position is no reasons to be given. I believe that a reason for that is that IBAC is concerned that the giving of reasons may just open up another avenue of complaint and another avenue of review when particular reasons are given, but we do believe that there should be some reasons given to a complainant to give them the satisfaction of knowing that their complaint has been fully considered and dealt with and a decision has been reached.895 [Emphasis added]

The VI therefore considers that IBAC should give complainants reasons for their decisions at the assessment stage, including ‘whether it is going to be investigated’. See Appendix 11 for the VI’s account in its annual report for 2014/15 of its exchanges with IBAC in relation to these issues.

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893 IBAC Act 2011 (Vic) s 184—but note that under s 184(5) ‘the action’ may be disclosed in certain circumstances.
With respect to IBAC’s dismissals of complaints, in its submission to this Inquiry the VI explained the rationale in the following terms, making reference to best practice principles of complaint-handling:

[The] VI expressed the view to the IBAC that as a matter of good practice, the IBAC ought to provide the complainant with an explanation for its decision not to investigate a complaint on the basis that:

1. it is reasonable for a complainant to expect to be provided an explanation for the IBAC’s decision not to investigate a complaint;
2. where a person whose complaint has been dismissed by the IBAC complains about the dismissal to the Inspectorate, the task of the Inspectorate would be considerable assisted by the provision of a clearly articulated statement of reasons;
3. it would not be significantly onerous on the IBAC to provide reasons for its decision not to investigate a complaint;
4. not providing reasons to the complainant is likely to reduce public confidence in making a complaint to the IBAC and result in an increased amount of complaints made to the VI about the IBAC.

Furthermore, the provision of reasons or an explanation for decisions is consistent with best practice principles in exercising a complaint function. The applicable principle is that of transparency. Complainants who are given explanations for decision feel listened to and valued for their contribution even if such explanations result in their complaints not being investigated.\(^{896}\)

In contrast, while IBAC has expressed the view that it would prefer to give reasons to complainants, at least in relation to dismissals and referrals, it is concerned about the risk of being burdened with time-consuming legal reviews and challenges. As the IBAC Commissioner, the Hon Robert Redlich QC, told the Committee at a hearing for this Inquiry:

The Committee will be aware that there are three stages at which IBAC may make a decision which affects a complainant. The first is at the gateway. The complaint or notification comes in. IBAC must decide whether to dismiss, investigate or refer. That is a threshold gateway process.

Our preferred position is that we would like to give more reasons, even at the gateway process—at that very first stage—but the difficulty is that if we give reasons and there is no protection in the legislation, then the complainant can immediately go to VCAT [Victorian Civil and Administrative Tribunal] and there can be an extended court process about whether or not the reasons for a decision justify the decision made.\(^{897}\)

In further evidence to the Committee, the Commissioner explained:

The current legal framework governing administrative decision-making arguably does not support IBAC providing reasons for its decisions. At present if IBAC were to provide reasons they may jeopardise operations and open an avenue for expensive and time-consuming legal challenge in an area of high-volume preliminary decision-making.\(^{898}\)

IBAC further highlighted what it saw as the risks were it to give reasons to complainants in relation to dismissals or referrals under the current law:

\(^{896}\) Victorian Inspectorate, Submission 34, 14 August 2017, p. 13.
\(^{897}\) Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, p. 11.
\(^{898}\) Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 15.
The reasons for referring or dismissing a particular complaint may relate to sensitive operational issues, such as: the existence of a relevant operation within other investigating agencies (including Victoria Police); the absence of necessary powers or resources within IBAC; or the need to prioritise the investigation of other particular categories of complaints from time to time. Some of these details may not be able to be disclosed to a complainant under legal non-disclosure obligations. In other cases, for instance, where an allegation cannot be substantiated, the reasons for not investigating may not be sensitive and can be revealed. However, the ALA [Administrative Law Act 1978 (Vic)] does not discriminate. The ALA expressly excludes Royal Commissions and Boards of Inquiry from its operation. IBAC is not included in the list of ALA exempt bodies, although IBAC is in a similar position.899

IBAC proposed the following amendments to the Administrative Law Act 1978 (Vic) to provide IBAC with what it sees as necessary safeguards against legal challenges to its decisions:

To amend the ALA [Administrative Law Act 1978 (Vic)] to provide that IBAC may provide reasons for a decision to dismiss, investigate or refer a complaint but that the decision is not subject to review.

a) Amend s 8 of the ALA to exclude IBAC as a tribunal.

b) Amend the ALA to provide that IBAC may provide reasons for a decision to dismiss, investigate or refer a complaint but that the decision is not subject to review.900

The Commissioner explained the purpose of the proposed amendments as follows:

The amendments sought are intended to ensure that the provision of reasons does not give rise to a right to review the correctness of the decision not to investigate, or refer a complaint or a decision not to take action on the complaint following an investigation.

IBAC recognises that consideration of a range of technical legal and policy issues will be required, to achieve the recommended outcome.901

With regard to the prospect of IBAC giving reasons to complainants for their decision to investigate a complaint, IBAC provided the following critique:

It is important that it be appreciated that the system of criminal justice under which we and other common law countries operate has never placed an obligation on those police officers making decisions as to whether something should be investigated to provide reasons for their decision or where the matter has been investigated, to provide reasons why no action has been taken on a criminal complaint. In neither circumstance does the decision ordinarily give rise to a right to review the decisions or the reasons for them. Thus it should be recognised that to require IBAC to provide reasons at either stage is to impose an obligation that the criminal justice system does not impose.902

899 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 15.
900 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 15.
901 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, pp. 15–16.
902 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 15.
Note, however, that the VI observed that New Wales’s Independent Commission Against Corruption is required in some circumstances to give reasons: see Victorian Inspectorate, Submission 34, 14 August 2017, p. 13.
While other stakeholders did not closely examine the legal issues associated with IBAC giving reasons for decisions at the assessment stage (focusing in more general terms on the provision of reasons after an investigation), they clearly favoured complainants being given reasons at every stage of the complaints-handling process, to meet the best practice principles of transparency and complainant-involvement, and raised concerns about the quality of information IBAC provides to complainants.903

6.3.3 The Committee’s view

The Committee considers that IBAC should, subject to appropriate conditions and exceptions, be required to give complainants reasons for its decisions to dismiss, refer or investigate a complaint itself. This advances the best practice principles of transparency and complainant-involvement, is in accord with the weight of evidence received by the Committee during this Inquiry and is consistent with the position of the VI.

**FINDING 11:** As part of a complainant-centred approach, IBAC needs to improve its communication at the assessment stage of the complaints-handling process by giving reasons for its decisions to dismiss, refer or investigate a complaint itself.

While the Committee acknowledges IBAC’s concerns in relation to the risk of legal challenges to its decisions, it draws attention to the significant protection already provided to IBAC under s 59(4) of the **IBAC Act 2011** (Vic), which, for instance, requires IBAC not to notify a complainant of decisions to dismiss, refer or investigate when, for example, it considers that this would ‘not be in the public interest or the interests of justice’ or would ‘prejudice an investigation under ... [the **IBAC Act 2011** (Vic)] or an investigation by Victoria Police ...’. In this regard, it is noteworthy that neither the Victorian Inspector in his evidence, nor the VI in its submission to the Inquiry, gave much weight to the risk of legal challenges to IBAC decisions.904

Given the current safeguards for IBAC under the present **IBAC Act 2011** (Vic), the Committee does not consider at this stage that the **Administrative Law Act 1978** (Vic) should be amended to further protect IBAC from legal challenges to its decisions.

However, since IBAC’s proposed amendments to the **Administrative Law Act 1978** (Vic) could change the legal landscape significantly, it would be valuable for the Victorian Government to undertake a review of them.

**RECOMMENDATION 25:** That the Victorian Government seek the amendment of s 59 of the **IBAC Act 2011** (Vic) to provide that, subject to appropriate conditions and exceptions (including under s 59(4)), IBAC must inform a complainant or discloser whether IBAC has determined to dismiss, refer or investigate a complaint or disclosure and the reasons for that determination.

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903 Ms Anna Lyons, Acting Principal Solicitor, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, Transcript of evidence, p. 58; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 9, 21; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 17; Youthlaw, Submission 39, 26 August 2017, p. 12; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 34; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 41; Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 6; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 14; Fitzroy Legal Service, Submission 43, 31 August 2017, p. 10. See also the discussion in Chapter 5 of this report.

**RECOMMENDATION 26:** While the Committee does not consider that the *Administrative Law Act 1978* (Vic) (‘the Act’) needs to be amended to provide IBAC with greater legal protection, to avoid any doubt the Victorian Government should review whether s 8 of the Act should be amended to exclude IBAC as a tribunal.

### 6.4 Conclusion

Transparent, effective, lawful and appropriate assessment of complaints and disclosures is important as it influences how seriously a complaint is regarded, which body (IBAC, PSC or police regions, for example) will handle it, how it will be handled and who, if warranted, will investigate it. This chapter has examined two main issues with the assessment of complaints and disclosures identified by stakeholders: Victoria Police’s classification of complaints and the information IBAC provides to complainants after an assessment decision.

Stakeholders, including IBAC, have expressed concern that Victoria Police has misclassified serious misconduct as minor misconduct or as a customer service matter. These concerns have been borne out by IBAC’s 2016 and 2018 audits: allegations have been improperly rolled in together, complaints about serious misconduct have been wrongly classed as ‘correspondence’ or ‘work file’ matters, and there has been a lack of rigour in the treatment of officer complaint histories. While it is encouraging that Victoria Police has accepted all the recommendations in the audits, the Committee notes the delay in implementing a number of recommendations made in IBAC’s 2016 audit report. Many of the problems identified in that report continue to cast shadows over Victoria Police’s current assessment of complaints. Further, a number of stakeholders, including IBAC and Victoria Police, have recognised the complexity of the classification matrix used by Victoria Police, with its 11 poorly defined and overlapping categories. For this reason, the Committee has recommended that Victoria Police, in consultation with IBAC, consolidate, simplify and clarify its complaint file classification system.

One of the themes of past inquiries into police corruption and other misconduct, best practice principles and research, and evidence to this Inquiry, is the importance of taking a complainant-centred approach to handling complaints. In particular, as IBAC itself has noted, ‘Communication with complainants is critical’, especially effective communication. The Committee has received evidence that IBAC’s communication with complainants needs improvement. This has been recognised by the VI over a number of years. Therefore, the Committee has recommended that, with appropriate conditions and exceptions, IBAC be required to notify complainants of its decisions to dismiss, refer or investigate a complaint, and the reasons for them. This will enhance the transparency and accountability of the complaints-handling process and reduce the frustrations of complainants when they are not adequately informed.

The next chapter takes up issues related to the referral of complaints, both by IBAC to PSC and by PSC to Victoria Police regions, departments and commands.

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905 IBAC, Audit of Victoria Police complaints handling at regional level—summary report, Melbourne, September 2016, p. 18.
Referring complaints and disclosures

7.1 Introduction

The vast majority of complaints about police in Victoria are referred by the Independent Broad-based Anti-corruption Commission (IBAC) to Victoria Police for investigation. Stakeholders have expressed concern over whether the current law and practices in relation to referrals undermine best practice handling and investigation of those complaints. This chapter examines the number and kinds of complaints referred to Victoria Police, including whether complaints about serious police misconduct are being referred; the suitability of IBAC’s legislated referral power under s 73 of the *IBAC Act 2011* (Vic); whether complainants are adequately informed about a referral of their complaint; how effectively complainants, and particularly whistleblowers, are protected against reprisals; and when IBAC should withdraw a referral and investigate a complaint itself.

7.2 The key issues

7.2.1 The number and kinds of complaints referred to police

During this Inquiry, most stakeholders expressed concern over the number and kinds of complaints that IBAC refers to Professional Standards Command (PSC), Victoria Police (around 98% of allegations warranting investigation) as well as the number and kinds of complaints PSC refers to other sectors of the organisation for investigation (around 90% of complaints). In particular, there was concern that complaints about serious police misconduct are regularly referred to Victoria Police. Some of these concerns have already been discussed in the context of the challenges in making a complaint and the problems with Victoria Police’s classification of complaints.

For example, Ms Merys Williams, from the Law Institute of Victoria, told the Committee that ‘[it] is the experience of our members that complaints of very serious misconduct, including assault and racial bias, can be referred from IBAC to Victoria Police for investigation’.

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906 See Section 4.4 in Chapter 4 of this report.
Similarly, Ms Ariel Couchman, Director of Youthlaw, stated that

To our knowledge—and there seems to be a little bit of a different view coming from IBAC, but from our experience IBAC refers matters no matter how serious the police misconduct. This can include physical assaults, threats, inflicting injury, engaging in harassment and serious verbal abuse. This is despite the fact that IBAC holds itself out as a police complaints-handling body and on its website it very clearly indicates that it invites complaints of a broad nature. It is our assessment that IBAC investigates few police complaints even of a serious nature due to their lack of resources, although we have heard them also say that they do not think it is their business. I have heard the [IBAC parliamentary] Committee say that possibly they view their core business being corruption. Certainly it seems that they do keep cases which seem to have an element of corruption rather than the sort of cases that are coming before us which we still view as very serious.\textsuperscript{909}

Further, Youthlaw expressed concern over the lack of certainty and transparency regarding how IBAC determines whether it retains a complaint or refers it to police: ‘We are not aware of any public and transparent account of the process used by IBAC in determining whether to keep a complaint with IBAC or refer it to police.’\textsuperscript{910}

A number of legal firms and services told the Committee that, given current IBAC practices regarding referrals as well as associated delays and lack of access to documentation on the investigation of their complaint, they advise their clients not to make a complaint directly to IBAC but rather to Victoria Police in the first instance. A representative account of this approach was given by Robinson Gill Lawyers:

The complaints received by IBAC are only a portion of the total complaints about police members as complaints are also lodged directly with Victoria Police. Practitioners in this area advise clients against lodging complaints with IBAC, and instead encourage complaints to be lodged directly with Victoria Police, for two main reasons, as previously discussed. Firstly, it is almost inevitable that the complaint will be referred to Victoria Police for investigation. Secondly, the complainant is provided with limited information about how the investigator reached their final decision and prevented from accessing their file through Freedom of Information due to s 194 IBAC Act [2011 (Vic)] ...\textsuperscript{911}

Flemington & Kensington Community Legal Centre’s Police Accountability Project similarly advises its clients to lodge their complaints with Victoria Police rather than IBAC:

The Police Complaints Clinics run by the FKCLC [Flemington & Kensington Community Law Centre] and the Melbourne University Law School now have such little faith in the IBAC process that staff at those clinics no longer recommend that members of the public make complaints to IBAC, but instead make their complaints to the Police Conduct Unit [of Victoria Police]. They do not make this recommendation because they think complaints are better investigated by the police. The reasons for the Clinic’s recommendations are as follows:

1. Complaints made to IBAC will inevitably be referred to the police—even very serious assaults.
2. Complaints made to IBAC will cause significant delay in complaint investigation and resolution.

\textsuperscript{909} Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 33. See also Youthlaw, Submission 39, 26 August 2017, p. 3.

\textsuperscript{910} Youthlaw, Submission 39, 26 August 2017, p. 3.

\textsuperscript{911} Robinson Gill Lawyers, Submission 44, 4 September 2017, pp. 4–5.
Chapter 7 Referring complaints and disclosures

3. Complaints made to IBAC preclude complainants from accessing any information about the investigation of their complaint, even if that investigation ends up being conducted by Victoria Police, due to the operation of section 194 of the IBAC Act [2011 (Vic)]... 932

The kinds of complaints IBAC should refer to Victoria Police: stakeholder views

While a number of stakeholders expressed the view that a new independent body, established along the lines of the Office for the Police Ombudsman for Northern Ireland (PONI), or a transformed IBAC, ought to investigate all complaints about police—and therefore that no complaints should be referred to Victoria Police—even among these stakeholders a more pragmatic consensus was evident. 933 The consensus among these stakeholders was that only properly characterised customer service complaints ought to be referred to Victoria Police, with all other complaints being investigated by IBAC. 934 While there were variations in how these stakeholders defined customer service complaints, there was substantial agreement among them over what kinds of complaints would be included in this category.

Ms Tamar Hopkins, a lawyer and researcher, described customer service complaints as follows:

There is a broad group of matters that fall within the requirement of needing independent investigation.

The matters that fall outside of that are what we have called ‘customer service complaints’. This is incivility, rudeness or delay where that conduct does not allege discriminatory conduct or duty failure in relation to family violence, discrimination or sexual harassment. So there is a category that we can see leaving to police, but that needs to be triaged by the independent body. We say it should not be up to Victoria Police to judge where that boundary lies, but it should be the independent body that is making that decision about which complaints fall in its remit and which go below. 935

In a similar vein, the Law Institute of Victoria argued that if IBAC is to continue to refer complaints to Victoria Police, then only ‘genuine customer service issues’ should be referred to Victoria Police, and only after independent triaging and with the consent of the complainant. 936

Along the same lines, the Flemington & Kensington Community Legal Centre stated that

After assessment, IBAC may refer other [non-serious] complaints that allege customer service failures ... to a mediation pathway or to Victoria Police for performance management processes. Customer service complaints include incivility, rudeness or response delay.

912 Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 16. The implications of s 194 of the IBAC Act 2011 (Vic) for complainants seeking information about the investigation of their complaint is examined in the next chapter of this report.

913 See, for example, St Kilda Legal Service, Submission 36, 18 August 2017; Youthlaw, Submission 39, 26 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Robinson Gill Lawyers, Submission 44, 4 September 2017; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017.

914 See, for example, Robinson Gill Lawyers, Submission 44, 4 September 2017; Law Institute of Victoria, Submission 41, 31 August 2017.

915 Ms Tamar Hopkins, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 20.

916 Law Institute of Victoria, supplementary evidence, 17 May 2018, p. 2.
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The assessment process needs to ensure that the ‘customer service complaint’ does not allege discriminatory conduct (under State or Federal law, either on its face or by implication) or duty failure in relation to family [violence], discrimination and sexual violence/harassment or a human rights breach.

Complainants who have their complaint passed onto a mediation pathway or back to Victoria Police should have a right to appeal that decision if they are not satisfied with the outcome.\(^\text{917}\)

The Police Accountability and Human Rights Clinic, submitted that

[to] ensure transparency and consistency, what constitutes a ‘customer service complaint’ … should be set out in a publicly accessible and plain language policy document that is widely available online and in police stations.\(^\text{918}\)

Finally, Mr Jeremy King from Robinson Gill Lawyers, argued that there is uncertainty about what is or is not a customer service complaint given the lack of legislative definitions of these kinds of complaints and of what constitutes serious police misconduct:

Historically, complaints which legal practitioners consider very serious have been referred back to Victoria Police for investigation because IBAC has not deemed them serious enough. If IBAC is going to continue to refer matters back to Victoria Police, it is our submission that these complaints should be limited to genuine customer service complaints and that this needs a full and comprehensive definition in the IBAC Act [2011 (Vic)].

...  

[A] customer service complaint ... is really things like if someone said, ‘The police officer was rude to me’, or, ‘I had to wait for 4 hours in the lobby of the police station’. Those are really customer service complaints. But certainly allegations of assault, allegations of misconduct, allegations of inappropriate behaviour, allegations of any racist, derogatory or discriminatory remarks should definitely all fall within the remit of IBAC or an independent body.\(^\text{919}\)

While the majority of stakeholders expressed concern over the current level and kinds of referrals by IBAC to Victoria Police, this concern was not universal. The Police Association of Victoria, for example, opposed any proposed amendments to the \textit{IBAC Act 2011} (Vic) that ‘purported to ... limit IBAC’s ability to refer certain complaints to the Chief Commissioner of Police’, including any proposal to prohibit the referral of complaints about ‘serious police misconduct’ to Victoria Police.\(^\text{920}\)

The Association also emphasised Victoria Police’s capacity to conduct rigorous investigations of alleged police wrongdoing and to fearlessly hold its members to account for any proven misconduct.\(^\text{921}\) Further, the Association expressed concern over the investigative capacity of IBAC compared with Victoria Police, and therefore questioned the prudence of conferring a greater investigative workload on IBAC.\(^\text{922}\)

These issues will be addressed in the next chapter.

\(^{917}\) Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, correspondence, 23 February 2018, p. 2.

\(^{918}\) Police Accountability and Human Rights Clinic, \textit{Submission} 49, 6 October 2017, p. 25.


\(^{920}\) The Police Association of Victoria, \textit{Submission} 28, 8 August 2017, pp. 2, 5.

\(^{921}\) The Police Association of Victoria, \textit{Submission} 28, 8 August 2017, pp. 3–5.

\(^{922}\) The Police Association of Victoria, \textit{Submission} 28, 8 August 2017, p. 5.
Victoria Police thinks that the right balance has largely been struck between the role of external oversight bodies, such as IBAC, and of the Police in taking responsibility for addressing wrongdoing within its ranks and handling and investigating a range of complaints:

This oversight model can best be described as police investigating police subject to independent oversight. This model draws on the advantages of police investigating misconduct matters including criminal offending, but also responds to community concerns about police investigating themselves. Moreover, this model allows IBAC to focus on the most problematic behaviours of police employees. The strength of this hybrid model resides in its ability to facilitate public accountability, whilst enabling the Chief Commissioner of Police to, as far as possible, fulfil his statutory responsibility to manage and be accountable for the professional standards of police employees and ongoing maintenance of police integrity.

Victoria Police acknowledged, however, that ‘it needs to make improvements to transparency, accountability, quality assurance and the management of conflicts of interest’.

IBAC also has the view that, since the primary responsibility for police misconduct should rest with Victoria Police, it is appropriate for most complaints to be referred to them subject to IBAC oversight. As the IBAC Commissioner, the Hon Robert Redlich QC, told the Committee:

[For] policy reasons it is highly desirable that a police organisation has primary responsibility for investigating its own fault. Why is that so? Because it is not good enough to simply have written material within an organisation which sets out codes of conduct. It is not enough that there be an educative process within a police force as to what is the necessary practical, ethical behaviour which each police officer should adhere to. It has got to be implemented, and it has got to be seen to be promoted by all police officers at a senior level.

If I could just read to you what Deborah Glass, our present Ombudsman, at the end of her 10-year period as the Chair of the United Kingdom Police Commission, said in relation to that question:

Complaints should be a key driver of better performance, responding positively to feedback and thereby learning from mistakes. It is therefore crucial that complaints handling becomes embedded in frontline policing, not something to be farmed out to another body, and that it fosters better relationships with the communities the police serve.

Further, IBAC considers that serious police misconduct should not be defined at all in the IBAC Act 2011 (Vic), preferring to retain the discretion to refer any complaint to Victoria Police, subject only to the current legislative requirement in s 15(1A) that it prioritise the exposure and investigation of serious or systemic corrupt conduct (although it would accept an extension of that requirement to ‘serious police misconduct’, as long as that phrase remains undefined). If ‘serious police misconduct’ were defined in the Act, as the Committee has recommended, IBAC believes that such an approach could only be considered workable if IBAC ... retains its discretion to determine those matters which warrants its direct investigation and those which should be referred to Victoria Police to investigate. This would support IBAC

923 Victoria Police, Submission 52, 1 May 2018, p. 11 (see also pp. 30, 34, 38).
924 Victoria Police, Submission 52, 1 May 2018, p. 4.
925 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 2–3.
maintaining sufficient flexibility in the appropriate use of its powers and resources, while providing a clarified mandate for IBAC to prioritise the investigation of more serious police misconduct...²⁹⁶

The Committee’s view

A range of stakeholders has expressed concern over the number and kind of complaints that IBAC refers to Victoria Police for investigation. In particular, the Committee has received evidence that a significant number of complaints about serious police misconduct, as defined in this report, are regularly referred by IBAC to PSC for investigation. IBAC long maintained that it kept for its own investigation serious matters, referring only customer service and like matters to Victoria Police (see the discussion in Section 7.2.2 below).

More recently, however, IBAC has acknowledged that it has often referred complaints about serious police misconduct to police due to deficits in its resources, expertise, jurisdiction and investigative powers. IBAC has informed the Committee that it ‘has the capacity to investigate 25–40 police matters each year (in rough terms, one investigation per investigator)’.²⁹⁷ This appears to be in marked contrast to PONI, even taking into account its unique circumstances and its concentration on police matters. In an official PONI publication, for example, a Police Ombudsman Investigation Officer reported:

At any one time, I can be investigating anything up to 25 cases. A lot of work goes into maintaining case files, updating complainants and police officers about the progress of their investigations and writing letters or reports about the findings of our investigations.²⁹⁸

The Committee considers that the proportion of complaints investigated by IBAC is insufficient. Of particular concern is the number of complaints about serious police misconduct that are referred to Victoria Police, especially given the deficiencies that IBAC’s own audits of regional and PSC complaints-handling systems have revealed.²⁹⁹

Best practice in a robust mixed Civilian Review complaints system such as Victoria’s requires that, generally, external police oversight and investigative agencies, rather than police, investigate serious police misconduct.³⁰⁰ The Council of Europe Commissioner for Human Rights Opinion on the handling of complaints against police emphasises that both police and the external oversight and investigative agency, which it calls the Independent Police Complaints Body (IPCB), should be involved in handling and investigating complaints, with complaints appropriately

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²⁹⁶ Ms Christine Howlett, Director–Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, pp. 6–7.
²⁹⁷ Ms Christine Howlett, Director–Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 11.
²⁹⁹ Ms Christine Howlett, Director–Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, pp. 11–12; IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016; IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018.
allocated on the basis of seriousness, proportionality and the need for police, in parallel, to address wrongdoing in its ranks.\textsuperscript{931} In order to better understand the view outlined in the Opinion, it is necessary to quote it at some length:

Best practice is served by the operation of an Independent Police Complaints Body working in partnership with the police.

... For the prevention of police ill-treatment and misconduct to be effective all grievances against the police, including service complaints, need to be handled by appropriate means. Complaints, and the way in which they are handled, need to be differentiated according to the seriousness of the allegation and the potential consequences for the officer complained against.

... An independent police complaints body ... should form a pivotal part of such a system.

The IPCB should respect police operational independence and support the head of police as the disciplinary authority for the police service. There should be a clear division of responsibility between the IPCB and the police with full co-operation from the police, which will help maintain high standards of conduct and improve police performance.\textsuperscript{932} [Emphasis added]

The Opinion then suggests a division of responsibility between the IPCB and the police. Under the suggested division, the IPCB investigates complaints that engage Article 2 (right to life) or 3 (prohibition of torture and degrading treatment) of the European Convention on Human Rights (ECHR), or in which ‘an issue of criminal or disciplinary culpability arises’, while the police investigate:

complaints in which:
—Article 2 or 3 of the ECHR is not engaged;
—no issue of criminal or disciplinary culpability arises; or
—the IPCB refers responsibility for the handling of the complaint to the police.\textsuperscript{933} [Emphasis added]

The United Nations Office on Drugs and Crime (UNODC) handbook on police accountability takes a similar approach in recommending an appropriate division of labour in handling complaints between police and the external police oversight and investigative agency:

The complaint can be investigated by either police or by an independent body. It is recommended that serious cases are investigated by an independent body to prevent police interference in that investigation. Also, the independent body should have oversight over all investigations, including those conducted by the police.

...
Although in general it is considered good practice for the independent body to have investigative powers and the capacity to initiate an investigation, this does not mean that it needs to investigate all complaints. It is considered good practice for it to investigate serious complaints only and monitor the rest.\textsuperscript{934} [Emphasis added]

It is noteworthy that PONI itself has the power to refer complaints to police for investigation, although as a matter of policy it would do so only for ‘less serious matters’ and with the consent of the complainant. As the official PONI complaints brochure explains:

If your complaint is about a less serious matter we may ask for your consent to refer it to the police for them to deal with. If you agree, the police will then contact you and try to reach a solution. We will check how the police have dealt with your complaint.\textsuperscript{935}

However, one of the principal Acts governing PONI, the\textit{Police (Northern Ireland) Act 1998} (UK),\textsuperscript{936} does not require the consent of the complainant for the Ombudsman to refer a matter to police. Section 54 of that Act reads in part as follows:

(2) Where the complaint is a serious complaint,\textsuperscript{937} the Ombudsman shall formally investigate it in accordance with section 56.

(3)\textit{ In the case of any other complaint, the Ombudsman may as he thinks fit—}

(a) formally investigate the complaint in accordance with section 56; or

(b) refer the complaint to the Chief Constable for formal investigation by a police officer in accordance with section 57. [Emphasis added]

Under the heading ‘Formal investigation by a police officer’, s 57 of the Act provides in part as follows:

Where a complaint is referred to the Chief Constable … he shall appoint a police officer to investigate it formally on behalf of the Ombudsman.

…

(4) The Ombudsman may supervise the investigation of any complaint under this section if he considers that it is desirable in the public interest for him to do so.

…

(7) The Ombudsman may impose requirements as to the conduct of an investigation which the Ombudsman is supervising; and it shall be the duty of a police officer to comply with any requirement imposed on him by virtue of this subsection.

(8) At the end of an investigation under this section the police officer appointed to conduct the investigation shall submit a report on the investigation to the Ombudsman. [Emphasis added]

It should also be recalled that PONI and police have ‘informal resolution’ and mediation options to handle and resolve complaints by members of the public.\textsuperscript{938}


\textsuperscript{936} As at 1 July 2018.

\textsuperscript{937} Under s 50 of the\textit{Police (Northern Ireland) Act 1998} (UK), ‘serious complaint’ ‘means a complaint … alleging that the conduct complained of resulted in the death of, or serious injury to, some person, or … of such description as may be prescribed’. ‘Serious injury’ is defined under s 50 as a ‘fracture, damage to an internal organ or impairment of bodily function’.

\textsuperscript{938}\textit{Police (Northern Ireland) Act 1998} (UK), ss 53 (informal resolution), 58A (mediation).
It is an exaggeration to suggest that defining serious police misconduct in legislation, and requiring an external oversight agency to investigate it, will undermine police responsibility for addressing wrongdoing—the best practice principles do not support that view. However, it is also inaccurate to say that best practice principles require the external agency to investigate all complaints to the exclusion of police. Instead, best practice principles require that serious police misconduct generally be investigated by the external police oversight and investigative agency, that responsibility for investigating other kinds of misconduct be shared between them and that the agency have robust, global oversight of the entire complaints system.\(^{939}\)

**FINDING 12:** Best practice principles would require that IBAC, as the external oversight agency, generally investigate complaints about serious police misconduct, that IBAC and Victoria Police share the responsibility for investigating other forms of police misconduct and that IBAC exercise oversight over the entire complaints system.

The Committee therefore recommends that, unless exceptional circumstances exist, IBAC should not refer to Victoria Police any complaint or disclosure about serious police misconduct as defined in this report. Further, to enhance the best practice principles of transparency, public scrutiny and accountability, IBAC must in its annual reports identify what exceptional circumstances existed to justify any referral of a complaint or disclosure about serious police misconduct back to police. In addition, IBAC must maintain rigorous oversight of any such referral.

**RECOMMENDATION 27:** That the Victorian Government seek the amendment of s 73 of the *IBAC Act 2011* (Vic) to prohibit, unless there are exceptional circumstances, IBAC referring to Victoria Police for investigation any complaint or disclosure about ‘serious police misconduct’ (as defined in this report). In addition, in their annual report IBAC must report what exceptional circumstances existed justifying referral of a complaint or disclosure about serious police misconduct back to police. Further, IBAC must maintain rigorous oversight of any such referral of a complaint or disclosure back to police.

**A note on PSC referrals**

While the Committee received more evidence in relation to IBAC referrals to PSC than PSC referrals to Victoria Police regions, departments and commands, Section 7.2.3 (below) briefly examines the key issues relating to conflicts of interest in the context of PSC referrals. Issues in relation to investigations conducted by the PSC or other levels of Victoria Police are examined in the next chapter.

**7.2.2 The nature of IBAC’s legislated referral power**

For most of its existence, IBAC has, in both its public reports and in its evidence to the Committee, consistently explained the referral of the overwhelming majority of complaints it receives to Victoria Police for investigation as not only appropriate but desirable. It has maintained that it was appropriate for IBAC to retain for investigation only complaints alleging the most serious kinds of police corruption and other misconduct on the basis that:

- these matters came within IBAC’s jurisdiction and were consistent with the legislated requirement that it prioritise the exposure and investigation of serious or systemic corrupt conduct (s 15(1A), *IBAC Act 2011* (Vic))

\(^{939}\) See sections 2.4 and 2.5 in Chapter 2 of this report.
most of the complaints referred were not serious misconduct matters, but, rather, customer service and performance issues and cases of minor misconduct

Victoria Police were in a better position than IBAC to handle these minor matters effectively and efficiently

as a matter of principle, it was not only appropriate but desirable for Victoria Police to handle these matters as a reinforcement of its primary responsibility to address wrongdoing within its workforce.940

For example, in a special report in 2015 IBAC stated that the:

... Chief Commissioner of Police rightly has primary responsibility for ensuring the integrity and professional standing of the organisation ...

The majority of complaints assessed by IBAC are considered appropriate for direct action by Victoria Police. This means that police managers are responsible for dealing with most complaints, particularly customer service or behaviour-related matters (such as rudeness and poor communication) and lower-level misconduct.

It is appropriate that police retain this responsibility for complaint investigations. Victoria Police has immediate access to information, and has expert and current knowledge of its systems and people. For example, PSC is able to quickly access relevant documentation such as work rosters, emails and running sheets to enable timely initial assessment of complaints. Direct action by Victoria Police also drives improved staff and organisational performance.941

In its 2016 audit of Victoria Police complaints handling systems at the regional level, IBAC reported that it ‘understands that it is appropriate for local police managers to deal with most complaints, particularly those that concern customer service or lower level misconduct’.942

IBAC similarly said in its annual report for 2015/16 that:

The majority of police complaints are assessed by IBAC as appropriate for investigation by Victoria Police as they primarily concern customer service or operational performance issues (such as poor communication or slow/inadequate response) or lower level misconduct. This is consistent with established best practice oversight principles that police managers must retain primary responsibility for ensuring the integrity and professional conduct of their own employees.943

Finally, in December 2017 the then IBAC Commissioner, Mr Stephen O’Bryan QC, explained:

Commensurate with our powers and resources, IBAC may investigate allegations involving serious or systemic police misconduct.


942 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 7.

943 IBAC, Annual report 2015/16, Melbourne, 2016, p. 5.
This means that in practice, we oversee Victoria Police’s handling of the bulk of complaints which have been referred to them for investigation. Most police complaints involve minor misconduct or customer service issues, and it is appropriate that police managers retain primary responsibility for addressing performance and disciplinary issues within their workforce.\textsuperscript{944}

Only more recently, and particularly during 2018, has IBAC explicitly expressed the view that the most significant reason for its referral of the vast majority of complaints to police is the nature and operation of the s 73 referral power in the \textit{IBAC Act 2011 (Vic)}.\textsuperscript{945} Section 73 requires IBAC to refer a complaint to Victoria Police \textit{when IBAC considers} that it is ‘more appropriate’ for it to be handled by police. IBAC has emphasised the mandatory component of s 73 rather than the discretionary dimension evident in the phrase ‘when it [IBAC] considers’ it is more appropriate for another body to investigate a matter.\textsuperscript{946} As the IBAC Commissioner, the Hon Robert Redlich QC, has stated:

The next matter that I would pass to is the obligation to refer complaints ... You will recall that section 73 of the IBAC Act [2011 (Vic)] says that if IBAC comes to the conclusion that it is more appropriate that some other body investigate something, which would include Victoria Police, it must refer it to that other body.\textsuperscript{947}

However, the Inspector, Mr Eamonn Moran PSM QC, drew the Committee’s attention to the discretionary aspect of s 73 and the need for greater rigour when IBAC is considering whether to refer a complaint to police:

Obviously there is a discretion [in s 73] in terms of IBAC considering whether or not the subject matter is relevant to the Chief Commissioner [of Police] and whether or not it is more appropriate for the Chief Commissioner to deal with that.

We understand that IBAC does not have any internal policies and procedures around deciding when it is more appropriate for it to be considered by the police, and we do feel that written guidelines within IBAC would be helpful for us in reviewing or overseeing what they are doing and perhaps helpful in terms of managing the business—if you have got guidelines as to when you will dismiss and when you will refer and when it may be more appropriate for a particular matter to be dealt with by police.

\dots

While section 67 of the IBAC Act [2011 (Vic)] sets out detailed circumstances in which a complaint does not warrant investigation—you know, it has got a list of it being frivolous or vexatious or whatever—section 73 ... does not itself provide any guidance as to that. It very much leaves it in the discretion of IBAC. I know IBAC say to us, ‘We do not need policies and procedures around when something warrants or does not

\begin{thebibliography}{99}
\bibitem{947} Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, \textit{Transcript of evidence}, pp. 2–3.
\end{thebibliography}
warrant investigation because section 67 has a pretty fullsome statement of that’. But the same argument could not possibly apply to section 73, and therefore there would seem to be certainly a need for some policies and procedures there.\footnote{948}

In this regard, it is relevant to recall that the Committee has recommended that IBAC publish on its website a plain-language account of how, in general terms, it assesses that a complaint should be dismissed, referred or investigated by IBAC.\footnote{949} The purpose of this recommendation is to make the process more rigorous and transparent and to better inform complainants and potential complainants.

IBAC has more recently explained that when, in accordance with s 73, it considers whether Victoria Police is the more appropriate body to handle a particular complaint it must take into account its own capability (expertise), authority (its legislated powers, including investigative powers) and capacity (human and other resources) compared with Victoria Police’s.\footnote{950}

IBAC has argued that the insufficiency of its resources compared with PSC (which has around 200 full-time staff devoted to police standards and complaints compared with IBAC’s around 150 staff engaged in police oversight \textit{and} anti-corruption functions) and with Victoria Police more generally, is a key factor in its common assessment that the police are the more appropriate body to investigate a complaint.\footnote{951} The Committee notes in this regard its recommendation that the Victorian Government adequately resource the proposed Police Corruption and Misconduct Division in IBAC to ensure that it can independently and effectively investigate complaints and disclosures about Victoria Police.\footnote{952} The report will address this issue more fully in the next chapter when examining IBAC’s investigative resources and capacities. However, it is useful here to outline some of IBAC’s concerns, shared by a wide range of other stakeholders, over its investigative resources and capacity.\footnote{953}

The IBAC Commissioner justified the present arrangements for the referral of the vast bulk of complaints to Victoria Police for investigation in the following way:

\begin{quote}
... [What] is our view as to the policy which underlies the IBAC Act [2011 (Vic)]? You would already know from previous submissions made by the former commissioner, Mr [Stephen] O’Bryan [QC], that IBAC takes the view that, in broad, the policy which underlies the Act is sound. When I say ‘policy’ I am referring to the fact that under the Act, whilst IBAC can undertake [its] own investigations in limited circumstances, the process that is followed is to refer back to Victoria Police most complaints which come to IBAC.
\end{quote}

\footnote{948}{Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, \textit{Transcript of evidence}, pp. 15–16.}

\footnote{949}{See Section 5.4.2 in Chapter 5 of this report.}

\footnote{950}{Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, \textit{Transcript of evidence}; Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, \textit{Transcript of evidence}.}

\footnote{951}{Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, \textit{Transcript of evidence}; Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, \textit{Transcript of evidence}.}

\footnote{952}{See Section 2.5 in Chapter 2 of this report.}

Speaking both personally and on behalf of the institution, I would like to make it clear I think that is an extremely sound policy and for various reasons ... any alternative arrangement—that is, one that contemplates that in certain circumstances matters should not be referred back to VicPol [Victoria Police]—has both policy and pragmatic sound reasons for rejecting such an alteration in policy ...

Mr O’Bryan made it very clear that were IBAC to be required to investigate as a mandatory requirement particular areas of activity, there would be quite extraordinary practical implications for IBAC. We do not have the resources. If we were to significantly increase our responsibility in terms of investigating certain crimes, we would need a different location, we would need a vast increase in the number of staff, the powers that we are able to exercise, and we would not be able to give effect to what presently is enshrined as the policy in the Act—namely, to give primary focus to serious misconduct, whether it be systemic or just serious, in the area of police activity. So there are practical reasons why that is just a policy shift which would carry with it huge practical consequences.954

It should be noted, however, that the Committee is not proposing that IBAC be prohibited from referring any complaints to Victoria Police for investigation. It is only recommending that, unless there are exceptional circumstances, IBAC be prohibited from referring back complaints about ‘serious police misconduct’ as defined in this report. It would therefore be able to refer back any other complaints, which covers the broad scope of ‘police misconduct’ as defined in this report. The Committee considers that, as the Commissioner desires, this would enable IBAC to prioritise its attention to, not only serious or systemic corrupt conduct, but also serious police misconduct. Presently, s 15(1A) of the IBAC Act 2011 (Vic) only requires IBAC to prioritise its attention on exposing and investigating serious or systemic corrupt conduct—it neither mentions serious police misconduct by name nor (logically, given the present wording) prescribes that IBAC must prioritise its attention to it. Section 15(1A) reads as follows:

(1A) In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct or systemic corrupt conduct.

This limitation of s 15(1A) was noted by the Victorian Inspector:

Under the … IBAC Act [2011 (Vic)] … IBAC is required to prioritise the investigation and exposure of serious or systemic corrupt conduct. So it is perfectly understandable that they are going to devote the majority of their resources to that task. Whereas with respect to police personnel misconduct, there is no sort of similar obligation. There is no classification of what might be regarded as serious police personnel misconduct or systemic [police misconduct], where a priority could be given to then look at that form of misconduct.955

In this regard, s 15(1B)–(2) should also be noted. These provisions make it clear that the even the current requirement that IBAC prioritise its attention on serious or systemic corrupt conduct does not mean that it should not pay attention to and investigate when warranted other forms of police wrongdoing:

(1B) Subsection (1A) does not restrict the IBAC’s discretion to determine to investigate any matter that the IBAC considers may constitute corrupt conduct.

(2) Without limiting the generality of subsection (1), the IBAC has the following functions—

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954 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 2.

955 Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 15.
(a) to identify, expose and investigate corrupt conduct;
(b) to identify, expose and investigate police personnel misconduct;
(c) to assess police personnel conduct.

As noted earlier in this report, the Committee recommends that s 15(1A) of the IBAC Act 2011 (Vic) be amended so that IBAC must prioritise its attention to the exposure and investigation of not only serious or systemic corrupt conduct but serious police misconduct as well. Since the Commissioner’s statement at the hearing quoted above, the Committee has received evidence from IBAC that it would support the amendment of s 15(1A) so that IBAC is required to prioritise for investigation serious or serious corrupt conduct and serious police misconduct. These issues are more fully addressed in the next chapter when the Committee examines more fully what complaints IBAC should investigate itself.

According to IBAC, when it makes an objective assessment under s 73 of whether it or Victoria Police is the more appropriate body to investigate a complaint it can rarely conclude that it is more appropriate for IBAC to undertake an investigation than Victoria Police, even when it would prefer to undertake an investigation itself. In contrast to its earlier accounts, IBAC has, moreover, recently stated that the range of complaints it refers to Victoria Police include complaints alleging serious, even serious criminal, police misconduct. Indeed, IBAC has identified the distinctive nature of some serious forms of police misconduct as the reason why—given police expertise, knowledge, access to police systems—it is more appropriately handled by Victoria Police, and therefore must, under the current s 73, be referred to them. In the view of the IBAC Commissioner:

That problem [of referrals being mandatory in some circumstances under s 73 of the IBAC Act 2011 (Vic)] may not be so acute in the event that IBAC has the additional investigative powers that we are seeking—then the fact that it says ‘must’ or ‘may’ may not matter so much. But at present there are many types of crimes where IBAC simply does not have the same powers as a police officer and it remains the regrettable fact then that one would conclude it is more appropriate for the police to investigate that—for example, a sexual offence committed by a police officer or a serious assault involving forensic questions at the scene of a crime. We do not have powers that police officers have. That needs to be addressed and then we would not need to conclude that it is more appropriate for that issue to be referred back to Victoria Police. [Section 73 means] … that at the moment it is mandatory that we pass it back to Victoria Police if they are the more appropriate body to investigate it, and that largely turns on the difference currently between the powers an IBAC investigator has and a normal police officer.

Whether IBAC needs any additional investigative powers to better carry out its oversight and investigative functions in relation to the current complaints system is discussed in the next chapter.

The contrast between IBAC’s earlier characterisations of the referral of the vast majority of complaints to police and its more recent ones is marked. The more recent characterisation that IBAC refers not only minor misconduct matters but also very serious matters is, however, more consistent with the longstanding status

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956 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, pp. 2–3, 5–6.
957 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, pp. 2–3; Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 5.
958 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, p. 3.
and treatment of Local Management Resolution matters (LMRs) and Management Intervention Model matters (MIMs) within the complaints system. In particular, it is more consistent with the fact that these ‘customer service’, ‘low-level performance’ or ‘minor misconduct’ matters were not even considered by IBAC or Victoria Police to be ‘complaints’ in the formal sense, are presently not required under the legislation to be reported to IBAC and were not, until recently, even reported to IBAC. In other words, the longstanding status and treatment of LMRs and MIMs challenges the account that the vast majority of complaints referred by IBAC to police were minor matters of this nature—in fact, most of these matters were not formally received by IBAC at all. The weight of this argument is augmented by the misclassification of some complaints about serious police misconduct as LMRs, which was recognised in IBAC’s 2016 and 2018 audits and in a range of other evidence received by the Committee.\(^{959}\)

Nevertheless, IBAC has recently emphasised that, if the power of referral in s 73 were made discretionary, it would be able to retain more complaints about police and would, as it desires to, undertake more investigations of these complaints itself.\(^{960}\)

The Committee agrees that s 73 be amended so that it is no longer mandatory to refer complaints to police. However, this amendment is subject to IBAC being prohibited, unless there are exceptional circumstances, from referring complaints about ‘serious police misconduct’, as defined in this report, to Victoria Police for investigation.\(^{961}\) It is also subject to the Committee’s recommendations (below) with respect to conflicts of interest, protection of complainants from reprisals and informing complainants.

**RECOMMENDATION 28:** That the Victorian Government seek the amendment of s 73 of the IBAC Act 2011 (Vic) so that IBAC ‘may’ (instead of ‘must’) refer a complaint to another person or body to undertake the investigation.

### 7.2.3 Informing and involving complainants

#### The views of stakeholders

The Committee further heard that many complainants were surprised and disappointed to learn that their complaint had been referred back to police, especially if they had purposefully complained directly to IBAC.\(^{962}\) As the Victorian Inspectorate (VI) said:

> A significant percentage of complainants to the VI do not know why IBAC has referred their complaints to the very body they are complaining about, namely Victoria Police ...

> A common sentiment expressed to the VI is illustrated by the following extract from one complaint: ‘I had understood that IBAC was intended to be an independent body, ... I am astounded that IBAC keeps referring this back to the PSC—PSC is clearly not a body independent of Victoria Police.’\(^{963}\)

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959 See the discussions on LMRs in chapters 3–6 in this report.

960 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, p. 5.

961 See Section 7.2.1 in this chapter and the discussions in chapters 2 and 8 of this report.

962 See, for example, Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 12; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, pp. 2, 8; Youthlaw, Submission 39, 26 August 2017, p. 3.

963 Victorian Inspectorate, Submission 34, 14 August 2017, p. 12.
Victoria Police has acknowledged that these kinds of circumstances do sometimes arise:

Victoria Police acknowledges that there are occasions where IBAC will forward complaints to Victoria Police for attention in circumstances where the complainant specifically requests that this not happen, but notes that IBAC is responsible for all decisions for the referral of complaints to Victoria Police for investigation.  

Mr Jeremy King, from Robinson Gill lawyers, told the Committee that given that, in his view, members of the public have ‘already lost faith’ in the complaints process, they are even more disillusioned when they discover their complaint has been referred back to Victoria Police, the very body they are complaining about.

Mr King also observed that his firm’s clients ‘do not understand why IBAC has referred their complaint to Victoria Police in the first place’.

**The Committee’s view**

The importance of informing, involving and communicating well with complainants has been reinforced throughout this Inquiry. These principles are clearly relevant to the situation in which a complaint has been referred by IBAC to Victoria Police (or by PSC to a region, department or command), particularly when the complaint was made directly to IBAC.

The Committee considers that part of the solution to the problem of complainant frustration and dismay at the referral of their complaint to police is better quality public information about the complaints system. That is, information that is readily available to members of the public and police personnel alike and which specifically explains when and why complaints are referred and what that involves. In addition, the Committee has also recommended that IBAC give reasons to complainants, explaining why it has decided to dismiss, refer or investigate a complaint.

Best practice principles provide that, in order to adequately inform and involve a complainant in the complaints process, the external oversight agency or the police, whichever is responsible for handling the complaint, ‘should arrange to liaise with the complainant’ and ensure they are ‘kept informed of developments throughout the determination of his or her complaint’. The requirements of these principles have been well described in the *Landers report*:

An effective complaints system should involve the complainant in the process so far as is appropriate. However, the extent to which the complainant is involved is itself a source of debate. The opportunities for complainant involvement vary across jurisdictions. Most systems will, at a minimum, require communication with the complainant throughout the process where possible. A failure to communicate with complainants is very likely to lead to complainant dissatisfaction and will affect public perception of the complaints process.
Such an approach is consistent with Victoria Police’s policy on victim-centric policing, under which it ‘aims to ensure that victims and those in need of assistance are .. provided with appropriate information and support in a timely manner’.

Given the risks associated with IBAC and PSC referrals to Victoria Police, such as reprisals or partial investigations (identified in IBAC’s 2016 audit, for example), the Committee considers that IBAC and PSC should inform complainants that they are planning to make a referral and consult with them where that is practicable. This will allow complainants to be better informed and able to pursue their complaint with the benefit of professional advice and support where necessary. As the Council of Europe Commissioner for Human Rights has put it, informing and liaising with complainants ‘serves to safeguard’ their ‘legitimate interests in the complaints system’. Such an approach will also mean that IBAC and Victoria Police will themselves have better access to information about the particular circumstances of a complaint and be able to engage with complainants in a fashion that meets complaints-handling and customer service best practice. These circumstances could, for example, include specific conflict of interest, reprisal and officer complaint-history risks that IBAC and Victoria Police might otherwise be unaware of.

RECOMMENDATION 29: That the Victorian Government seek the amendment of the IBAC Act 2011 (Vic) to require IBAC to inform disclosers and complainants of any decision by IBAC to refer a complaint (including a protected disclosure, ‘whistleblowing’, complaint) about Victoria Police back to Victoria Police for investigation prior to its referral. In addition, IBAC should consult with complainants prior to making any referral to Victoria Police where that is practicable.

RECOMMENDATION 30: That the Victorian Government seek the amendment of the Victoria Police Act 2013 (Vic) to require Professional Standards Command, Victoria Police, before it makes any referral of a complaint about police to Victoria Police’s regions, departments or commands for investigation, to inform the complainant or discloser of that planned referral. In addition, Professional Standards Command should consult with the complainant or discloser prior to making a referral to Victoria Police’s regions, departments or commands where that is practicable.

7.2.4 Protection against reprisals

The views of stakeholders

A number of stakeholders presented evidence that complainants sometimes experience reprisals or related forms of disadvantage if they make a complaint about police. These might include over-policing and under-policing, retaliatory charges or direct mistreatment. Much of this evidence was thoroughly examined in Chapter 5 of this report. In this section, it is useful, however, to draw on some of that evidence as an illustration of the need for complainants to be adequately protected against reprisals.

970 IBAC, Audit of police complaint handling systems at regional level, Melbourne, September 2016.
Youthlaw explained that

[the] reality for the young people we work with is that they have a higher likelihood of having more contact with police than other members of the community. For many their complaints arise in the context of police charges.

Many of the young people we assist are reluctant or don’t realise they have a right to complain about treatment by police officers. They also regularly say they don’t want to make a complaint because they did not think it will do anything, they are fearful of might happen to them if they do.972

St Kilda Legal Service put the view that

the act of lodging the complaint contains an inherent risk of significant adverse consequences for our clients.

These include:

- Reduced police responsiveness in future call outs, or police (and particularly their local police station) being unwilling to investigate future allegations of criminal behaviour (including family violence).
- Targeting by way of subsequent criminal charges. In the case of family violence survivors, this may include being charged with breaches of an intervention order where there are cross-applications of orders.
- Threats of discrimination, or actual aggressive behaviour.
- Feelings of isolation in that our clients have nowhere to turn to when seeking protection against violence.973

Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, based in country Victoria, highlighted that the risk of reprisals can be increased in small towns where the anonymity of a complainant is much less likely to be protected:

Particular issues arise for people living in a rural or regional location who seek to make a complaint against a member(s) [sic] of a local police station. The casework experience of the LCCLC [Loddon Campaspe Community Legal Centre] indicates that the idea of simple participation in police accountability processes is hampered by the reality of small-town life in rural locations. Anonymity is also at risk in small communities—LCCLC has found clients are reluctant to complain because they feel they will be the objects of targeted treatment by local police. Client instructions often are ‘they know where I live, they will harass me if I complain’.974

The Committee’s view

In its report, Improving Victoria’s whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic), this Committee recognised that protected disclosers who blow the whistle on wrongdoing can face reprisals for doing so, especially in the workplace.975 While there are a range of protections in the Protected Disclosure Act 2012 (Vic) (‘PD Act 2012 (Vic)’)—and the Committee’s report made recommendations

973 St Kilda Legal Service, Submission 36, 18 August 2017, p. 4.
974 Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017, p. 1.
to strengthen them—in its review of the whistleblowing regime, and in the course of its regular oversight functions, the Committee learnt that such protections are not always effective.

During this Inquiry, the Committee received evidence, based on the Victorian Equal Opportunity and Human Rights Commission’s (VEOHRC) report into Victoria Police’s workplace culture, that police whistleblowers are sometimes at risk of reprisals when they report wrongdoing on the part of their colleagues. It should be recalled that, under s 167(3) of the *Victoria Police Act 2013* (Vic), police are required to report suspected misconduct on the part of another officer and that these reports are deemed protected disclosures.

The tenor of this evidence is corroborated in a recent IBAC survey on Victoria Police employees’ perceptions of corruption and their willingness to report wrongdoing. The key findings relevant to this discussion are as follows:

- 46 per cent of respondents felt *they would experience personal repercussions* and 18 per cent stated *I could lose my job* if they reported corruption
- only 20 per cent of respondents felt they would be *protected from victimisation* if they reported corruption ...
- 13 per cent felt Victoria Police *actively discourages the reporting of corruption*.

The IBAC report concluded that ‘the research reveals concern among Victoria Police employees about the repercussions of reporting and protection for those who report.’

IBAC has further observed:

> Despite ... [the] statutory requirement to report misconduct, there remain cultural impediments to police reporting police for suspected misconduct. It is well established that the culture of law enforcement agencies has traditionally valued loyalty to colleagues, at the expense of reporting wrongdoing. This culture can be reinforced by a fear of reprisals.

Victoria Police is undertaking a substantial program of reform and cultural change in response to the VEOHRC review of sexual harassment and abuse within the force, a key component of which is designed to encourage reporting of suspected wrongdoing.
In order to encourage the reporting of wrongdoing and to reduce the risk of complainants being exposed to reprisals due to their making a complaint about police, the Committee considers that IBAC and PSC should be prohibited from making referrals of complaints where there is an unreasonable risk of serious harm to the complainant’s or discloser’s safety, health or welfare due to a reprisal.

**RECOMMENDATION 31:** That the Victorian Government seek the amendment of the *IBAC Act 2011* (Vic) to prohibit IBAC from referring a complaint back to Victoria Police for investigation if there is an unreasonable risk of serious harm to the complainant’s or discloser’s safety, health or welfare due to a reprisal.

**RECOMMENDATION 32:** That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to prohibit Professional Standards Command, Victoria Police, from referring a complaint about police back to regions, departments or commands if there is an unreasonable risk of serious harm to the complainant’s health, safety or welfare due to a reprisal.

### 7.2.5 Conflicts of interest

A conflict of interest exists where there is a conflict between, broadly, a person’s private interests and their public duties. Conflicts of interest can be actual, potential, perceived or a ‘conflict of duty’. For a useful account, see Box 7.1. In the context of the referral of complaints from IBAC to police, the proper identification, declaration, management and avoidance of any conflicts of interest affecting police officers involved in the handling or investigation of complaints is essential to the impartiality of the process. This section briefly examines conflict of interest issues as they relate to referrals, although there are some necessary overlaps with the investigation of complaints themselves.

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986 The next chapter examines the broader significance of conflicts of interest to the impartiality of PSC and other Victoria Police complaint investigations, including the issue of complaints against officers stationed in regional and country Victoria.
**BOX 7.1: Types of conflict of interest and duty**

A conflict of interest is where ... [someone] has private interests that could improperly influence, or be seen to influence, their decisions or actions in the performance of their public duties.

Conflicts may be actual, potential or perceived, or represent a conflict of duty.

**Actual conflict of interest:**

There is a real conflict between an employee or director’s public duties and private interests.

**Potential conflict of interest:**

An employee or director has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.

**Perceived conflict of interest:**

The public or a third party could form the view that an employee or director’s private interests could improperly influence their decisions or actions, now or in the future.

**Conflict of duty:**

Will arise when a person is required to fulfil two or more roles that may actually, potentially or be perceived to be in conflict with each other.


**The views of stakeholders**

While much of the evidence received during this Inquiry focused on the more general issues of the independence of the handling and investigation of complaints about police, a number of stakeholders drew attention to conflict of interest issues in the sense described above.987

For example, Robinson Gill Lawyers argued:

There is a clear risk for a conflict of interest where Victoria Police investigates its own officers. Even a perception of a conflict of interest is sufficient to undermine public confidence in the investigatory process ...  

This perception of bias exists regardless of which officer is allocated the investigation, however that perception is significantly escalated where the complaint is referred for investigation to the station at which the officer who is the subject of the complaint works.988

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988 Robinson Gill Lawyers, Submission 44, 4 September 2017, pp. 3–4;
St Kilda Legal Service similarly reported:

Unfortunately, the current police complaints system fails particularly our vulnerable clients, but also broader society, in numerous ways. Our experience is that where vulnerable clients face a legitimate problem with police response and wish to raise a complaint, there is a real risk that if they do so ... the complaint is investigated by the very station they are complaining against. 989

IBAC has stressed that the actual or perceived conflicts of interest of an investigator can undermine the impartiality of an investigation of a complaint, trigger further complaints about the legitimacy and rigour of the investigation process and lessen confidence in the complaints-handling system more generally. 990

IBAC’s audit of Victoria Police regional-level complaints found that 17% of the files (excluding LMRs) were found to have been allocated to an inappropriate investigator because:

- the investigator was not of a higher rank than all of the subject officers
- the investigator and the subject officer worked at the same station
- the investigator had a complaint history relevant to the investigation. 991

IBAC has argued that investigators be of a higher rank than a subject officer on the basis that it is more difficult for officers to investigate their peers or superiors:

Ensuring investigators are of a more senior rank to subject officers avoids actual or perceived conflicts of interest and practical issues associated with investigators questioning or recommending sanctions against their peers or more senior officers. 992

IBAC found that in 7% of the files (excluding LMRs) investigating officers had complaint histories ‘that could impact on their impartiality when investigating a complaint’. 993 IBAC considered an officer’s complaint history to be relevant if they had a recent complaint that was similar in nature to that which they were being asked to investigate or if there was a concerning pattern of behaviour (such as a high number of complaints or regular complaints of a similar nature) ... 994

IBAC also identified a policy inconsistency in Victoria Police with respect to whether an investigating officer’s previous investigation of a subject officer ought to preclude them undertaking a new investigation of that officer. 995 At the time, IBAC noted that while the Victoria Police manual policy on complaints and discipline stated that such an investigating officer would not be automatically precluded, its Integrity management guide (at April 2015) effectively did. 996 It is noteworthy that this still seems to be the case. Victoria Police's submission to this Inquiry states that an ‘investigator who has conducted a previous investigation into the subject employee is not automatically precluded from conducting another investigation into that same person. 997

989 St Kilda Legal Service, Submission 36, 18 August 2017, p. 4.
990 IBAC, Audit of Victoria Police complaints handling systems at regional level—summary report, Melbourne, September 2016, p. 11.
991 Ibid., p. 11.
992 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 34.
993 Ibid., p. 36.
994 Ibid.
995 IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 34.
996 Ibid.
Chapter 7 Referring complaints and disclosures

IBAC made a number of recommendations for Victoria Police to improve its identification, declaration and management of conflicts of interest, including requiring the use of conflict of interest declaration forms by potential investigators; ensuring investigators have seniority over subject officers; making sure that, with regional investigations, investigators come from a different station from the subject officer; making Victoria Police policy consistent on when a potential investigator is precluded from conducting an investigation; excluding potential investigators who have a relevant complaint history; and improving PSC’s scrutiny of the process.\footnote{998}{IBAC, Audit of Victoria Police complaints handling systems at regional level—summary report, Melbourne, September 2016, p. 11.}

The response of Victoria Police and recent developments

In the 2016 audit report, IBAC advised that Victoria Police had taken a number of measures in response to IBAC’s concerns, including reinforcing in its policies that impartiality was essential and requiring that investigators fill out a conflict of interest form, which was to be monitored by PSC.\footnote{999}{Ibid.}

More recently, in its submission to this Inquiry, Victoria Police has reported that it has taken, or is taking, a number measures in response to ‘concerns raised in recent years by IBAC and community stakeholders about the management of conflict of interest in regional complaint investigations’.\footnote{1000}{Victoria Police, Submission 52, 1 May 2018, p. 21.} These measures include:

- Replacing (at the urging of IBAC), in December 2017, its conflict of interest form with an improved form based on one used in New South Wales.
- Having EPSOs [Ethical and Professional Standards Officers] make sure these forms are filled out before any investigation.
- EPSOs auditing every active regional investigation to ensure that each file has a current, completed conflict of interest form that has been ‘considered by a relevant supervisor’.
- Reallocating any files to an appropriate investigator where there is a conflict of interest.\footnote{1001}{Victoria Police, Submission 52, 1 May 2018, pp. 21–22.}

With regard to the New South Wales experience, which doubtless bears on the new form introduced by Victoria Police, IBAC has explained:

Ensuring conflict of interest issues are properly addressed and documented has been recognised in other jurisdictions as a significant way of increasing public confidence in police complaint handling process. IBAC notes that in NSW [New South Wales] Police, the Matter Allocation Risk Appraisal (MARA) process is designed to determine whether misconduct matters should be managed locally or transferred to another location for investigation or other resolution. The first part of the form, which must be completed by the Local Area Command complaint management team (CMT), requires the team to consider conflicts of interest which may affect the conduct of an investigation and any strategies to be adopted to manage those risks. If a conflict is identified, the matter may be transferred to another NSW Police command or [NSW] PSC [Professional Standards Command] to investigate or other assistance may be provided by the Region or [NSW] PSC to manage the potential conflict.\footnote{1002}{Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, pp. 10–11.}
In July of this year, the IBAC Commissioner informed the Committee of its discussions with the Chief Commissioner of Police over concerns about the management of conflicts of interest with regard to complaint investigations as well as its recommendations for addressing these concerns. This is discussed in Section 8.3.2 in Chapter 8.

**The Committee’s view**

Best practice principles require the proper identification, declaration, management and avoidance of conflicts of interest in investigations of complaints about police. As the UNODC has emphasised, it is crucial that police do not investigate their immediate colleagues both in order to avoid any conflict of interest and to ensure that the investigation may be seen by the public as unbiased and impartial.

Given the important role of police in the handling and investigation of complaints in a robust mixed Civilian Review system, it is essential that impartiality is safeguarded and enhanced. On the basis of the evidence received during this Inquiry, and recent IBAC audits in 2016 and 2018 identifying conflicts of interest as an area of concern in Victoria Police, the Committee considers that neither IBAC nor the PSC should refer a complaint for investigation to a police investigator who is affected by a conflict of interest.

**RECOMMENDATION 33:** That the Victorian Government seek the amendment of the **IBAC Act 2011 (Vic)** and the **Victoria Police Act 2013 (Vic)** to provide that complaints not be referred back to police by IBAC or Professional Standards Command, Victoria Police, for investigation by a police investigator who is affected by a conflict of interest.

### 7.2.6 IBAC’s power to withdraw a referral

**The views of stakeholders**

While stakeholders did not specifically refer to IBAC’s legislated power under s 79 of the **IBAC Act 2011 (Vic)** to withdraw a referral, and to take over the investigation of a complaint from the body that has received the referral, most provided evidence of the need for the handling and investigation of complaints to be fair, impartial, thorough and timely. The Committee also received evidence that there needs to be robust

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1003 Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018
oversight over all investigations of complaints about police. These issues are examined fully in the next chapter. This section discusses IBAC’s power to withdraw a referral under s 79.

The current law and practice

Putting aside the issue of LMRs and MIMs and the serious deficiencies with Victoria Police’s and IBAC’s electronic complaints management systems (already discussed in this report), IBAC exercises a range of monitoring, review, audit and other oversight functions regarding complaints referred to Victoria Police. There is also the ultimate power under s 79 of the IBAC Act 2011 (Vic) for IBAC to withdraw a referral it has made to a body or person, including Victoria Police, that is authorised to receive a referral under s 73.

Section 79 reads, in part, as follows:

(1) This section applies to a referral under section 73 ...
(2) At any time after the IBAC has made a referral to which this section applies of a complaint or notification to the IBAC, the IBAC may—
   (a) determine to investigate that complaint or notification under Division 4; and
   (b) withdraw that referral by providing written notice to the person or body to which the complaint or notification was referred.
(3) A person or body which receives a notice from the IBAC withdrawing a referral under subsection (2) must—
   (a) cease its investigation of the referred complaint or notification; and
   (b) provide the IBAC with any evidence that the person or body has in its possession or control in relation to that referred complaint or notification; and
   (c) cooperate with the IBAC and ensure that its officers provide all reasonable assistance requested by the IBAC in relation to that complaint or notification.
(4) The IBAC, as soon as reasonably practicable, must notify the Victorian Inspectorate in writing of the withdrawal under this section of any referral.

Thus, section 79 authorises IBAC to withdraw a complaint referred to Victoria Police and investigate it itself. However, the exercise of that power is presently discretionary and not subject to any conditions. Should IBAC make a withdrawal under this section, Victoria Police is required to cease its investigation and cooperate with IBAC by transferring any relevant evidence it has and by rendering ‘all reasonable assistance’ to it.

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1007 See, for example, Aboriginal Family Violence Prevention & Legal Service Victoria, Submission 37, 18 August 2017, pp. 4–5; Youthlaw, Submission 39, 26 August 2017, pp. 5, 14–15; Remedy Australia, Submission 40, 31 August 2017, p. 5; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5–6, 17, 21–22; Fitzroy Legal Service, Submission 43, 31 August 2017, pp. 7–8, 9–10; Mr Allen Tong, Submission 12, 2 August 2017; Mr Jordan Brown, Submission 17, 3 August 2017, p. 2; Centre for Multicultural Youth, Submission 18, 3 August 2017, p. 2; Victoria Legal Aid, Submission 19, 3 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Robinson Gill Lawyers, Submission 44, 4 September 2017; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 24–25.

1008 Section 3.9 in Chapter 3 of this report; Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, IBAC, pp. 1, 5, 9 (IBAC carried out 73 reviews of ‘selected matters referred to Victoria Police’ in 2016/17); Ms Christine Howlett, Director—Prevention & Communication, correspondence, 30 November 2017, p. 5.
However, it appears that IBAC has rarely, if ever, withdrawn a complaint under s 79. At a hearing in September 2016, the then IBAC Commissioner, Mr Stephen O’Bryan QC, told the Committee that IBAC had threatened to use it on a few occasions but had not actually done so.\footnote{Mr Stephen O’Bryan QC, Commissioner, IBAC, closed hearing, Melbourne, 24 October 2016, Transcript of evidence, pp. 12–13 (‘There is always the fallback under our Act where we can take back a referral and we can just investigate ourselves in an extreme case where we think the agency is just not capable of dealing with it properly for whatever reason ... We have threatened it. We have threatened it at least once. ... I do not think we have done it. No. But a couple of times we have warned that we might, but that smartens them up, we find.’).}

**The Committee’s view**

Best practice principles require the fair, impartial, thorough and timely investigation of complaints; global oversight of all investigations by an external agency; and the authority of that agency to intervene and undertake its own investigation where necessary.\footnote{See, for example, UNODC, *Handbook on police accountability, oversight and integrity*, United Nations, New York, 2011, pp. 13–14, 36, 52–53.}

The Committee believes, as part of the process of ensuring the adequacy of Victoria Police investigations of complaints, that IBAC be required to withdraw a referral from Victoria Police when IBAC considers that Victoria Police is not investigating a complaint fairly, thoroughly and without unreasonable delay. In those circumstances, IBAC would be required to take over responsibility for the complaint and investigate it itself.

**RECOMMENDATION 34:** That the Victorian Government seek the amendment of s 79 of the *IBAC Act 2011* (Vic) to require IBAC to withdraw a complaint it has referred to Victoria Police—that is, take it over and investigate the complaint itself—when IBAC considers that Victoria Police is not investigating the complaint fairly, thoroughly and without unreasonable delay.

Section 80(1) of the *IBAC Act 2011* (Vic) currently provides, subject to a wide range of prohibitions in subsection (2), that IBAC may notify a complainant that it has withdrawn a complaint under s 79 and has determined to investigate the complaint itself. Consistent with the best practice principles of transparency and complainant-involvement—and with the Committee’s recommendations regarding IBAC giving reasons to complainants for their decisions—the Committee believes that IBAC should be required to inform a complainant when it has withdrawn a complaint from Victoria Police under the amended s 79 of the *IBAC Act 2011* (Vic) in order to investigate that complaint itself.

**RECOMMENDATION 35:** That the Victorian Government seek the amendment of s 80 of the *IBAC Act 2011* (Vic) so that IBAC must inform a complainant when it has, under the amended s 79, determined to investigate a complaint itself, unless IBAC considers that this would jeopardise the investigation.

### 7.3 Conclusion

This chapter has examined a range of key issues with IBAC and PSC referrals of complaints to Victoria Police for investigation. The evidence shows that the vast majority of complaints are referred to Victoria Police, with only a very small fraction
Chapter 7 Referring complaints and disclosures

The Committee considers that the proportion of complaints that IBAC investigates is insufficient and it is also concerned that matters referred to police include complaints alleging serious misconduct. The Committee has therefore recommended that, unless exceptional circumstances exist, IBAC be prohibited from referring complaints about serious police misconduct to Victoria Police for investigation.

With regard to IBAC’s legislated referral power under s 73 of the \textit{IBAC Act 2011} (Vic), the Committee recognises that greater discretion for IBAC with respect to referrals of complaints about police misconduct will assist IBAC in retaining and investigating more complaints than it does presently, and in prioritising its attention to not only serious or systemic corrupt conduct but serious police misconduct. However, this proposed discretion is subject to the Committee’s other recommendations with regard to the non-referral of serious police misconduct, reprisals, informing complainants and conflicts of interest.

Consistent with its position that IBAC ought to give complainants reasons for its decisions, the Committee recommends that IBAC and PSC be required to inform a complainant of any planned referral of a complaint to Victoria Police. This is particularly important when a complainant has made a complaint directly to IBAC in the first instance. This will mean that complainants are better informed and better able to gain the benefit of appropriate professional advice and support where necessary.

The Committee’s review of Victoria’s whistleblowing regime demonstrated that whistleblowers can be at risk of reprisals, especially in their workplace, for reporting wrongdoing. This can be true also for police whistleblowers, as shown in recent VEOHRC and IBAC reports. The Committee therefore recommends that IBAC and PSC be prohibited from referring a complaint back to police when there is an unreasonable risk of serious harm to a complainant’s safety, health or welfare due to a reprisal.

IBAC, like the Office of Police Integrity before it, has identified that Victoria Police needs to improve its management of conflicts of interest, conflicts that can undermine the reality or perception of impartiality in the handling and investigation of complaints. This is essential given the role of police in investigating complaints within a robust mixed Civilian Review complaints system. Therefore, the Committee has recommended that IBAC and PSC be prohibited from referring a complaint to a police investigator affected by a conflict of interest.

Finally, under s 79 of the \textit{IBAC Act 2011} (Vic), IBAC has the ultimate power to withdraw a complaint from a body it has referred a complaint to and take over responsibility for the complaint and investigate it. However, it appears the power has rarely, if ever, been used. The Committee considers that IBAC’s oversight of referrals will be strengthened if it were required to withdraw a referral to Victoria Police when IBAC considers that an investigation is not being undertaken fairly, thoroughly and in a timely manner. Whenever IBAC withdraws a referral from police it should, consistent with the best practice principle of complainant-involvement, inform the complainant unless it considers that this would jeopardise the investigation.

The next chapter examines the key issues with the conduct of investigations into complaints about police by both IBAC and Victoria Police.
8 Investigating complaints and disclosures

8.1 Introduction

While a robust mixed Civilian Review model of police oversight retains an important role for police, it is important to ensure that any complaint investigations they undertake are impartial, effective and subject to vigorous external oversight. This chapter examines the key issues of concern identified by stakeholders who gave evidence to this Inquiry, with a focus on how investigations are conducted. In turn, it examines the prioritisation and investigation of serious police misconduct by the Independent Broad-based Anti-corruption Commission (IBAC); the enhancement of IBAC’s investigative and oversight powers and capacity, as well as proposed reforms to its conduct of complaint investigations; and improvements to Victoria Police complaint investigations, with a focus on impartiality, thoroughness and complainant-involvement.

8.2 Improving IBAC’s investigation and oversight roles

8.2.1 Prioritising IBAC’s attention to serious police misconduct

The Committee has received evidence from some stakeholders that IBAC has paid insufficient attention to its investigative function in relation to police misconduct.\textsuperscript{1011} This has been attributed in part to the nature of the current legislation as well as IBAC’s orientation towards its (certainly invaluable) anti-corruption functions in relation to the public sector at large, and its reluctance to fully develop its role as a complaint-handling body in relation to police misconduct.\textsuperscript{1012}

As Robinson Gill Lawyers informed the Committee:

IBAC is focused on corruption. Section 15(1A) IBAC Act requires IBAC to ‘... prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct or systemic corrupt conduct’. The body has been named an ‘anti-corruption commission’. It is apparent from the website that IBAC prioritises corruption claims.\textsuperscript{1013}

Similarly, the Police Accountability Project has suggested that

Although IBAC has completed some significant police oversight activities since its establishment, IBAC’s fundamental focus has been on, and remains on high level corruption. This is evidenced by its allocation of resources and indeed, its name.\textsuperscript{1014}

\textsuperscript{1011} See the discussions in sections 2.5 of Chapter 2 and 5.6.2 in Chapter 5 of this report.

\textsuperscript{1012} See, for example, Youthlaw, Submission 39, 26 August 2017, pp. 3, 4; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 17; Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 4; Law Institute of Victoria, Submission 41, 31 August 2017, pp. 4, 12; Robinson Gill Lawyers, Submission 44, 4 September 2017, pp. 5, 6.

\textsuperscript{1013} Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 5.

\textsuperscript{1014} Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 17.
Section 15(1A) of the *IBAC Act 2011 (Vic)* requires IBAC to prioritise its attention on ‘serious corrupt conduct or systemic corrupt conduct’:

(1A) In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute corrupt conduct or systemic corrupt conduct.

The Victorian Inspector, Mr Eamonn Moran PSM QC, has told the Committee that there is presently no legislative distinction between ‘serious’ and other police misconduct nor, as seen above, present legislative authority for IBAC to prioritise serious police misconduct:

Under the legislation—the IBAC Act [2011 (Vic)]—IBAC is required to prioritise the investigation and exposure of serious or systemic corrupt conduct. So it is perfectly understandable that they are going to devote the majority of their resources to that task. Whereas with respect to police personnel misconduct, there is no sort of similar obligation. There is no classification of what might be regarded as serious police personnel misconduct or systemic, where a priority could be given to IBAC to then look at that form of misconduct.  

This year IBAC has itself recognised the need to prioritise its attention on not only serious or systemic corruption but also serious police misconduct. This is in order ‘to ensure that IBAC’s powers and resources are equally focused on ... serious police misconduct’.  

The Committee considers that IBAC should prioritise not only the investigation and exposure of serious or systemic corrupt conduct but also serious police misconduct as defined in this report.

**RECOMMENDATION 36:** That the Victorian Government seek the amendment of s 15(1A) of the *IBAC Act 2011 (Vic)* to provide that:

In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct, systemic corrupt conduct or serious police misconduct.

As discussed earlier in this report (Section 5.6.2 in Chapter 5), the Committee has recommended that ‘serious police misconduct’ be defined as follows:

‘Serious police misconduct’ should be defined in the relevant legislation in terms similar to s 10 of the *Law Enforcement Conduct Commission Act 2016 (NSW)* as:

- conduct of a police officer, Protective Services Officer or other police personnel that could result in the prosecution of the officer or employee for a serious indictable offence or serious disciplinary action against the officer or employee for a disciplinary infringement, including:
  - corrupt conduct
  - serious assault and other serious criminal offences
  - wrongful arrest, false imprisonment and malicious prosecution
  - serious mistreatment in police custody

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1016 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, pp. 5–6.
1017 See Section 2.5 in Chapter 2 and Section 5.6.2 in Chapter 5 of this report.
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- the use of excessive force
- human rights violations (including cruel, inhuman and degrading treatment)

- a pattern of officer misconduct carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of Victoria Police.

8.2.2 Investigating serious police misconduct

The Committee considers that, in order to meet best practice principles, and to pay sufficient attention to its complaint investigation functions in relation to police, IBAC must, unless there are exceptional circumstances, investigate complaints about serious police misconduct; report on those exceptional circumstances in their annual reports; and exercise rigorous oversight over any referral of a complaint to police for investigation.1018

IBAC's concerns and the views of other stakeholders

IBAC has put forward two main, overlapping, objections to being required to investigate complaints about serious police misconduct. The first objection is that IBAC lacks the necessary investigative expertise and capacity to handle the resulting increase in the volume and type of investigations. The second objection is that IBAC lacks the necessary resources, in the more general sense of that word, to effectively investigate most complaints about serious police misconduct.

Expertise

With respect to the first objection, in February 2018 IBAC explained:

- IBAC has previously raised with the Committee and reported on the difficulties we face in recruiting trained and skilled investigators. This has been evident in our recent efforts to establish a fourth investigative team, where not all positions have been able to be filled.

- In addition to requiring additional investigators, IBAC would require additional auxiliary operational support, such as physical and technical surveillance, digital forensics and collection (for example high tech crime and telephone intercept monitors) as well as associated assessment, review, prevention and strategic research and audit capabilities. There would also be additional associated corporate support required.

- Further, ... an absence of sufficient powers would need to be addressed if IBAC was mandated to investigate a prescribed category of serious police misconduct.1019

IBAC has also emphasised the need to recruit experienced, specialised investigators with values that are compatible with IBAC’s:

- Recruiting staff who are highly skilled and experienced in their professional disciplines, and whose personal values align with those of IBAC is an ongoing challenge. It is important to recruit experienced investigators, many of whom have law enforcement experience. Law enforcement experience is important as investigators need to be skilled in areas including exhibit management, brief preparation, applications for special investigative tools, development and

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1018 See the discussions in chapters 2 and 7 in this report.
execution of search warrants, surveillance, and handling of defensive equipment. To help ensure the independence of IBAC investigations into police, IBAC targets candidates with interstate law enforcement experience rather than Victoria Police experience. This limits the pool of available investigators.

- There are investigative challenges associated with investigations into police. Generally, police are more aware of law enforcement techniques than other public sector employees.
- ... IBAC is [also] constrained by an absence of all necessary powers in our investigations of complaints and notifications about corrupt conduct and police personnel conduct.¹⁰²⁰

As discussed in the preceding chapter, IBAC has also drawn attention to the fact that its lack of investigative expertise means that complaints about serious police misconduct (such as a serious assault) are often referred back to Victoria Police for investigation. As IBAC has stated, another ‘factor that is sometimes relevant is the absence of the specialist expertise with respect to crime scenes and victims’.¹⁰²¹

A range of stakeholders who have given evidence to this Inquiry have argued, following the example of the Office of the Police Ombudsman for Northern Ireland (PONI), that IBAC—or any other proposed external investigative and oversight agency—would be able to recruit civilian investigators to investigate complaints about police, and that they would not need to have come from a policing background.¹⁰²² Flemington & Kensington Community Legal Centre (FKCLC), for example, told the Committee that there are a range of civilian professionals with the skill set to effectively undertake investigations of complaints about police, and that the idea that only police officers, or former police officers, can do so was a ‘myth’.¹⁰²³ As Mr Anthony Kelly, Executive Officer of the FKCLC, told the Committee:

That is a very pervasive myth in this discussion and, dare I say, somewhat of a deliberate one. We find that there are a great deal of civilian roles, professional practices, that are involved in high-level, sophisticated and detailed criminal investigations. They exist within a whole range of different industries—WorkSafe in insurance regulation, in financial investigations, but also in transport accident investigations and human rights abuses, just to name a few. Each of these areas and bodies involve civilians, non-police, trained professionals, uncovering, maintaining and examining forensic evidence, protecting crime scenes—very complex, some involving fatalities and multiple fatalities—and bringing those scenes to the point of prosecution. So the myth that police are the only professional body with the skills and experience for crime scene investigation is just that—a myth. Around the world complaint bodies draw on a range of these professions and deliberately aim for a diversity of professions, insights and community representation within their teams for very clear and important reasons. It is part of that shifting away from the cultural connections with just having police investigating themselves, and also developing a diverse skill base.

¹⁰²¹ Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 6. See also the Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 5; Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 7 May 2018, Transcript of evidence, p. 3. See also The Police Association of Victoria, Submission 28, 8 August 2017.
¹⁰²² See, for example, Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 23; Flemington & Kensington Community Legal Centre, supplementary evidence, 22 March 2018, p. 5; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, pp. 5, 7–8.
¹⁰²³ Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 23.
In terms of, also, training, there already exists within Australia a range of diploma and beyond tertiary-level investigative training courses in accident safety investigation, air crash investigations, WorkSafe investigations and so forth. The advanced diploma in crime investigation that is currently being run through Australian police forces, both federally and state and territory, has units of competency that are shared by other investigative courses. Any of these units of competency could be adapted, adopted and used by an independent complaints body to develop a specialised course in partnership with a university and so forth, and coupled with in-house training, links with the police academies and ride-alongs and so forth, you get a very good overview of the investigative skill set that would be valuable. Of course experience builds quickly. IBAC already have skilled investigators with several years experience as it is.\footnote{1024}

The Law Institute of Victoria (LIV) agreed that there are a wide range of civilian professionals who could become complaint investigators:

In the LIV’s view, the independent investigation of complaints, either by IBAC or a new independent body, should be conducted by professional investigators. The LIV does not believe that investigators must be either ex-Victoria Police or police from other jurisdiction.

There are several bodies that currently perform investigatory functions that are similar to IBAC’s functions, including WorkSafe, the Civil Aviation Authority, and the Human Rights Commission of Tasmania.

The LIV also notes that … the [Police] Ombudsman [for Northern Ireland] is supported by a team of professional investigators from other government bodies, lawyers, people with police experience and others.\footnote{1025}

Mr Jeremy King, from Robinson Gill Lawyers, recognised that some reliance on recruiting former police officers is presently necessary but considered that this reliance could, with appropriately diverse recruitment and in-house training, be reduced over time:

As I said to you before, there is a reality behind the situation in that obviously for the first period of any new [independent complaints] body, if it was a new body, they would have to probably do what you are talking about in terms of relying on police officers. But you would hope in the long term that that does not have to be the case—that [in the] long term you could train up appropriate people to be able to investigate police complaints and that the skills in being able to investigate any complaint, particularly a police one, could certainly be transferred across to up-and-coming people who might never have worked in Victoria Police but who might be trained up by IBAC in respect to being able to investigate them. I think there is a myth that you have to have been police or former police in order to be able to investigate police. That is just not the case. Within our office, for example, we conduct civil litigation against police on a daily basis, and we have had to skill up all of our lawyers in respect to how do police work, what are police documents, what are we looking for in terms of CCTV [closed-circuit television] evidence gathering.\footnote{1026}

While PONI was often given as a model for civilian investigators of complaints about police, it should be noted that it does not exclude the recruitment of former police officers as investigators. As a PONI publication explains:

\footnote{1024} Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 23.
\footnote{1025} Law Institute of Victoria, supplementary evidence, 17 May 2018, p. 4.
\footnote{1026} Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 7.
Our investigators come from a variety of backgrounds. Some are ex-police officers, some are temporarily seconded from police forces in England and Wales. Others are from a legal background or are recruited on the basis of having prior investigative experience with bodies such as HM Customs and Revenue or the Ministry of Defence police. We have a number of investigators with prior investigative experience overseas, for example with the Hong Kong police.\[^{1027}\]

PONI has also recruited graduates who are then trained internally and externally to become investigators:

In the past, the Office has appointed graduates as trainee investigators. These trainees undertake an intensive course of job-based training—the university Accredited Training Programme (ATP). The ATP was the first course of its type in the UK. It was developed by the Police Ombudsman's Office in conjunction with Portsmouth University and leads to a formal qualification in investigation.\[^{1028}\]

The LIV noted that PONI ‘does employ ex-police officers and is considered human rights compliant’, however the LIV submitted ‘that the number of ex-police officers employed should be relatively low’.\[^{1029}\]

However, IBAC has expressed concerns that the challenge of addressing the serious gaps in IBAC’s investigative capacities cannot simply be met by training people without law enforcement backgrounds as investigators:

IBAC is aware that evidence has been given to the Committee suggesting that the resourcing issue could be addressed by training people without law enforcement or other formal investigative experience to investigate police complaints. This is an overly simplistic response. IBAC currently recruits investigators from non-policing backgrounds. However law enforcement experience is a significant advantage as investigators need to be skilled in areas including the obtaining and assessment of evidence, exhibit management, surveillance, handling of defensive equipment and legal rights and duties ...

It should also be noted that specific challenges present when investigating police, including for example:

- police have a high level of awareness of traditional and contemporary investigative techniques and therefore police under investigation can deploy counter measures to counteract those techniques
- police under investigation know how to hinder discovery of items of evidentiary value
- it is common for police to be experienced witnesses which makes the examination process less effective
- police have an in-depth understanding of the law (and associated deficiencies) which can be exploited to their advantage.

Investigators with law enforcement experience are better positioned to understand and counteract such challenges associated with investigating police.\[^{1030}\]

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\[^{1028}\] Ibid.
\[^{1029}\] Law Institute of Victoria, supplementary evidence, 17 May 2018, p. 4.
\[^{1030}\] Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 12.
It should be noted that a number of stakeholders who gave evidence, including the FKCLC, recognised the value in recruiting skilled investigators, including those with law enforcement backgrounds. However, as IBAC itself recognises, there are a range of professionals and people with law enforcement backgrounds who have not come from a policing background. Moreover, the FKCLC does not believe that ex-police officers should necessarily be excluded from being recruited as complaint investigators. Rather, the FKCLC sees it as a matter of the right balance being struck. As Mr Anthony Kelly, from the FKCLC, told the Committee:

The debate around former police, police from outside the jurisdiction of the target body, of course is a very live one. Tulloch in Canada, the Honourable Judge Tulloch, is very clear on this. He says it is not about excluding police; police can be non-biased in the same way that civilians could be biased either way as well. So it is about the recruitment, the training and the evaluation and the development of staff to develop the most coherent, non-biased and professional staff body in investigative teams. The New York Civilian Review Board has 100 investigators in teams of six to eight. They represent diverse community members; they have a growing amount of experience; they have proportions of former police officers and people from other law enforcement backgrounds. That is what the aim is—to have that balance. Tulloch and others have suggested no more than 25 per cent or so of former police in any one particular team. Any of this is perfectly achievable within the Victorian context.

Certainly, the Committee recognises the valuable knowledge, experience and skills that former police officers can bring.

IBAC has explained that there are challenges in training and developing recruits to become effective investigators of complaints:

The experience of IBAC and other similar agencies tells us that establishing a training and development program for recruits without previous investigative experience would be an extremely slow and onerous process, which could not in the short term produce significant numbers of new investigators. And obviously the larger the number of inexperienced investigators, the greater the risk of investigation error.

It is critical that investigators have the requisite skills and experience to lawfully carry out their functions. As has been illustrated in other jurisdictions, errors in investigations can jeopardise prosecutions and significantly damage an agency’s reputation.

IBAC’s emphasis needs to remain on the quality of our investigators. Recruiting or developing staff to unrealistic quantitative targets would be both highly undesirable and impractical. Indeed, if IBAC or some other body was legislatively required to investigate such a substantial number of matters ... there would be little alternative than to draw heavily on resourcing from Victoria Police. This would effectively negate the primary objective of those who have raised concerns with the Committee about the perception of partiality and lack of independence of police investigating police.

However, IBAC’s assessment of the burdens and risks of recruiting and training investigators who have not come from a policing background needs to be tempered by its own recognition that there can be deficiencies in Victoria Police
complaint investigations, including; poor management of conflicts of interest, lax record-keeping, delays, insufficient thoroughness and misunderstandings of the complaints system and relevant laws (including, for example, the significance, content and relevance of the *Charter of Human Rights and Responsibilities Act 2006* (Vic)).

**FINDING 13:** While civilians from a range of occupations can be recruited and trained to undertake IBAC investigations of complaints about police, former police officers have also shown themselves to be effective complaint investigators.

**Resources**

IBAC has also argued, in a more general sense, that if IBAC were required to investigate serious police misconduct it would need more resources to handle the increased investigative workload:

> [W]ere IBAC to be required to investigate as a mandatory requirement particular areas of activity, there would be quite extraordinary practical implications for IBAC. We do not have the resources. If we were to significantly increase our responsibility in terms of investigating certain crimes, we would need a different location, we would need a vast increase in the number of staff, the powers that we are able to exercise ...

IBAC has further informed the Committee:

> That without the required resources and capacity in place, the police complaints handling system in Victoria would be overwhelmed by the proposed change. A large backlog of police-related investigations would develop. This would have significant legal and other implications, including a much reduced capacity for IBAC to give priority to serious or systemic police conduct or human rights violations.

However, the Committee's recommendation that IBAC prioritise the exposure and investigation of serious police misconduct is crucial to ensure that IBAC give sufficient attention to these matters. It is important to recall that IBAC has long maintained that the vast majority of complaints about police concern customer service and low-level performance issues or minor misconduct matters, and that IBAC presently investigates only around 2% of all the allegations it receives that it considers warrant investigation (referring the rest to Professional Standards Command, PSC, Victoria Police). If it is the case that only a minority of complaints allege serious police misconduct, then requiring IBAC to generally investigate them should not lead to the feared backlog.

In addition, it is important to note that the Committee's recommendation does not entail the exclusion of Victoria Police from investigating complaints. Indeed, Victoria Police would continue to handle Local Management Resolution (LMR) and Management Intervention Model (MIM) matters, be encouraged to conciliate other suitable complaints and share the responsibility with IBAC for investigating police misconduct that did not fall within the definition of 'serious police misconduct'. If it is the case that there are a large number of complaints about serious police

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1036 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 13.

1037 Conciliation as an option for Victoria Police and IBAC to use is discussed in the next chapter of this report.
misconduct (contrary to IBAC’s long-expressed position), the best practice principles nevertheless recommend that they generally be investigated by an independent, external oversight agency, such as IBAC, if confidence in the complaints system is to be retained.\footnote{see, e.g., Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 14, 16, 17; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 8; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 33; Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 27, 30; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 12, 14, 15; St Kilda Legal Service, Submission 36, 18 August 2017, pp. 2, 10; Youthlaw, Submission 39, 26 August 2017, pp. 3, 9, 12, 14, 17; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5, 15, 17, 40; Fitzroy Legal Service, Submission 43, 31 August 2017, p. 7; Law Institute of Victoria, Submission 41, 31 August 2017, pp. 4, 12; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 5; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 14, 22; Victorian Aboriginal Legal Service, supplementary evidence, 16 March 2018, p. 9; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 7; Joint submission: Flemington & Kensington Community Legal Centre (FKCLC); Drum Youth Services (DYS), Australian Lawyers Alliance (ALA); Loddon Campaspe Community Legal Centre (LCLLC); Ethnic Communities Council of Victoria (ECCV); Federation of Community Legal Centres (FCLC); Victorian Aboriginal Legal Service (VALS); Africa Media Australia (AMA); Synod of Victoria and Tasmania, Uniting Church in Australia (UCA); Northern Community Legal Centre (NCLC); Islamic Council of Australia (ICV); Springvale Monash Legal Service (SMLS); Drummond Street Services (DSS); Eastern Community Legal Centre (ECLC); Goulburn Valley Community Legal Centre (GVCLC), Submission 20, 3 August 2017; Accountability Roundtable, Submission 47, 14 September 2017.}

Having said that, the issue of the resourcing of IBAC was also recognised by other stakeholders who gave evidence to this Inquiry.\footnote{See, e.g., Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 14, 16, 17; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 8; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 33, 35; Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 27, 30; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 12, 14, 15; St Kilda Legal Service, Submission 36, 18 August 2017, pp. 2, 10; Youthlaw, Submission 39, 26 August 2017, pp. 3, 9, 12, 14, 17; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5, 15, 17, 40; Fitzroy Legal Service, Submission 43, 31 August 2017, p. 7; Law Institute of Victoria, Submission 41, 31 August 2017, pp. 4, 12; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 5; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 14, 22; Victorian Aboriginal Legal Service, supplementary evidence, 16 March 2018, p. 9; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 7; Joint submission: Flemington & Kensington Community Legal Centre (FKCLC); Drum Youth Services (DYS), Australian Lawyers Alliance (ALA); Loddon Campaspe Community Legal Centre (LCLLC); Ethnic Communities Council of Victoria (ECCV); Federation of Community Legal Centres (FCLC); Victorian Aboriginal Legal Service (VALS); Africa Media Australia (AMA); Synod of Victoria and Tasmania, Uniting Church in Australia (UCA); Northern Community Legal Centre (NCLC); Islamic Council of Australia (ICV); Springvale Monash Legal Service (SMLS); Drummond Street Services (DSS); Eastern Community Legal Centre (ECLC); Goulburn Valley Community Legal Centre (GVCLC), Submission 20, 3 August 2017; Accountability Roundtable, Submission 47, 14 September 2017.} In particular, a number emphasised that IBAC, in contrast to its predecessor the Office of Police Integrity (OPI), has much broader investigative and oversight functions and jurisdiction, covering not only police wrongdoing but the broader field of anti-corruption in relation to Victoria’s public sector.\footnote{See, e.g., Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 14, 16, 17; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 8; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 33, 35; Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 27, 30; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 12, 14, 15; St Kilda Legal Service, Submission 36, 18 August 2017, pp. 2, 10; Youthlaw, Submission 39, 26 August 2017, pp. 3, 9, 12, 14, 17; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5, 15, 17, 40; Fitzroy Legal Service, Submission 43, 31 August 2017, p. 7; Law Institute of Victoria, Submission 41, 31 August 2017, pp. 4, 12; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 5; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 14, 22; Victorian Aboriginal Legal Service, supplementary evidence, 16 March 2018, p. 9; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 7; Joint submission: Flemington & Kensington Community Legal Centre (FKCLC); Drum Youth Services (DYS), Australian Lawyers Alliance (ALA); Loddon Campaspe Community Legal Centre (LCLLC); Ethnic Communities Council of Victoria (ECCV); Federation of Community Legal Centres (FCLC); Victorian Aboriginal Legal Service (VALS); Africa Media Australia (AMA); Synod of Victoria and Tasmania, Uniting Church in Australia (UCA); Northern Community Legal Centre (NCLC); Islamic Council of Australia (ICV); Springvale Monash Legal Service (SMLS); Drummond Street Services (DSS); Eastern Community Legal Centre (ECLC); Goulburn Valley Community Legal Centre (GVCLC), Submission 20, 3 August 2017; Accountability Roundtable, Submission 47, 14 September 2017.} Some stakeholders have therefore questioned whether IBAC has sufficient funding and human resources to effectively handle this broader role.\footnote{See, e.g., Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 14, 16, 17; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 8; Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 33, 35; Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 27, 30; Mr Tim Marsh, Chief Counsel, Victoria Legal Aid Chambers, Victoria Legal Aid, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 12, 14, 15; St Kilda Legal Service, Submission 36, 18 August 2017, pp. 2, 10; Youthlaw, Submission 39, 26 August 2017, pp. 3, 9, 12, 14, 17; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5, 15, 17, 40; Fitzroy Legal Service, Submission 43, 31 August 2017, p. 7; Law Institute of Victoria, Submission 41, 31 August 2017, pp. 4, 12; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 5; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 14, 22; Victorian Aboriginal Legal Service, supplementary evidence, 16 March 2018, p. 9; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 7; Joint submission: Flemington & Kensington Community Legal Centre (FKCLC); Drum Youth Services (DYS), Australian Lawyers Alliance (ALA); Loddon Campaspe Community Legal Centre (LCLLC); Ethnic Communities Council of Victoria (ECCV); Federation of Community Legal Centres (FCLC); Victorian Aboriginal Legal Service (VALS); Africa Media Australia (AMA); Synod of Victoria and Tasmania, Uniting Church in Australia (UCA); Northern Community Legal Centre (NCLC); Islamic Council of Australia (ICV); Springvale Monash Legal Service (SMLS); Drummond Street Services (DSS); Eastern Community Legal Centre (ECLC); Goulburn Valley Community Legal Centre (GVCLC), Submission 20, 3 August 2017; Accountability Roundtable, Submission 47, 14 September 2017.} A representative account of this view came from the LIV:

The LIV recognises that IBAC has similar staff capacity as the former Office of Police Integrity; however, it has a much broader jurisdiction to cover public sector corruption. Further, Victoria Police number[s] have increased ... since IBAC commenced operation. The LIV notes that the final Report of the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006 includes a
recommendation that the Government ensure that IBAC has capacity to investigate allegations of serious human rights abuses by police and protective services officers (Recommendation 26).¹⁰⁴²

See Appendix 12 for a table comparing the staffing levels of the Office of Police Integrity (2011–2012) and IBAC (2013–2017).

In accordance with best practice principles, the LIV recommended further funding for IBAC, including funding a dedicated arm to handle and investigate complaints about police:

In order to address the apparent capacity issues and to increase the independent investigation of police misconduct, the LIV suggests providing IBAC with additional resources to allow it to prioritise this function. Additional funding would need to be accompanied by cultural change, as LIV members report that the current culture at IBAC is that it is an anti-corruption body, not a complaints body, and this affects the priority IBAC places on investigating police misconduct. ...

The additional resources should be invested in a new and dedicated investigations arm within IBAC.¹⁰⁴³

**FINDING 14:** There are a number of limitations with respect to IBAC’s present investigative and oversight capacities.

**The Committee’s view**

The Committee recognises the present challenges facing IBAC in recruiting appropriate investigators to handle complaints about police as well as the need for it to be adequately resourced to handle any increase in its investigative workload. In this regard, the Committee draws attention to its recommendations that IBAC ‘increase the number of staff dedicated to the investigation of complaints and disclosures about police within the proposed Police Corruption and Misconduct Division’.¹⁰⁴⁴ It also recalls its recommendation that IBAC ‘increase the number of civilian specialists from a diverse range of backgrounds and disciplines’ and create an in-house training team.¹⁰⁴⁵ Finally, the Committee has recommended that the Victorian Government ‘adequately resource the Police Corruption and Misconduct Division to ensure that it can independently and effectively investigate complaints and disclosures about police.’¹⁰⁴⁶

To reiterate, the Committee recognises the importance of Victoria Police’s responsibility for addressing misconduct in its ranks and the important role it can play within the complaints system provided it is subject to rigorous oversight. As the United Nations Office on Drugs and Crime (UNODC) has explained:

> It is important to ensure that the independent oversight body does not alienate itself from the police. Its function is to preserve the police and their integrity, which must be a concern not only for the police but also for the general public. It is crucial


¹⁰⁴³ Law Institute of Victoria, Submission 41, 31 August 2017, pp. 4, 12.

¹⁰⁴⁴ See Section 2.5 in Chapter 2 of this report.

¹⁰⁴⁵ See Section 2.5 in Chapter 2 of this report.

¹⁰⁴⁶ See Section 2.5 in Chapter 2 of this report.
that the external body does not become a tool for the police that absolves them of responsibility for their own force: an external mechanism cannot and must not replace internal mechanisms.

Care should be taken to avoid placing all responsibility for police conduct outside the police. Establishing the degree of responsibility an independent oversight body is to have may be challenging. The independent body must respect the operational independence of the police and support the chief of police as the disciplinary authority in command. It is helpful to establish a clear division of tasks and responsibilities between the independent body and the police, with full police cooperation, to help maintain high professional standards of conduct.1047

IBAC, Victoria Police and The Police Association of Victoria have each in their own ways emphasised the importance of police retaining responsibility for addressing wrongdoing and being involved in the complaints system.1048 For example, the IBAC Commissioner, the Hon Robert Redlich QC, told the Committee that there have been multiple issues at a state level throughout Australia since then in which the same question has been addressed, always with the same answer: that for policy reasons it is highly desirable that a police organisation has primary responsibility for investigating its own fault. Why is that so? Because it is not good enough to simply have written material within an organisation which sets out codes of conduct. It is not enough that there be an educative process within a police force as to what is the necessary practical, ethical behaviour which each police officer should adhere to. It has got to be implemented, and it has got to be seen to be promoted by all police officers at a senior level.

Putting that another way, it is not enough that Victoria Police has enshrined ethical policies—management of police have got to walk the talk. It is not enough that they have written policies, that police officers may be said to understand what their ethical duties are. Wherever there is misconduct, first and foremost it has to be the responsibility of the management of the organisation to prosecute it, to be seen in the public arena to be prosecuting it. If we change that, we fundamentally shift the risk, because if Victoria Police sees that in these areas we no longer have a responsibility to investigate or prosecute our own, we are not doing what is necessary to affect the culture. When we talk about corruption within a large organisation, particularly a police organisation, we are seeking to address a culture that may exist that enables corruption to be fostered.

We all know the vast majority of police officers are good people. It is only a small section of our police force that might have an inclination to be corrupt, but why does corruption flourish? It flourishes because all the good people around those who are corrupt turn a blind eye, don’t report those that they either detect or suspect are doing something that is wrong. So it is the culture ultimately that we must be focusing upon, and if we divest Victoria Police of the obligation to investigate and prosecute, we do not foster the task of ensuring that the right culture is there. We all say it, in all sorts of walks of life, ‘all care, no responsibility’. If you take away from

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an institution the responsibility to investigate and prosecute, you make it very hard for there to be a perception that at a front level management is really serious about enforcing ethical standards.\textsuperscript{1049}

Victoria Police believes

that in order to develop and sustain a police culture with the highest levels of ethical standards and integrity, the organisation must administer its own internal complaint handling and discipline system. Moreover, external independent oversight of this system plays a vital role in holding Victoria Police to account and building community confidence in the State’s police service.

...  

Victoria Police does not resile from its responsibility to maintain a police culture that is one of respect and professionalism with a focus on the protection of human rights. This responsibility can only reside with Victoria Police and requires our close attention and commitment. At the same time, independent oversight of this system will ensure Victoria Police is an accountable policing organisation that is open to recommendations for change and improvement.\textsuperscript{1050}

Along similar lines, The Police Association of Victoria considered that its submission provided

ample evidence to illustrate that Victoria Police is investigating their own, and that their position is neither hopelessly conflicted nor is it soft. We have a strong view that divesting Victoria Police entirely of its responsibility to investigate complaints about its employees and removing from them their important function of ensuring the performance of excellence of the organisation is an exercise that will involve unnecessary and significant expense of the state and indeed is a suggestion that appears contrary to the views currently held by IBAC itself. We are also of the view that it is a flawed process to remove the responsibility of any organisation to maintain its own integrity.\textsuperscript{1051}

The Committee endorses the continued responsibility of Victoria Police to address wrongdoing within its organisation, its role with respect to the disciplinary system and its shared responsibility with IBAC for handling and investigating complaints about police misconduct. However, best practice principles recommend that a body such as IBAC generally investigate complaints about serious police misconduct and exercise rigorous, global oversight over the entire complaints system—police responsibility is not undermined by such measures but reinforced by them.

Moreover, it is important to understand that Victoria Police’s responsibility for maintaining high ethical and legal standards is not limited to its role in handling and investigating complaints about misconduct, a fact recognised by Victoria Police itself.\textsuperscript{1052} Further, as Mr Anthony Kelly, from the FKCLC, highlighted:

\begin{quote}
One of the arguments we hear against the scale of serious misconduct and the definition is that it removes the responsibility of Victoria Police to manage its own workforce and professionally develop its own workforce. However, in reality and in practice none of it does. Victoria Police would still need to maintain responsibility for
\end{quote}

\begin{footnotes}
\item[1049] Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 2–3.
\item[1050] Victoria Police, Submission 52, 1 May 2018, p. 29.
\item[1051] Sergeant Wayne Gatt, Secretary, The Police Association of Victoria, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 11.
\item[1052] Victoria Police, Submission 52, 1 May 2018, especially pp. 6–8.
\end{footnotes}
day-to-day performance management, for supervision. The independent body and the adjudication of other investigative teams merely add weight to the seriousness of the conduct that they would need to be managing, in the same way that hospitals get advice from medical complaint boards and other industries get advice and support and adjudication from other independent regulation boards. Victoria Police would still need to maintain day-to-day supervision and performance management but with the rigour of having the independent body providing extra weight.\textsuperscript{1053}

Ms Tamar Hopkins similarly identified a number of ways outside the complaints system that police managers can contribute to maintaining integrity within the workforce:

[M]anagers have a wide range of things that they can do: they can do integrity checks, training, they can go on ride-alongs with their officers, they can examine use-of-force forms, they can examine field contacts and, very shortly, body-worn camera images and audio. So there is a whole range of activities that managers within Victoria Police can use to ensure the integrity of the workforce outside complaint investigation.\textsuperscript{1054}

The Committee therefore recommends that, unless exceptional circumstances exist, IBAC be required to investigate complaints about serious police misconduct.

**RECOMMENDATION 37:** That the Victorian Government seek the amendment of the IBAC Act 2011 (Vic) to require that, unless there are exceptional circumstances, IBAC, rather than Victoria Police, investigate complaints and disclosures about ‘serious police misconduct’ (as defined in this report). In addition, in their annual report IBAC must report what exceptional circumstances existed justifying referral of a complaint or disclosure about serious police misconduct back to police. Further, IBAC must maintain rigorous oversight of any such referral of a complaint or disclosure back to police.

A related matter is the great complexity in the current legislative definitions of police wrongdoing. The Committee has recommended that the categories of misconduct be clarified, simplified and consolidated into two categories: ‘police misconduct’ and ‘serious police misconduct’. IBAC has also drawn the Committee’s attention to complexity and uncertainty in the legislative characterisation of IBAC’s functions and powers to investigate the full range of police ‘conduct’ and ‘misconduct’ in the IBAC Act 2011 (Vic) and has urged that this be remedied in the following fashion:

IBAC’s functions provided in s 15(2) of the IBAC Act [2011 (Vic)] establishes a distinction between IBAC’s function to investigate corrupt conduct and police personnel misconduct, and IBAC’s function to assess police personnel conduct. Elsewhere in the IBAC Act is reference to IBAC’s ‘police personnel investigative functions’, such as ss 15(4)(a)(ii) and 64(1) of the IBAC Act. IBAC’s functions described in s 15(2) should be modified to include the investigation of police personnel conduct.\textsuperscript{1055}

While the Committee agrees with the intent of this proposal to tidy up the relevant provisions in the IBAC Act 2011 (Vic), given the Committee’s recommendation that there be simpler categories of ‘police misconduct’ and ‘serious police misconduct’, the Committee recommends that s 15(2) of the Act be amended to provide that, among its other functions, IBAC has functions of investigating police misconduct and serious police misconduct.

\textsuperscript{1053} Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 21.

\textsuperscript{1054} Ms Tamar Hopkins, Flemington & Kensington Community Legal Centre, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 21.

\textsuperscript{1055} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 4.
RECOMMENDATION 38: That the Victorian Government seek the amendment of s 15(2) of the IBAC Act 2011 (Vic) to provide that IBAC has functions of investigating police misconduct and serious police misconduct (as defined in this report).

8.2.3 Enhancing IBAC’s investigative and oversight powers

The IBAC Commissioner told the Committee that he considered that IBAC does not presently have all the powers and jurisdiction it needs to investigate and review police corruption and misconduct in an optimal way. He emphasised that this meant that it was often ‘more appropriate’ under s 73 of the IBAC Act 2011 (Vic) for complaints to be referred to Victoria Police for investigation, even complaints about serious police misconduct. In the Commissioner’s view, these deficiencies would be even more marked were IBAC to undertake more investigations of complaints about police. The Commissioner explained that

it is my perception that IBAC presently does not have all of the necessary capability which it should have to properly investigate complaints received against police officers. Curiously, IBAC is the only commission throughout Australia whose investigators do not have the same powers as a police officer. I can see no sound reason for that situation.

... I should have perhaps said by preamble that every other interstate commission has those powers conferred upon its investigators. The mechanism differs from one place to another. For example, in New South Wales the power is expressed to be that if there is a police investigator at the New South Wales commission—a former police officer—that has had five years experience or more, that officer will have all the powers of a police officer. In other states there is a combination of that, together with an ability by the Commissioner to invest in his or her investigators, upon being satisfied that they have the necessary expertise, the power to exercise the police officer’s powers. But whatever system one utilises, we are the only place in Australia where investigators cannot exercise all of the powers of a police officer.

... We are not talking here about some draconian powers that are outside the normal parameters of a police officer’s jurisdiction; we have listed all of the powers that other police officers have, which investigators interstate all have, and we would urge the Committee to look carefully at those powers. That is not to say that there would not have to be discussion and maybe lengthy debate about how those powers should be expressed and any provisions which seek to redress this problem, but the important point at this stage is to recognise that we are presently handicapped.

The Commissioner further emphasised his view that the lack of necessary powers meant that the vast majority of complaints about police had to be referred back to Victoria Police for investigation even in cases where IBAC considers it would be better to undertake its own investigation:

What significance does the absence of those powers have? ... [S]ection 73 of the IBAC Act [2011 (Vic)] provides that in the event that IBAC concludes that it is more appropriate for some other entity to investigate a complaint, it must—we are obliged to—return the matter to that entity. In all of those cases where the absence of these powers impedes our ability to adequately investigate the matter, we are as a matter

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1056 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, 5 February 2018, Melbourne, Transcript of evidence, pp. 4, 5.
of course obliged to return the matter to the Chief Commissioner [of Police]—and we have had to do that on a number of occasions where it would plainly have been better had IBAC investigated the matter itself.1057

This view was reiterated by the Commissioner in subsequent evidence to the Committee:

[A] present there are many types of crimes where IBAC simply does not have the same powers as a police officer and it remains the regrettable fact then that one would conclude it is more appropriate for the police to investigate that—for example, a sexual offence committed by a police officer or a serious assault involving forensic questions at the scene of a crime. We do not have powers that police officers have. That needs to be addressed and then we would not need to conclude that it is more appropriate for that issue to be referred back to Victoria Police. ... [Section 73] is merely to address the fact that at the moment it is mandatory that we pass it back to Victoria Police if they are the more appropriate body to investigate it, and that largely turns on the difference currently between the powers an IBAC investigator has and [those of] a normal police officer.1058

The Commissioner stated further that if IBAC had these ‘necessary powers’ it would be able to investigate and review significantly more matters than it presently does:

[I]f we have those powers and with the added resources which we now have available or hope to acquire in relation to the fourth investigative unit—you will recall, I hope, that we have now been able to add a fourth investigative unit; we have not yet filled all of the positions—with a combination of the full force of the fourth investigative unit and these powers, which we submit are really necessary, we would expect IBAC to be able to investigate further offences itself. And perhaps just as importantly, we would expect to make a major change to the level at which we can review by way of oversight the vast majority of matters which go back to VicPol [Victoria Police] for investigation by VicPol. Above anything else, that is the area where the greatest improvement can take place—our capacity to review what is happening within VicPol, both in relation to matters which constitute misconduct or matters which presently VicPol treat as being only management issues.1059

IBAC has stressed that any additional investigative powers conferred on IBAC officers ‘must be subject to the same safeguards as those that apply to the exercise of those powers by police officers.’1060 Further, IBAC has noted that IBAC officers are subject to the additional safeguard of the Victorian Inspectorate’s oversight of legality and propriety in the exercise of IBAC duties, powers and functions, provided for in the Victorian Inspectorate Act 2011 [(Vic)].1061

At hearings and through correspondence, the Committee sought the views of stakeholders on these issues. It received the most detailed response from the LIV, which endorsed IBAC’s view that it needed additional powers to enhance its investigative capacities:

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1057 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, 5 February 2018, Melbourne, Transcript of evidence, p. 5.
1058 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, 7 May 2018, Melbourne, Transcript of evidence, p. 3.
1059 Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, 5 February 2018, Melbourne, Transcript of evidence, p. 5.
The LIV supports IBAC’s position that IBAC should have the same powers as Victoria Police, including search and arrest powers. Alternatively, if a new independent body were to be established to handle all police complaints, the LIV supports a new independent body having the same powers as Victoria Police.

It is concerning that IBAC is the only commission throughout Australia whose investigators do not have arrest powers or the power to search a person. IBAC should have these powers to be able to properly engage in its oversight function and effectively investigate complaints of police misconduct. Similarly, a new independent body should have the same powers as Victoria Police to ensure that investigations are conducted promptly, thoroughly and effectively.\textsuperscript{1062}

However, Senior Sergeant Chris Gorissen, from The Police Association of Victoria, expressed concern about conferring arrest powers on IBAC officers:

I have not turned my mind to it specifically, but I would suggest that we would be very cautious about any powers resting in IBAC to arrest people. We would have concerns that they would not exercise them judiciously, so it would be something we would have to turn our mind to. But again I see that as a significant, I suppose, divesting of power from Victoria Police into the hands of IBAC, and we will always have concerns in relation to expansion of IBAC powers to that extent, I must say.\textsuperscript{1063}

The next section examines the areas where IBAC considers its legislated powers are insufficient, as well as the remedies it has suggested.

It should be noted that the Committee devoted considerable attention, analysis and discussion to the merits of the proposed additional jurisdiction and powers for IBAC. This involved, for example, consideration of whether such jurisdiction and powers existed under comparable interstate legislation.

**The right against self-incrimination in IBAC preliminary inquiries**

IBAC has informed the Committee that, during ‘a preliminary inquiry, a person served with a summons to attend IBAC to produce documents or things can assert the privilege against self-incrimination’, which, in its view, has on occasion ‘hindered IBAC’s ability to proceed to a full investigation and has created a risk of evidence destruction or concealment’.\textsuperscript{1064}

IBAC has recommended that the *IBAC Act 2011* (Vic) be amended to ‘ensure that the abrogation of the right against self-incrimination that applies to investigation summonses also applies in relation to preliminary inquiry summonses’.\textsuperscript{1065}

Specifically, IBAC has recommended that

provisions abrogating the privilege against self-incrimination in relation to preliminary inquiry summonses be included in Division 3A of Part 3 [of the *IBAC Act 2011* (Vic)]. The recommended provisions would mirror those in section 144 of the IBAC Act which abrogate the privilege in relation to investigation summonses.

\textsuperscript{1062} Law Institute of Victoria, supplementary evidence, 17 May 2018, p. 2. See also Prof Jude McCulloch, Director, Monash Family Violence Prevention Centre, School of Social Sciences, Monash University, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 6; Senior Sergeant Chris Gorissen, Legal Manager, The Police Association of Victoria, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 13.

\textsuperscript{1063} Senior Sergeant Chris Gorissen, Legal Manager, The Police Association of Victoria, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 13.

\textsuperscript{1064} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 6.

\textsuperscript{1065} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 6.
The recommended provision would provide that:

- A person is not excused from giving information or producing a document or other thing in accordance with a preliminary inquiry summons issued under section 59E on the ground that the information, or the production of the document or other thing, might tend to incriminate the person or make the person liable to a penalty.

- Any information, document or thing that might tend to incriminate the person or make the person liable to a penalty is not admissible in evidence against the person before any court or person acting judicially, except in proceedings for:
  - perjury or giving false information
  - destruction or concealment of evidence
  - an offence against this Act
  - an offence against the Victorian Inspectorate Act 2011 [(Vic)]
  - an offence against section 72 or 73 of the Protected Disclosure Act 2012 [(Vic)]
  - contempt of the IBAC under the IBAC Act
  - a disciplinary process or action.1066

However, given that the preliminary inquiry stage is an early part of IBAC’s consideration of a matter, and that the proposed amendment appears to significantly affect an important right of a person subject to a preliminary inquiry, the Committee believes, after due consideration, that the benefits and detriments of the proposal need to be carefully examined by the Victorian Government.

**RECOMMENDATION 39:** That the Victorian Government review whether the IBAC Act 2011 (Vic) should be amended to provide that the abrogation of the right against self-incrimination that applies to investigation summonses applies in relation to preliminary inquiry summonses.

**‘Cease and desist’ directions in relation to investigations by public bodies**

IBAC has argued that a ‘new provision is required to stop public bodies investigating or continuing an investigation when IBAC is investigating the same matter or a related matter’.1067 IBAC has said that when it decides to conduct an investigation in relation to a particular complaint, some public bodies (including Victoria Police) have continued to investigate matters relevant to the IBAC investigation. This has created a significant risk of IBAC investigations being compromised or interfered with.1068

The Committee considers that such an amendment is prudent to avoid duplication and unnecessary complexity as well as to protect IBAC investigations from being interfered with or compromised.

**RECOMMENDATION 40:** That the Victorian Government seek to insert a new provision in the IBAC Act 2011 (Vic) to require a relevant principal officer or the Chief Commissioner of Police to cease conducting an investigation or making inquiries about a matter that is the subject of an IBAC investigation or preliminary inquiry.

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Chapter 8 Investigating complaints and disclosures

Power to search a person

IBAC has recommended that ss 86 and 91 of the IBAC Act 2011 (Vic) be amended ‘to give IBAC the power to search a person during an authorised search of premises under a search warrant’.1069

IBAC explained:

There have been a number of instances where police officers have concealed items of evidence such as mobile phones on their person during the execution of an IBAC Act 2011 (Vic) search warrant or a search of police premises as part of police personnel misconduct investigations, and refused to provide that evidence on request. This in turn has significantly hampered the investigation.

IBAC is unique in being the only anti-corruption commission in Australia without the power to search a person to identify any items of evidence concealed on the person during the execution of a search warrant or search of police premises.1070

The Committee agrees that these proposed search powers will enable more effective investigations of police personnel misconduct in Victoria and notes the LIV’s view that IBAC should have such powers.1071

RECOMMENDATION 41: That the Victorian Government seek to amend sections 86 and 91 of the IBAC Act 2011 (Vic) to give IBAC the power to search a person during an authorised search of premises under a search warrant.

Named persons and search warrant executions

The current Independent Broad-based Anti-corruption Commission Regulations 2013 (Vic) (‘IBAC Regulations 2013 (Vic)’) ’require the names and titles of all persons participating in the execution of a search warrant to be set out on the face of the warrant’.1072 In IBAC’s view, this requirement risks the health and safety of IBAC officers by providing ‘persons of interest’ in an investigation with details about the officers and can also compromise an investigation.1073 As IBAC informed the Committee, the present situation creates an avoidable occupational health and safety risk and risk of compromise to investigations. Providing persons of interest with details of IBAC officers would assist some individuals that may be motivated to threaten harm to IBAC Officers. Based on IBAC’s understanding of the extent of organised crime in Victoria and attempts that may be taken to obtain information and manipulate decision-making processes, this is considered to be a credible risk.1074

IBAC therefore recommends that Form 3 of the IBAC Regulations 2013 (Vic) be amended so that “all IBAC authorised officers” be authorised to enter and search the specified premises, rather than requiring that officers be identified on a particular warrant’. The Committee agrees.

1071 Law Institute of Victoria, supplementary evidence, 17 May 2018, p. 2.
**RECOMMENDATION 42:** That the Victorian Government seek to amend Form 3 of the IBAC Regulations 2013 (Vic) to provide that ‘all IBAC authorised officers’ be authorised to enter and search the specified premises, rather than requiring that officers be identified on a particular warrant.

**Passwords and access to cloud documents**

IBAC has found that when executing search warrants they have sometimes been denied access to computer data, which has created a risk of evidence destruction and has impeded investigations.\(^{1075}\)

During the execution of search warrants, there have been instances where individuals have refused to provide their passwords or assist in access to computing encrypted devices, and then claimed to have forgotten their password when summoned to an IBAC examination. This has allowed evidence to be lost or destroyed.

Currently IBAC does not have the power to compel persons to provide passwords or otherwise assist in providing access to data during the execution of a search warrants [sic]. Police officers currently have such powers.\(^{1076}\)

IBAC has recommended that the IBAC Act 2011 (Vic) be amended ‘to require individuals to assist IBAC officers to access data held on a computer or data storage device or elsewhere, during the execution of a search warrant’.\(^{1077}\) The Committee agrees that such an amendment is prudent given the now commonplace digital storage of data and how a denial of access to it during the execution of a search warrant by IBAC can hamper its investigation of a matter.

**RECOMMENDATION 43:** That the Victorian Government seek to insert a new section in similar terms to section 465AAA and 465AA of the Crimes Act 1958 (Vic) into the IBAC Act 2011 (Vic), to require individuals to assist IBAC officers to access data held on a computer or data storage device or elsewhere, during the execution of a search warrant.

**Power to require names and addresses**

IBAC has informed the Committee that the lack of power to require the provision of names and addresses impedes investigations:

Police officers are able to require a person to provide their name and address, upon forming a reasonable belief that the person has or is likely to commit an offence, or where the person may be able to assist in the investigation of an indictable offence [Crimes Act 1958 (Vic) s 456AA].

This is a power held by corruption investigation bodies in all other states and the Commonwealth and would assist in the timely and effective investigation of offences. The absence of this power significantly hampers IBAC investigative techniques. For instance, in attending a crime scene involving an allegation of serious misconduct by a police officer, witnesses may be reluctant to identify themselves, and a valuable investigative outcome may be missed.\(^{1078}\)

The Committee agrees that IBAC should be given this power.

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RECOMMENDATION 44: That the Victorian Government seek to insert a new section in the IBAC Act 2011 (Vic) to give IBAC the power to obtain names and addresses of persons in similar terms to s 456AA of the Crimes Act 1958 (Vic).

Power of arrest—reasonable belief of offence

IBAC has advised the Committee that it

must rely on the assistance of other law enforcement agencies to arrest persons reasonably suspected of having committed an offence. Where the suspect is a police officer who is to be charged with a serious crime, the need to inform other police of the details of the investigation and any delay in proceeding can both compromise the independence of IBAC investigations and prevent the immediate identification of incriminating and exculpatory evidence.

This impedes IBAC’s ability to investigate allegations of the most serious offence categories, for instance in relation to the investigation and prosecution of police officers accused of serious crimes.\textsuperscript{1079}

IBAC also told the Committee that

[a] number of other statutory officers (such as PSOs [Protective Services Officers] and Fisheries Officers) are empowered to arrest persons if they have a belief on reasonable grounds a person has committed an offence. IBAC is limited to exercising only those powers available to an ordinary member of the public. This impedes investigative methodology and creates a burden to seek assistance from another agency that may compromise an investigation in urgent circumstances. The power to arrest which may then be followed by investigative avenues such as interview or forensic examination is a critical investigative tool. Police oversight bodies in all other states have a broader range of investigative powers available to them to effectively and efficiently investigate police misconduct and corruption such as this.\textsuperscript{1080}

IBAC recommends that powers of arrest be established in the IBAC Act 2011 (Vic) ‘to allow IBAC to arrest persons reasonably suspected of having committed an offence, in similar terms to the power in s 459 of the Crimes Act [1958 (Vic)]’. IBAC emphasised that the operation of this arrest power include all the rights of persons that are arrested and held in custody under s 459 of the Crimes Act [1958 (Vic)], such as the right to be brought before a bail justice or Magistrate within 24 hours [s 4 of the Bail Act 1977 (Vic)].\textsuperscript{1081}

The LIV also considered that such powers of arrest should be established in the IBAC Act 2011 (Vic).\textsuperscript{1082}

The Committee, however, considers that the conferral of such a power of arrest on IBAC officers is such a significant step that systematic review of the rationale, extent, practical operation and relative benefits and risks of the proposed power is warranted.

RECOMMENDATION 45: That the Victorian Government review whether powers of arrest should be established in the IBAC Act 2011 (Vic) to allow IBAC to arrest persons reasonably suspected of having committed an offence, in similar terms to the power provided in s 459 of the Crimes Act 1958 (Vic).
Forensic procedures

IBAC has informed the Committee that its investigations, particularly of offences against the person, are limited by the lack of a power to carry out a range of forensic procedures:

IBAC’s ability to investigate interpersonal offences is significantly hampered by a lack of power to undertake forensic procedures. Forensic procedure powers include the taking of fingerprints, forensic samples (DNA) and undertaking a physical examination during an investigation.

The absence of forensic procedure powers limits IBAC’s ability to investigate offences against the person by police officers as forensic examination of clothing/injuries etc. is not permitted. IBAC is not in a position to protect exculpatory and inculpatory evidence in early stages of an investigation. Similarly, reference samples are unable to be tested or taken if DNA or fingerprints are located on evidence.1083

However, the Committee believes that the proposed conferral of such forensic procedure powers on IBAC officers needs to be systematically evaluated—taking proper account of IBAC’s present expertise and possible impacts on the existing laws and protocols for the use of forensic procedures.

RECOMMENDATION 46: That the Victorian Government review whether a mechanism should be created to enable forensic procedures carried out by Victoria Police under section 464 of the *Crimes Act 1958* (Vic) to be oversighted by IBAC.

Road Safety Road Rules exemption

IBAC considers that some of its surveillance operations are hampered when ‘certain individuals experienced with surveillance counter measures ... breach the road rules to evade detection’:

As IBAC Officers are limited to observing the road rules at all times, this has hampered some investigations. During several investigations, IBAC officers have been unable to follow persons of interest due to erratic driving, speeding, driving down one way streets etc.1084

IBAC has therefore recommended that there be an ‘appropriate exemption under the Road Safety [Road] Rules 2017 [(Vic)] (similar to r 305) for “an authorised IBAC Officer engaged in official IBAC duties”, subject to all necessary safeguards and restrictions’.1085

Specifically, IBAC recommends that the proposed exemption be subject to the same safeguards and restrictions as applies to police officers under r 305 of the Road Safety [Road] Rules 2017 [(Vic)], whereby an exempted police officer is required to take reasonable care in order to be subject to the exemption. The requirement of sub-rule (2) is noted, whereby the vehicle is not required to display lights or sirens if reasonable. IBAC’s covert surveillance requirements would enliven this exception from the requirement to display lights and sirens.1086

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1083 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 11.
1084 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 11.
1085 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 11.
1086 Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 11.
However, the Committee does not consider that the case for creating such an exemption for IBAC officers under the *Road Safety Road Rules 2017* (Vic) has been established and recommends instead that the proposed amendment be reviewed.

**RECOMMENDATION 47:** That the Victorian Government review whether an appropriate exemption be created under the *Road Safety Road Rules 2017* (Vic) (similar to r 305) for an ‘authorised IBAC officer engaged in official duties’, subject to all necessary safeguards and restrictions.

**Arrest warrants relating to examinations**

IBAC has drawn the Committee’s attention to a number of problems with respect to the existing law on warrants relating to examinations:

Currently, a warrant for the arrest of a witness cannot be sought until *after* the witness has failed to appear. A witness avoiding service of a summons or who is *likely* to fail to appear can successfully evade being required to attend an IBAC examination. Police oversight bodies in all other states are able to exercise ... [a] power of pre-emptive application for an arrest warrant to prevent a person from leaving the jurisdiction.

... Further, IBAC is unable to *execute* arrest warrants that may be issued when a person fails to attend an examination (under s 139 [of the *IBAC Act 2011* (Vic)]) or is charged with contempt of the IBAC (under s 153 [of the *IBAC Act 2011* (Vic)]). IBAC must rely on another law enforcement agency to execute such warrants. Any delay in relation to arresting a person that has failed to appear may facilitate the witness leaving the jurisdiction.

The reliance on Victoria Police in executing arrest warrants also undermines IBAC’s independence and may jeopardise sensitive investigations of police.1087 [Emphasis added]

IBAC has proposed the following amendments to the *IBAC Act 2011* (Vic) to remedy the problems:

To amend s 139 and s 153 of the IBAC Act to provide that:

- an application for an arrest warrant may be made to the IBAC Commissioner when a person, in relation to whom a summons has been issued has (a) failed to appear or where there is a reasonable suspicion that a person is likely to fail to appear, or (b) is otherwise attempting or is likely to evade the service of the summons
- authorised IBAC Officers may execute warrants for failing to appear and for contempt.1088

The Committee agrees with the proposed amendments.

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RECOMMENDATION 48: That the Victorian Government seek to amend s 139 and s 153 of the IBAC Act 2011 (Vic) to provide that:

- an application for an arrest warrant may be made to the IBAC Commissioner when a person, in relation to whom a summons has been issued has (a) failed to appear or where there is a reasonable suspicion that a person is likely to fail to appear, or (b) is otherwise attempting or is likely to evade the service of the summons
- authorised IBAC Officers may execute warrants for failing to appear and for contempt.

Offence to destroy or conceal evidence

IBAC has informed the Committee that ‘if a potential witness destroys evidence prior to being served with a summons, prosecution for such conduct may not be possible’. IBAC has reported that there have been ‘numerous examples of destruction and concealment of evidence that have occurred during IBAC investigations’.

IBAC noted that it ‘is the only corruption commission that does not have provisions to prevent the destruction of evidence’ and that an appropriate offence should be created in the IBAC Act 2011 (Vic):

The offence for destruction and concealment of evidence provided in s 254 of the Crimes Act [1958 (Vic)] is insufficient, so a new offence relevant to IBAC investigations is required. Including an appropriately formulated offence in the IBAC Act would enliven the exception to the abrogation of the right against self-incrimination provided at s 144 of the IBAC Act. Evidence of the destruction or concealment of evidence obtained at an IBAC examination could therefore be used in criminal prosecution.

IBAC recommends the creation of an offence in the IBAC Act 2011 (Vic) ‘for the destruction and/or concealment of evidence relevant to an IBAC investigation’. IBAC notes that ‘the suggested amendment is similar to the powers for Royal Commissions and Boards of Inquiry under the Inquiries Act 2014 [(Vic) ss 40, 80, 112]’.

The Committee agrees with the proposed amendment given the risk of the concealment or destruction of evidence during IBAC investigations.

RECOMMENDATION 49: That the Victorian Government seek to create an offence in the IBAC Act 2011 (Vic) for the destruction and/or concealment of evidence relevant to an IBAC investigation.

Protection of IBAC witnesses

In order to protect witnesses and the integrity of IBAC investigations, and to prevent interference in IBAC examinations, IBAC has recommended the establishment of ‘offences of engaging in conduct to undermine an IBAC investigation, procure
false testimony, bribe a witness ... [and to] commit a fraud on a witness'. These provisions should, in IBAC’s view be enacted along similar lines as relevant interstate provisions.

IBAC has further explained the rationale for the proposed offence provisions as follows:

IBAC has experienced incidents involving witnesses summoned to an IBAC examination being encouraged to provide false evidence by third parties. Current offences under the IBAC Act [2011 (Vic)] and other legislation are inadequate to protect IBAC investigations and witnesses from a range of potential methods of interference by third parties, intended to procure false testimony from a witness. Currently it is not an offence to pervert or obstruct an IBAC investigation.

Legislative protection of IBAC witnesses from threats of intimidation or other interference is needed to prevent IBAC witnesses from being manipulated or threatened.

While remedies for detrimental action against those making protected disclosures under the PDA [Protected Disclosure Act 2012 (Vic)] are available, specific relevant offences to prevent interference with an IBAC investigation or any IBAC witness are not provided. Common law offences related to perverting the course of justice or statutory witness interference offences may not necessarily be engaged in the circumstances of IBAC investigations into corrupt conduct.

The Committee appreciates the risk of witnesses being subject to dishonest, intimidatory and manipulative conduct during IBAC investigations and examinations and the need for adequate legislative protection against it.

**RECOMMENDATION 50:** That the Victorian Government seek to establish offences of engaging in conduct to undermine an IBAC investigation, procure false testimony, bribery of a witness and fraud on a witness and to protect witnesses generally, in similar terms to provisions in other states.

### Custody requirements at examinations

IBAC has expressed concern over the current custody arrangements that bear on IBAC examinations:

IBAC investigations regularly involve the examination of witnesses who are in custody, in relation to allegations of corruption or misconduct of a police officer. An IBAC witness who is in prison is required to be delivered into the custody of a police officer for the purpose of bringing the person to an IBAC investigation (s 126 [IBAC Act 2011 (Vic)]). This requirement raises a risk of compromise of the independence of an IBAC investigation, as there is a risk of disclosure of sensitive investigation [sic: information] from one police officer to another. The issuing of confidentiality notices to police officers receiving prisoner witnesses into custody is impractical and insufficient, particularly in highly sensitive investigations.

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The existing requirement has the potential to undermine the independence of investigations concerning the conduct of police officers.\textsuperscript{1096}

IBAC has recommended the amendment of s 126 of the \textit{IBAC Act 2011 (Vic)} ‘to permit a prisoner to be transferred into the custody of an authorised IBAC officer that is appropriately trained.’\textsuperscript{1097}

However, the Committee considers that such an amendment would be premature without a systematic assessment of its merits, taking into account IBAC officers’ current capacity to perform such a function and the costs and benefits of doing so.

\textbf{RECOMMENDATION 51:} That the Victorian Government review whether s 126 of the \textit{IBAC Act 2011 (Vic)} should be amended to permit a prisoner to be transferred into the custody of an authorised IBAC officer that is appropriately trained.

\textbf{Seizing drugs and other controlled substances}

IBAC ‘does not have legal authority to take possession of drugs seized during the execution of a search warrant’.\textsuperscript{1098} The \textit{Drugs, Poisons and Controlled Substances Act 1981 (Vic)} (‘\textit{DPCS Act 1981 (Vic)}’) presently ‘defines “authorised officer” to mean “a person authorised by the Secretary under section 41 and any police officer”’.\textsuperscript{1099}

IBAC has explained that there are a number of concerns with the current law:

IBAC Authorised Officers executing search warrants for drugs of dependence are not authorised to handle the drugs they are seizing, and have relied on Victoria Police for assistance. Amending the definition to ensure it includes IBAC Officers would remove any ambiguity and ensure that IBAC Officers can lawfully fulfil their functions under the \textit{IBAC Act [2011 (Vic)]} without relying on police officers (or other persons currently authorised) for assistance.\textsuperscript{1100}

IBAC has recommended the amendment of s 4 of the \textit{DPCS Act 1981 (Vic)} to include IBAC Officers as persons authorised to seize drugs and controlled substances.\textsuperscript{1101}

The Committee considers that this proposal needs to be considered more fully, including how it might affect present arrangements regarding the seizure of drugs and controlled substances in Victoria.

\textbf{RECOMMENDATION 52:} That the Victorian Government review whether s 4 of the \textit{Drugs, Poisons and Controlled Substances Act 1981 (Vic)} should be amended to include IBAC Officers as persons authorised to seize drugs and controlled substances.

\textsuperscript{1096} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 14.
\textsuperscript{1097} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 14.
\textsuperscript{1098} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 16.
\textsuperscript{1099} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 16.
\textsuperscript{1100} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 16.
\textsuperscript{1101} Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 16.
8.2.4 IBAC and Freedom of Information

As part of the best practice principles of complainant-involvement and transparency, a number of stakeholders expressed their concern to the Committee over the current legislative exemption of IBAC, in certain circumstances, from Victoria’s Freedom of Information (FOI) regime.\textsuperscript{1102}

The current law

The FOI exemption in s 194 of the \textit{IBAC Act 2011 (Vic)} provides:

\begin{enumerate}
\item The \textit{Freedom of Information Act 1982} does not apply to a document that is in the possession of any person or body to the extent to which the document discloses information that relates to—
  \begin{enumerate}
  \item a recommendation made by the IBAC under this Act; or
  \item an investigation conducted under this Act; or
  \item a report, including a draft report, on an investigation conducted under this Act.
  \end{enumerate}
\item The \textit{Freedom of Information Act 1982} does not apply to a document that is in the possession of the IBAC to the extent to which the document discloses information that relates to—
  \begin{enumerate}
  \item a complaint; or
  \item information received by the IBAC under section 56; or
  \item a notification made to the IBAC under a mandatory notification provision; or
  \item a preliminary inquiry.
  \end{enumerate}
\item In this section, document has the same meaning as it has in the \textit{Freedom of Information Act 1982}.
\end{enumerate}

The effect of the section and its purpose have been well described by IBAC in the following terms:

Section 194 of the IBAC Act [2011 (Vic)] exempts documents relating to, or investigations by, IBAC from the operation of the \textit{Freedom of Information Act 1982} (Vic) (FOI Act). The purpose of the exemption is to protect the integrity of IBAC’s investigative processes and methodology. Section 194 is part of a developed scheme intended to prevent the compromise of IBAC investigations and protect the confidentiality of information in IBAC’s possession which has been provided to IBAC by virtue of section 56 or a mandatory notification.\textsuperscript{1103}

\begin{footnotesize}\begin{thebibliography}{99}
\item Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 3.
\end{thebibliography}\end{footnotesize}
Stakeholder concerns

A number of stakeholders have expressed concern over complainants’ access to investigation files and other documents relevant to their complaint. The Committee was told that Victoria Police had on a number of occasions relied on s 194 to deny complainants access to relevant documents when the Police were carrying out an investigation upon referral by IBAC. In this way, even though Victoria Police were carrying out the investigation, they characterised it as an IBAC investigation under the protection of s 194.

The LIV, for example, expressed concern that there are further problems for complainants who wish to access documents related to their complaint through the Freedom of Information Act 1982 (Vic), when complaints are made initially to IBAC and then referred to Victoria Police. This is due to the operation of s 194 of the IBAC Act [2011 (Vic)]. Though LIV acknowledges that [s 194] has been amended for the purpose of addressing this issue, the LIV continues to hold concerns that the amendment does not sufficiently address the problem. Particularly, the LIV is concerned that complainants may still have trouble accessing documents where their complaint has been investigated by Victoria Police but where nevertheless the investigation may still be able to be considered conducted under the IBAC Act 2011 [(Vic)].

Robinson Gill Lawyers took a similar view of the current s 194:

Complainants can gain access to the investigation file through Freedom of Information processes if the initial complaint is lodged with Victoria Police. However, s 194 [of the] Independent Broad-based Anti-Corruption Act [2011 (Vic)] (‘IBAC Act’) applies if the initial complaint is lodged with IBAC and then referred to Victoria Police for investigation. The complainant will therefore be precluded from accessing the same file to which they would otherwise have been entitled had the complaint been lodged with Victoria Police initially. Whilst Parliament passed the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016 in May this year with the intention of overcoming this discrepancy, it is our view that the amendments are not sufficient to achieve this aim.

Mr Jeremy King, from Robinson Gill Lawyers explained the problems that some of the firm’s clients have experienced with s 194. Given the complexity involved, it is valuable to quote from Mr King’s evidence at length:

There has been a significant amount of discourse about the interaction between section 194 of the IBAC Act [2011 (Vic)] and freedom of information legislation. The essential issue is this: our clients have faced issues in respect to attempting to access

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1105 See, for example, Robinson Gill Lawyers, Submission 44, 4 September 2017, pp. 3, 5; Mr Jeremy King, Principal Lawyer, Robinson Gill Lawyers public hearing, Melbourne, 19 February 2018, Transcript of evidence, pp. 7–8; Law Institute of Victoria, Submission 41, 31 August 2017, pp. 2–3.

1106 In 2017, s 129 of the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017 (Vic) substituted a new s 194 in the IBAC Act 2011 (Vic) — Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 3.

1107 Law Institute of Victoria, Submission 41, 31 August 2017, p. 7.

1108 Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 3.
the complaint files, or materials on their complaint files, from both Victoria Police and IBAC. IBAC is expressly excluded from the freedom of information provisions under section 194 of the IBAC Act. However, as noted in our written submission, our firm has many examples where IBAC has referred a complaint to Victoria Police, as they do in 90 per cent of cases, and Victoria Police have investigated this complaint on IBAC’s behalf.

Victoria Police have then taken the position that as the complaint is investigated on IBAC’s behalf, Victoria Police are also protected by section 194 and therefore are prevented or prohibited from providing a copy of the complaint file and/or investigation file conducted by Victoria Police, despite the fact that Victoria Police are obviously subject to the Freedom of Information Act.

Our clients have no knowledge of section 194. They complain to IBAC because they have lost faith in Victoria Police. It is extraordinarily disheartening and disempowering for them to learn that they will then be unable to obtain any of the documents concerning the investigation made by IBAC or Victoria Police, on behalf of IBAC, in respect to their complaint and in respect to the decision that was subsequently made regarding that complaint. This negative experience is often compounded by the fact that our clients do not understand why IBAC has referred their complaint to Victoria Police in the first place.

I apologise for the legalistic path I am going to have go through next, but I am a lawyer. The real issue with section 194 is the fact that it uses the words ‘relates to’ and also the words ‘an investigation’, and on the basis of the case law, particularly two cases, one called O’Grady and another called Luck, this has been interpreted broadly by the courts and certainly provides Victoria Police with an arguable case to say they are covered by section 194 despite Victoria Police being subject to the Freedom of Information Act.

Section 194 was recently the subject of legislative change in 2017. However, it is our position that the legislative change did not seek to remedy the true source of the issue, being the words ‘relates to’ and ‘an investigation’, which are still contained within the current legislation. Further, it has been the experience of our firm that subsequent to a legislative change Victoria Police are continuing to rely upon section 194 of the IBAC Act in situations where our clients have requested a copy of the police investigation file under the Freedom of Information Act and where there has been some sort of IBAC involvement ...

It is our submission that section 194 needs to be amended and that complainants of police misconduct should really be allowed full access to their file, save for exceptional circumstances of corruption. Further, section 194 should also be amended to ensure that Victoria Police are expressly not covered by it.

Section 194 is another example of the fact that IBAC is a corruption commission and not a complaints body, and it is our submission that any human rights–compliant complaints body should provide complainants with a copy of their complaint file in order to ensure transparency and confidence in the process.109

The Police Accountability Project emphasised the principle of complainant-involvement, arguing that

[ complaints also fail because complainants are rarely given any opportunity to give feedback to an investigation before it is finalised.

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Nor are complainants routinely given access to the investigation reports into their claim. Indeed, it is currently the case that copies of investigation reports where a complaint was initially made to or subsequently referred to IBAC, are now being regularly denied to complainants when they make FOI requests for them.

If complainants were to be provided with access to the report before finalisation, they could correct false assumptions, provide further information, witnesses or ideas. (Indeed as these reports frequently make negative comment about complainants, procedural fairness suggests they ought to have the opportunity to comment.)\(^{110}\)

While some stakeholders recommended the further amendment of s 194 to ensure that complainants could gain access to relevant documents from Victoria Police, the Police Accountability Project, along with a number of other organisations, called for s 194 to be repealed.\(^{111}\)

### IBAC’s response

IBAC considers that s 194 performs an important purpose in protecting ‘the integrity of IBAC’s investigative processes and methodology’.\(^{112}\) With respect to the LIV’s concerns over the current s 194, IBAC noted that the Institute’s representative gave evidence to the Committee ... that the 2017 amendment [of s 194] did not sufficiently address the Institute’s concerns. The genesis of the submission appears to be that lawyers acting for victims of alleged police misconduct have encountered an unwillingness by Victoria Police to release documents which have been created or gathered by Victoria Police during its investigation. As we understand the argument raised by Victoria Police, it is that where the documents relate to an investigation by police after the matter has been referred to them by IBAC to investigate, any investigation which the police conduct is said to be ‘an investigation under the (IBAC) Act’ (section 194(1)(b)) and therefore the FOI Act [Freedom of Information Act 1982 (Vic)] does not apply to such documents. The argument does not appear to have merit, but IBAC is not aware of the matter having been tested in court.\(^{113}\)

IBAC informed the Committee that, ‘even if the argument [of Victoria Police] was judged to have merit’, s 194 should not be repealed given its important purpose.\(^{114}\) Instead, IBAC considers that

[a]n amendment to section 194 to make clear that a police investigation following a referral is not an investigation ‘conducted under the IBAC Act [2011 (Vic)]’ would make unmistakably clear that documents collected by Victoria Police during an investigation following referral are not exempt under section 194.\(^{115}\)

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\(^{111}\) For example, the Flemington & Kensington Community Legal Centre—Police Accountability Project, the Victorian Aboriginal Legal Service and Mr Allen Tong called for the repeal of s 194—see Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 6; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 4 and Mr Allen Tong, Submission 12, 2 August 2017, p. 5.

\(^{112}\) Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 3.

\(^{113}\) Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 4.

\(^{114}\) Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 4.

\(^{115}\) Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee’s questions), 24 May 2018, p. 4.
**FINDING 15:** Section 194 of the IBAC Act 2011 (Vic) performs an important purpose and does not need to be repealed but instead appropriately amended.

**The Committee’s view**

The Committee considers that IBAC’s recommended amendment to s 194 is a prudent solution to the problem of complainants being denied access to documents from Victoria Police when it is carrying out an investigation upon referral from IBAC. This proposal continues to provide necessary protection for the integrity of IBAC investigations. The Committee will, however, continue to monitor developments with respect to s 194 as part of its regular oversight functions.

**RECOMMENDATION 53:** That the Victorian Government seek to amend s 194 of the IBAC Act 2011 (Vic) to make it clear that a Victoria Police investigation following a referral from IBAC is not an investigation ‘conducted under the IBAC Act’ so that documents collected by Victoria Police during such an investigation are not exempt under s 194 from the operation of the Freedom of Information Act 1982 (Vic).

### 8.2.5 Timely completion of investigations

The Committee received evidence that timely completion of complaint investigations is essential since it:

- reinforces the rule of law and confidence in the complaints system by demonstrating that complaints about police are taken seriously
- ensures relevant evidence is promptly sought and secured
- lessens frustration and stress for complainants and subject officers alike
- reduces the likelihood of additional complaints about the process
- contributes to the overall transparency and efficiency of the complaints system.\(^{1116}\)

The timely completion of complaint investigations is one of the key best practice principles for an effective complaints system and is complemented by the availability of high quality information, effective communication with complainants and a

The timely completion of complaint investigations has been recognised as a best practice principle by the Council of Europe Commissioner for Human Rights Opinion on the handling of complaints about police, the International Organization for Standardization (ISO) and the UNODC. It was also recognised in the Hayes Review and by the United Kingdom House of Commons Home Affairs Committee.\textsuperscript{1118}

According to the Commissioner for Human Rights, compliance with the principle of ‘promptness’ requires that ‘the investigation... be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law’.\textsuperscript{1119} The Opinion explains further that the promptness principle stresses the need for timeliness and that fair and effective complaints investigations must be undertaken promptly and expeditiously. Delay may result in the loss of crucial evidence and failure to conduct an adequate investigation.

Failure to conduct a complaints investigation in a prompt and reasonably expeditious manner may give the appearance that there is a reluctance to investigate or of collusion between investigators and officers complained against to conceal wrongdoing...

The promptness principle plays a crucial part in preserving trust and confidence in the rule of law and upholding the core policing principle that police officers are accountable to and protected by the law throughout the police complaints process.\textsuperscript{1120}

Among other things, compliance with the principle requires 'timely implementation of notification, recording and allocation principles' and 'timeliness in the conduct of a thorough and comprehensive investigation and determination of a complaint'.\textsuperscript{1121}

The Opinion’s recognition of the rule of law, due process, thoroughness and comprehensiveness is an important counterbalance to the principle of timeliness—while complaint investigations ought to be as expeditious as possible, the rigour and propriety of those investigations always needs to be ensured.


\textsuperscript{1119} Opinion of the Commissioner for Human Rights concerning police 2009, p. 3.

\textsuperscript{1120} Ibid., p. 13.

\textsuperscript{1121} Ibid.
For ISO, the prompt, timely and transparent handling and investigation of complaints is an essential part of best practice customer service. In ISO’s view, organisations must respond to complaints promptly, have deadlines for various stages of the complaint-handling process and provide the complainant with progress reports upon reasonable request, and certainly when each milestone is reached. ISO also considers that the organisation’s performance in regard to timeliness should be monitored as part of its commitment to the overall improvement of its service. For example, it is relevant whether the organisation acknowledged complaints within the agreed period and whether ‘complaints [were] resolved after the agreed time’. It is therefore also useful to have high quality data on these issues as part of monitoring and improving the performance of the complaints system and the satisfaction of complainants and other stakeholders with it.

The report of the Hayes Review of the handling of complaints about police in Northern Ireland, which contributed to the establishment of PONI, also identified the importance of cases being dealt with, and being seen to be dealt with, expeditiously.

... The time limits arrived at should be monitored and reviewed and reported on and complainants and subject officers should be told what to expect and be kept informed of changes.

The Review recommended a target of six months to finalise complaints that did not involve criminal proceedings:

A target of 6 months to clear a complaint (not subject to criminal proceedings) should be the norm. The time limit for informal resolution would be much less, days preferably, but a month at the outside. The [Police] Ombudsman should set targets of clearance rates as performance indicators and measure activity against these ...

The United Kingdom’s Home Affairs Committee, in its review of the then existing Independent Police Complaints Commission, has similarly reinforced the importance to complaints systems of timeliness, clear milestones and effective communication:

Accurate and timely information is ... vital in retaining confidence in the complaints process. The [Independent Police Complaints] Commission should be required to set out a timetable for an investigation for complainants and to write to them to explain any deviation ... There should be sanctions if the process and timelines are not followed.

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1125 For a discussion of the importance of high quality data about the complaints system in this respect, see Section 4.5.3 in Chapter 4 of this report.

1126 Hayes report, p. 71.

1127 Ibid., p. 86.

The views of stakeholders

A number of stakeholders who gave evidence to this Inquiry expressed concerns over the timeliness of complaint investigations. Some stakeholders noted that interactions between IBAC and Victoria Police in relation to a complaint can lead to delays, while others expressed the view that IBAC did not always complete investigations expeditiously.

For example, Victoria Legal Aid noted that

[d]elays between IBAC and Victoria Police may result in time-critical evidence being lost. Consider this: someone is assaulted by police and makes a complaint to IBAC as they don’t have the courage or the confidence to approach Victoria Police following the incident. IBAC refer the matter back to Victoria Police. Forensic evidence of assault? Injuries? Anecdotal reports suggest that the Victorian Institute of Medicine have expressed difficulty and frustration with having to rely on attempts to document injuries by victims that are insufficient. Some evidence is time-critical—any delay could be significant.1129

The importance of prompt and timely investigation in terms of gathering and preserving relevant evidence was further explained by Ms Tamar Hopkins, a lawyer and researcher in the field of police oversight and complaints:

Investigators, judges, lawyers, doctors, coroners and forensic technicians understand that time is critical in ensuring evidence is collected and retained for subsequent purposes.

Memories fade, evidence is tampered with, scenes are altered, footage ‘lost’, cameras stolen, witnesses intimidated or even murdered, bruises fade, clothes removed, shot residue dissipated, false evidence planted, fingerprints lost, splatter marks removed, collusion, stories and alibis concocted.

There must be time limits set for investigations. Delay is a major issue facing most complaint bodies. This can be an issue of deficient resources or of complacency ... Most complaint bodies see the need for specific time limits introduced into the legislation under which they are set up.1130

Flemington & Kensington Community Legal Centre’s Police Accountability Project argued:

Legislative time limits need to be set for finalisation of investigations and for the gathering of critical evidence (like CCTV footage) and interviewing witnesses ...1131

The Police Accountability Project further claimed that IBAC is ‘not prompt’

in carrying out its investigative or oversight processes, which is exacerbated by communication delays between Victoria Police and IBAC. One client we assisted waited over 2 years for IBAC to review Victoria Police’s determination of his complaint, which involved serious human right[s] breaches ...1132

1129 Victoria Legal Aid, supplementary evidence, 2 March 2018, p. 4.
1130 Ms Tamar Hopkins, Submission 4, 18 July 2018, p. 52.
1131 Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 6.
1132 Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 17.
The Police Association of Victoria argued that the lack of timeliness in some IBAC complaint investigations is due to their lack of capacity and expertise relative to that of Victoria Police. As the Association’s Legal Manager, Senior Sergeant Chris Gorrisen, told the Committee:

The problem I would see with that is that at the minute we would call into question, with all due respect to people who work at IBAC, the skill set that is necessary to actually complete those investigations with any real clarity and timeliness. It has been our experience that when IBAC have had carriage of certain files they do take a long time to actually resolve one way or another.\textsuperscript{1133}

**Current practice and proposed reform**

There is presently no legislative requirement for IBAC to complete an investigation within a set period or within a reasonable time. There are, however, limited State Government performance measures as part of the Budget process that are relevant to timeliness (see Table 8.1).

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<tbody>
<tr>
<td>Proportion of IBAC investigations into police personnel conduct and police personnel corrupt conduct completed within 12 months</td>
<td>per cent</td>
<td>75</td>
<td>60</td>
<td>75</td>
<td>nm\textsuperscript{(a)}</td>
</tr>
<tr>
<td>The 2017–18 expected outcome is lower than the 2017–18 target due to the complexity of the cases being investigated and the time required to complete these investigations.</td>
<td></td>
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<tr>
<td>Complaints or notifications about police personnel conduct or police personnel corrupt conduct assessed by IBAC within 45 days</td>
<td>per cent</td>
<td>90</td>
<td>90</td>
<td>90</td>
<td>nm</td>
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\textsuperscript{(a)} ‘nm’ = new performance measure\textsuperscript{1134}

**Source**: Adapted from Department of Treasury and Finance, State Government of Victoria, 2018–19 Budget Paper No. 3: service delivery, 2018, Melbourne, p. 316.

In its 2016/17 annual report (see Table 8.2), IBAC reported against the timeliness performance measures detailed in the 2016/17 Budget Paper No. 3. However, it should be noted that the performance measures regarding IBAC timeliness in the 2016/17 Budget Paper No. 3 (see Table 8.3) covered all IBAC assessments and investigations—unlike the 2018/19 Budget Paper No.3, there were no specific measures relating to ‘police personnel conduct and police personnel corrupt conduct’.

\textsuperscript{1133} Senior Sergeant Chris Gorrisen, Legal Manager, The Police Association of Victoria, public hearing, Melbourne, 19 February 2018, Transcript of evidence, p. 12.

Table 8.2  IBAC reporting on 2016/17 Budget Paper No. 3 timeliness performance measures in Annual report 2016/17

<table>
<thead>
<tr>
<th>Performance measure</th>
<th>Unit of measure</th>
<th>2016/17 target</th>
<th>2016/17 actual</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Complaints or notifications assessed by IBAC within 45 days</td>
<td>per cent</td>
<td>90%</td>
<td>94%</td>
<td>Exceeded our target by continuing to strengthen our case management and assessment processes. We have also focused resources on assessments required to meet impacts associated with changes in legislation and community engagement initiatives.</td>
</tr>
<tr>
<td>Proportion of IBAC investigations completed within 12 months</td>
<td>per cent</td>
<td>70%</td>
<td>71%</td>
<td>Completed fewer investigations within the 12-month period (71 per cent in 2016/17 compared to 86 per cent in 2015/16), primarily due to the complexity and protracted nature of the allegations subject to investigation.</td>
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Table 8.3  Timeliness measures for IBAC in Victorian Budget Paper No. 3, 2016/17

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<tbody>
<tr>
<td>Proportion of Independent Broad-based Anti-corruption Commission investigations completed within 12 months</td>
<td>per cent</td>
<td>70%</td>
<td>70%</td>
<td>70%</td>
<td>85%</td>
</tr>
<tr>
<td>Complaints or notifications assessed by IBAC within 45 days</td>
<td>per cent</td>
<td>90%</td>
<td>90%</td>
<td>90%</td>
<td>nm(a)</td>
</tr>
</tbody>
</table>

(a)  ‘nm’ = new measure


IBAC has informed the Committee of its performance with regard timeliness in the 2017/18 year as follows:

For the 2017/18 financial year, IBAC has reported that of the investigations into police personnel conduct and police personnel corrupt conduct completed during the year, 100 per cent were completed within 12 months (compared with 60 per cent of public sector investigations). This reflects that our police-related investigations to date have, for the most part, been less complex matters and therefore able to be completed within shorter timeframes than our public sector investigations (many of which have involved complex fraud cases).

For 2017/18, IBAC also reported that 95 per cent of complaints or notifications about police personnel conduct and police personnel corrupt conduct were assessed by IBAC within 45 days (compared with 92 per cent of complaints or notifications about public sector corrupt conduct). This reflects IBAC’s continuing refinement and consolidation of our processes around assessment of complaints and notifications.

IBAC notes a current audit by the Australian National Audit Office (ANAO) concerning the operational efficiency of the Australian Commission for Law Enforcement Integrity involved benchmarking against interstate counterpart agencies. ANAO advised that IBAC’s external performance measure targets around complaint assessments are generally more stringent than those of our interstate counterparts.\(^{1135}\)

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However, as can be seen from the Budget Paper No. 3 targets, there are only very limited and marginal performance measures on the timely completion of investigations by IBAC.

The Committee therefore considers that the IBAC Act 2011 (Vic) should be amended to require IBAC to complete its investigations of complaints about police within a reasonable time.

This is consistent with IBAC’s own recognition of the importance of timely investigations of complaints. For example, in its 2016 audit of Victoria Police’s complaint-handling systems, IBAC reported:

Timely investigation of files is critical to maintain confidence in Victoria Police’s complaint management. Although timeliness is not the only measure of how well complaints are handled, it is critical for complainants and subject officers. Expedient management of complaints—together with clear communication in the event of any delays—is important for a number of reasons, including the welfare of complainants and subject officers, the potential for delays to adversely affect the availability of evidence, and to reduce the prospects of further complaints or appeals.1136

The Committee also encourages IBAC to develop and publicise more precise timeliness targets graded on the assessed complexity of a complaint investigation. For example, PONI has developed the following timeliness targets for its Initial Complaints and Investigations, Core Investigations, and Significant Cases teams that, respectively, handle ‘more minor cases’, ‘more serious cases’ and ‘matters of alleged serious criminality and critical incidents involving police’ (see Box 8.1).

**BOX 8.1: Timeliness targets for PONI’s Current Investigation Directorate**

The resources required to progress an investigation therefore differs from case to case. However targets have been set aligned to the new Current [Investigation] Directorate as follows:

- Initial Complaints and Investigations Team—75% of complaints to be completed within 90 working days
- Core Investigations Team—75% of complaints to be completed within 110 working days
- Significant Cases Team—to produce an investigation report in relation to all contemporary referrals or complaints received in 2017/18 within 330 working days of the commencement of the investigation


The Committee has received evidence that a legislative requirement with regard to timeliness is important in ensuring that investigations are undertaken promptly and completed expeditiously. The Committee therefore recommends that there be a legislative requirement that IBAC complete its investigation of complaints about police within a reasonable time. In accordance with best practice principles, this mandates timeliness while allowing for a degree of flexibility (to accommodate, for example, the time it takes to complete more complex investigations).

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RECOMMENDATION 54: That the Victorian Government seek the amendment of the IBAC Act 2011 (Vic) to require IBAC investigations of complaints about police to be completed within a reasonable time.

8.2.6 Investigation outcomes: informing complainants

As emphasised in this report, the need to adequately inform, involve and communicate with the complainant is recognised in best practice principles and was supported by a range of stakeholders who gave evidence during this Inquiry. This section addresses concerns over how well IBAC informs complainants of the outcomes of its investigations.

Best practice principles

The UNODC has recognised that complainants should be kept informed throughout the complaints-handling and investigation process, while it appreciates that there might be some limitation on what information complaint-handling bodies provide:

For most complainants, it is not easy to file a complaint against the police, and they may have had to overcome various barriers (practical, psychological or emotional). If they never hear about the outcome of the complaint, this can result in demoralization and a loss of confidence in the police. It is therefore important to establish procedures for informing complainants about the progress of the investigation. In some countries, a special person is appointed for this purpose. While rules for confidentiality criteria usually require that not all information be disclosed to the complainant, some information on the progress of the investigation or on whether a decision has been made can help restore confidence.

The Opinion of Council of Europe’s Commissioner for Human Rights also states that complainants ‘should be consulted and kept informed of developments throughout the determination of his or her complaint’.

The International Organization for Standardization’s (ISO’s) best practice standard for complaints handling similarly requires effective tracking of complaints, progress updates upon request and communication of the complaint outcome.

The report of Hayes Review gives a valuable account of the need to better inform complainants about the progress of investigations and their outcomes:

Another important element in openness is the provision of a detailed concluding report to the complainant. My experience of cases in Northern Ireland is that fairly standard letters are sent out to complainants which do not really do justice to the investigation that is taking place or satisfy sufficiently the complainant’s interest in...
the case. In other jurisdictions ... a full copy of the investigating officer’s report is sent to the complainant unless it contains sensitive information. I think we should move in this direction.\footnote{1143}

PONI itself has embraced these principles.\footnote{1144} Box 8.2 is an extract on the kinds of information PONI provides to complainants about the outcome of their complaint. In accessibility, plain language, level of detail, structure and tone it contrasts with the information provided by Victoria Police and, to a lesser degree, IBAC. It clearly explains to complainants the range of possible outcomes and how PONI will communicate with them. It also gives complainants the opportunity to give feedback about the process, including through a complainant satisfaction survey.

**BOX 8.2: Complaint outcomes: how PONI informs complainants**

**Telling you what happened to your complaint**

The Police Ombudsman can reach a number of different decisions on your complaint, depending on the available evidence.

He might:

- Recommend that a police officer or employee is prosecuted
- Recommend that a police officer or employee should be disciplined
- Recommend that a police officer or employee should receive further training
- Make recommendations to the police to improve the ways in which they work
- Decide that there is insufficient evidence to uphold your complaint

Recommendations for prosecution are made to the Public Prosecutions Service. It is for the Director of Public Prosecutions to decide whether to prosecute. If the Director decides to prosecute, we will explain to you how this process works.

Recommendations for disciplinary action are made to the Chief Constable. If a decision is taken to discipline an officer or employee, we will explain this process to you.

Whatever the outcome, we will write to you when we have finished dealing with your complaint to explain the Police Ombudsman’s decision.

**We value your views**

We are continually striving to improve the service we provide. You can help us by completing and returning the satisfaction questionnaire which we will send you at the end of the complaints process. The views of those who use the service provided by the Office are extremely important to us and have in the past led to improvements in the service we deliver.

**If you are unhappy with the service we provide**

If you wish to make a complaint about the service you received, you should write to Customer Complaints at the address at the bottom of this page. We will look into your complaint and send you a written reply.

If you believe our response does not properly address your concerns, the letter you will receive will explain how you can appeal the decision.

Chapter 8 Investigating complaints and disclosures

The views of stakeholders

A number of stakeholders who gave evidence to this Inquiry, including the VI, expressed the view that IBAC’s current communication with complainants, including the communication of investigation outcomes, needs substantial improvement.\textsuperscript{1145} While it was not always clear whether the criticism of communication practices was directed at Victoria Police or IBAC, it was evident that most stakeholders who gave evidence considered that complainants receive insufficient information about the course of investigations, how determinations are reached and on what basis.

Ms Merys Williams, from the LIV, for example, emphasised the importance of informing complainants in order to meet the requirements of transparency and accountability:

> A police oversight system must be transparent if it is to meet human rights standards. Transparency encourages accountability and fosters public confidence. The current police complaints system is not transparent for complainants or for the public generally. At the end of an investigation complainants are provided with very little information about what investigations were made and why an outcome was reached.\textsuperscript{1146}

The Police Accountability and Human Rights Clinic went further in recommending that investigation ‘decisions … be explained, recorded in writing and publicly available, subject to appropriate and necessary redactions’.\textsuperscript{1147}

The Victorian Aboriginal Legal Service (VALS) considered that satisfactory closing letters can help advance a complainant-centred approach:

> By providing complainants with a description of each allegation forming the complaint, a brief summary of the evidence in relation to each allegation, the determination reached and how the investigator reached that conclusion (including steps taken to investigate that allegation), and the action taken in response to the complaint, the victim-centred/participation principle of an effective system is enhanced.\textsuperscript{1148}

VALS also emphasised that it is not sufficient to simply provide this information; it also has to be communicated in plain language\textsuperscript{1149} and in an appropriate tone for the complainant:

> It is essential that there is full communication, not just pro forma templates but using language that our clients can understand, so language that is familiar to them and digestible and meaningful.\textsuperscript{1150}

\textsuperscript{1145} Victorian Inspectorate, Submission 34, 14 August 2017, pp. 12–13; Mr Eamonn Moran PSM QC, Inspector, Victorian Inspectorate, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, p. 14; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 25; Law Institute of Victoria, Submission 41, 31 August 2017, p. 7; Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, 26 February 2018, p. 28; Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 3; Youthlaw, Submission 39, 26 August 2017, p. 12; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 5, 15, 17; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 9, 20, 21; Fitzroy Legal Service, Submission 45, 31 August 2017, pp. 8, 10; Ms Anna Lyons, Acting Principal Solicitor, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 58; Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 41.

\textsuperscript{1146} Ms Merys Williams, Member, Human Rights Committee, Law Institute of Victoria, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 28.

\textsuperscript{1147} Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017, p. 25.

\textsuperscript{1148} Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 21.

\textsuperscript{1149} Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 20.

\textsuperscript{1150} Ms Anna Lyons, Acting Principal Solicitor, Civil Law, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 58.
Similarly, Ms Carmel Guerra, from the Centre for Multicultural Youth, told the Committee that

IBAC does not say to us or VicPol [Victoria Police] do not say, ‘This is what we’ve done; this is the outcome of how we’ve dealt with it.’ So to be honest, we do not have the confidence to tell the young person, ‘We feel like that complaint you’ve made has been followed up in reality.’

The VI has also raised with the Committee the issue of IBAC’s use of ‘template letters’ to communicate with complainants, and its view that IBAC’s communication with complainants generally could be improved:

It is the view of the VI that IBAC’s current process of communicating with complainants is an obstacle to effective communications about its referral practice and its police complaint practice generally, and that community satisfaction with the IBAC’s decisions would be improved if full reasons were given to complainants.

**Current law and practice**

IBAC’s provision of information about the results of their complaint investigations is largely governed by ss 163–164 of the *IBAC Act 2011* (Vic). Under s 163(1), IBAC ‘may’ give a complainant

information about the results of an investigation, including—

(a) any action taken by the IBAC; and

(b) any recommendation by the IBAC that any action or further action be taken.

However, under s 163(2), IBAC ‘must’ provide that information in relation to a ‘corrupt conduct complaint’, a ‘police personnel conduct complaint’ or a ‘protected disclosure complaint’. Section 163(2) reads as follows:

Subject to subsection (4), the IBAC must provide a complainant with the information referred to in subsection (1) if the investigation relates to—

(a) a corrupt conduct complaint or police personnel conduct complaint in relation to a police officer or protective services officer; or

(b) a protected disclosure complaint.

But the provision of information to complainants is subject to a range of prohibitions and other stipulations. For example, IBAC must not provide that information to a complainant if it considers that it would not be ‘in the public interest or in the interests of justice’ to do so. Section 163(4) reads as follows:

(4) The IBAC must not provide any information under this section if the IBAC considers that the provision of the information would—

(a) not be in the public interest or in the interests of justice; or

(b) put a person’s safety at risk; or

(c) cause unreasonable damage to a person’s reputation; or

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1151 Ms Carmel Guerra, CEO, Centre for Multicultural Youth, public hearing, Melbourne, 26 February 2018, *Transcript of evidence*, p. 41.


1153 For a detailed discussion, see Section 3.7 in Chapter 3 of this report.

1154 See, for example, *IBAC Act 2011* (Vic) s 163(4), (7), (8); s 184.

1155 *IBAC Act 2011* (Vic) s 163(4)(a).
(d) prejudice an investigation under this Act or an investigation by Victoria Police; or

(e) be likely to lead to the disclosure of any secret investigative method used by the IBAC or members of police personnel; or

(f) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.

While these provisions do not specifically refer to ‘reasons’ at all—nor to the giving of reasons to a complainant in relation to an investigation outcome—IBAC has informed the Committee that it considers the provisions ‘broad enough to support IBAC providing reasons to complainants’.  IBAC has further said that its ‘preference is to give reasons unless subsection (4) is engaged’. This means that IBAC considers that it has the option of providing complainants with reasons in relation to investigation outcomes and prefers to do so unless it is prohibited under one of the grounds of s 163(4). It does not consider, however, that it is required to give reasons to complainants.

However, the Committee has received some inconsistent evidence on these issues. IBAC has generally seemed reluctant to give reasons to complainants, as seen in relation to the provision of information to complainants at the assessment stage. This reluctance has also been observed by the VI. As the Victorian Inspector told the Committee:

"It is a longstanding issue about the policy of IBAC not giving complainants reasons for a decision. It would seem natural that if you have made a complaint and you just get back a pro forma letter advising you of the outcome of your complaint, whether it is dismissed or whether it is going to be referred to Victoria Police or whether it is going to be investigated, that you would want some reasons to better understand it. I believe that the VI has been raising this issue of reasons now for some three or four years, and it was first touched on in the [VI’s] 2014–15 annual report.

In discussions that have been had with IBAC, they say that it is at the discretion of the assessment and review officers whether to give reasons but the default position is no reasons to be given. I believe that a reason for that is that IBAC is concerned that the giving of reasons may just open up another avenue of complaint and another avenue of review when particular reasons are given, but we do believe that there should be some reasons given to a complainant to give them the satisfaction of knowing that their complaint has been fully considered and dealt with and a decision has been reached."

As discussed earlier in the report in relation to the possible provision of reasons to complainants at the assessment stage of the complaints-handling process, IBAC’s reluctance is largely based on a concern that giving reasons could lead to further complaints and legal challenges to IBAC decisions or undermine IBAC investigations and operations. IBAC has told the Committee that if there were

1156 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee questions), 24 May 2018, p. 9.

1157 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee questions), 24 May 2018, p. 9.

1158 Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee questions), 24 May 2018, p. 9.

1159 See Section 6.3 in Chapter 6 of this report.


1161 See Section 6.3 in Chapter 6 of this report.
to be an explicit reference to reasons in ss 163–164 of the IBAC Act 2011 (Vic), together with a requirement for IBAC to give complainants reasons explaining investigation outcomes, IBAC would need to be protected against legal challenges to its decisions.\textsuperscript{1162} It stated that any obligation of this kind ‘must be accompanied by adequate protection from legal challenges to the decision’ and to ‘minimise the risk of judicial review applications’.\textsuperscript{1163} In particular, IBAC wants to ensure that ‘the provision of reasons’ to complainants, were that to be required under future legislative provisions, ‘does not give rise to a right to review the correctness of ... a decision not to take action on the complaint following an investigation.’\textsuperscript{1164}

However, the Committee does not consider that IBAC needs further protection under the legislation against legal challenges to its decisions. It is notable, in this regard, that the VI did not consider that the risk of any such challenges outweighed the value of IBAC providing reasons to complainants in the interests of the best practice principle of transparency.\textsuperscript{1165} With respect to IBAC’s concern that it does not currently have sufficient legislative protection of its legitimate interest to decline giving information to complainants in certain circumstances, the breadth of s 163(4) is relevant. As noted in the discussion above, IBAC is not required, for example, to provide complainants with information about the results of investigation—in fact is prohibited from doing so—when it considers that it would:

- not be ‘in the public interest’ or ‘the interests of justice’ to do so
- ‘prejudice an investigation under this Act or an investigation by Victoria Police’
- ‘be likely to lead to the disclosure of any secret investigative method used by’ IBAC or Victoria Police or would breach ‘any applicable statutory secrecy obligations’, or
- ‘involve the unreasonable disclosure of information relating to the personal affairs of any person’.\textsuperscript{1166}

These are only some of the circumstances in which IBAC may lawfully decline to provide information to a complainant about the investigation of their complaint.\textsuperscript{1167}

The VI also considers that the clear elaboration and inclusion of such reasons in IBAC complaint files (along with the sources of various kinds of evidence that underlay IBAC’s reasoning) and their provision to complainants would assist the VI in its oversight role, reduce the frustration of complainants and enhance confidence in the complaints system more generally.\textsuperscript{1168}

As the Victorian Inspector told the Committee,

\begin{itemize}
\item \textsuperscript{1162}Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee questions), 24 May 2018, p. 9; Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence, 11 May 2018, p. 5.
\item \textsuperscript{1163}Ms Christine Howlett, Director—Prevention & Communication, IBAC, correspondence (response to Committee questions), 24 May 2018, p. 9.
\item \textsuperscript{1164}Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 7 May 2018, p. 16.
\item \textsuperscript{1166}IBAC Act 2011 (Vic) s 163(4)(a)(d)–(e)(f).
\item \textsuperscript{1167}See, for example, \textit{IBAC Act 2011 (Vic) s 163(4)(b) (when it would put ‘a person’s safety at risk’) (c) (when it would ‘cause unreasonable damage to a person’s reputation’)}.
\end{itemize}
an issue that has struck us is there is minimal reasoning for a determination of the outcome as shown on the IBAC complaint file. So when we call for the file and look at the IBAC file, it is difficult to see completely how the decision was reached, and we have been saying that it would help us in our assessment if there was more information given as to how a particular decision was reached.

Particularly from that [VI 2016/17 survey of 50 IBAC police complaint files] ... it was found that occasionally you would see on the IBAC file some other information that did not come from the complainant but it was not readily identified where that information came from. Was it from within other police resources, or how did it come about? Again when you are looking at the file and trying to look at how IBAC handled it, it would be good to know better where all the information came from.  

In its submission, the VI further argued that ‘the provision of reasons or an explanation for decisions is consistent with best practice principles in exercising a complaint function. The applicable principle is that of transparency.’

**Proposed reforms**

The Committee considers that, subject to appropriate conditions and exceptions, IBAC should be required to inform complainants about the results of an IBAC investigation of a complaint, including any actions taken by IBAC, any recommendations it has made and any other formal outcome. It should also be required to provide the complainant with reasons for any IBAC actions, recommendations or formal outcomes in relation to a complaint investigation. Such a requirement is consistent with the weight of evidence received by the Committee, including the view of the VI, and also accords with the best practice principles of transparency and complainant-involvement. The Committee considers that IBAC’s legitimate interest in declining to provide information to complainants in certain circumstances is adequately protected under the current law, including s 163(4) of the IBAC Act 2011 (Vic).

Moreover, the principles and purposes underlying the provision of reasons to complainants has been recognised by IBAC itself in the context of its 2016 audit Victoria Police’s communication practices when it closes a complaint investigation at the regional level:

Communication with complainants is a critical part of an effective complaints process. Complainants’ satisfaction with the way in which their complaint is handled will be influenced by how police communicate with them, including how the outcome of an investigation is explained. As the [Victoria Police] integrity management guide states, the final letter to a complainant should clearly describe the allegations, summarise the evidence in relation to each allegation, the determination reached, and any action taken. Unfortunately, this is not consistent practice. It was not uncommon for final letters to provide inadequate information on a complaint investigation ...

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1171 IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016, p. 84.
Further, IBAC recognised that

Greater emphasis [needs] to be given [by Victoria Police] to writing final letters that are informative, accurate and timely. In particular, focus [needs] to be given to explaining the determination reached (such as by explaining that not substantiated means the evidence was weighted in favour of the account given by the officer).1172

Given that these principles, purposes and prescriptions apply equally to IBAC’s own communication practices, the Committee makes the following recommendation.

**RECOMMENDATION 55:** That the Victorian Government seek the amendment of ss 163–164 of the *IBAC Act 2011* (Vic) to provide that, subject to appropriate conditions and exceptions (including under s 163(4)), IBAC *must* inform a complainant about ‘the results’ of any IBAC investigation of a complaint, including:

- any action taken by IBAC
- any recommendations IBAC has made
- any other formal outcome of an investigation.

Subject to appropriate conditions and exceptions (including under s 163(4)), IBAC must also provide the complainant or discloser with the reasons for any action it has taken, any recommendation it has made and any formal outcome of its investigation.

### 8.3 Improving how Victoria Police investigates complaints

While the Committee considers that Victoria Police should continue to take responsibility for addressing misconduct within its ranks and share responsibility with IBAC for handling and investigating complaints about police misconduct, it believes there is a need for improvement in how Victoria Police conducts those investigations. This section gives an overview of stakeholder concerns over the impartiality and thoroughness of Victoria Police investigations of complaints. It then examines in detail the findings of IBAC’s audits of Victoria Police’s handling and investigation of complaints, at the regional level and by PSC, that corroborate the validity of those concerns. The Committee then makes a number of recommendations to improve Victoria Police investigations of complaints, with an emphasis on impartiality and thoroughness.

#### 8.3.1 The views of stakeholders: an overview

A number of stakeholders who gave evidence to this Inquiry criticised a range of deficiencies in Victoria Police’s investigation of complaints. These mainly concerned how well the investigations met the overlapping best practice principles of impartiality and fairness, thoroughness and effectiveness, complainant-involvement and timeliness.1173

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1172 Ibid., p. 85.
1173 See, for example, Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Robinson Gill Lawyers, Submission 44, 4 September 2017; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017; Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017; Police Accountability and Human Rights Clinic, Submission 49, 6 October 2017; Youthlaw, Submission 39, 26 August 2017.
Impartiality and fairness

The Police Accountability Project argued that Victoria Police investigations were often affected by poorly managed conflicts of interest and even bias.\footnote{1174} For example, the Project claimed that police investigations were often distorted by the following factors:

- the biased collection of evidence (for example, police investigators are not motivated ‘to collect evidence from all witnesses or to gather available CCTV footage or evidence in a timely manner’)
- police viewing complainants with distrust, even as criminals with a propensity to lie
- the downplaying or minimising of ‘unlawful conduct’ by police
- an uncritical approach to subject officers’ accounts (including failure to interview officers and test their accounts)
- assistance given to subject officers to develop a defence to a complaint
- the use of information gathered during complaint-handling and investigation as the basis for charges (even retaliatory charges against a complainant)
- the intimidation of complainants and the urging of them to drop their complaints.\footnote{1175}

Similar claims were made by a number of other stakeholders who gave evidence to this Inquiry.\footnote{1176}

While the empirical basis for some of these claims is uncertain, they reflect the experience of the Police Accountability Project and a number of community legal centres and law firms who represent complainants.\footnote{1177} The tenor of their concerns is also supported by a wide range of evidence discussed in Chapter 5 of this report. Further, as will be seen, a number of these concerns have been corroborated by findings in IBAC audits of Victoria Police complaint-handling and investigations.

Robinson Gill Lawyers informed the Committee that while, in its view, Victoria Police’s investigation of their own officers was intrinsically problematic, the perception and risk of police bias was ‘significantly escalated where the complaint

\footnotesize{\begin{itemize}
\item \footnote{1174} Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, pp. 4, 13.
\item \footnote{1175} Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 13.
\item \footnote{1176} See, for example, Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Robinson Gill Lawyers, Submission 44, 4 September 2017; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017.
\item \footnote{1177} See, for example, Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 12; Fitzroy Legal Service, Submission 43, 31 August 2017; St Kilda Legal Service, Submission 36, 18 August 2017; Robinson Gill Lawyers, Submission 44, 4 September 2017; Law Institute of Victoria, Submission 41, 31 August 2017; Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017.
\end{itemize}}
is referred for investigation to the station at which the officer who is subject of the complaint works’. This problem, discussed earlier in this report, has been recognised as a concern by IBAC and Victoria Police and is revisited in Section 8.3.4, below.

It should be noted that The Police Association of Victoria contests the view that Victoria Police investigations of complaints are significantly undermined by bias or a tendency to be ‘soft’ on their own:

[T]here is evidence to suggest Victoria Police have little compunction in investigating, charging and prosecuting its members either in open court or through the statutory discipline regime.

...

There is, in our submission, overwhelming objective evidence that gainsays claims of bias and investigative indifference by Victoria Police in probing complaints against fellow members. The alacrity to investigate without fear or favour is clearly not restricted to internal investigation specialists alone. The fact that such a willingness obviously permeates those responsible for local level complaint files should bolster community confidence that grievances regarding police conduct are taken seriously.

...

The Association submits that there is little evidence that Victoria Police are in a ‘hopeless conflict of interest position’ or ‘soft’ when it comes to investigating the conduct of their own. Indeed, we believe there is ample evidence to the contrary and it has been our experience that some charges have been preferred against our members where objectively scrutinised they would not be laid against an ordinary member of the public.

Victoria Police has also defended its role in taking responsibility for addressing misconduct within its ranks and its functions with respect to the discipline system and to the handling and investigation of complaints. However, in contrast to The Police Association, Victoria Police has recognised that there have been ‘concerns around conflict of interest … and … about collusion and cover up’. In particular, Victoria Police has recognised the need to improve its identification, declaration and management of conflicts of interest as they affect complaint investigations and to avoid the risk of partiality when complaints are investigated at the regional level. These issues are discussed further later.

Nevertheless, with the implementation of a number of significant reforms recommended in this report, and the rigorous oversight of IBAC over the entire complaints system, the Committee considers that Victoria Police can undertake impartial and effective complaint investigations. This approach, which recognises


the important role of police within discipline and complaints systems, has received support in a number of Australian and international reviews and inquiries, and from the UNODC.\textsuperscript{1182}

**Thoroughness and effectiveness**

The criteria of thoroughness and effectiveness with regard to complaint investigations concern whether an investigation is conscientious and rigorous, whether meritorious complaints are sustained and whether subject officers are held to account for any misconduct.\textsuperscript{1183} These criteria are sometimes referred to in accounts of best practice principles as relating to the ‘adequacy’ of an investigation.\textsuperscript{1184}

The Police Accountability Project asserted that whoever investigates a complaint about police must be capable ‘of conducting an adequate investigation (i.e. an investigation leading to criminal and/or disciplinary outcomes’).\textsuperscript{1185} The Commissioner for Human Rights gives the following account of the best practice principle of ‘adequacy’:

- The adequacy principle has been developed to ensure that police complaints investigations are effective and capable of bringing offenders to justice.
- Adherence to the rule of law requires that a complaints investigation into the conduct of an officer must be carried out in accordance with the same procedures, including safeguards for the officer complained against, that apply for a member of the public suspected of wrongdoing.
- Requirements of a thorough and comprehensive police complaints investigation include:
  - taking a full and accurate statement from the complainant covering all of the circumstances of their complaint;
  - making reasonable efforts to trace witnesses, including members of the public and police officers, for the purposes of obtaining full and accurate statements;
  - where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards, and not allowing them to confer with colleagues before providing an account;
  - making reasonable efforts to secure, gather and analyse all of the forensic and medical evidence;
  - pursuing lines of inquiry on grounds of reasonable suspicion and not disregarding evidence in support of a complaint or uncritically accepting evidence, particularly police testimonies, against a complaint;
  - investigating complaints of police discrimination or police misconduct on grounds of race, ethnicity, religion, belief, gender, gender identity, sexual orientation, disability, age or any other grounds; and

\textsuperscript{1182} Hayes report; Lander report, p. 25 (‘While examples were given of instances where internal investigations were not properly conducted there are also many examples of the success of internal investigations’); UNODC handbook, p. 14 (‘the police bear the prime responsibility for the integrity and overall performance of their force, and as a consequence they should continue to carry out internal investigations’); Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, 5 February 2018, Transcript of evidence, pp. 2–3. See also the discussion in sections 2.2, 2.3.2 and 2.4 of Chapter 2 in this report.
\textsuperscript{1184} See, for example, Opinion of the Commissioner for Human Rights concerning police 2009, p. 3.
\textsuperscript{1185} Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 5.
Evidence-gathering and analysis

Drawing in part on IBAC’s 2016 audit of Victoria Police’s complaint-handling and investigations at the regional level, the LIV has expressed concern over the thoroughness of evidence-gathering by Victoria Police and its conscientious examination of such evidence as part of its complaint investigations:

A system of police oversight should allow complaints to be effectively and thoroughly investigated. This involves the collecting of sufficient evidence to allow investigators to make fully informed findings in response to the complaint.

... 

[T]he [2016 audit report] found that 17 per cent of audited files ... [excluding Local Management Resolution matters, LMRs] involved an apparent failure to consider relevant evidence. Evidence not considered was CCTV footage, running sheets and medical records. Further ... witnesses were not contacted by investigating officers in 34% of investigations.

The LIV is concerned that these findings reflect an inadequate approach to investigating complaints. An effective system of oversight should involve the consideration of all relevant evidence, particularly evidence that can be as persuasive as CCTV footage, and should ensure through checks and balances that the determination made is informed by the evidence available. Though determinations may ordinarily involve an aspect of subjectivity, an oversight body should guarantee that the determination made is one that is on balance most likely.

A number of stakeholders told the Committee that CCTV footage in the possession of Victoria Police, often important for complainants, could not always be readily accessed by them or implied that it was not always promptly provided to IBAC. One complainant informed the Committee that it took more than four years from his first FOI application for CCTV footage until he received the relevant footage and that it had involved a number of burdensome legal and administrative actions through a number of agency channels to do so. The Victorian Aboriginal Legal Service reported that its clients had experienced cases where police CCTV footage could not be accessed because cameras were not working due to technical issues or because footage had been erased. The Committee asked IBAC whether it had been able to readily obtain police-held CCTV footage relevant to a complaint investigation and whether complainants were able to access it. IBAC responded as follows:

IBAC has not encountered any difficulty in receiving such material where it is part of evidence supporting a notification. It has not encountered difficulty in obtaining such material when a request is made for it. It is expected that if the CCP [Chief Commissioner of Police] pursuant to s 167 of the VPA [Victoria Police Act 2013 (Vic)] notifies IBAC of misconduct of an officer and that conduct is evidenced by CCTV footage, it would as a matter of course be supplied.

\[1187\] Law Institute of Victoria, Submission 41, 31 August 2017, pp. 5–6.
\[1188\] Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 6; Mr Allen Tong, Submission 12, 2 August 2017, pp. 3–4; Ms Tamar Hopkins, Submission 4, 18 July 2017, pp. 8, 58, 69.
\[1189\] Mr Allen Tong, Submission 12, 2 August 2017, pp. 3–4.
\[1190\] Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 11, 14, 15. See also Ms Tamar Hopkins, Submission 4, 18 July 2017, pp. 8, 58, 69.
IBAC is not aware of any circumstances where such footage has been withheld from complainants who require it for the purpose of litigation concerning the events disclosed in the footage.\(^{191}\)

**FINDING 16:** The Committee recognises the importance of IBAC having timely access to CCTV footage, body-worn camera footage and/or other visual evidence relevant to a complaint or disclosure about police.

It is encouraging that IBAC reports that it has ready access to CCTV footage since the Committee recognises the importance of access to this and other film recordings from a range of technologies, including body-worn cameras and other digital equipment.

With regard to gathering evidence from witnesses, Robinson Gill Lawyers informed the Committee that ‘lack of communication with witnesses has been a longstanding deficiency of police misconduct investigations’.\(^{192}\) This can involve not even contacting or interviewing the complainant, such as in the case of Ms Corinna Horvath:

> In its 2014 Communication, the United Nations Human Rights Committee (‘UNHRC’) commented on the Victoria Police’s investigation into assault allegations made against its own officers by Corinna Horvath in 1996. The UNHRC found that police had not interviewed the complainant or relevant civilian witnesses when investigating the complaint.\(^{193}\)

IBAC’s 2016 audit found that in 16% of cases police investigators had not contacted the complainant, an issue that also falls short of meeting the best practice principle of complainant-involvement, which is further discussed in the next section.\(^{194}\)

Related to good evidence-gathering, and again drawing on the 2016 audit, the LIV identified the problem of poor record-keeping in some Victoria Police complaint investigations:

> The IBAC report noted that 29 per cent of audited files did not include all relevant documentation. Some of the most significant issues relating to record keeping, as found by the IBAC report, were the failure of investigators to include in the complaint file information such as CCTV footage, material that was referenced by determinations, and contact made with the subject officers and/or complainants.\(^{195}\)

**Complaint substantiation rates**

A number of stakeholders highlighted the comparatively low substantiation rates for complaints investigated by Victoria Police and contrasted these rates with the success their clients had in litigating claims or defending charges in the courts. For example, FKCLC reported a substantiation figure of 2% with Victoria Police investigations of their clients’ complaints. This figure was

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\(^{192}\) Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 3.


\(^{194}\) Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 3; IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016, p. 48.

\(^{195}\) Law Institute of Victoria, Submission 41, 31 August 2017, pp. 6–7.
derived from the complaints that the Police Complaints Clinic [Police Accountability and Human Rights Clinic] had submitted over 2014/15 (51 allegations filed/1 substantiated) and in 2015/16 years [sic] (59 allegations/1 substantiated). These results indicate a 2% [sic] were found substantiated by PSC [Professional Standards Command].

Their argument was that this suggested that meritorious complaints were not being substantiated due to flaws in Victoria Police investigations, including their lack of impartiality and thoroughness:

This is not for lack of meritorious complaints. When courts are given the chance to assess allegations of police mistreatment, they consistently find those allegations have substance, despite being dismissed by the police complaint system.

... We consider that the extremely low substantiation rates by Victoria Police investigators ... is more likely to indicate failure in the investigative process rather than every one of the complaints investigated by Victoria Police being without substance.

In thirteen criminal cases the Flemington & Kensington Community Legal Centre has been involved in, judicial decision-makers contradicted the assessment made by the Victoria Police investigators. These judgements support the view that the present internal complaint system is not achieving justice.

While the Committee is cautious not to generalise these statistics, the need for Victoria Police complaint investigations to be improved has received support from other stakeholders who have given evidence during this Inquiry, including IBAC.

For example, referring to the fact that IBAC’s 2016 audit found that only 9% of complaint files audited were substantiated, the LIV noted that the percentage of files determined to be substantiated is lower than that in other jurisdictions. For example, the New South Wales Police Force reported that in 2014–15 and 2015–16 17 per cent and 16.67 per cent of complaints, respectively, were sustained. In contrast, substantiation rates in jurisdictions that have an independent police oversight body have a higher substantiation rate. In 2016–2017 the Northern Ireland Police Ombudsman recorded a 22 per cent substantiation rate and the New York Civilian Complaints Review Board recorded 23 per cent.

In more general terms, Robinson Gill Lawyers reported:

Complainants dissatisfied with the complaints process often pursue civil litigation to obtain a sense of justice. In our experience a finding by Victoria Police that a complaint was not substantiated has little impact on the outcome of the litigation. Together with the inadequacy of Victoria Police’s investigations, this suggests that the low rate of ‘substantiated’ complaints is unlikely to be reflective of the true number of genuine complaints.
Finally, Mr Wayne Muir, CEO of the Victorian Aboriginal Legal Service, also told the Committee:

Of the files that we have run, not a single complaint has been substantiated in full. Not one outcome letter included the required detail about the nature of the complaint, the steps taken to investigate or any actions taken. Our experience is consistent with IBAC’s 2016 audit finding that only 9 per cent of complaints in its sample were substantiated. When we talk to our clients we hear that the most common outcome they are seeking is an explanation as to why police misconduct occurred. The current system is not even providing those answers.\textsuperscript{1201}

\textbf{Complainant-involvement}

The importance of the best practice principle of complainant-involvement has been a theme of evidence given during this Inquiry and of this report. The Commissioner for Human Rights described the principle, also known as the ‘victim involvement principle’ as it applies to investigations as follows:

The victim involvement principle, by ensuring the complainant’s participation in the investigation serves to safeguard his or her legitimate interests in the complaints system. In order to facilitate the involvement of a complainant, \textit{without prejudicing the interests of the officer complained against}, the IPCB [Independent Police Complaints Body] or police officer responsible for handling a complaint should arrange to liaise with the complainant. The complainant should be consulted and kept informed of developments throughout the determination of his or her complaint.\textsuperscript{1202} [Emphasis added]

Three interwoven features of this complainant-involvement principle may be discerned in relation to complaint investigations: the involvement or participation of the complainant in the processes of the investigation, communication with the complainant and support of the complainant.\textsuperscript{1203} The provision of high quality information to complainants and the need for effective communication with and support for complainants has been closely examined in this report thus far. Here only a few key aspects of the evidence relating to involvement in investigation processes and communication with complainants will be discussed.

The Police Accountability Project has argued that complainants should ‘fully participate in the investigation, including through access to information’ and that, as part of ‘procedural fairness in decision making’,

complainants should be informed before a complaint is dismissed and have opportunity to comment on any adverse material which may affect the complaint outcome. For example, complainants may be able to provide further information, witnesses or evidence and correct false assumptions.\textsuperscript{1204}

This approach reflects the 2009 research of Ms Tamar Hopkins, a lawyer and researcher who was formerly the Principal Solicitor at the FKCLC:

Complainants perform a vital public service in filing complaints against police, without which the State would be unable to fulfil its obligation to discipline and punish perpetrators of human rights abuses. The transmission of information is

\begin{footnotes}
\item[1201] Mr Wayne Muir, CEO, Victorian Aboriginal Legal Service, public hearing, Melbourne, 26 February 2018, \textit{Transcript of evidence}, p. 57.
\item[1202] Opinion of the Commissioner for Human Rights concerning police 2009, p. 14
\item[1203] Ibid.
\item[1204] Flemington & Kensington Community Legal Centre—Police Accountability Project, \textit{Submission 42}, 31 August 2017, p. 5.
\end{footnotes}
critical at the time a complaint is lodged and on an ongoing basis throughout its investigation. It is the complainant who knows what happened and has critical background information and insight. As a result they are well placed to assist and scrutinise investigations. An effective investigation requires victim involvement, not just for the sake of victims’ rights, but because victims are critical in ensuring the investigation occurs and that it has the capacity to get to the truth of what occurred and hold police, who abuse their power, to account. The victim must be central to an investigation process.\[1205\]

This interpretation of the complainant-involvement principle treats the complainant as a partner in the investigation who can make recommendations on the course of an investigation, cross-examine witnesses and access and give a response to provisional findings of the investigation.\[1206\] The South Australian Lander Review cautioned against such a high level of involvement:

Hopkins has proposed a very high level of involvement, going considerably beyond that afforded to victims in criminal proceedings.

\[...\]

The high level of involvement proposed by Hopkins presents some practical difficulties. A complainant has a personal interest in the outcome of an investigation and for a complainant to have such a decisive role in the progress and direction of an investigation could create serious impediments to an objective, fair and efficient outcome.\[1207\]

The Committee considers that such caution is warranted given the need to ensure the impartiality of investigations and for those subject to investigation to be treated fairly.

However, it is important, as the LIV submitted, that ‘complainants are properly consulted and informed of developments throughout the investigation of his or her complaint’.\[1208\] The LIV has expressed concern over the regularity and quality of communication with complainants, reporting usefully on one complainant’s experience:

The LIV hosted a Police Accountability Roundtable in July 2017 inviting various stakeholders and members of the legal sector. Attendees heard from individual complainants who expressed dissatisfaction with the system and the level of communication between investigators and complainants. One complainant informed the roundtable that there was a lack of transparency regarding the processing of her complaint as she did not receive updates regarding the progress of the complaint handling. The complainant suggested that better communication throughout the entire complaints handling process would have addressed some of the grievances she had as a result of the conduct subject to the complaint. Aside from ensuring that the interests of victims are protected, an increase in communication between victims and police can also encourage the resolution of complaints at earlier stages and through alternative means.\[1209\]

Robinson Gill Lawyers reinforced this view, and also highlighted deficiencies with respect to Victoria Police’s communication and explanation of investigation outcomes:

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1205 Ms Tamar Hopkins, Submission 4, 18 July 2017, p. 81.
1206 Lander report, p. 32; Ms Tamar Hopkins, Submission 4, 18 July 2017, pp. 81, 90, 95, 97, 98.
1207 Lander report, p. 32.
1208 Law Institute of Victoria, Submission 41, 31 August 2017, p. 7.
1209 Law Institute of Victoria, Submission 41, 31 August 2017, pp. 7–8.
Complainants often have little contact with the investigating officer and receive only limited updates throughout the process. At the end of the investigation the complainant will receive a brief letter stating each allegation and whether it was substantiated, unsubstantiated, unfounded etc. The decision letter provides neither the method of conduct, or the investigating officer’s reasoning behind the decision. This deprives the complainant of any tangible understanding of how their complaint was handled.\(^{1210}\)

**Timeliness**

The best practice principle of timeliness and the general perspectives of stakeholders who gave evidence to this Inquiry have already been discussed in detail in relation to IBAC. The Committee also received evidence identifying that delays are an issue with respect to Victoria Police complaint investigations.\(^{1211}\) Timeliness is important for a number of reasons: instilling confidence that a complaint is being taken seriously, ensuring promptness in the commencement of an investigation (including securing evidence and interviewing complainants, subject officers and witnesses), reducing the frustrations of complainants and subject officers and enhancing the overall efficiency of the complaints system.\(^{1212}\)

The Police Accountability Project argued that

> Police suspects and witnesses must be separated and interviewed immediately for both criminal and administrative purposes. Enforceable timelines for investigations are critical. Provision of documents by police agencies must be prioritised and investigators should use warrants to collect documents themselves where any delay occurs.\(^{1213}\)

The Police Accountability Project also recommended legislative ‘time limits ... for the gathering of critical evidence (like CCTV footage)’.\(^{1214}\)

The LIV expressed concern that around one third of Victoria Police complaint investigation files audited by IBAC were delayed past their deadlines for completion and that ‘[s]ignificant delays may also impact upon the public’s confidence in Victoria Police’s ability to oversee the complaints system, and may give the appearance of a reluctance to investigate’.\(^{1215}\)

The next sections examine the key issues with Victoria Police complaint investigations identified in IBAC’s 2016 audit of regional complaints-handling systems and its 2018 audit of PSC complaint investigations.\(^{1216}\) The issues identified

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1210 Robinson Gill Lawyers, Submission 44, 4 September 2017, p. 3.
1212 See the discussion in Section 8.2.5 in this chapter.
1213 Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 21.
1214 Flemington & Kensington Community Legal Centre—Police Accountability Project, Submission 42, 31 August 2017, p. 6.
1215 Law Institute of Victoria, Submission 41, 31 August 2017, p. 6.
1216 See IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016; IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018.
by IBAC through these audits validate many of the concerns of stakeholders over the adequacy of Victoria Police complaint investigations and contain lessons the Committee can draw on in developing recommended improvements to them.

8.3.2 **Key issues identified in IBAC’s 2016 audit of Victoria Police’s regional complaint-handling**

IBAC’s audit of Victoria Police complaint-handling systems at the regional level corroborates the concerns of stakeholders over the need for improvements with regard to impartiality, thoroughness, complainant-involvement and timeliness.\(^\text{1217}\)

**Impartiality**

With regard to impartiality, IBAC reported that its audit identified:

- 59 files (17 per cent of audited files excluding LMRs [Local Management Resolution matters]) where the choice of investigator was not appropriate. The issues that made the choice of investigator inappropriate were:
  - the investigator was not of a higher rank than all of the subject officers
  - the investigator and the subject officer worked at the same station
  - the investigator had a complaint history relevant to the investigation.\(^\text{1218}\)

IBAC identified a number of measures Victoria Police should take to ensure impartiality and properly manage conflicts of interest, including:

- requiring conflict of interest forms ‘to be completed for all complaint and oversight files ... to identify potential conflicts of interest’
- reinforcing that ‘Victoria Police policy requires that investigators come from a different station to the subject officer, for complaints investigated in the regions’
- enhancing PSC scrutiny of the selection of an investigator ‘to ensure the investigator does not work at the same station as the subject officer and does not have a complaint history that could create a perception of a conflict of interest’.\(^\text{1219}\)

**Thoroughness and effectiveness**

IBAC emphasised the importance of investigation plans as well as the systematic and comprehensive collection, documentation and analysis of evidence relevant to a complaint investigation:

Collecting, assessing and recording appropriate evidence underpins the thoroughness of complaint investigations. Neglecting relevant evidence undermines investigators’ assessments of complaints and potentially, the determinations reached.

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in relation to allegations. The poor documentation of evidence limits the ability of supervising officers to effectively review investigation files and an investigator’s conclusions.\textsuperscript{1220}

In carrying out its audit, IBAC ‘did not locate any investigation plans on the files examined’, which meant that they did not meet the standards of ‘good investigative practice’:

It is good investigative practice to develop a plan for serious or complex complaints, to ensure an investigation addresses all relevant elements of a complaint, and to justify actions taken or not taken. An investigation plan is a means of ensuring transparency in the conduct of an investigation, and—if properly documented and followed—would assist those who review investigations (both within Victoria Police and IBAC) to better understand an investigator’s decisions.\textsuperscript{1221}

IBAC stated that Victoria Police should require investigation plans to be completed for all complaint files that involve allegations of criminality and for other complex matters (for instance, complaints that involve multiple allegations or multiple subject officers). Plans should be proportional to the seriousness and complexity of the investigation and completed investigation plans must be placed on the complaint file. A template plan should be attached, either physically or electronically, to the file when it is allocated to a region, department or command.

Victoria Police should take steps to promote and monitor development of investigation plans, including explaining the requirement in its integrity management program, which is designed to equip officers with the skills to conduct complaint investigations.\textsuperscript{1222}

The audit also found that relevant evidence was not considered in 60 of the audited files (17 per cent). The most frequent types of evidence not considered were CCTV footage (not considered in 17 files where it would have been relevant), police running sheets (14 files) and medical records (10 files).

IBAC urged that Victoria Police increase awareness among officers of the different types of evidence that might be relevant and ensure that officers attach all evidence to complaint files.\textsuperscript{1224}

The audit also identified deficiencies with Victoria Police’s record keeping and documentation in relation to complaint files: ‘almost one third (29 per cent) of audited files (plus 38% of LMRs) did not contain all of the relevant documentation’.\textsuperscript{1225} IBAC noted that this raised questions as to whether all relevant material was considered by investigators when arriving at their determinations and recommendations. A failure to include all relevant material on the file also limits the capacity of senior Victoria Police officers and IBAC to effectively review the files.\textsuperscript{1226}

\textsuperscript{1220} Ibid., p. 13.
\textsuperscript{1221} Ibid., p. 10.
\textsuperscript{1222} Ibid.
\textsuperscript{1223} Ibid., p. 13.
\textsuperscript{1224} Ibid.
\textsuperscript{1225} Ibid., p. 20.
\textsuperscript{1226} Ibid.
IBAC suggested that Victoria Police improve its record keeping by including ‘a checklist of steps and evidence to consider as part of the file template sent to investigators’ and by continuing to transition ‘from a paper-based complaint file management system to an electronic system’.1227

In terms of effectiveness, the audit found that only 9% of files that were audited ‘had at least one allegation with a determination of substantiated, a lower rate than other comparable jurisdictions that publish substantiation rates’.1228 Further, with 14% of the audited files IBAC found that an inappropriate determination had been reached.1229 It emphasised that

all parties to a complaint must have confidence that a determination is correct: a determination must be based on the information gathered during an investigation (and included on the investigation file) otherwise confidence in the complaints system is undermined.1230

In addition, IBAC recommended that the system of determinations be reduced and simplified; this is discussed in Section 8.3.3.

Through the audit IBAC also ‘identified a general lack of understanding of the rights enshrined in the Charter of Human Rights and Responsibilities Act 2006 [(Vic)]:

In 34 per cent of files audited human rights were not appropriately addressed. This included investigators failing to identify that a complaint raised human rights issues, identifying human rights not relevant to the complaint, or addressing rights not covered by the Charter.1231

IBAC suggested that investigators at the regional, command and departmental levels be given the human rights training delivered to PSC investigators.1232 Further, IBAC urged that EPSOs (Ethics and Professional Standards Officers) be given human rights training ‘in how to consider human rights issues within the context of complaint investigations, to enable them to provide informed advice to investigators and to more rigorously review this aspect of complaint files’.1233

Complainant-involved

IBAC also identified a lack of adequate involvement of, and communication with, complainants throughout the investigation process, finding that

16 per cent of complainants and 34 per cent of all witnesses did not appear to have been contacted by investigating officers, based on the information attached to the file. ... In most of these cases there was no indication on the file as to why contact had not been made.

Contrary to the requirements of the Victoria Police integrity management guide ... most complainants were not updated on the progress of investigations or provided with explanations for any delays.1234

1227 ibid.
1228 ibid., p. 15.
1229 ibid.
1230 ibid.
1231 ibid., p. 18.
1232 ibid.
1233 ibid.
1234 ibid., p. 13.
IBAC observed that:

> effective communication between investigators and complainants is essential to ensure the substance of a complaint is addressed, the material relied on by the investigator is accurate and to maintain the complainants’ trust in the investigative process.\textsuperscript{1235}

It suggested a number of improvements with respect to Victoria Police’s communication with complainants during the investigation:

Victoria Police could improve contact with relevant parties during an investigation by:

- Ensuring investigators are aware of requirements around communication with relevant parties. This could be achieved through formal training or by developing a customer service charter that is explicit about how communication with complainants should occur
- Requiring investigators to maintain an investigation log that includes a record of contact with relevant parties to an investigation
- PSC and supervisors being more active in identifying where contact has not been made with relevant parties to a complaint, and requesting remedial action be taken.\textsuperscript{1236}

IBAC was also critical of the way Victoria Police communicated investigation outcomes to complainants, noting:

> Communication with complainants is critical. Complainants’ satisfaction with the way in which their complaint is handled will be influenced by how police communicate with them, including how an investigation outcome is explained. Section 172 of the Victoria Police Act [2013 (Vic)] requires Victoria Police to advise the complainant in writing of the results of a complaint investigation and the action taken, unless it would be contrary to the public interest.\textsuperscript{1237}

The audit found that in 10% of ‘relevant files’ ‘there was no indication that final letters had been sent and no reason given for that not occurring’, and that in 36 files

the final letter did not comply with the Victoria Police Act [2013 (Vic)] or policy, generally because the letter did not clearly explain the result of the investigation, the outcome or the action taken. It was not uncommon for final letters to provide inadequate information, for inconsistent or inaccurate information to be provided, or for there to be delays in the advice provided to complainants.\textsuperscript{1238}

IBAC suggested a number of measures Victoria Police could implement to improve its communication with complainants, including:

- Ensuring that final letters to complainants are informative, accurate and timely. In particular, the determinations outlined in final letters should be clearly explained …
- Identifying where the responsibility for improving the quality of letters to complainants rests, and taking steps to ensure that responsibility is understood and actioned

\textsuperscript{1235} Ibid.
\textsuperscript{1236} Ibid.
\textsuperscript{1237} Ibid., p. 18.
\textsuperscript{1238} Ibid.
• Regularly sampling complainants ... to assess their level of satisfaction with communication during the complaint handling process, including the final advice of the outcome of their complaint.\textsuperscript{1239}

While not, by definition, within the principle of complainant-involvement, IBAC also found that communication with subject officers was unsatisfactory, with 16\% of ‘relevant files’ not containing ‘final letters to subject officers’.\textsuperscript{1240} Further, 8\% of letters attached were
d\textsuperscript{[d]}eficient because they were either inconsistent with letters sent to complainants, did not address all allegations investigated, referred to the incorrect determination or did not state what action would be taken.\textsuperscript{1241}

IBAC urged that Victoria Police ensure ‘that all subject officers are advised formally of the outcome of a complaint investigation in a timely and accurate way’.\textsuperscript{1242}

**Timeliness**

IBAC stressed that, ‘Although timeliness is not the only measure of how well complaints are handled, it is critical to complainants and subject officers’:

Expedient management of complaints—together with clear communication in the event of any delays—is important for a number of reasons, including the welfare of complainants and subject officers, the potential for delays to adversely affect the availability of evidence, and to reduce the prospect of further complaints or appeals.\textsuperscript{1243}

The audit found that there were ‘[s]ignificant delays associated with the investigations of most categories of complaint files, with almost one third (32 per cent) of files being overdue’.\textsuperscript{1244} The report suggested that Victoria Police improve its timeliness by setting up a better system of reminders and by complying with its extensions policies.\textsuperscript{1245}

### 8.3.3 Key issues identified in IBAC’s 2018 audit of Professional Standards Command complaint investigations

This audit of PSC complaint investigations used a similar methodology to the 2016 regional audit and found significant problems with respect to impartiality, thoroughness and effectiveness of investigations.

**Impartiality**

The audit found a number of issues with PSC complaint investigations relevant to the principle of impartiality, including poor management of conflicts of interest, the need to fully take into account subject officer complaint histories and the need for better probity processes regarding staff recruitment to PSC.\textsuperscript{1246}

\begin{itemize}
\item \textsuperscript{1239} Ibid., p. 19.
\item \textsuperscript{1240} Ibid.
\item \textsuperscript{1241} Ibid.
\item \textsuperscript{1242} Ibid.
\item \textsuperscript{1243} Ibid., p. 12.
\item \textsuperscript{1244} Ibid.
\item \textsuperscript{1245} Ibid.
\item \textsuperscript{1246} IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018, p. 5.
\end{itemize}
With respect to conflicts of interest, the audit found that 95% of audited files did not explicitly address potential or actual conflicts of interest between investigators and subject officers.

...

[The] auditors could not find any evidence that the investigator had considered conflict of interest issues at any time during the investigation.

The audit only identified one file that attached a conflict of interest form.\textsuperscript{1247}

At the time of the audit investigators had to fill out a conflict of interest form (Form 1426) before undertaking an investigation, which asked them ‘whether they currently or previously worked, socialised, trained or worked at the same location of any of the identified people in the investigation’.\textsuperscript{1248} The completed form would then have to be ‘approved by the investigator’s supervisor who is required to develop a conflict management plan if needed’.\textsuperscript{1249} In response to IBAC’s concerns, as discussed earlier, Victoria Police now use an improved form and are seeking to develop a better, more comprehensive, conflicts of interest policy.\textsuperscript{1250}

Nevertheless, IBAC reiterated the recommendations it made in its 2016 audit and observed:

\begin{quote}
[It is important to identify and declare possible conflicts of interest so that appropriate strategies can be put in place to manage the conflict and ensure impartiality and fairness. If the complainant, witnesses or the police officer who is the subject of the complaint perceive that the investigator has a relationship with one or more of those involved, that actual or perceived conflict of interest could undermine the investigation as well as PSC’s reputation.\textsuperscript{1251}
\end{quote}

With regard to subject officer complaint histories, only 41% of audited files contained the subject officer’s complete complaint history.\textsuperscript{1252} The audit found that a subject officer’s complaint history was relevant to a then current complaint investigation in 17 files, including because the history involved:

- similar allegations in the recent past (10 files)
- similar allegations in recent times and another complaint that was currently open (three files)
- a significant number of total complaints (four files).\textsuperscript{1253}

This is troubling given that, as IBAC noted, subject officer complaint histories ‘are an important tool to inform the investigator’s assessment of whether the current allegation can be proven on the balance of probabilities’.\textsuperscript{1254}
Recent commitments to improve the impartiality of complaint investigations

Victoria Police has advised IBAC that a number of commitments are being pursued to improve the impartiality of complaint investigations and better manage conflicts of interest.\textsuperscript{1255} These commitments should be seen in the context of Victoria Police’s acceptance of a number of IBAC recommendations relating to impartiality and conflict of interest, especially over the last two years.\textsuperscript{1256} They should also be seen in the context of Victoria Police’s development of a ‘new policy framework for Victoria Police employee conflicts of interest’ to govern ‘all employee activities and conduct that might raise issues of conflict—work-related actions as well as gifts and benefits, secondary employment and outside interests and declarable associations’.\textsuperscript{1257}

Victoria Police has informed IBAC that the following measures with regard to ensuring impartiality and managing conflicts of interest are in place or being developed:

... Ethical and Professional Standards Officers (EPSOs) will monitor compliance with its new procedures and conflict of interest form. The form is to be completed by the investigator and approved by their manager for all matters before the commencement of a complaint investigation. Victoria Police has advised that the form will also be used in local management resolution matters (LMRs) and management intervention model matters (MIMs), although the principle of geographical independence would not apply (as by their nature, LMRs and MIMs are usually resolved by the subject officer’s manager).

Other changes Victoria Police has advised it has introduced to improve impartiality in complaint investigations include:

- the investigator is required to discuss conflicts (or perceived conflicts) with the complainant before the commencement of the investigation
- EPSOs have been directed to audit all active regional complaint investigation files to ensure the form is on the file, has been considered by a supervisor and that where a conflict has been identified, the file has been reallocated
- Assistant Commissioners and Department heads are required to discuss the importance of addressing conflicts of interest in regional complaint investigations with their leadership teams.

Victoria Police has further advised it is continuing to refine its conflict of interest policy, practices and workforce education, and is committed to working with IBAC on this issue.\textsuperscript{1258}

For its part, IBAC has said that it ‘will continue to monitor how Victoria Police identifies and manages conflicts of interest, including through our reviews and audits of complaint investigations.’\textsuperscript{1259}

\textsuperscript{1255} Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018,
\textsuperscript{1256} IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016; IBAC, Audit of Victoria Police oversight of serious incidents, Melbourne, March 2018; IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018.
\textsuperscript{1257} Victoria Police, Submission 52, 1 May 2018, p. 37.
\textsuperscript{1258} Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018, p. 2.
\textsuperscript{1259} Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018, p. 2.
Thoroughness and effectiveness

The audit identified issues with how methodical, thorough and effective PSC complaint investigations were.\textsuperscript{1260} For example:

- ‘only 20 per cent of the files audited contained a formal investigation plan’
- ‘25 files (42 per cent) did not appear to have appropriately considered evidence relevant to the investigation’—evidence most commonly ‘overlooked’ included CCTV footage
- auditors ‘disagreed with the determinations made by Victoria Police in 10 files (17 per cent) on the basis that there was either insufficient evidence to substantiate an allegation that was not substantiated or insufficient evidence to support determinations of “exonerated”, “withdrawn”, “not substantiated” or “unfounded”’
- auditors ‘disagreed with the recommended action in nine files (15 per cent)’
- complaint determination categories had not yet been simplified by Victoria Police.\textsuperscript{1261}

In terms of effectiveness, the audit found that Victoria Police consistently failed to ‘consult with the Office of Public Prosecutions in relation to reportable offences as required under section 127(2) of the \textit{Victoria Police Act 2013 ([Vic])}’\textsuperscript{1262} and recommended that it do so ‘as soon as possible when Victoria Police forms a reasonable belief that a reportable offence has been committed’.\textsuperscript{1263}

As in 2016, the audit concluded that ‘human rights were not adequately dealt with in 20 of the 59 files audited (34 per cent)’:

\begin{quote}
[H]uman rights were not addressed in the majority of files audited and ... those that did discuss human rights frequently failed to identify clear human rights issues, did not address rights in sufficient detail, or demonstrated a poor understanding of human rights by mischaracterising complaint issues as relevant “rights”.\textsuperscript{1264}
\end{quote}

IBAC gave the following examples where human rights concerns ‘should have been addressed but were not’:

- an assault off-duty which should have given rise to consideration of the right to liberty and security of person (section 21 of the Charter \textit{[Charter of Human Rights and Responsibilities Act 2006 (Vic)]})
- an assault in custody which should have given rise to consideration of the right to humane treatment when deprived of liberty (section 22)
- failure to take action in relation to intervention order breaches which should have given rise to consideration of the right to equality before the law (section 8).\textsuperscript{1265}

With regard to record keeping in relation to complaint investigations, IBAC stated that, ‘Accurate records are essential for accountability and data analysis. Reasons for decisions are easier to explain when all the details are maintained on file. Analysis

\textsuperscript{1260} IBAC, \textit{Audit of complaints investigated by Professional Standards Command, Victoria Police}, Melbourne, June 2018, pp. 27, 29, 33, 37, 38, 39, 41, 45.
\textsuperscript{1261} Ibid., pp. 27, 29, 37, 38, 39.
\textsuperscript{1262} Ibid., p. 5.
\textsuperscript{1263} Ibid., p. 6.
\textsuperscript{1264} Ibid., p. 57.
\textsuperscript{1265} Ibid.
of trends and patterns relies on complete and correct data."1266 However, all of the audited files ‘failed to include some relevant material in the file or in ROCSID’.1267 For more detail, see Box 8.2

**BOX 8.3: IBAC’s key findings on PSC complaint investigation record keeping**

All of the relevant files audited failed to include some relevant material in the file or in ROCSID. In particular, the majority did not attach conflict of interest forms, investigation plans, or a copy of the [Victoria Police] DAU [Discipline Advisory Unit] advice or extension approvals (where sought). A good complaint handling process must be transparent. The absence of these documents and other material that records the reasoning behind key decisions hinders the auditing process and undermines the value of complaint files as a means of assisting police to improve practices and procedures.

In the absence of clear directions and effective process, a complaint management system such as Interpose is of limited use to managers and reviewers to actively monitor the progress and audit complaint files. As part of Victoria Police’s roll out of Interpose more broadly to manage complaint investigation files, it would be prudent to provide all investigators with clear guidance on record keeping requirements to ensure consistency in how Interpose is used.

*Source: IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018, p. 64.*

### 8.3.4 Improving Victoria Police complaint investigations: the Committee’s view

**Victoria Police complaint investigations: general requirements**

The Committee has received and examined a wide range of evidence with respect to Victoria Police’s conduct of complaint investigations. The tenor of that evidence has been corroborated by in-depth IBAC audits of regional complaint-handling systems and PSC complaint investigations. The Committee has found that significant improvements are necessary.

**FINDING 17:** There are a range of deficiencies with respect to Victoria Police complaint investigations concerning impartiality, effectiveness, complainant-involvement and timeliness.

The Committee therefore recommends that a general set of requirements for Victoria Police’s handling and investigation of complaints be set out in the *Victoria Police Act 2013* (Vic).

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1266 Ibid., p. 64.
1267 Ibid.
RECOMMENDATION 56: That the Victorian Government seek the amendment of Parts 9 and 10 of the Victoria Police Act 2013 (Vic) to include a general set of requirements for Victoria Police’s handling and investigation of complaints about police at the start of each Part, as follows:

- Investigations must be conducted impartially, fairly, thoroughly and without undue delay.
- Subject to reasonable limitations, complainants must be adequately informed about the receipt, handling, progress and outcome of their complaint.
- Victoria Police must take reasonable steps to protect complainants, investigators and those cooperating with investigators from reprisals.
- Victoria Police must have regard to the human rights obligations in the Equal Opportunity Act 2010 (Vic), the Racial and Religious Tolerance Act 2001 (Vic) and the Charter of Human Rights and Responsibilities Act 2006 (Vic) in handling and investigating complaints.
- Victoria Police must comply with the Victims’ Charter Act 2006 (Vic) in handling and investigating complaints.
- Subject to reasonable limitations, natural justice must be accorded to police officers and Protective Services Officers who are subject to complaints and investigations of complaints.
- Subject to reasonable limitations, police officers and Protective Services Officers must be adequately informed about the receipt, handling, progress and outcome of complaints against them.
- Victoria Police must pay due regard to the safety, health and welfare of complainants and police officers subject to complaints and investigations of complaints.

Ensuring impartial investigators and avoiding conflicts of interest

Evidence received during this Inquiry has demonstrated the importance of proper management of conflicts of interest if Victoria Police complaint investigations are to be impartial and retain the confidence of complainants, subject officers and the community at large. The Committee notes that the persistence of the serious problems with Victoria Police’s management of conflicts of interest, identified in IBAC’s 2016 audit of regional complaint-handling. Indeed, in its 2018 audit of PSC complaint investigations IBAC reiterated the recommendations it had made in both the 2016 regional audit report and the 2018 Audit of Victoria Police oversight files.

The Committee therefore considers that a clear definition of conflict of interest, perhaps drawing on that of the Victorian Public Sector Commission, is needed in the legislation, together with provisions requiring that a complaint investigator not be affected by a conflict of interest, that any such investigator be certified as impartial by PSC and that IBAC have the power to require the appointment of an impartial investigator.

1269 IBAC, Audit of Victoria Police’s oversight of serious incidents, Melbourne, March 2018.
RECOMMENDATION 57: That the Victorian Government seek legislative amendments to provide identical, detailed definitions of ‘conflict of interest’ in both the *IBAC Act 2011* (Vic) and the *Victoria Police Act 2013* (Vic), supported as necessary by appropriate regulations.

RECOMMENDATION 58: That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to require that police investigations of complaints and disclosures be carried out impartially by an investigator who is not affected by a conflict of interest.

RECOMMENDATION 59: That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to require Professional Standards Command, Victoria Police, to:

- approve the appointment of any police investigators of complaints about police
- certify that any appointed investigator is impartial and not affected by a conflict of interest, and
- report that certification (with supporting reasons) in writing to IBAC.

RECOMMENDATION 60: That the Victorian Government seek the amendment of the *IBAC Act 2011* (Vic) to give IBAC the power to veto the appointment of a particular police investigator and to require the appointment of an impartial investigator instead.

Taking officer complaint histories into account

The Committee has received evidence that, to ensure impartial complaint investigations, it is essential that Victoria Police have accurate and complete records of police officer complaint histories and take them into account—both when allocating complaints to investigators and when investigating allegations against a subject officer. IBAC should have ready access to those complaint histories to aid it in monitoring, reviewing and auditing Victoria Police complaint investigations.

RECOMMENDATION 61: That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to require Victoria Police to keep records of police officer and Protective Services Officer complaint histories and take them into account when appointing an investigator to undertake an investigation into a complaint about police and when investigating a subject officer in relation to police misconduct. The amendment should also require Victoria Police to provide IBAC with ready access to these records.

Ensuring impartial investigations at the regional level

The Committee has long been concerned over the risk to impartiality, or at least the perception of impartiality, when a police investigator of a complaint comes from the same town, or a proximate geographical region, as the complainant and/or subject officer. The risk is no doubt higher in relation to investigations in small country towns where the anonymity of complainants, subject officers and investigators is

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harder to protect, and where there are more likely to be close personal interactions on a daily basis that can expose complainants to reprisals. This is not to say, of course, that this risk is only present in complaint investigations in country regions.

These concerns have also been identified by IBAC in its 2016 audit of Victoria Police’s complaint-handling systems at the regional level (‘regional’ referring to a sector of Victoria Police) and its 2018 audits of PSC complaint investigations and Victoria Police oversight of serious incidents.

For example, IBAC’s recent report on the oversight of serious incidents discussed the relevance of the Victoria police manual’s notion of ‘geographic separation’. ‘The VPM [Victoria police manual] states that there must be a ‘geographic separation’ between the relevant parties (meaning they should not work in the same station or unit ...)’. This principle echoes IBAC’s previous statements in its 2016 and 2018 audits of Victoria Police complaint handling and investigations. The 2016 audit report relied on the Victoria police manual in stating that investigators ‘must not’:

- be from the same work area as the subject officer
- be a line manager of the subject officer
- have an existing association with the subject officer such as a friendship, relationship or former common workplace.

These concerns are also shared in some respects by Victoria Police, as discussed later.

IBAC’s concerns

In February 2018, the IBAC Commissioner told the Committee of IBAC’s concerns in relation to Victoria Police’s regional handling and investigation of complaints about police:

But one area in particular, again being something that has been a focus of the [IBAC parliamentary] Committee, is the way in which regional complaints are handled by VicPol [Victoria Police]. I think we are all in agreement, and I think the Chief Commissioner [of Police] also accepts, that the present method of investigating regional complaints in which a senior police officer from that region—or in some cases where there is no senior police officer, at the region closest to the area where the complaint comes from—investigates the matter is an unsatisfactory one. That is quite aside from whether or not in a particular case the outcome is an appropriate one. It simply does not have the perception of being free of partiality, and we should all of course be striving towards a regime in which those looking on—the complainants and outsiders—can say to the extent that we are able to that the investigative process seems to be an impartial one.

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1272 See, for example, Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre, Submission 30, 11 August 2017, p. 1 (‘Client instructions often are “they know where I live, they will harass me if I complain”’). See also the discussion in Section 5.3.1 and Box 5.1 in Chapter 5 of this report.
1273 See, for example, Victorian Aboriginal Legal Service, Submission 46, 15 September 2017; Aboriginal Family Violence & Legal Service Victoria, Submission 37, 18 August 2017.
1275 Ibid.
So the Chief Commissioner [of Police], again, has agreed that that is a matter that needs to be considered. He has directed his staff to report back to him as to proposals as to how this regional issue should be addressed. Again, subject to the Committee’s wishes, as soon as the Chief Commissioner [of Police] is in a position to respond to the information he receives, we will provide a further submission to the Committee as to whether or not what is proposed by the Chief Commissioner [of Police] is acceptable or whether something additional is required.\textsuperscript{1278}

With respect to the specific challenge of maintaining the perception and reality of impartiality when allocating complaints to investigators in country towns, the IBAC Commissioner observed:

I do think that we need to strike an arrangement that avoids the perception that those who are investigating and making management decisions as to how the matter should proceed or what the outcome is must be removed from the region which is the subject of a complaint. How far removed? For example, if we have a complaint made about something that occurred in the Bairnsdale Police Station, will it be sufficient that it is investigated by the Chief Superintendent stationed at Sale? I suspect the answer to that is no because that is the superior officer who is responsible for that region.

Exactly what the framework should be would have to be, at least initially, the subject of some discussion with the Chief Commissioner [of Police]. As I indicated, he has asked for a report back from Professional Standards [Command] as to how this concern can best be addressed. I think the starting point is to look at what he might propose and then to see whether or not that will address the concern I have just mentioned. But plainly enough a regime has to be followed which removes the perception, and it often is only a perception but nonetheless it is critical—a perception that those investigating or deciding the outcome are not impartial.\textsuperscript{1279}

IBAC has subsequently received responses from the Chief Commissioner of Police in relation to these issues. These are discussed later.

**The views of Victoria Police**

Victoria Police has acknowledged that ‘a number of concerns have been raised in recent years by IBAC and community stakeholders about the management of conflict of interest in regional complaint investigations’.\textsuperscript{1280} Victoria Police has informed the Committee that it is now using an improved form, adapted from one used in New South Wales, and that EPSOs are auditing all active regional complaint investigations to check that every file has a current completed Conflict of Interest—Investigation Form on file and there is evidence that the form has been considered by a relevant supervisor.\textsuperscript{1281}

Victoria Police has said that it is ‘confident that the risk of conflict of interest is now being better managed in regional complaint investigations, particularly in rural areas where these issues have been specifically highlighted’.\textsuperscript{1282}

\textsuperscript{1278} Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, closed hearing, 5 February 2018, Transcript of evidence, p. 4.

\textsuperscript{1279} Hon Robert Redlich QC, Commissioner, IBAC, closed hearing, Melbourne, closed hearing, 5 February 2018, Transcript of evidence, p. 9.

\textsuperscript{1280} Victoria Police, Submission 52, 1 May 2018, p. 21.

\textsuperscript{1281} Victoria Police, Submission 52, 1 May 2018, pp. 21–22.

\textsuperscript{1282} Victoria Police, Submission 52, 1 May 2018, p. 22.
However, in his evidence to the Committee, Assistant Commissioner Luke Cornelius from Victoria Police recognised that the risks of partiality and lack of transparency remained in relation to regional investigations, especially in country towns, given the closeness of these smaller communities:

At the locations you cite [towns in country Victoria] the problem is exacerbated by the fact that most members [of Victoria Police] in those locations have served there for many, many years. Of course they have grown up together, if you like, as colleagues. Not only is there a very real perception of bias and self-interest and conflict in those sorts of matters, but also I would have to say to you I have certainly seen real evidence that that in fact is the case—there is conflict and bias. So as an organisation we have recognised the need to much more effectively surface those conflicts and address those perceptions but also more particularly to ensure that if an investigation is allocated for investigation outside of PSC, the individual who receives that investigation responsibility is truly independent of the members who are the subject of the complaint.¹²⁸³

Superintendent Tony de Ridder, from PSC, told the Committee that Victoria Police has sought to address these issues by improving its policies and practices in relation to the management of conflicts of interest and the allocation of complaints to regional investigators.²⁸⁴ It also seeks to consult with complainants to hear about any concerns they have about the risk of a conflict of interest or partiality:

Do we need to improve further? Absolutely. I think what we need to do is actually extend it to taking into account what our complainants feel is conflicted in the first instance. We are now positioned, with our introduction of the Interpose system, to have a fully automated system to introduce some of those system changes at that point so that we are able to be more sensitive to what complainants actually identify as their concerns about conflict and also their concerns about our proposition if we feel that we are in a position to manage that. Our standing position at the moment is that a member must not be conflicted when they conduct an investigation, and if that requires a 4-hour drive in order to conduct that investigation, so be it. We escalate that right up to the Assistant Commissioner level if we find that local managers in their allocation of these files are deciding to allocate it to someone that we personally know is conflicted. We do not always get it right, but I think our error rate in regard to this is significantly better than it has been in the past.¹²⁸⁵

This new approach, which appears to reflect complainant-centred values to some extent, was also endorsed by Assistant Commissioner Cornelius:

Superintendent de Ridder makes a critical point. I think this probably lies at the heart of why we have not done as well in this as we would hope to in the future—that is, a critical part of the process needs to be that we engage with the affected person or complainant to understand from them personally and very directly where they see potential conflict lying so that we can surface that at the start of the investigation, so that rather than us just making assumptions we actually are fully informed around how a complainant or affected person sees conflict and then from that perspective have that information inform the decision we make about allocation.¹²⁸⁶

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Recent developments

In July of this year, the IBAC Commissioner informed the Committee of proposals it had developed to address the need to enhance the perception and reality of transparency and impartiality in the regional investigation of complaints about police, particularly in country Victoria. This additional evidence from the IBAC Commissioner also included an account of the responses of the Chief Commissioner of Police, following discussions between Victoria Police and IBAC.

Noting that different approaches to the allocation of complaints to investigators might be warranted depending on the location of the subject officer and investigator (for example, country versus metropolitan locations), the IBAC Commissioner explained IBAC’s proposed approach as follows:

IBAC has proposed to Victoria Police that, as a general rule, a complaint investigator should not be from the same division as the subject officer/s. If a manager determines to allocate a complaint for investigation within the same division, he or she will need to confirm by authorising the conflict of interest declaration form that:

i. they are satisfied the investigator comes from a location sufficiently geographically independent from the subject officer/s, and

ii. there are no previous professional and/or private associations, which could reasonably give rise to concerns regarding the investigator’s impartiality.

This would mean that, particularly in regional areas, the standard practice for Victoria Police would be to allocate complaint files to an investigator from a different division from the subject officer/s. For example, Sale and Bairnsdale are different Police Service Areas (PSA) within the same division. However, it is unlikely that a manager could determine that there would be sufficient geographical independence between these two PSA due to the regular interaction between the areas. Therefore, a complaint about an officer from Sale would need to be allocated to a different division for investigation.

However, in other situations, allocation of a complaint within the same division may be appropriate. For example, a manager may determine that a complaint about an officer working within the Footscray PSA can be investigated by an officer from the Werribee PSA even though the two areas fall within the same division. In this case, the manager may determine that these two larger metropolitan areas are sufficiently geographically independent, and there are no other issues giving rise to a conflict of interest, including previous professional or private associations between the investigator and the subject officer.

IBAC has reported that Victoria Police ‘does not support IBACs proposal that, as a general rule, a complaint investigator should not be from the same division as the subject officer/s, noting that “Whilst in principle the suggestion is sound, in practice it may not always be possible to achieve.”’ Victoria Police also advised IBAC ‘that geographic independence is one of a number of methods managers currently have available to them to avoid conflicts of interest in the process of assigning investigations.’

However, the Committee is mindful that significant deficiencies in relation to Victoria Police complaint investigations and oversight (including issues regarding conflicts of interest, probity and complaint histories) have been identified by IBAC.

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1287 Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018.
1289 Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018, p. 2 (quoting from the Chief Commissioner of Police’s correspondence with the IBAC Commissioner, dated 24 July 2018).
as recently as June 2018.\footnote{1291} It is also concerned that Victoria Police has not yet fully implemented IBAC’s recommendations on these issues from the 2016 audit of regional complaint-handling systems.\footnote{1292}

Therefore, consistent with its recommendations to ensure impartial complaint investigations (including PSC certification of impartiality and enhanced IBAC oversight over the police investigator appointments), the Committee recommends that the \textit{Victoria Police Act 2013} (Vic) be amended to prohibit the formal investigation of a complaint about an officer’s misconduct from a particular police station, or associated geographic region, by an officer from that region or town.

\textbf{RECOMMENDATION 62:} That the Victorian Government seek the amendment of the \textit{Victoria Police Act 2013} (Vic) to prohibit the formal investigation of a complaint about a police officer’s or Protective Services Officer’s misconduct from a particular police station or associated geographical region, by an officer from that town or region. This is to ensure public confidence in the impartiality and transparency of any Victoria Police investigation and to reduce the risk of reprisals against a complainant. This does not apply to Local Management Resolution (LMR) and Management Intervention Model (MIM) matters.

\section*{Simplifying complaint determinations}

At the completion of a Victoria Police complaint investigation, the investigator’s report must record a determination with respect to each \textit{allegation} in the complaint.\footnote{1293} There are currently 10 determinations: ‘Substantiated’, ‘Lesser deficiency’, ‘Unable to determine’, ‘Not proceeded with’, ‘Withdrawn’, ‘No complaint’, ‘Not substantiated’, ‘Unfounded’, ‘Exonerated’ and ‘False report’.\footnote{1294}

A number of stakeholders told the Committee that they found complaint determinations complex, opaque and confusing; this was often made worse by a lack of high quality public information, poor communication practices and the failure to provide adequate reasons or explanations for outcomes.\footnote{1295}

Similarly, an internal Victoria Police review in 2012 found that the number and subtle nature of these determination types confused not only subject officers but also investigators, created anxiety for them and increased the risk of incorrect determinations.\footnote{1296} The review recommended that the determinations be reduced to a simple ‘Case to answer’ or ‘No case to answer’.\footnote{1297} These recommendations were not implemented by Victoria Police.\footnote{1298}
In its 2016 audit of regional complaints-handling systems, IBAC recommended that Victoria Police, ‘Review the system of determinations to reduce and simplify determination categories.’ IBAC argued that the current system ... is unnecessarily complicated for complainants and subject officers, who do not always understand the nuanced distinction between categories. As has been suggested by a previous internal Victoria Police review, it would be preferable to reduce determinations along the lines of ‘case to answer’, ‘no case to answer’ and ‘unable to determine’.

The 2016 audit also noted that this would make it easier not only for subject officers and complainants to understand but complaint investigators as well. Despite accepting this recommendation, Victoria Police has not yet implemented it. In its May 2018 submission to this Inquiry, Victoria Police stated that, ‘Implementation of this recommendation will be addressed through current reforms being undertaken to the Victoria Police complaint handling and discipline system.’ It described the status of actions with respect to this recommendation as ‘Ongoing’. In its June 2018 audit report in relation to PSC complaint investigations, IBAC reiterated its 2016 recommendation on determinations:

IBAC reiterates its ... [recommendation] in relation to ... reviewing the system of determinations to reduce and simplify determination categories, to help ensure clarity for investigators, complainants and subject officers.

IBAC observed further that, ‘Although this recommendation was not implemented, it is understood that Victoria Police is now committed to simplifying the categories of determinations.’

The Committee considers that, given Victoria Police accepted this recommendation in 2016, it should prioritise the simplification of complaint determinations.

RECOMMENDATION 63: That Victoria Police, in consultation with IBAC, seek to consolidate, simplify and clarify the range of determinations it may make at the conclusion of an investigation into a complaint or disclosure about police.

8.4 Disciplinary action against Victoria Police officers

While it is beyond the scope of this Inquiry to examine the Victoria Police disciplinary system at large, the Committee notes that Victoria Police gave evidence calling for a legislative amendment to allow it to commence disciplinary action against an officer ‘where the conduct is subject to criminal charges’. Victoria Police explained the rationale for such an amendment as follows:

1299 Ibid., p. 3.
1300 IBAC, Audit of Victoria Police complaints handling systems at regional level—summary report, Melbourne, September 2016, p. 15.
1301 Ibid., p. 11.
1302 Victoria Police, Submission 52, 1 May 2018, p. 23.
1303 Victoria Police, Submission 52, 1 May 2018, p. 53.
1304 Victoria Police, Submission 52, 1 May 2018, p. 53.
1306 Ibid., p. 39.
1307 Victoria Police, Submission 52, 1 May 2018, p. 36.
At present, there is no legislative clarity regarding the ability of Victoria Police to commence disciplinary action against a police officer or PSO where the conduct in question is subject to criminal charges. Whilst legal advice suggests this can be done under current legislative provisions, without the clear articulation of powers in this regard, Victoria Police has not pursued this course of action. This has been an impediment to the timely removal of unsuitable employees. A change to legislation to specifically allow Victoria Police to address misconduct which is also criminal will allow the community to be confident that only those who are most suitable are serving police officers and PSOs.

The tenor of this evidence is consistent with the findings and recommendations of VEOHRC’s reports into Victoria Police’s governance and culture.

IBAC has advised the Committee, however, that there are some concerns with the present operation of the Victoria Police disciplinary system and have cautioned that the right balance needs to be struck between managerial, educative and ‘rehabilitative’ approaches to officer wrongdoing and the application of punitive sanctions when warranted:

... IBAC has previously advised the IBAC Committee of a number of concerns with the way Victoria Police currently determines outcomes and applies its disciplinary regime.

Based on an ongoing examination of the outcomes of matters, IBAC has raised key concerns with Victoria Police regarding the need to improve its practices, including to ensure:

- application of the correct standard of proof in determining disciplinary proceedings (as well as allegations), that is, ‘on the balance of probabilities’ (rather than ‘beyond reasonable doubt’)
- properly documented reasons for decisions about action to be taken or not taken in response to substantiated disciplinary breaches
- consistent authorisation of briefs of evidence where allegations of criminal conduct have been substantiated
- consistent consultation with the Office of Public Prosecutions (OPP) when allegations of ‘reportable offences’ have been substantiated, pursuant to section 127(2) of the Victoria Police Act [2013 (Vic)]
- timeliness of the disciplinary processes.

IBAC is further examining these issues and consulting with the Chief Commissioner of Police, both to raise systemic issues of concern and specific cases where concerns with process and outcomes have been identified. Victoria Police has advised that it is reviewing its complaint and discipline system, and is committed to working with IBAC and other stakeholders to ensure any proposed changes are appropriate and effective.

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1308 Victoria Police, Submission 52, 1 May 2018, p. 36. See also Hon Robert Redlich QC, Commissioner: IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 15 (‘Where an officer is reasonably believed to have committed a criminal offence, criminal charges can be laid. It may also be decided to proceed with disciplinary action but that will generally not occur until after the determination of the criminal matter. ...Although it is recognised that disciplinary matters will be delayed when criminal proceedings are involved, matters can take years to resolve which is unsatisfactory to complainants and subject officers. Some delays can be avoided by proceeding with disciplinary action for matters unrelated to the alleged criminal offences.’)

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More broadly, IBAC considers that there is a need to re-assess the underlying rationale of Victoria Police’s disciplinary system, including to achieve better transparency and balance in the focus of sanctions between punitive and rehabilitative action. In recent years, Victoria Police has adopted a ‘sack or save’ philosophy, citing former Office of Police Integrity reviews as warranting this approach. IBAC is concerned that this has resulted in a significant increase in the use of workplace guidance and admonishment notices, at the expense of formal disciplinary (and in some cases, criminal) sanctions.1310

The Committee considers that there should be a legislative amendment authorising Victoria Police to begin disciplinary action against an officer when the relevant conduct ‘is subject to criminal charges’. The Committee recognises, however, the importance of striking the right balance between appropriate rehabilitative approaches and the application of punitive sanctions for officer wrongdoing in order to ensure adequate accountability within Victoria Police.

**RECOMMENDATION 64:** That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to authorise Victoria Police to commence disciplinary action against a police officer or Protective Services Officer, including possible dismissal of that officer, where the conduct in question is subject to criminal charges.

Further, given the broader concerns with the nature and effectiveness of the disciplinary system for Victoria Police, the Committee recommends that the Victorian Government review the disciplinary system.

**RECOMMENDATION 65:** That the Victorian Government review the disciplinary system for Victoria Police, including the nature and operation of the *Victoria Police Act 2013* (Vic) with respect to that system.

### 8.5 Oversight of critical incidents

It is beyond the scope of this Inquiry to provide an in-depth examination of issues relating to Victoria Police and IBAC management and oversight of critical incidents involving police contact.1311 Instead, this section outlines the key findings and recommendations of a recent IBAC audit of Victoria Police oversight of critical incidents and includes recommendations for review and improvements in this area. First, however, some terminological issues need to be addressed.

While ‘critical incident’ is the common term for deaths or serious injuries where there is police contact of some kind, Victoria Police uses the term ‘serious incident’, which is defined as:

- a death or serious injury resulting from contact between police and the public
- a death or serious injury to a person in police custody
- an attempted suicide by a person in police custody

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1310 Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018, pp. 7–8.
• an incident involving the discharge of a firearm by police
• an escape from custody
• any serious vehicle collision involving police.\textsuperscript{1312}

For its audit, IBAC used the term ‘serious incident’ as follows:

For the purposes of this audit, the term ‘serious incident’ is used to collectively refer to incidents that are overseen through Victoria Police’s C1-8 file process. This includes what Victoria Police refers to as ‘death or serious injury incidents’—which some other police organisations refer to as ‘critical incidents’—as well as other incidents requiring C1-8 oversight, such as escapes from custody.\textsuperscript{1313}

The key findings of the audit included:

• Conflicts of interest were poorly identified and managed, and almost a third (32 per cent) of oversights did not include the mandatory conflict of interest form. Where conflict of interest forms were on file, there were significant shortcomings in how these forms were completed and how conflicts were managed. The poor management of conflict of interest erodes confidence in the integrity of the oversight process.

• More than half of the oversights conducted by Victoria Police failed to consider evidence that should have been included. The audit found that there was an over-reliance on police statements in relation to serious incidents. Many oversights failed to include statements from independent witnesses that could assist in verifying police versions or critically examine police statements against other evidence such as CCTV.

• There was inadequate supervision of almost a third of oversights, including instances where supervisors did not remedy significant shortcomings in the oversight. Of particular concern was poor or inadequate supervision provided by the Ethics and Professional Standards Officers (EPSOs). EPSOs are inspectors assigned to each region, department and command to provide guidance around oversights and complaints.

• Human rights is a key oversight principle. However, 61 per cent of the oversights audited by IBAC did not address human rights. Even where human rights were discussed, some oversights failed to identify relevant human rights issues, did not address rights in sufficient detail, or demonstrated a poor understanding by mischaracterising other issues as ‘rights’.

• More than a third of oversights took longer than the permitted time of 90 days to complete. These delays were mostly caused by poor procedures, including slow file movements and the need to undertake further work to correct inadequate oversight. There were also significant delays with communicating the outcomes of reviews to officers, with 19 per cent of oversights taking more than 60 days.

• A pattern of deficiencies was identified in oversights of incidents involving the Special Operations Group (SOG). Oversights of SOG incidents were generally conducted by the SOG itself or the Critical Incident Response Team (CIRT) and were characterised by clear conflicts of interest and a lack of thorough oversight. This is particularly concerning given the serious nature of the incidents that require SOG involvement.

\textsuperscript{1312} IBAC, Audit of Victoria Police’s oversight of serious incidents, March 2018, p. 5 (citing Victoria Police’s Integrity management guide, April 2016, p. 60).

\textsuperscript{1313} IBAC, Audit of Victoria Police’s oversight of serious incidents, March 2018, p. 5.
• While Victoria Police notified IBAC of the majority of serious incidents that were examined by this audit, there was no statutory requirement to do so (unless they were the subject of a complaint). In September 2017, in response to the audit, Victoria Police commenced notifying IBAC by automated email whenever an oversight file is created. This process should ensure IBAC is notified of all Victoria Police oversight files.\(^{1314}\)

These and other key findings in the audit showed a similar pattern of deficiencies in the oversight of ‘serious incidents’ that were identified in the 2016 and 2018 IBAC audits of Victoria Police complaint investigations—namely, problems with regard to impartiality (including conflicts of interest and complaint histories of officers given oversight roles), thoroughness and effectiveness (including identifying and having regard to human rights), and communication and timeliness.\(^{1315}\)

IBAC made a number of recommendations, accepted by Victoria Police, to ensure impartial oversight carried out efficiently and with due regard for any human rights issues.\(^{1316}\) IBAC also recommended that Victoria Police work with it ‘to improve the system for notifying IBAC of all deaths and serious injuries following police contact’.\(^{1317}\) For the recommendations in full, see Box 8.4.

**BOX 8.4: IBAC recommendations regarding Victoria Police oversight of ‘serious incidents’**

Following IBAC’s audit of Victoria Police’s oversight files, IBAC recommends that Victoria Police:

1. creates a standard memorandum to be sent to supervisors responsible for allocating oversights, providing clear advice that the overseer should be independent to both the incident and investigator, and reminding these supervisors of the purpose of the oversight process
2. ensures that all overseers complete the conflict of interest declaration at the commencement of the oversight process, that the form is included on the file, and where there is a conflict declared, the supervisor puts a plan in place to avoid any reasonable apprehension of partiality
3. examines ways to improve the supervision provided by EPSOs to ensure greater consistency in how oversights are completed, including in relation to reclassification, timeliness, record keeping and how deficiencies are addressed
4. standardises how oversight matters are reclassified to ensure consistency in cases where performance issues are identified
5. revises the determinations and recommendations that are made at the conclusion of oversights to better describe the outcomes of the oversight process
6. provides overseers with clear information and training on the Victorian Charter of Human Rights to assist in identifying human rights that have been breached
7. requires that incidents involving the SOG [Special Operations Group] be overseen by Professional Standards Command (PSC).
8. works with IBAC to improve the system for notifying IBAC of all deaths and serious injuries following police contact.

\(^{1315}\) Ibid., especially pp. 16, 20–21, 22–23, 24, 25, 27, 36, 44.
\(^{1316}\) Ibid., p. 7.
\(^{1317}\) Ibid.
Victoria Police has accepted IBAC’s recommendations and IBAC will monitor their implementation. IBAC has requested that Victoria Police provide an interim report on its implementation of the audit’s recommendations by September 2018 and a final report by March 2019.


The deficiencies in Victoria Police’s oversight of serious incidents reinforce the importance of the prompt notification of serious incidents to IBAC so IBAC can oversee them. With respect to notification, IBAC’s serious incident oversight report noted:

Under IBAC’s ‘own motion’ review, PSC notifies IBAC of serious incidents including deaths and serious injuries involving Victoria Police. The audit identified that IBAC did not receive a notification in relation to 28 of the 65 files that fell within the scope of the ‘own motion’ review. These 28 files included 16 deaths associated with police contact. Liaison with PSC indicates that where a serious incident was included in PSC’s ‘on-call logs’ emails, it is unlikely that a notification would have been provided to IBAC (given there is no legislated requirement to notify IBAC of these incidents). This represented a serious gap in IBAC’s awareness of serious incidents.[1318] [Emphasis added]

IBAC explained that, ‘This has since been addressed by Victoria Police introducing an automated notification process under which IBAC is advised when an oversight file is created.’[1319]

While there ‘is no explicit statutory provision requiring IBAC to oversee serious incidents’, IBAC has relied on its functions with respect to Victoria Police under s15 of the IBAC Act 2011 (Vic) (which include the assessment of police personnel conduct and ‘ensuring that the highest ethical and professional standards are maintained by police officers’ and that they ‘have regard to the human rights set out in the Charter of Human Rights and Responsibilities Act 2006 [(Vic)]’).[1320] The extent of IBAC’s oversight of serious incidents is set out in Box 8.5.

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1318 IBAC, Audit of Victoria Police’s oversight of serious incidents, March 2018, p. 16.
1319 Ibid.
1320 Ibid., p. 13.
**Box 8.5: IBAC’s oversight of serious incidents**

IBAC’s Commissioner signed an ‘own motion’ determination in 2013 that IBAC will review selected:

- deaths associated with police contact
- serious injury associated with police contact
- risks of death or serious injury associated with police contact
- the independence, effectiveness, timeliness and sufficiency of Victoria Police investigations into such deaths, serious injuries or risks thereof associated with police contact
- the application and effectiveness of Victoria Police systems and practices that may be relevant to deaths, serious injuries or risks thereof associated with police contact.

Pursuant to this determination, PSC would provide IBAC with notifications of oversight files relevant to IBAC’s ‘own motion’ review. This included most (but not all) oversight files ...


When IBAC is notified with respect to an oversight file, its Assessment and Review section decides whether to subject it to review:

When considering whether to review an oversight matter, Assessment and Review considers whether:

- the incident involved a death directly attributable to police contact
- police have possibly failed in their duty and this has contributed to a death or serious injury
- use of force, reasonable or otherwise, contributed to the death or serious injury
- a review is in the public interest.[1321]

IBAC has informed the Committee that, while the foundation for this standing own motion review of serious incidents is sound, some uncertainty remains and an explicit legislative power would be preferable:

The role of IBAC in this regard is the result of a standing arrangement with the CCP [Chief Commissioner of Police]. It needs to be the subject of an explicit provision. Arguably s 64(1)(c) [of the *IBAC Act 2011* (Vic), which authorises own motion investigations by IBAC] could be invoked but not without difficulty.[1322]

Recently, IBAC has advised the Committee that it supports a legislative amendment to require Victoria Police to notify serious incidents to them:

[As] highlighted in our 2018 Audit of Victoria Police’s oversight of serious incidents, there is no statutory requirement for Victoria Police to notify IBAC of serious incidents resulting in death or serious injury (or the risk of death or serious injury) following police contact. In September 2017, in response to our audit, Victoria Police commenced notifying IBAC of these matters. Although this administrative arrangement is in place, IBAC recommends that it be formalised via legislative change to require Victoria Police to notify IBAC of all serious incidents associated with police contact, to improve transparency and community confidence around the handling of such serious matters.[1323]

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However, IBAC has reported that Victoria Police considers that the present ‘administrative arrangement’ is satisfactory:

Victoria Police has advised that it does not support legislative change to enable IBAC to be notified of serious incidents resulting in death or serious injury, or civil process matters. It considers that the current administrative arrangement for notifying serious incidents is sufficient.\(^{1324}\)

Nevertheless, the Committee agrees with IBAC that there be a legislative requirement for Victoria Police to report serious incidents to IBAC to ensure adequate oversight in relation to deaths and serious injury involving police contact, especially given the deficiencies identified in IBAC’s 2018 audit. The Committee also considers that it would be valuable for the Victorian Government to review the basis and extent of IBAC’s powers in relation to critical incidents.

**RECOMMENDATION 66:** That the Victorian Government seek the amendment of the *Victoria Police Act 2013* (Vic) to require Victoria Police to report, as soon as practicable, all critical incidents in which death or serious injury has occurred in connection with police activity to IBAC. These amendments should be supported by appropriate regulations.

**RECOMMENDATION 67:** That the Victorian Government review the basis and extent of IBAC’s jurisdiction with respect to the investigation and oversight of critical incidents in which death or serious injury has occurred in connection with police activity.

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### 8.6 Conclusion

The Committee considers that IBAC could devote more attention to its investigative functions in relation to police misconduct. While this is partly due to current legislative arrangements (in particular the requirement that IBAC prioritise its attention to the investigation and exposure of serious or systemic corrupt conduct), it is also due to IBAC giving a higher priority to its broad, public sector anti-corruption functions over its role as a complaint-handling body in relation to police misconduct.

The Committee has therefore recommended the amendment of the legislation so that IBAC also prioritises the investigation and exposure of serious police misconduct. Further, the Committee has recognised that, in order to meet best practice principles, IBAC must, unless there are exceptional circumstances, investigate complaints about serious police misconduct. This is consistent with recognition of the important principle that Victoria Police take responsibility for addressing wrongdoing within its ranks and with its playing an important role within the complaints system by investigating a range of police misconduct subject to rigorous global oversight by IBAC.

The Committee recognises that requiring IBAC to undertake more investigations will present some challenges in terms of expertise and resourcing. In this regard, it draws attention to its recommendations that the proposed Police Corruption and Misconduct Division be adequately resourced and that IBAC’s in-house capacity be enhanced through training and recruitment of more civilian specialists from a range of appropriate backgrounds, while recognising the distinctive skills former police officers can bring. To assist IBAC in carrying out its investigative and oversight roles in relation to the complaints system and policing, the Committee has made a number of recommendations that enhance IBAC’s jurisdiction and powers.

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\(^{1324}\) Hon Robert Redlich QC, Commissioner, IBAC, correspondence, 27 July 2018, p. 6.
In examining the issue of the application of Victoria’s FOI scheme to the complaints system, the Committee recognises that a balance needs to be struck between the protection of the integrity of IBAC investigations and operations and the advancement of a complainant-centred approach. One of the main problems has been some lack of clarity about whether a complainant can gain access to documents that Victoria Police has collected during a complaint investigation it is carrying out under a referral from IBAC. The Committee has recommended an amendment to s 194 of the IBAC Act 2011 (Vic) to clarify that complainants may seek such documents in these circumstances from Victoria Police through the FOI regime.

Consistent with its recommendation that, subject to appropriate limitations, IBAC must provide complainants with reasons for its decisions at the assessment stage, the Committee has further recommended that IBAC be required to provide complainants with information about the results of an investigation (including any action taken, any recommendations and the reasons for them). This is in accord with the best practice principles of complainant-involvement and transparency, and, more pragmatically, will reduce the frustrations of complainants, which can lead to the escalation and prolongation of the complaints process. The Committee considers that IBAC’s legal, investigative and operational interests are presently adequately protected under the IBAC Act 2011 (Vic).

The Committee also considered how Victoria Police complaint investigations could be better conducted, drawing extensively on evidence from stakeholders as well as a range of findings and recommendations in IBAC audits. Clear themes emerged regarding the improvements Victoria Police needs to make in relation to impartiality, thoroughness and effectiveness, complainant-involvement and communication, and timeliness (an issue also considered in relation to IBAC). A range of particular issues were also examined, including how the allocation of complaints to police investigators at the regional level, including country Victoria, might be improved, as well as aspects of the oversight of critical incidents and the disciplinary system.
Conciliation as an alternative

9.1 Introduction

The Committee has received evidence that alternative dispute resolution (ADR) methods, such as conciliation, can be a useful way to address complaints about less serious forms of police wrongdoing, without a formal investigation, provided the subject officer and the complainant consent to it and that it is subject to adequate oversight.¹³²⁵ This chapter describes what conciliation involves (including how it overlaps with, and differs from, other common ADR approaches); discusses relevant best practice principles; examines the advantages and disadvantages of conciliation; considers the current law and practice on conciliation as it relates to the complaints system; and identifies the benefits of a greater use of conciliation by Victoria Police and the Independent Broad-based Anti-corruption Commission (IBAC), in suitable circumstances, as an alternative to investigations.

9.2 What is conciliation?

Conciliation is a form of ADR—‘alternative’ in these circumstances to making a formal complaint about police under the relevant legislation. While there are some distinctions between conciliation and other forms of ADR, such as negotiation and mediation, in practice—and often even in theory and doctrine—they overlap considerably.¹³²⁶ For instance, in practice the neutral third party that disputants may choose to help them resolve a dispute is sometimes called a ‘mediator’ or sometimes a ‘conciliator’ despite any doctrinal distinctions between the two terms.¹³²⁷ These overlaps are important to take into account given that a number of stakeholders who provided evidence to this Inquiry supported greater use of a variety of local or informal resolution measures, such as conciliation or mediation, provided they are only employed with the complainants’ consent, with strict oversight by an external agency and with other appropriate safeguards for complainants’ rights and interests.¹³²⁸


¹³²⁶ NADRAC, Your guide to dispute resolution, Attorney-General’s Department (Cth), Canberra, 2012, pp. 13–19; NADRAC, Dispute resolution terms: the use of terms in (alternative) dispute resolution, Attorney-General’s Department (Cth), Canberra, 2003, pp. 1–3, 5, 7, 9; Victoria Legal Aid, Achieving a positive outcome at conciliation or mediation, Melbourne, 2018; David Bryson and Shirli Kirschner, What are the origins of conciliation in Australia?, November 2017, https://www.mediate.com/pfriendly.cfm?id=13508, accessed 16 July 2018.


¹³²⁸ See, for example, Robinson Gill Lawyers, Submission 44, 4 September 2017; Mr Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre, correspondence, 23 February 2018, p. 2; Law Institute of Victoria, Submission 41, 31 August 2017, p. 8; Victorian Aboriginal Legal Service, Submission 46, 15 September 2017.
Taking these qualifications into account, it is nevertheless valuable to clarify the meaning of ‘conciliation’ in the Australian context. Arguably the most authoritative account comes from the National Alternative Dispute Resolution Advisory Council (NADRAC):

Conciliation is a process where the participants, with the help of an independent person as conciliator:

- listen to and are heard by each other
- work out what everyone agrees on
- identify areas of common ground
- aim to reach a workable agreement
- develop options to resolve each issue
- receive expert advice and legal information (in some circumstances).

Conciliation can be similar to mediation, although the conciliator’s role may be more directive and advisory ...

Conciliation may be voluntary, court ordered, or required as part of a contract. It is often part of a court, tribunal or government agency process.\textsuperscript{1329}

Consistent with the above description, it is sometimes said, therefore, that conciliators take a more interventionist and advisory role than mediators in helping parties to resolve their dispute. On this view, the role of the mediator is ‘purely facilitative’, limited to helping disputants identify what is in dispute and to develop resolution options.\textsuperscript{1330} But, as noted, these kinds of distinctions between conciliation and mediation are often fine ones and turn out to be less significant in practice. For more technical descriptions of conciliation and mediation and the formal distinctions between them, see Box 9.1.

**BOX 9.1: Distinguishing conciliation from mediation: NADRAC’s view**

**Conciliation–mediation distinction**

In NADRAC’s view, ‘mediation’ is a purely facilitative process, whereas ‘conciliation’ may comprise a mixture of different processes including facilitation and advice. NADRAC considers that the term ‘mediation’ should be used where the practitioner has no advisory role on the content of the dispute and the term ‘conciliation’ where the practitioner does have such a role. NADRAC notes, however, that both ‘mediation’ and ‘conciliation’ are now used to refer to a wide range of processes and that an overlap in their usage is inevitable.


\textsuperscript{1330} NADRAC, Dispute resolution terms: the use of terms in (alternative) dispute resolution, Attorney-General’s Department (Cth), Canberra, 2003, p. 7.
Chapter 9 Conciliation as an alternative

Conciliation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

Note: there are wide variations in meanings for ‘conciliation’, which may be used to refer to a range of processes used to resolve complaints and disputes including:

- Informal discussions held between the parties and an external agency in an endeavour to avoid, resolve or manage a dispute
- Combined processes in which, for example, an impartial party facilitates discussion between the parties, provides advice on the substance of the dispute, makes proposals for settlement or actively contributes to the terms of any agreement.

...

Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. Mediation may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement.

Source: NADRAC, Dispute resolution terms: the use of terms in (alternative) dispute resolution, Attorney-General’s Department (Cth), Canberra, 2003, pp. 3, 5, 9.

9.3 Best practice principles

Generally, best practice principles in relation to systems for handling complaints about police encompass and recommend a range of ADR options to complement formal responses to complaints such as investigation. Instead of singling out conciliation, they recommend varieties of mediation as part of a range of informal dispute resolution techniques. However, given the overlaps between conciliation and mediation in both theory and practice, this focus on mediation should not be seen as excluding the usefulness of conciliation as a dispute resolution technique.

Whatever type of ADR is suggested, key issues include when it is appropriate to use it and which third party (if any) should assist the disputants, and in accordance with what processes and outcomes.\footnote{1332}

The Council of Europe Commissioner of Human Rights Opinion on complaints-handling and police oversight recognises that not every grievance against police will lead to, or warrant, a formal complaint or investigation and may instead be addressed through informal means, provided these are overseen by an external oversight agency:

A grievance that a practitioner may consider to be trivial may cause distress to a member of the public. The way in which such complaints are dealt with is likely to influence public trust and confidence in the police complaints system and the police.

Police officers routinely address grievances during encounters with the public without the need for a complaint to be made. This may be by way of an explanation, acknowledgement of a different point of view or an apology. Where a relatively uncomplicated misunderstanding or breakdown in communication between a member of the public gives rise to a complaint it may not be necessary for the police or the IPCB [Independent Police Complaints Body] to undertake a lengthy and expensive investigation. Moreover, investigation is unlikely to meet the complainant’s expectation that their uncomplicated complaint will be quickly resolved in a simple and straightforward manner. Provision should be made for such complaints to be resolved through mediation or a less formal mechanism.\footnote{1333}

Similarly, the Hayes Review in Northern Ireland, considered that while ‘[f]ormal procedures are essential ... it will frequently be possible to resolve a complaint without recourse to such procedures’,\footnote{1334} For ‘quality of service complaints’, for example, it concluded that ‘informal resolution’ would often be appropriate if it were subject to proper oversight and the complainant could ‘opt out’ of the process and make a formal complaint.\footnote{1335} The Hayes Review also regarded informal resolution as ‘a useful example of the principle of subsidiarity of function—of dealing with matters at the lowest level possible consistent with fairness and effectiveness’.\footnote{1336}

The perspective of the Hayes Review on informal resolution came to be embodied in the operations and strategies of the Office of the Police Ombudsman for Northern Ireland (PONI). For example, in its annual report for 2017 PONI emphasised its renewed focus on ‘problem solving’ which has seen the Office engage complainants and police officers through dialogue and an effort to resolve issues at the heart of the complaint rather than always following the more formal and necessarily protracted investigation process. We believe that many more complaints can be resolved through this approach which often results in enhanced confidence in the complaints system for both the complainant and the officer(s) concerned.\footnote{1337}
Chapter 9 Conciliation as an alternative

One of PONI’s targets in relation to its performance measure of ‘Delivering excellence in investigations’ is to ‘Maintain or increase the number of complaints resolved through Informal Resolution’.  

The main benefits that have been claimed for ADR processes, including conciliation, are that they are flexible, private, confidential, ‘self-directed’, cheap and quick. It also often claimed that through the engagement, dialogue, listening and negotiation involved in ADR there can be educative, therapeutic and preventive benefits. These can improve relationships between complainants and subject officers and contribute to the wider goals of community policing, restorative justice and the enhancement of community confidence in the complaints-handling system. The Office of the Police Complaint Commissioner (OPCC) in British Columbia, Canada, has usefully reflected and elaborated on the potential benefits of ADR as follows:

Resolving suitable complaints through communication, understanding and reconciliation results in more meaningful resolution for the participants. ADR allows for repair and improvement of public confidence in police, one relationship at a time.

...  

By directly participating in the resolution and finding solutions to a conflict, the majority of complainants come away from the process confirming that the experience resulted in a meaningful level of satisfaction. A successful Complaint Resolution provides the opportunity to gain a greater understanding of the situation which gave rise to the complaint and both parties achieve a broader perspective on the issue. As a result, a greater degree of learning and relationship-building can be gained as compared to the outcome of an investigation. The OPCC encourages complainants and police at the front end to take full advantage of these options while ensuring that the public interest is met.

Box 9.2 outlines in more detail the OPCC’s Complaint Resolution option. These benefits of ADR have been experienced by other complaint-handling bodies, such as the Office of Police Complaints in Washington DC, and are supported by a range of research.

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1338 PONI, Annual report and accounts for the year ended 31 March 2018, Belfast, 2018, p. 9 (Table 1).
BOX 9.2: OPPCC Complaint Resolution—benefits and process

**Complaint Resolution—benefits**

The main goal of Complaint Resolution is to provide complainants and police officers an opportunity to engage in a process where they can share their perspectives and find common ground with the aim of coming to a resolution agreement between both parties. Some of the advantages of this process include:

- Ability to play a more active role in resolving your complaint and having direct input into the outcome;
- Ability to be heard and to share your perspectives, concerns and the impact the incident had on you;
- Allows for the opportunity to get answers to questions you may have about the incident;
- Completely confidential.

Many complainants report that they are more satisfied with the outcome of their complaint and are able to reach a more meaningful resolution of their complaint after participating in the Complaint Resolution process. This is because complainants are able to take part in the process and have a direct impact on the outcome. This results in a formalized resolution that reflects and addresses your concerns as a complainant.

Complaint Resolution enhances community policing by improving upon the relationship between members of the public and the police, one relationship at a time. Successful resolutions can have a positive impact on the participants’ families, friends and community as a whole.

**Complaint Resolution—process**

Complaint Resolution is a method for parties to resolve a complaint. Complaint Resolutions involve the assistance of a facilitator; usually a trained senior member of the police department. Complaint resolution is suitable for less serious allegations of misconduct.

- A complaint can only be resolved through Complaint Resolution if both the complainant and the officer consent to the procedure. Either party may withdraw consent at any time during the process. If either party withdraws consent, the complaint will continue to be investigated under the *Police Act*.
- The proposed resolution must be agreed to in writing and include the specific terms of the proposed resolution.
- The Police Complaint Commissioner will review the proposed agreement and consider if the public interest is best served by such a resolution.
- If the Police Complaint Commissioner does not approve the resolution, the complaint will continue to be investigated under the *Police Act*.


However, it should be noted that ADR is unsuitable for some kinds of complaints and disputes and that a number of disadvantages or costs have been identified. NADRAC, *Your guide to dispute resolution*, Attorney-General's Department (Cth), Canberra, 2012, pp. 14, 16; Department of Justice and Regulation (Vic), *Access to Justice Review: Volume 1 report and recommendations*, Melbourne, August 2016, pp. 195, 205–206, 224–226, 231; Victorian Law Reform Commission, *Civil justice review: report*, Melbourne, 2008, pp. 214–215.
the establishment of a legal precedent, the absence of ‘court protections’, the lack of enforceability, the potential for processes that are not as fair as court processes and the potential impact of inequality in bargaining power between the parties.\footnote{1344}

The issue of the suitability of ADR processes such as conciliation is an important one. Conciliation is suitable only for complaints about minor police misconduct. Further, conciliation will not always be suitable where there is a marked power imbalance between the complainant and police officer: such as, for example, where the complainant has a relevant disability that affects their ability to understand the process, or is otherwise vulnerable to improper pressure and unlikely to be able to adequately identify, assert and protect their rights and interests throughout the conciliation.\footnote{1345} As the Victorian Access to Justice Review put it:

\begin{quote}
[A]lternative dispute resolution is not always an appropriate method for resolving disputes. Consideration needs to be given to whether it is appropriate in a particular case. Vulnerable and disadvantaged people need special consideration in order to participate meaningfully in alternative dispute resolution. In some circumstances, alternative dispute resolution has the potential to cause delay, disempower the parties, create legal costs, and prematurely end disputes when public adjudication would have been beneficial.\footnote{1346}
\end{quote}

Nevertheless, best practice principles and research endorse the availability of an ADR option, such as conciliation, within a system for handling complaints about police when it is used appropriately, with the complainant’s consent and with the necessary safeguards and support.

\section*{9.4 The views of stakeholders}

A number of stakeholders emphasised that there should be a range of ADR options available to complainants, including informal resolution, mediation and conciliation.\footnote{1347} However, they were concerned that such options only be used for customer service and low-level police conduct matters, not for serious matters. Further, they emphasised that any such process would have to take proper account of the particular vulnerabilities of complainants as well as any particular cultural backgrounds and needs.\footnote{1348}
Chapter 9 Conciliation as an alternative

Keys to successful ADR options in these stakeholders’ view include that the complainant consents to it throughout the process, that there is usually an independent, properly trained mediator and that these options not displace the role of the appropriate use of formal investigations (and even litigation where necessary). Most of the stakeholders who gave evidence to this Inquiry favoured mediation over informal resolution or conciliation, though, as this chapter has noted, the distinctions between them are often fine ones in both theory and practice.

As Ms Ariel Couchman, from Youthlaw, stated:

We ... think that there should be a number of resolution options apart from investigation to be offered to the complainant, including mediation or alternative dispute resolution. All the research about alternative dispute resolution and conciliation in the United States is very positive, and it seems highly effective from the point of view of the complainant and the police officers themselves.

... I think fundamentally there has to be the consent of the complainant as to whatever resolution process is embarked on ... I think any good complaints handling body has that whole range of different pathways to resolution, and certainly some forms of conciliation and mediation would be I think a useful way to deal with things.

Ms Couchman also emphasised that if forms of ADR were to be undertaken by a complaints-handling body such as IBAC there would need to be training of any staff involved so they have the necessary skills to facilitate it effectively:

[My] assessment is that ... [IBAC] would need much greater resourcing and would require substantial change ... would need people trained up who have the professional skills in handling complaints. It is probably a different skill set that a lot of their investigators have at the moment.

The Victorian Aboriginal Legal Service (VALS) also endorsed the availability of ADR options, especially mediation, provided such options are developed in consultation with Aboriginal bodies and communities and that those facilitating the ADR are culturally competent. VALS informed the Committee that a study of its complaints files showed that ‘complainants most commonly sought outcome was an explanation … why the police misconduct occurred’ and that one option should be mediation facilitated by an external mediator where the subject officer and complainant agree.

1351 Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, pp. 35, 39.
1352 Ms Ariel Couchman, Director, Youthlaw, public hearing, Melbourne, 26 February 2018, Transcript of evidence, p. 39.
1353 Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, pp. 4, 18–19.
1354 Victorian Aboriginal Legal Service, Submission 46, 15 September 2017, p. 18.
Culturally appropriate mediation should be developed for police complaints, to be available where both parties consent. This should be developed in partnership with Aboriginal and Torres Strait Islander communities and organisations, including VALS.\footnote{1355}

VALS cautioned, however, that in developing ‘culturally appropriate mediation’, it was important to take proper account of diversity within Aboriginal and Torres Strait Islander communities.\footnote{1356} VALS also argued that mediation is ‘unlikely to be appropriate in very serious complaints where there are allegations that may lead to criminal charges or disciplinary action’.\footnote{1357}

The Law Institute of Victoria (LIV) was the only stakeholder to focus on conciliation by Victoria Police under s 170(2) the \textit{Victoria Police Act 2013} (Vic). It encouraged greater use of this conciliation power in relation to customer service complaints, but only if there is complainant consent:

Aside from ensuring that the interests of victims are protected, an increase in communication between victims and police can also encourage the resolution of complaints at earlier stages and through alternative means. Currently, section 170(2) of the \textit{Victoria Police Act} allows the Chief Commissioner to attempt to resolve a complaint by conciliation. Conciliation is a constructive means of resolving disputes and provides all parties with the opportunity to voice their concerns and communicate their views. Ideally, conciliation results in a resolution and prevents the escalation of complaints. While there are great benefits to conciliation, the LIV is concerned that where a complaint is classified as a customer service complaint the complainant [sic] is sent for informal conciliation. It is the LIV’s view that conciliation should be offered as an option for complainants provided that complainants give proper informed consent.\footnote{1358}

The LIV did not mention IBAC’s power to conciliate a complaint about police under s 64(2) of the \textit{IBAC Act 2011} (Vic).

\section*{9.5 The current law and practice}

Under the legislation, IBAC and Victoria Police each have the power to try to resolve a complaint about police through conciliation.

Under s 170(2) of the \textit{Victoria Police Act 2013} (Vic),

The Chief Commissioner [of Police] may attempt to resolve a complaint by conciliation and must—

(a) before commencing to conciliate, notify the IBAC of the proposed attempt; and

(b) notify the IBAC of the results of the attempt.
There is an equivalent provision for IBAC to attempt to conciliate a complaint. Section 64 of the *IBAC Act 2011 (Vic)* relevantly reads as follows:

(2) The IBAC may attempt to resolve a police personnel conduct complaint under section 52 in relation to police personnel conduct by conciliation.

(3) The IBAC must notify the Chief Commissioner of Police of the proposal to attempt conciliation under subsection (2) before commencing a conciliation.

(4) The IBAC must notify the Chief Commissioner of Police of the results of the attempted conciliation under subsection (2).

### 9.5.1 Conciliation by Victoria Police

In 2016, IBAC’s audit into Victoria Police’s handling of complaints at the regional level reported that ‘IBAC has not been notified of any attempted conciliations by Victoria Police’.\(^{1359}\) In response to a question from the Committee about whether Victoria Police has ‘made effective use of its conciliation power’ under s 170(2) of the *Victoria Police Act 2013* (Vic), Victoria Police stated that, ‘Complaints classified as LMR or MIM may be resolved through dispute resolution, but s 170(2) does not apply to these matters’.\(^{1360}\) No further explanation of this view was given. In contrast, IBAC reported that ‘matters that may be appropriate for conciliations’ are ‘most likely to be those files addressing lower level issues such as those covered by the LMR and MIM classifications’.\(^{1361}\) There is clearly some confusion and inconsistency of approach between IBAC and Victoria Police on the use of conciliation. In any event, it would appear that conciliation under the legislation has rarely, if ever, been attempted by Victoria Police.

### 9.5.2 Conciliation by IBAC

In response to a Committee question about how effectively IBAC has used its conciliation power under the legislation, IBAC stated:

- Section 64(2) of the IBAC Act [2011 (Vic)] states that IBAC may attempt to resolve a police personnel conduct complaint by conciliation. *To date, IBAC has not used this conciliation power.*

- The NSW [New South Wales] Law Enforcement Conduct Commission (LECC) is the only interstate anti-corruption agency that has a power to deal with complaints by conciliation, specifically ‘mediation, conciliation or any other alternative dispute resolution’ [*Law Enforcement Conduct Commission Act 2016* (NSW) s 48(1)]. LECC has advised that since becoming operational on 1 July 2017, it has not utilised this power.\(^{1362}\) [Emphasis added]

### 9.6 The Committee’s view

The Committee considers that Victoria Police’s and IBAC’s reluctance to use their legislated powers to try to resolve complaints through conciliation is, given best practice principles and the potential benefits discussed in this section, a missed

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1359 IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, p. 57.
opportunity. When appropriately used, conciliation can increase the satisfaction of complainants and police officers alike, engage complainants and give them a voice, prevent the exacerbation or multiplication of complaints and reduce the investigative workloads of IBAC and Victoria Police.

It is noteworthy that, while IBAC has not itself used conciliation, its 2016 audit of Victoria Police’s complaint-handling systems found that ‘conciliations are under-utilised as a means of resolving suitable complaints at the regional level’.1363 It further identified greater use of conciliation by Victoria Police as an ‘area of improvement’:

Victoria Police may choose to consider promoting conciliation, noting that this would require the development of appropriate principles and guidelines including:

- The identification of matters that may be appropriate for conciliation ...
- The need for an impartial mediator with appropriate skills
- The need for all parties to participate in a conciliation process.1364

IBAC further explained the value of conciliation as follows:

> Conciliation is a constructive means of resolving disputes. It provides an opportunity for all parties to express their concerns and perspectives, improve their understanding of the other parties’ points of view and ideally, reach a mutually acceptable resolution. Successful conciliation can prevent the escalation of complaints. However, it should be noted that conciliation will not be suitable in many cases, such as in cases involving a significant power imbalance between parties or where issues of criminal behaviour or sexual harassment have been raised.1365

This rationale for conciliation applies as much to IBAC as it does to Victoria Police. It appears that neither Victoria Police nor IBAC has developed policies, principles, guidelines and processes related to their conciliation powers, meaning that conciliation is presently underutilised and that there is not yet a methodical approach to it—for example, when it should be used, who should facilitate it (for example, a specially trained police officer or an external conciliator/mediator?), what it involves and what the available outcomes might be. The relationship of conciliation with other forms of less formal complaint resolution (such as LMR and MIM) would also need to be clarified. The lack of clarity in Victoria on these issues can be contrasted with the position of the OPCC in Canada, which has clear, detailed guidelines on the use of mediation or other informal means of complaint resolution.1366

The Committee therefore recommends that Victoria Police and IBAC make use of their conciliation powers in relation to complaints about police. To ensure that the use of conciliation is transparent and methodical, Victoria Police and IBAC should develop the necessary policies, principles, guidelines and processes and publicise conciliation as an option for complainants.

**RECOMMENDATION 68:** That IBAC and Victoria Police, with consent of the complainants, use their jurisdiction under the *IBAC Act 2011 (Vic)* and the *Victoria Police Act 2013 (Vic)* to conciliate complaints and publicise conciliation as a dispute resolution option.

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1364 Ibid.
1365 IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, p. 58.
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9.7 Conclusion

The Committee believes that Victoria Police’s and IBAC’s underutilisation of conciliation as an alternative to investigations into complaints about police is a significant missed opportunity. This form of ADR, when appropriately used with the consent of the complainant, protections for the vulnerable and rigorous oversight can increase complainant satisfaction, resolve disputes more quickly, improve policing, enhance confidence in the complaints system and reduce the investigative workloads of IBAC and Victoria Police.
Concluding remarks

The importance of an impartial and effective system for the handling and investigation of complaints and disclosures about police cannot be overstated. Distinctive powers have been conferred on police officers, such as the powers to arrest, search and use force. The community rightly expects that these powers will be used judiciously, and that officers will be held accountable for their actions. A properly functioning complaints system is essential to ensure this is the case, which also reinforces the public’s confidence in policing. In turn, this helps the police to carry out their vital functions of enforcing the law and protecting and assisting the community.

While the Committee recognises the critical role played by Victoria Police in the system—addressing wrongdoing within its ranks, upholding ethical and professional standards and resolving, handling and investigating a range of complaints—it is also keenly aware of the Independent Broad-based Anti-corruption Commission’s (IBAC’s) important complaint-handling, investigative and oversight roles. There have long been debates over how the balance is to be struck between the responsibility of police services and external agencies in complaints and oversight systems. The Committee has focused on this issue throughout this Inquiry and made a number of recommendations to enhance the roles of Victoria Police and IBAC within the Victorian complaints and oversight system.

In undertaking the work for this Inquiry, the Committee was struck by the complexity of the overlapping legislation governing the complaints and police oversight system in Victoria and the strongly contested issues raised with respect to it. Drawing on the experience and key lessons from past inquiries, best practice principles and the evidence from a diverse range of stakeholders, the Committee has identified a number of areas in which the handling, investigation and oversight of complaints about police can be improved.

Models and best practice principles

From its examination of a wide range of past inquiries into police corruption and other misconduct, as well as the models and complaint systems that have been established to address it, the Committee was able to identify a number of key themes and lessons. They included the challenges of complex of legislative frameworks (including Victoria’s), the need for police investigations into complaints to be subject to rigorous external oversight, the value of effective communication with complainants and the importance of high quality data about complaints. The main models for complaints and police oversight systems are: Internal Affairs (police investigate complaints without external oversight); Civilian Review (police investigate certain complaints subject to external oversight); and Civilian Control (almost all complaints are investigated by an external agency).

Victoria conforms to the most common model, the Civilian Review model. The responsibility for handling and investigating complaints about police is shared between Victoria Police and IBAC, with IBAC exercising global oversight over the complaints system. The Committee found that the Victorian system was at the
robust end of the spectrum of Civilian Review systems, with the independent IBAC possessing significant investigative and oversight powers in relation to the complaints system and policing more broadly.

The Committee also closely examined the relevant best practice principles for police complaints and oversight systems. These were drawn principally from the Opinion of the Council of Europe’s Commissioner for Human Rights, the United Nations Office on Drugs and Crime (UNODC), the International Organization for Standardization (ISO) as well as the Hayes Review of police oversight in Northern Ireland. The key principles identified in the Opinion of the Commissioner for Human Rights on police oversight are independence, adequacy, promptness, public scrutiny and victim (or complainant) involvement. The Committee received evidence from a number of stakeholders that compliance with these best practice principles requires the establishment of a complaints and oversight system along the lines of the Office of the Police Ombudsman for Northern Ireland (PONI).

However, it became evident to the Committee that a robust Civilian Review system such as Victoria’s can comply with best practice principles. The Opinion itself recognises that a balance needs to be struck between police responsibility for wrongdoing and upholding professional standards, and the responsibility of an independent, external agency to exercise effective oversight over police. IBAC is legally independent from Victoria Police and has relatively strong investigative and oversight powers—it can investigate, oversight, review and audit a wide range of police misconduct. Therefore, the Committee found that a PONI-style body does not need to be created in Victoria; nor should all complaints about police misconduct be investigated by IBAC.

This is not to say, however, that the complaint-handling, investigative and oversight functions of IBAC does not need to be improved—it does. Through this Inquiry, the Committee has identified that IBAC should give greater attention to its police oversight and investigative functions than it has done. In particular, IBAC should, unless there are exceptional circumstances, investigate complaints about serious police misconduct (which should be clearly defined in the IBAC Act 2011 (Vic)) rather than referring them to Victoria Police for investigation.

In order to enhance IBAC’s attention to serious police misconduct, the Committee has further recommended the establishment of an adequately resourced, staffed and empowered Police and Misconduct Division within IBAC. The Committee has also recommended the conferral on IBAC of a range of additional investigative and oversight powers. These powers, together with the establishment of the proposed Division, will help to increase public confidence in the Victorian system for handling complaints about police, enhance IBAC’s performance within the system and assist IBAC in further developing its expertise and capacities in complaint-handling and oversight.

The Committee also considers that the present legislative regime for complaints and police oversight can be simplified and clarified to the benefit of not only complainants but also Victoria Police and IBAC. For example, the Committee has recommended that the range of complex categories of police wrongdoing be reduced to two simpler categories of ‘police misconduct’ and ‘serious police misconduct’. The Committee further believes that the structure, language and usability of the relevant legislation can be improved by applying plain-language principles.
10.2 Transparency: high quality data and public information

Throughout this Inquiry, the importance of high quality data and public information about the complaints system was highlighted. High quality and transparent data about the complaints system helps to enhance confidence in it and allows police and oversight agencies to identify trends, assess performance and make improvements.

Further, this Committee has long emphasised the importance of high quality information about the operation of the integrity system so that complainants are better informed about how to make a complaint and what is involved in the handling and investigation of complaints. Naturally, the provision of high quality information advances not only the principle of transparency but also complainant-involvement, a strong theme of this report.

10.2.1 The need for high quality data about the complaints system

If the police complaints system in Victoria is to be transparent and accountable, and retain the trust of the community, then IBAC and Victoria Police need to follow the best practice principles outlined in the United Nations General Assembly–endorsed Fundamental Principles of Official Statistics (2014). Public access to robust data on the Victoria Police complaints system will assist in making the system more transparent and accountable and can be used to inform policy and practice. The Commissioner for Human Rights and the UNODC have emphasised the importance of public access to robust data as part of the best practice principle of public scrutiny. The Committee identified that the UK Statistics Authority Code of Practice and PONI's publication of statistical data are valuable examples of the application of these best practice principles.

The Committee found that, when compared with the police complaints data PONI provides, the publication and analysis of statistics on police complaints by Victoria Police and IBAC are inadequate. Published data provided by Victoria Police also lacked reliability and was therefore difficult to interpret. Both IBAC and Victoria Police have attributed these inadequacies, in part, to the outdated complaint management systems that generate their statistics, and have indicated they are developing new or improved systems.

Clearly, there is a need for a robust data collection system such as PONI’s that could publish reliable, regularly updated data on complaints and complainants across a range of variables. Complainant surveys can also be employed to gauge complainants’ satisfaction with the system. The Committee has made a number of recommendations that draw on best practice principles to improve the current data collections and the systems that generate them.

10.2.2 The need for high quality public information about the complaints system

The importance of high quality public information that explains the workings of Victoria’s integrity and anti-corruption system, and how to make a complaint or disclosure within it, has been emphasised by the Committee in a number of its previous reports—for example, reports on the protected disclosure (‘whistleblowing’)
Chapter 10 Concluding remarks

regime and the performance of IBAC and the Victorian Inspectorate (VI).\textsuperscript{1367} Public information needs to be readily accessible, suitable for its intended audience, consistent across the sector, accurate, in plain language and available in variety of print and digital formats.\textsuperscript{1368}

The Committee found that there were a range of deficiencies with the public information about the complaints system that Victoria Police makes available. Improvements are needed to ensure that the information it provides on its Compliments and complaints web page, in its guidelines on protected disclosures and in its hard-to-access Victoria Police manual is far more comprehensive, coherent and clear. While the public information IBAC provides about the complaints and oversight system is generally of a good standard, it is rather limited in terms of scope and detail. There is not enough information, for example, about how a member of the public or police officer can make a complaint or about how Victoria Police and IBAC each handle, assess, dismiss, refer and investigate complaints. Victoria Police and IBAC need to develop clear and consistent guides on how to make a complaint about police corruption and other misconduct and how that complaint will be handled, including the steps in the process and any applicable time lines.

Producing and making good quality information available is part of an approach by police and oversight agencies that involves the complainant, has a customer service orientation to complaint handling and is receptive to learning from complaints.\textsuperscript{1369} Better quality information will also save Victoria Police and IBAC time and resources, since better informed complainants are less likely to have to seek clarification from them, or to express their frustrations over an opaque and poorly understood process.\textsuperscript{1370}

10.3 A complainant-centred approach: enhancing public confidence through better communication, support and conciliation

One of the key best practice principles discussed in this report is that of complainant-involvement, which requires that complainants are properly informed, communicated with effectively and supported throughout the complaint-handling process. Better communication, support and conciliation help reinforce public confidence in the complaints system and policing at large.


\textsuperscript{1369} See Section 5.4.1 in Chapter 5 in this report.

\textsuperscript{1370} On the benefits of good quality information and complaint-handling, see NSW Ombudsman, Managing unreasonable complainant conduct: a manual for frontline staff, supervisors and senior managers, 2nd edn, Sydney, May 2012; Commonwealth Ombudsman, Better practice guide to complaint handling, Canberra, April 2009, pp. 13-14; Ombudsman Western Australia, Guidelines: effective handling of complaints made to your organisation—an overview, Perth, January 2017.
10.3.1 The importance of public confidence in the complaints system

Public confidence in the system for handling complaints and disclosures about police is important for its effectiveness and legitimacy, something recognised by Victoria Police in the evidence it provided during this Inquiry. The Committee heard evidence from a range of stakeholders who felt that confidence in the system has been diminished. In particular, a range of stakeholders submitted that Victorians are not always confident enough to make, or persist with, a complaint about police, thinking that it might not be treated seriously or investigated impartially, or that they might suffer some sort of retaliation. The Committee received evidence that this was particularly applicable to a range of vulnerable and marginalised Victorians.

The Committee considered that a range of reforms were needed to ensure that public confidence in the system is reinforced and maintained. In particular, complainants must feel confident that their complaint will be treated seriously and impartially investigated (when investigation is warranted), that they will be adequately involved and supported throughout the process and that their complaint will be finalised efficiently. Confidence in the system will be enhanced, in part, by implementation of the Committee's recommendations regarding better communication with, and support for, complainants as they navigate their way through what can be a daunting process.

10.3.2 Better communication and support

Major causes of complainant dissatisfaction are not having a complaint properly acknowledged, not being kept informed throughout the process in a regular and comprehensible fashion and not having decisions and outcomes adequately explained.

The Committee received evidence that IBAC's communication with complainants needs improvement. This has been recognised by the VI for a number of years. Therefore, the Committee has recommended that, subject to appropriate conditions, IBAC be required to give complainants reasons for its decisions at the assessment and outcome stages. The Committee has also recommended that, subject to reasonable limitations, complainants must be adequately informed about the receipt, handling, progress and outcome of their complaint. Victoria Police has acknowledged, in line with its commitment to victim-centric policing, the need for improvement in its engagement and communication with complainants.

It is clear that Victorians face many challenges in making a complaint or disclosure about police. Given the complexity of the system (which even legal experts wrestle with), the often unsatisfactory public information and communication with complainants, as well as delays, it is not surprising that complainants can find the experience of making a complaint bewildering and stressful. The Committee recognises the need for complainants to be guided through the process step-by-step, referred to independent professional services where necessary and supported by complaints-handling bodies throughout the process. This is particularly the case for marginalised and vulnerable Victorians but is likely to benefit anyone making a complaint or disclosure. To ensure that complainants receive the support they need, the Committee has recommended that Victoria Police and IBAC each create a role for a complainant welfare manager.
10.3.3 Conciliation as an alternative to complaint investigations

Both IBAC and Victoria Police have legislated powers to use conciliation to resolve a complaint. Research, international experience and evidence from stakeholders demonstrate that Alternative Dispute Resolution (ADR) can be a valuable option within a system for handling complaints about police, provided it is used appropriately, with the complainant’s consent and with protections for the vulnerable. It can be cheaper, quicker and less stressful for complainants and subject officers alike and advance the best practice principle of complainant-involvement. It can also prevent complaints from escalating and multiplying and reduce the investigative workload of IBAC and Victoria Police. The Committee has therefore recommended that IBAC and Victoria Police make greater use of conciliation, support it with systematic policies and publicise it as an ADR option for complainants.

10.4 Improving the assessment, referral, investigation and oversight of complaints

Ensuring that assessments are accurate, that referrals are appropriate, that investigations are impartial and thorough and that the oversight of complaints is comprehensive are essential features of an effective system for handling complaints about police.

However, the Committee received evidence that there were some deficiencies in the assessment, referral, investigation and oversight of complaints.

10.4.1 Assessment of complaints

The transparent and accurate assessment of complaints and disclosures is important since it influences how seriously a complaint is regarded, which body (for example, IBAC, Professional Standards Command (PSC) or police regions) will handle it, how it will be handled and who, if investigation is warranted, will investigate it.

Stakeholders who gave evidence to this Inquiry expressed concern that Victoria Police has misclassified serious misconduct as minor misconduct or as a customer service matter. This concern was corroborated by IBAC’s 2016 audit of regional complaint handling by Victoria Police and its 2018 audit of PSC’s complaint investigations. While it is encouraging that Victoria Police has accepted all the recommendations flowing from these IBAC audits, it is a concern that the 2016 recommendations have not yet been fully implemented. The Committee, like IBAC, also found that the complaint classification matrix used by PSC, with its 11 poorly defined and overlapping categories, is unsatisfactory, recommending that it be simplified and clarified.

10.4.2 Referral of complaints

The evidence received during this Inquiry shows that the vast majority of complaints about police are referred by IBAC to PSC, and that PSC only retains a small percentage of complaints for investigation. The overwhelming bulk of complaints about police are investigated by regions, departments or commands of Victoria Police. IBAC investigates around 2% of the allegations about police that it has determined warrant investigation.
The Committee considers that the proportion of complaints investigated by IBAC is insufficient and is also concerned that matters currently referred to police include complaints alleging serious police misconduct. The Committee has therefore recommended that, unless exceptional circumstances exist, IBAC not refer complaints about serious police misconduct back to police. The Committee has also recommended the amendment of the IBAC Act 2011 (Act) so that IBAC is no longer required to refer a complaint to Victoria Police when it considers, under s 73, that Victoria Police is the ‘more appropriate’ body to investigate a complaint.

Consistent with the best practice principle of complainant-involvement, and to protect complainants such as whistleblowers, the Committee has recommended that the legislation be amended to prohibit referrals back to police where there is an unreasonable risk of serious harm to a complainant due to a reprisal. In the Committee’s view, IBAC and PSC should also inform complainants of a planned referral and consult with them where that is practicable. Further, the Committee recommends that the legislation prohibit the referral of a complaint to a police investigator who is affected by a conflict of interest. Moreover, in the Committee’s view, if IBAC considers that a police complaint investigation is not being undertaken fairly, thoroughly and consistently it must take over the investigation, and inform the complainant unless this would jeopardise the investigation.

10.4.3 Oversight of complaints

In accordance with best practice principles and the strengths of a robust Civilian Review complaints system, it is essential that an external oversight body, such as IBAC, have comprehensive oversight of the entire complaints system.

During its monitoring of the performance of IBAC through reviews of its annual reports, the Committee learnt that Local Management Resolution and Management Intervention Model matters (LMRs and MIMs) were not considered as ‘complaints’ by Victoria Police and were not being formally reported to IBAC. While the Committee sees the value in effective local and informal resolution of minor customer service complaints and similar issues, it has recommended that all LMRs and MIMs be reported to IBAC so it can monitor, review and audit them, and investigate a matter if police misconduct has been wrongly classed as an LMR or MIM.

The Committee has also recommended that IBAC fully report the data relating to LMRs and MIMs in its annual reports. While IBAC and the Chief Commissioner of Police have recently informed the Committee that that all LMRs and MIMs are now being reported to IBAC, the Committee considers that Victoria Police should be required to do so under the legislation.

10.4.4 Complaint investigations

The Committee closely considered how Victoria Police complaint investigations could be improved, drawing extensively on evidence from stakeholders as well as a range of IBAC findings and recommendations made as part of IBAC audits. As a result, the Committee has made a series of recommendations for Victoria Police to improve its complaint investigations with regard to impartiality (including addressing issues of conflict of interest and officer complaint histories better), thoroughness and effectiveness (including evidence-gathering and record-keeping, complainant-involvement and communication) and timeliness. The Committee also examined, and recommended improvements to, Victoria Police’s allocation...
of misconduct complaints to investigators at the regional level (including at the station level in country Victoria), aspects of the oversight of critical incidents and the operation of the disciplinary system.

The Committee also received evidence from IBAC that its capacity to investigate complaints was limited by its present jurisdiction and powers. The Committee therefore recommended that IBAC be conferred with a range of additional investigative powers to enhance its capacity to effectively investigate a greater number of complaints about police. Further, as discussed, the Committee made a number of other recommendations to improve the way IBAC communicates with complainants throughout and at the completion of investigations and in relation to timeliness requirements.

10.5 Reviewing progress

As can be seen from the discussion above, the Committee has not recommended that a new, independent agency be established to exclusively handle and investigate all complaints regarding police misconduct and corruption. Rather, it has made 69 recommendations to address a range of limitations with the current system that require attention.

However, given the nature and extent of the concerns raised, it is important that the Committee responsible for the oversight of IBAC in the 59th Parliament keep a watching brief on the implementation of the recommendations to assess if they have adequately addressed the concerns identified in this report. If community confidence in the police complaints and oversight system is to be maintained, it is crucial that the problems identified are addressed.

**RECOMMENDATION 69:** That the Committee responsible for the oversight of IBAC in the 59th Parliament monitor the adoption and implementation of the recommendations contained in this report and assess if the concerns raised have been adequately addressed. Further recommendations will be required if the complaints system is still seen to be falling short of best practice principles.

Adopted by the Independent Broad-based Anti-corruption Commission Committee
55 St Andrews Place, East Melbourne
6 August 2018
## Appendix 1
### List of submissions

<table>
<thead>
<tr>
<th>Submission no.</th>
<th>Name of individual or organisation</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>20 July 2017</td>
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<tr>
<td>2</td>
<td>Ms Dorothy Long</td>
<td>11 July 2017</td>
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<tr>
<td>3</td>
<td>Ms Kate Doherty</td>
<td>13 July 2017</td>
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<td>4</td>
<td>Ms Tamar Hopkins</td>
<td>18 July 2017</td>
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<tr>
<td>7</td>
<td>Ms Felicity Caulfield</td>
<td>1 August 2017</td>
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<tr>
<td>12</td>
<td>Mr Allen Tong</td>
<td>2 August 2017</td>
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<tr>
<td>13</td>
<td>Ms Vanessa Born</td>
<td>3 August 2017</td>
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<td>14</td>
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<tr>
<td>15</td>
<td>Mr Kenneth McLeod</td>
<td>3 August 2017</td>
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<td>16</td>
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<td>17</td>
<td>Mr Jordan Brown</td>
<td>3 August 2017</td>
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<tr>
<td>18</td>
<td>Centre for Multicultural Youth</td>
<td>3 August 2017</td>
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<td>Victoria Legal Aid</td>
<td>3 August 2017</td>
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<td>Flemington &amp; Kensington Community Legal Centre (FKCLC); Drum Youth Services (DYS); Australian Lawyers Alliance (ALA); Loddon Campaspe Community Legal Centre (LCCLC); Ethnic Communities Council of Victoria (ECCV); Federation of Community Legal Centres (FCLC); Victorian Aboriginal Legal Service (VALS); Africa Media Australia (AMA); Synod of Victoria and Tasmania, Uniting Church in Australia (UCA); Northern Community Legal Centre (NCLC); Islamic Council of Victoria (ICV); Springvale Monash Legal Service (SMLS); Drummond Street Services (DSS); Eastern Community Legal Centre (ECLC); Goulburn Valley Community Legal Centre (GVCLC)</td>
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<td>24</td>
<td>Ms Kimberley Risson</td>
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<td>27</td>
<td>Mr Andrew Tink AM</td>
<td>8 August 2017</td>
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<td>28</td>
<td>The Police Association Victoria</td>
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<td>29</td>
<td>Harm Reduction Victoria</td>
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<td>Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre</td>
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<td>Date</td>
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<td>32</td>
<td>Assoc Prof Leanne Weber and Prof Jude McCulloch, Monash University</td>
<td>11 August 2017</td>
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<td>11 August 2017</td>
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<td>Victorian Inspectorate</td>
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<td>International Commission of Jurists (Victoria)</td>
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<td>Springvale Monash Legal Service</td>
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<td>Victorian Aboriginal Legal Service</td>
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<td>Accountability Roundtable</td>
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### Appendix 2
List of witnesses appearing at hearings in Melbourne

#### A2.1 Preliminary hearings related to police oversight

**12 November 2015 – Melbourne – closed hearing**

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Organisation</th>
</tr>
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<tbody>
<tr>
<td>Hon Murray Kellam AO QC</td>
<td>Former Chief Commissioner</td>
<td>Integrity Commission, Tasmania</td>
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**23 November 2015 – Melbourne – closed hearings**

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<thead>
<tr>
<th>Name</th>
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<tr>
<td>Mr George Brouwer</td>
<td>Former Ombudsman</td>
<td>Victorian Ombudsman</td>
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<td>Ms Katie Miller</td>
<td>President</td>
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<tr>
<td>Ms Fiona Spencer</td>
<td>Barrister, Victorian Bar Greens List</td>
<td>Law Institute of Victoria</td>
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<tr>
<td>Ms Kate Browne</td>
<td>Lawyer, Administrative Law and Human Rights Section</td>
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**7 December 2015 – Melbourne – closed hearing**

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<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Dr Simon Longstaff</td>
<td>Executive Director</td>
<td>The Ethics Centre (via teleconference)</td>
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**14 December 2015 – Melbourne – closed hearings**

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<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Mr Stephen O’Bryan QC</td>
<td>Commissioner</td>
<td>Independent Broad-based Anti-corruption Commission</td>
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<tr>
<td>Mr Alistair Maclean</td>
<td>Chief Executive Officer</td>
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<tr>
<td>Dr John Lynch PSM</td>
<td>General Counsel</td>
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<tr>
<td>Assistant Commissioner Brett Guerin</td>
<td>Assistant Commissioner, Professional Standards Unit</td>
<td>Victoria Police</td>
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<tr>
<td>Deputy Commissioner Wendy Steendam</td>
<td>Deputy Commissioner, Capability</td>
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**2 May 2016 – Melbourne – closed hearing**

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<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Hon James Wood</td>
<td>Former Commissioner</td>
<td>Royal Commission into the New South Wales Police Service (Wood Royal Commission) (via teleconference)</td>
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### Hearings for this Inquiry

#### 5 February 2018 – Melbourne – closed hearings

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<tr>
<th>Name</th>
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<tr>
<td>Hon Robert Redlich QC</td>
<td>Commissioner</td>
<td>Independent Broad-based Anti-corruption Commission</td>
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<tr>
<td>Mr Tony Gaylard</td>
<td>Manager, Assessment and Review</td>
<td>Independent Broad-based Anti-corruption Commission</td>
</tr>
<tr>
<td>Ms Christine Howlett</td>
<td>Director, Prevention and Communication</td>
<td>Independent Broad-based Anti-corruption Commission</td>
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<tr>
<td>Mr Robert Sutton</td>
<td>Director, Operations</td>
<td>Independent Broad-based Anti-corruption Commission</td>
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<tr>
<td>Mr Eamonn Moran PSM QC</td>
<td>Inspector</td>
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#### 19 February 2018 – Melbourne – public hearings

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<tr>
<td>Sergeant Wayne Gatt</td>
<td>Secretary</td>
<td>The Police Association of Victoria</td>
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<tr>
<td>Senior Sergeant Chris Gorissen</td>
<td>Legal Manager</td>
<td>The Police Association of Victoria</td>
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<tr>
<td>Mr Jeremy King</td>
<td>Principal Lawyer</td>
<td>Robinson Gill Lawyers</td>
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#### 26 February 2018 – Melbourne – public hearings

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<th>Name</th>
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<tr>
<td>Prof Jude McCulloch</td>
<td>Director, Monash Family Violence</td>
<td>School of Social Sciences, Monash University</td>
</tr>
<tr>
<td>Associate Prof Leanne Weber</td>
<td>Australian Research Council Future</td>
<td>School of Social Sciences, Monash University</td>
</tr>
<tr>
<td>Mr Tim Marsh</td>
<td>Chief Counsel</td>
<td>Victoria Legal Aid</td>
</tr>
<tr>
<td>Ms Tamar Hopkins</td>
<td>Founder, Police Accountability Project</td>
<td>Flemington &amp; Kensington Community Legal Centre</td>
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<tr>
<td>Mr Anthony Kelly</td>
<td>Executive Officer</td>
<td>Flemington &amp; Kensington Community Legal Centre</td>
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<tr>
<td>Mr Charandeep Singh</td>
<td>Development Officer, Police</td>
<td>Flemington &amp; Kensington Community Legal Centre</td>
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<tr>
<td>Ms Merys Williams</td>
<td>Member, Human Rights Committee</td>
<td>Law Institute of Victoria</td>
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<tr>
<td>Ms Carmel Guerra</td>
<td>CEO</td>
<td>Centre for Multicultural Youth</td>
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<tr>
<td>Ms Ariel Couchman</td>
<td>Director</td>
<td>Youthlaw</td>
</tr>
<tr>
<td>Assistant Commissioner Luke</td>
<td>Assistant Commissioner, Victorian</td>
<td>Victoria Police</td>
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<td>Cornelius APM</td>
<td>Equal Opportunity and Human Rights</td>
<td>Victoria Police</td>
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<td>Commission (VEOHR) Review, Partnerships and Innovation</td>
<td>Victoria Police</td>
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<tr>
<td>Acting Inspector Jim</td>
<td>Professional Standards Command</td>
<td>Victoria Police</td>
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<td>Mulholland</td>
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<tr>
<td>Superintendent Tony de Ridder</td>
<td>Professional Standards Command</td>
<td>Victoria Police</td>
</tr>
<tr>
<td>Mr Wayne Muir</td>
<td>CEO</td>
<td>Victorian Aboriginal Legal Service</td>
</tr>
<tr>
<td>Ms Anna Lyons</td>
<td>Acting Principal Solicitor, Civil Law</td>
<td>Victorian Aboriginal Legal Service</td>
</tr>
<tr>
<td>Ms Kate Browne</td>
<td>Lawyer, Civil Law</td>
<td>Victorian Aboriginal Legal Service</td>
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Appendix 2 List of witnesses appearing at hearings in Melbourne

5 March 2018 – Melbourne – closed hearing

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<thead>
<tr>
<th>Name</th>
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<tr>
<td>Mr Jordan Brown</td>
<td>Journalist</td>
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7 May 2018 – Melbourne – closed hearing

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<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Hon Robert Redlich QC</td>
<td>Commissioner</td>
<td>Independent Broad-based Anti-corruption Commission</td>
</tr>
<tr>
<td>Mr Robert Sutton</td>
<td>Director, Operations</td>
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</tr>
<tr>
<td>Ms Christine Howlett</td>
<td>Director, Prevention and Communication</td>
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The Committee also conducted in camera hearings on 28 February 2018 and 5 March 2018.
Appendix 3
List of witnesses appearing at preliminary interstate hearings and informal meetings

17 November 2015 – Brisbane – closed hearings

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<thead>
<tr>
<th>Name</th>
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<tr>
<td>Prof Tim Prenzler</td>
<td>Coordinator, Bachelor of Criminology and Justice</td>
<td>University of the Sunshine Coast</td>
</tr>
<tr>
<td>Mr Paul Favell</td>
<td>Parliamentary Crime and Misconduct Commissioner</td>
<td>Office of the Parliamentary Crime and Corruption Commissioner</td>
</tr>
<tr>
<td>Mr Mitchell Kunde</td>
<td>Principal Legal Officer</td>
<td>Queensland Integrity Commissioner</td>
</tr>
<tr>
<td>Mr Richard Bingham</td>
<td>Integrity Commissioner</td>
<td>Queensland Integrity Commissioner</td>
</tr>
<tr>
<td>Prof Nicholas Aroney</td>
<td>Australian Research Council Future Fellow—The Centre for Public, International and Comparative Law</td>
<td>The University of Queensland</td>
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16 May 2016 – Sydney – closed hearings

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<tr>
<td>Prof John McMillan AO</td>
<td>Acting Ombudsman</td>
<td>New South Wales Ombudsman</td>
</tr>
<tr>
<td>Mr Chris Wheeler</td>
<td>Deputy Ombudsman, Public Administration Division</td>
<td>New South Wales Ombudsman</td>
</tr>
<tr>
<td>Mr Michael Gleeson</td>
<td>Deputy Ombudsman, Police and Compliance Division</td>
<td>New South Wales Ombudsman</td>
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<tr>
<td>Ms Prem Aleema</td>
<td>Executive Officer</td>
<td>Redfern Legal Centre</td>
</tr>
<tr>
<td>Mr David Porter</td>
<td>Senior Solicitor</td>
<td>Redfern Legal Centre</td>
</tr>
<tr>
<td>Hon David Levine RFD QC</td>
<td>Inspector of the Independent Commission Against Corruption and Police Integrity Commission</td>
<td>Inspector of the Independent Commission Against Corruption and Police Integrity Commission</td>
</tr>
<tr>
<td>Ms Susan Raice</td>
<td>Principal Legal Advisor, Inspector of the Police Integrity Commission</td>
<td>Independent Commission Against Corruption</td>
</tr>
<tr>
<td>Mr John Nicholson</td>
<td>Assistant Inspector</td>
<td>Independent Commission Against Corruption</td>
</tr>
<tr>
<td>Mr Andrew Tink AM</td>
<td>Author, Review of police oversight, NSW Department of Justice, Sydney, 2015</td>
<td>NSW Department of Justice</td>
</tr>
</tbody>
</table>

17 May 2016 – Sydney – closed hearing

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Alan Beckley</td>
<td>Adjunct Research Fellow, School of Social Sciences &amp; Psychology</td>
<td>Western Sydney University</td>
</tr>
</tbody>
</table>
### 17 May 2016 – Sydney – informal meetings

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms Michelle O’Brien</td>
<td>Commission Solicitor</td>
<td>Police Integrity Commission</td>
</tr>
<tr>
<td>Mr Lee Evans MP and Members</td>
<td>Joint Parliamentary Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, New South Wales</td>
<td>Parliament of New South Wales</td>
</tr>
</tbody>
</table>
### Appendix 4

**List of informal meetings and site visits overseas**

**Vienna, Austria – 19 September 2016**
- Austrian Federal Bureau of Anti-Corruption (BAK)
- International Anti-Corruption Academy (IACA)

**Paris, France – 21 September 2016**
- Inspection Générale de la Gendarmerie nationale (IGGN)

**London, United Kingdom – 22–23 September 2016**
- House of Commons Library, United Kingdom Parliament
- Independent Police Complaints Commission (IPCC)

**Belfast Northern Ireland – 25 September 2016**
- The Office of the Police Ombudsman for Northern Ireland
- The Police Service of Northern Ireland (PSNI)

**Dublin, Republic of Ireland – 26–27 September 2016**
- Garda National Economic Crime Bureau
- Garda Síochána Ombudsman Commission
- Houses of the Oireachtas Committee on Justice and Equality

**Riga, Latvia – 27 September 2016**
- Transparency International
- Saeima Corruption Prevention Subcommittee, Parliament of Latvia Corruption Prevention and Combating Bureau (KNAB)

**Hong Kong – 4 October**
- Complaints Against Police Office (CAPO)
- Independent Police Complaints Council (IPCC)
## Appendix 4 List of informal meetings and site visits overseas

### Wellington - 23–24 October 2017

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institute for Governance and Policy Studies, Victoria University</td>
<td></td>
</tr>
<tr>
<td>JustSpeak</td>
<td></td>
</tr>
<tr>
<td>Maori Wardens, Poneke Area</td>
<td></td>
</tr>
<tr>
<td>New Zealand Police Association</td>
<td></td>
</tr>
<tr>
<td>Independent Police Conduct Authority</td>
<td></td>
</tr>
<tr>
<td>New Zealand Police</td>
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### Auckland - 24–25 October 2017

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious Fraud Office</td>
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</tr>
<tr>
<td>Transparency International New Zealand</td>
<td></td>
</tr>
<tr>
<td>Mangere Community Law Centre</td>
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</tr>
<tr>
<td>YouthLaw</td>
<td></td>
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<tr>
<td>Community Legal Services South Trust</td>
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</tr>
<tr>
<td>Manukau Urban Maori Authority</td>
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</tr>
</tbody>
</table>
Appendix 5

IBAC reports relating to Victoria Police

Special reports

Special report concerning police oversight, Melbourne, August 2015.
Operation Darby: an investigation of a person's complaint against Victoria Police, Melbourne, May 2016.
Operation Ross: an investigation into police conduct in the Ballarat Police Service Area, Melbourne, November 2016.


Research reports

Predatory behaviour by Victoria Police officers against vulnerable persons, Melbourne, December 2015.
Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016.
Transit Protective Services Officers: An exploration of corruption and misconduct risks, Melbourne, December 2016.
Audit of Victoria Police's oversight of serious incidents, Melbourne, March 2018.
Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018.
<table>
<thead>
<tr>
<th>Group</th>
<th>CCC</th>
<th>Due Days</th>
<th>ROCSID CODE</th>
<th>File Category</th>
<th>Investigation / Oversight or Resolution of Management Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cat-1</td>
<td>C2-4</td>
<td>15</td>
<td>LMR</td>
<td>Public / Internal</td>
<td>Allegations made against members of a minor nature regarding service delivery, performance management or professional conduct e.g. rudeness over zealousness; that may be resolved promptly. Dealt with at Regional level. No formal investigation is conducted and the matters resolved through conciliatory processes and Management intervention (MIM). May be reclassified, usually to C2-1 and an investigation conducted.</td>
</tr>
<tr>
<td></td>
<td>C2-5</td>
<td>40</td>
<td>MIM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cat-2</td>
<td>C2-1</td>
<td>90</td>
<td>Misconduct</td>
<td>Internal Discipline Serious / Public Complaint Serious</td>
<td>Serious Misconduct as defined by Sec 86A of PRA. Usually investigated by PSC. Conduct which constitutes an offence punishable by imprisonment, conduct which is likely to bring the force into disrepute or diminish public confidence in it, or disgraceful or improper conduct (whether in the member’s official capacity or otherwise). Complaints encompassing serious assault, excessive force, etc. COMPLAINANT AND SUBJECT EMPLOYEE NOTIFIED OF OUTCOME BY LETTER</td>
</tr>
<tr>
<td></td>
<td>C3-2</td>
<td>90</td>
<td>Misconduct (On Duty)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C3-3</td>
<td>90</td>
<td>Misconduct (Off Duty)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C3-4</td>
<td>152</td>
<td>Corruption</td>
<td></td>
<td>The illegal use of police power for personal gain in some form, not necessarily financial. Investigated by PSC. COMPLAINANT AND SUBJECT EMPLOYEE NOTIFIED OF OUTCOME BY LETTER</td>
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continued
<table>
<thead>
<tr>
<th>Group</th>
<th>CCC</th>
<th>Due Days</th>
<th>ROCSID CODE</th>
<th>File Category</th>
<th>Investigation / Oversight or Resolution of Management Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cat-3</td>
<td>Cl-8</td>
<td>90</td>
<td>SI</td>
<td>Monitor/Oversight</td>
<td>Oversight of those incidents required to be monitored by PSC which include incidents involving discharge of a firearm by police; death or serious injury to a person in police custody; attempted suicide by a person in police custody; death or serious injury resulting from contact between police and public; and any serious vehicle collision involving police. Refer to VPM 210 section 5.6 (Matters which must be reported to PSC). May be investigated by PSC or at Regional level. For all Cl-8 files it is necessary to determine if Force Policy, procedures and guidelines have been complied with.</td>
</tr>
<tr>
<td></td>
<td>Cl-7</td>
<td>90</td>
<td>CP</td>
<td>Civil Process</td>
<td>The issue of process against a member by another person and includes Intervention Orders, Bankruptcy Orders, Civil Warrants/Writs or Counter Summons. (See Sec10 VPM 201-6) USUALLY HANDLED BY REGIONAL MANAGEMENT</td>
</tr>
<tr>
<td>Cat-4</td>
<td>Cl-0</td>
<td>152</td>
<td>WF</td>
<td>Work Files</td>
<td>Files that do not require immediate classification under another category. For the recording and management of sensitive or anonymous allegations, Crime stoppers etc. Allegations that need some preliminary enquiry and assessment before a full investigation. Usually conducted by the PSC Targeted Investigations Division</td>
</tr>
<tr>
<td></td>
<td>Cl-5</td>
<td>28</td>
<td>PRE-CHECK</td>
<td>Initial Leap Audit / Missing Person Audit / Employee Risk Summary / Member’s fingerprint found on crime scene or on exhibit / International deployment group (IDG) involvement</td>
<td>Initial Leap Audit matters referred to PSC for initial investigation or reporting but cannot be considered a “complaint” and do not require immediate classification under the other categories. If any substance to matters is found following the preliminary investigations, the files would be re-classified at any time to enable it to be included amongst the public complaint or internal discipline matter statistics. The “Initial Leap Audit” File Category will have all the functionality of all other classified files, but will have security restrictions applied relating to access and dissemination of data. LEAP audits where deemed a breach of LEAP policy are re-classified as a C 3-2 and dealt with by way of hearing officer. INITIAL ACTION TO REGIONS TO DETERMINE ANY ACTION; THEN RETURNED TO PSC</td>
</tr>
<tr>
<td></td>
<td>Cl-6</td>
<td>90</td>
<td>Correspondence</td>
<td>COR</td>
<td>Matters referred to PSC for initial investigation or reporting but cannot be considered a “complaint”. On occasions letters are received at PSC from complainants and further information is required. A Cl-6 file is created, the complainant is interviewed and if necessary the file is re-classified and resolved through investigation or Management Intervention. USUALLY INVESTIGATED IN REGIONS OR DEPT</td>
</tr>
</tbody>
</table>

## Appendix 7
### Victoria Police complaint classifications, 1 May 2018

<table>
<thead>
<tr>
<th>GROUP</th>
<th>TYPE</th>
<th>CCC</th>
<th>DUE DAYS</th>
<th>ROCSID CODE</th>
<th>FILE CATEGORY</th>
<th>INVESTIGATION/ OVERSIGHT /RESOLUTION OF MANAGEMENT ISSUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cat-1</td>
<td>Resolution Process (Region/Dept)</td>
<td>C2-4</td>
<td>7</td>
<td>LMR</td>
<td>Public / Internal</td>
<td>Low Level Customer Service complaints (Local Management Resolution). Dealt with at Regions, Department or Command level.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C2-5</td>
<td>40</td>
<td>MIM</td>
<td></td>
<td>Allegations made against members of a minor nature regarding service delivery, performance management or professional conduct e.g. rudeness over zealously; that may be resolved promptly. Dealt with at Regions, Department or Command level. No formal investigation is conducted and the matters resolved through conciliatory processes and Management Intervention (MIM). May be reclassified, usually to C2-1 and an investigation conducted.</td>
</tr>
<tr>
<td>Cat-2</td>
<td>Integrity Files</td>
<td>C2-1</td>
<td>90</td>
<td></td>
<td>Misconduct</td>
<td>PSC or Regions, Department or Command may investigate depending on circumstances. Includes: Minor assault at time of arrest; Traffic Infringement Notice on duty (not for .05 Infringement Notice); internal discipline; outstanding matters at Sheriff’s Office; off duty traffic and election to appear at court.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C3-2</td>
<td>90</td>
<td></td>
<td>Serious Misconduct (On Duty)</td>
<td>Serious Misconduct as defined by s166 of VPA. Usually investigated by PSC. Conduct which constitutes an offence punishable by imprisonment, conduct which is likely to bring the force into disrepute or diminish public confidence in it, or disgraceful or improper conduct (whether in the member’s official capacity or otherwise). Complaints encompassing serious assault, excessive force, etc on duty. Complainant and subject employee notified of outcome by letter.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C3-3</td>
<td>90</td>
<td></td>
<td>Serious Misconduct (Off Duty)</td>
<td>Serious Misconduct as defined by s166 of VPA. Usually investigated by PSC. Conduct which constitutes an offence punishable by imprisonment, conduct which is likely to bring the force into disrepute or diminish public confidence in it, or disgraceful or improper conduct (whether in the member’s official capacity or otherwise). Criminal offence committed while off duty. Complainant and subject employee notified of outcome by letter.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C3-4</td>
<td>152</td>
<td></td>
<td>Corruption</td>
<td>The illegal use of police power for personal gain in some form, not necessarily financial</td>
</tr>
</tbody>
</table>

*continued*
<table>
<thead>
<tr>
<th>GROUP</th>
<th>TYPE</th>
<th>CCC</th>
<th>DUE DAYS</th>
<th>ROCSID CODE</th>
<th>FILE CATEGORY</th>
<th>INVESTIGATION/ OVERSIGHT/RESOLUTION OF MANAGEMENT ISSUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cat-3</td>
<td>Oversight Files</td>
<td>C1-8</td>
<td>90</td>
<td>SI</td>
<td>Monitor/Oversight</td>
<td>Oversight of those incidents required to be monitored by PSC which include incidents involving discharge of a firearm by police; death or serious injury to a person in police custody; attempted suicide by a person in police custody; death or serious injury resulting from contact between police and public; and any serious vehicle collision involving police. May be investigated by PSC or at Regional level. For all C1-8 files it is necessary to determine if Force Policy, procedures and guidelines have been complied with.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>C1-7</td>
<td>90</td>
<td>CP</td>
<td>Civil Process</td>
<td>The issue of process against a member by another person and includes Intervention Orders, Bankruptcy Orders, Civil Warrants/Writs or Counter Summons. Usually handled by Regions, Department or Command management.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cat-4</td>
<td>Assessment Files</td>
<td>C1-0</td>
<td>152</td>
<td>WF</td>
<td>Work Files</td>
<td>Files that do not require immediate classification under another category. For the recording and management of sensitive or anonymous allegations, Crime stoppers etc. Allegations that need some preliminary enquiry and assessment before a full investigation. Usually conducted by the PSC Preliminary Investigation Team.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PRECHECK</td>
<td>Preliminary Checks</td>
<td>Initial Leap Audit matters referred to PSC for initial investigation or reporting but cannot be considered a “complaint” and do not require immediate classification under the other categories. If any substance to matters is found following the preliminary investigations, the files would be re-classified at any time to enable it to be included amongst the public complaint or internal discipline matter statistics. The “Initial Leap Audit” File Category will have all the functionality of all other classified files, but will have security restrictions applied relating to access and dissemination of data. LEAP audits where deemed a breach of LEAP policy are reclassified as a C 3-2 and dealt with by way of hearing officer. Initial action to Regions, Department or Command to determine any action; then returned to PSC.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>COR</td>
<td>Correspondence</td>
<td>Matters referred to PSC for initial investigation or reporting but cannot be considered a “complaint”. On occasions letters are received at PSC from complainants and further information is required. A C1-6 file is created, the complainant is interviewed and if necessary the file is re-classified and resolved through investigation or Management Intervention. Usually investigated in Regions, Department or Command.</td>
</tr>
</tbody>
</table>

Source: Reproduced from Victoria Police, Submission 52, 1 May 2018, p. 62.
Appendix 8
Further queries to IBAC regarding Police complaints and allegations

1. Please provide a table for each of the last four financial years showing the number and percentage of
   a. Complaints received from Victoria Police
   b. Notifications received from Victoria Police
   c. Allegations received from Victoria Police
   d. Complaints received directly from the public about police
   e. Allegations received from the public about police
   f. Complaints received directly by IBAC from police officers about other police officers
   g. Allegations received directly by IBAC from police officers about other police officers

2. What is the total number of complaints and allegations made by police officers about other police officers
   – via Victoria Police and
   – IBAC directly?

3. Are local resolution complaints included in the numbers of complaints and allegations received by IBAC from Victoria Police?

4. Please provide a table for each of the last four financial years showing the number and percentage of
   a. Complaints about police that were dismissed
   b. Complaints about police referred to Victoria Police
   c. Allegations about police dismissed
   d. Allegations about police referred to Victoria Police
   e. Complaints about police investigated by IBAC
   f. Allegations about police investigated by IBAC

5. Does IBAC assess all complaints, notifications and allegations about police that it receives?

6. Table 5, p. 20 of the 2016/2017 Annual Report shows that for 2016/2017, 1264 of all allegations that IBAC received were returned ‘to another entity’. However, your response to question 5 in the letter from the Commissioner states that 1707 allegations were returned to Victoria Police alone. Can you explain this discrepancy?
APPENDIX T – COMPLAINTS AND OVERSIGHT MATTERS REGISTERED

In September 2016 the report of IBAC's audit of Victoria Police regional complaints handling processes was published. The objective of the audit was to identify areas for improvement in the complaint handling process and to identify good practice.

IBAC made a number of findings – resulting in nine specific recommendations underpinned by areas for improvement, for change to strengthen Victoria Police's complaint handling processes.

Recommendation 7 relates to publicly releasing aggregated information on a regular basis (such as in the Victoria Police Annual Report) on the number of complaints received, their classifications, determinations and recommendations to improve the transparency and accountability for outcomes.

**APPENDIX T – COMPLAINTS AND OVERSIGHT MATTERS REGISTERED**

In September 2016 the report of IBAC’s audit of Victoria Police regional complaints handling processes was published. The objective of the audit was to identify areas for improvement in the complaint handling process and to identify good practice. IBAC made a number of findings – resulting in nine specific recommendations underpinned by areas for improvement, for change to strengthen Victoria Police’s complaint handling processes.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Management Intervention Model (MIM) and Local Management Resolution (LMR)</td>
<td>Allegations of Minor nature regarding service delivery, performance management or professional conduct.</td>
<td>925</td>
<td>979</td>
<td>885</td>
</tr>
<tr>
<td>Misconducts – Minor/Serious/Corruption</td>
<td>Misconduct as per the Victoria Police Act s.166 &amp; the Public Administration Act s.4.</td>
<td>621</td>
<td>655</td>
<td>726</td>
</tr>
<tr>
<td>Complaints registered as Incidents and Resolved immediately</td>
<td>Resolved in the first instance by the Police Conduct Unit, Professional Standards Command and no further formal investigation required.</td>
<td>508</td>
<td>495</td>
<td>918</td>
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</tbody>
</table>

**Oversight Matters**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Process</td>
<td>Civil process matters against an employee of Victoria Police.</td>
<td>115</td>
<td>71</td>
<td>83</td>
</tr>
<tr>
<td>Oversight Matters</td>
<td>Police Critical Incidents – incidents that require monitoring and reporting on.</td>
<td>213</td>
<td>134</td>
<td>143</td>
</tr>
<tr>
<td>Work files – Correspondence</td>
<td>Allegations that require some preliminary enquiry, further information and assessment to determine if a full investigation is required.</td>
<td>261</td>
<td>128</td>
<td>41</td>
</tr>
<tr>
<td>Preliminary Check</td>
<td>Audit result enquiries regarding LEAP access, MDN usage, email or other Victoria Police databases.</td>
<td>6</td>
<td>78</td>
<td>242</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>2,649</td>
<td>2,540</td>
<td>3,038</td>
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**Note:**

Figures include Public Complaints made by the public against Victoria Police Employees (staff) and Internal Complaints made by employees of Victoria Police.
### OVERALL ALLEGATION DETERMINATION RATE (INVESTIGATIONS COMPLETED DURING THE CURRENT FINANCIAL YEAR)

<table>
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</thead>
<tbody>
<tr>
<td>Case to Answer</td>
<td>Substantiated</td>
<td>162</td>
<td>6.39</td>
<td>375</td>
<td>10.89</td>
<td>484</td>
<td>13.56</td>
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<tr>
<td></td>
<td>Lesser Deficiency Found</td>
<td>3</td>
<td>0.12</td>
<td>9</td>
<td>0.26</td>
<td>20</td>
<td>0.56</td>
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<tr>
<td></td>
<td>Sub Total</td>
<td>165</td>
<td>6.51</td>
<td>384</td>
<td>11.15</td>
<td>504</td>
<td>14.12</td>
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<tr>
<td>No Case to Answer</td>
<td>Not Substantiated</td>
<td>299</td>
<td>11.79</td>
<td>536</td>
<td>15.56</td>
<td>619</td>
<td>17.34</td>
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<tr>
<td></td>
<td>Unfounded</td>
<td>206</td>
<td>8.12</td>
<td>362</td>
<td>10.51</td>
<td>312</td>
<td>8.74</td>
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<td>Unable to Determine</td>
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<td>121</td>
<td>3.51</td>
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<td>Withdrawn</td>
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<td>1.97</td>
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<td>Member Exonerated</td>
<td>28</td>
<td>1.10</td>
<td>47</td>
<td>1.36</td>
<td>48</td>
<td>1.34</td>
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<td>False Report</td>
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<td>0.04</td>
<td>3</td>
<td>0.09</td>
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<tr>
<td></td>
<td>No Complaint</td>
<td>437</td>
<td>17.23</td>
<td>518</td>
<td>15.04</td>
<td>679</td>
<td>19.02</td>
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<td></td>
<td>For Intelligence Purposes</td>
<td>46</td>
<td>1.81</td>
<td>20</td>
<td>0.58</td>
<td>10</td>
<td>0.28</td>
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<tr>
<td></td>
<td>Sub Total</td>
<td>1,137</td>
<td>44.82</td>
<td>1,675</td>
<td>48.62</td>
<td>1,895</td>
<td>53.08</td>
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<tr>
<td>Other</td>
<td>Consolidated</td>
<td>1</td>
<td>0.03</td>
<td>3</td>
<td>0.08</td>
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<td></td>
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<td></td>
<td>Not Finalised</td>
<td>3</td>
<td>0.12</td>
<td>2</td>
<td>0.06</td>
<td>1</td>
<td>0.03</td>
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<tr>
<td></td>
<td>Not Proceeded With</td>
<td>61</td>
<td>2.40</td>
<td>106</td>
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**Note:**
Figures do not include complaints registered as incidents, as these are resolved immediately.

### RECOMMENDATIONS: (INVESTIGATIONS COMPLETED DURING THE FINANCIAL YEAR)

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**Note:**
Figures are a count of Victoria Police Employees where complaints have been investigated and finalised.

Source: Victoria Police, Annual report 2016-17, Melbourne, pp. 93–94.
2a. Strengthening transparency by expanding the range of matters notified to IBAC

Notification of LMR and MIM matters

On 5 February 2018, the Commissioner informed the IBAC Committee that Victoria Police is advising IBAC of all matters classified as LMRs and MIMs. According to the Victoria Police Manual (VPM, LMR is to be applied to resolve minor communication and customer service complaints where punitive or formal performance outcomes would not be required. The MIM, which was in place prior to the introduction of LMR, can be applied for communication and customer service complaints and performance management matters. Victoria Police introduced MIMs in 2004; a trial of LMRs commenced in 2014 and is now fully operational.

IBAC monitored LMRs and MIMs received over a three month period (23 January to 30 April 2018) to determine whether any LMRs or MIMs involved allegations of ‘misconduct’ and therefore should have been notified to IBAC under section 169 of the Victoria Police Act. As highlighted by the Commissioner in his evidence before the Committee, IBAC has identified some concerns with Victoria Police’s classification of complaints and therefore has monitored matters classified as LMRs and MIMs to ensure the appropriate use of this classification.

Over the three month period, 180 LMRs and 81 MIMs were monitored. Of this number, five LMRs and 15 MIMs were considered to have involved allegations of potential misconduct - and therefore were considered to have been inappropriately classified by Victoria Police. This represents a small proportion (7.6 per cent) of the total number of LMRs and MIMs monitored.

Some matters were considered to constitute possible misconduct on the basis that the allegation concerned potential breaches of the Equal Opportunity Act 2010 or the Charter of Human Rights and Responsibilities Act 2006. This reflects Victoria Police’s approach to classification of complaints (i.e. that such matters should be classified as C2-1, being misconduct on or off duty).

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Examples of matters which IBAC identified as involving allegations of misconduct included:

- The complainant alleged police refused to take her report of assault. After being placed in custody at the police station, she alleged that while suffering from severe concussion, she was left unattended in a cell. This complaint could constitute a breach of section 22 (humane treatment when deprived of liberty) of the Charter of Human Rights Act. This matter was classified as a MIM.

- A man complained that after attending a police station to be interviewed in relation to an assault, he was denied medical assistance (for mental health issues) during his interview and was laughed at by police. He proceeded to cut himself, inflicting a serious cut to his arm, after police allowed him to retain a small box cutter knife (which was attached to a key ring). This complaint could constitute a breach of section 22 of the Charter. This matter was classified as a MIM.

- A complainant alleged the subject officer failed to investigate a report of deception he made to a police station because the husband of the alleged person of interest worked at that police station. This matter was classified as an LMR.

- The file concerned allegations that a patched member of the Black Uhlans outlaw motorcycle gang was riding on a motorbike registered to a police officer who was on WorkCover. This file concerned a potential criminal association. This matter was classified as an LMR.

- Information was provided to an off-duty officer by a neighbour (a former police officer) of a property believed to be a ‘cannabis grow house’. The officer did not act on this information. A fire later occurred at the house which resulted in plants being seized. This matter was classified as a MIM and the subject officer received an admonishment notice for failing to pass on the intelligence.

- Two intoxicated off-duty police officers attended a licensed premises. One subject officer allegedly struck another police officer who was on-duty. The second subject officer failed to attend for duty as rostered the following day. This matter was classified as a MIM.

- The complainant alleged that she and her children were evicted from their home by a sergeant using an expired ‘warrant of possession’. She also alleged that the sergeant failed to investigate breaches of an IVO. This matter was classified as a MIM.

IBAC also reviewed 50 LMR files closed by Victoria Police between 1 January 2017 and 31 March 2017. Ten files were randomly selected from each region, and the remaining ten were randomly selected from departments and commands.

One issue examined was the appropriateness of classification. The review found that two of the fifty matters (4 per cent) would have been more appropriately classified as ‘misconduct on duty/off duty’ (Victoria Police’s C2-1 classification) as the matters involved allegations of racial discrimination. It was considered that a further nine matters should have been classified as MIMs because they were considered somewhat more serious than a minor customer service type matter.

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2 Victoria Police’s classification system states that lower level allegations of discrimination contrary to the Equal Opportunity Act 2010 are C2-1 matters.
This review identified that there were aspects of the LMR process which could be improved. These issues include:

- **Timeliness**: The VPM states that LMRs must be completed within seven days, commencing from the date the complaint is lodged. However, there appears to be an anomaly between policy and practice in calculating this seven day timeframe. Based on the VPM policy, IBAC identified that 72 per cent of LMRs were not completed within seven days. However, 70 per cent of matters were completed by the due date nominated within ROCSID. It was identified that there is a lag between receipt of complaints and lodgement on ROCSID (which is usually the same date that the LMR is allocated to a station); 40 per cent of LMRs reviewed were registered and allocated six or more days after receipt.

- **Communication with complainants**: The VPM states that primary considerations in resolving an LMR include the outcome sought by the complainant and keeping all parties informed throughout the process. Although IBAC found that resolution officers had tried to contact complainants in most of the 50 matters, there were six LMRs where there was no evidence that efforts had been made to contact the complainant. It is essential that contact is made with complainants to clarify allegations and to attempt a resolution; failure to do so undermines the process.

Issues were also identified with the quality of correspondence sent to complainants. IBAC identified 16 files where the LMR was unresolved and the complainant did not appear satisfied with the process; in these matters, 14 of the outcome letters were considered not to provide adequate detail on why police actions were appropriate or justified. Of the 27 files where it appeared that the complainant was satisfied with the process and matters were resolved, the final letter was detailed and thorough in 24 files.

- **Communication with subject officers**: It was not always clear whether subject officers were aware of the outcome of the resolution; in a large majority of files (43 of the LMRs reviewed), correspondence to the subject officer was not documented on ROCSID, although some outcome letters to complainants indicated a discussion had taken place with the subject officer. IBAC is aware that guidance provided to resolution officers by PSC (via email) requests that a copy of the final outcome letter/email provided to the complainant and nominated employee is provided to PSC. The email notes ‘This is important and LMR will remain active until received’.

- **‘Correspondence file’ descriptor**: ‘Correspondence file’ was used as a complaint descriptor in 12 of the 50 files. Subject officers were identified in six of these 12 files, however, due to the use of the ‘correspondence file’ descriptor, the LMR was not recorded on the relevant subject officer’s complaint history. This has implications for probity checks (e.g. where it is appropriate that a promotions board has regard to an officer’s full complaint history) and for the classification of future complaints as it means Professional Standards Command is unable to accurately assess whether a matter should be classified as an LMR or MIM.

- **Complaint histories**: The LMR policy states that if an officer has received two LMRs in a 12 month period, a complaint concerning minor communication and customer service issues is to be classified as a MIM. IBAC’s review identified two instances where this did not occur. In a further five matters, it was considered that the subject officer’s complaint history was such that a MIM classification...
was more appropriate, i.e. because of a significant total number of complaints over the course of an officer’s career or because a similar allegation had been made against the officer in the recent past.

The following is an example of an officer with a problematic complaint history in relation to incivility. At the time of IBAC’s review one officer (a sergeant) was the subject of two LMRs within a 12 month period. Those matters related to aggressive behaviour and harassment. One complainant was 74 years of age when she was intercepted by the officer for exceeding the speed limit. While the complainant accepted the speeding offence, she stated contact with the officer left her ‘shaking and distressed’. When IBAC revisited this officer’s complaint history in April 2018, it showed he had been the subject of a further two LMRs within a 12 month period, one concerning incivility. The officer’s complaint history suggests he has ongoing behavioural issues which do not appear to have improved despite the LMR process.

- Distinguishing between LMRs and MIMs: IBAC considers the distinction between LMRs and MIMs as minimal as evidenced by an almost equal number of LMR/MIMs being identified as potential C2-1 matters. While the assessment of ‘performance management’ matters appears to be the differentiating aspect between the two forms of alternative dispute resolution, it would appear the lines can be confusing when it comes to classifying a matter.

IBAC has proposed to Victoria Police that it streamline its complaints classification system by consolidating the current categories of LMRs and MIMs to create a single category for minor customer service and performance management matters. This would be consistent with Victoria Police’s commitment to simplify its approach to the classification of complaints. This change would need to be supported by the development of clear policy parameters around matters suitable for classification and resolution at this level, including to enable more effective communication with complainants and subject officers.

In response, Victoria Police has noted that LMRs relate primarily to minor customer service matters, while MIMs relate to performance issues, and these matters are “distinctly different” in terms the processes and systems used to resolve them. However, Victoria Police has agreed to consider IBAC’s proposal as part of its work to streamline the complaint and discipline system.

IBAC also proposes that the current arrangement for Victoria Police to advise IBAC of LMRs and MIMs be formalised via legislative change to strengthen the notification requirements under the Victoria Police Act. This would require the amendment of sections 167(3) and 169 of the Victoria Police Act as well as section 57(2) of the Independent Broad-based Anti-corruption Commission Act 2011. It is appropriate that IBAC be notified of these matters to enable an assessment to determine what, if any, action will be taken pursuant to section 58 of the IBAC Act. IBAC may determine to investigate a matter or matters if serious or systemic issues are identified (for example, a pattern of matters concerning the alleged ‘failure to investigate’ a particular type of crime or in a particular location, or breaches of Charter rights). Victoria Police has not commented on this proposal.

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3 Correspondence from the Chief Commissioner of Victoria Police to IBAC’s Commissioner, 24 July 2018.
Appendix 11
Excerpt from Victorian Inspectorate Annual report 2014/15

5.6 Issue: IBAC and reasons for decisions

During the reporting period there was correspondence between the Inspectorate and IBAC regarding IBAC’s policy relating to not giving reasons to explain any given decision by it not to investigate a complaint. The correspondence arose out of a complaint made to the Inspectorate in September 2014. At that time, when IBAC determined not to investigate a complaint, IBAC used a standard form letter to advise the complainant of its decision. The substance of the letter was a single sentence, as follows:

‘After consideration of the information provided, IBAC has decided that your complaint does not warrant investigation.’

The standard letter also went on to inform the complainant that if he or she wished to discuss the decision, the complainant should contact IBAC; but a complainant who did so was told that IBAC’s policy was not to give reasons for its decisions.

The Inspectorate corresponded with IBAC about its policy of not giving reasons to complainants for its decisions. The IBAC Act does not require IBAC to give reasons for its decisions, except in certain specific circumstances. The Inspector stated that his purpose in writing was not to raise the question whether IBAC was obliged to give reasons, but whether as a matter of good practice IBAC ought to do so. He gave several reasons why it might be appropriate for IBAC to reconsider its policy of not giving reasons.

continued
• Other public bodies that receive complaints generally give reasons for their decisions whether legislatively required to do so or not.

• A complainant has a reasonable expectation that a decision not to investigate his or her complaint will be accompanied by an explanation.

• The failure of IBAC to give reasons is consistently mentioned as a grievance by persons complaining to the Inspectorate.

• Where a person whose complaint has been dismissed by IBAC complains about the dismissal to the Inspectorate, the task of the Inspectorate would be considerably assisted by the provision of a clearly articulated statement of reasons.

• Although considerable work is involved in analysing a complaint to identify the various possible grounds of complaint and then articulating the reasons for investigating it or not, that work must be done in any event by the Assessments and Review section of IBAC in order to determine the disposition of the complaint, so that little additional work would be required in order to give reasons to complainants.

• Although there might be very good grounds for not giving reasons in certain particular cases, such cases were rare.

IBAC explained its policy in the following manner:

• On many occasions specific reasons are in fact provided to complainants at the discretion of the assessment and review officer concerned.

• IBAC was conscious of not causing unnecessary distress to the complainant by stating, for example, that the complaint had been considered frivolous or vexatious.

• Providing specific reasons for declining to investigate a matter risked prompting further correspondence, and that the reasons themselves, if given as a matter of course, would at least in some cases inevitably become the subject of further appeal, either to IBAC or to the Inspectorate.

• IBAC’s categorisation of a complainant’s allegations did not always correspond with the complainant’s categorisation, and the differences might be difficult to explain to the complainant.

Its policy going forward would be to reflect two broad considerations:

(a) Not to provide reasons beyond those provided for in the legislation, unless on a case by case basis there were good grounds for doing so.

(b) To ensure that IBAC’s correspondence with complainants sensibly and sensitively explained the reasons for IBAC’s approach.

The Inspector considered IBAC’s response and replied to IBAC’s points as follows:

• It appeared that although IBAC officers had a discretion to provide specific reasons to a complainant on a case by case basis, the ‘default’ position remained that specific reasons would not be given.
• Any distress that might be caused to a complainant whose complaint had been considered insufficiently important to investigate could be mitigated by the use of appropriate wording; and in any event it might be seen as more important for a complainant to be told why the complaint was not being investigated than for specific reasons to be withheld out of a desire to avoid distressing the complainant. A complainant might well also be less distressed by being told that his or her complaint was not sufficiently important to investigate than by not being given any reason at all.

• Although the provision of reasons might provoke argument from the complainant, IBAC could simply inform a complainant that it had given its reasons and its decision was final. Of course, if the complainant raised matters that were genuinely new, then IBAC would be obliged to consider them.

• It is doubtful that giving specific reasons would materially increase the volume of complaints to the Inspectorate, and where the complainant had been given a clear statement of specific reasons the Inspectorate’s assessment of any complaint would in fact be easier.

The Inspectorate has included this matter in its Annual Report because it considers that it is a matter of some importance.

IBAC has responded to this section of this report as follows:

‘Under its legislation, IBAC is not normally required to give reasons for its decisions, and it was never the intention of Parliament that it should. This is acknowledged above.

‘In practice IBAC often does give reasons for its decisions, at its discretion. Where IBAC does not give reasons, this is as a result of a conscious decision usually based on operational considerations.’

Appendix 12
Comparison of staffing levels of the Office of Police Integrity and IBAC

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Byrne, Jonny and William Priestley, Police oversight mechanisms in the Council of Europe member states, Council of Europe, Strasbourg, 2017.

Criminal Justice Inspection Northern Ireland, An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland, Belfast, September 2011.


Houston, Cameron and Chris Vedelago, ‘Top cop resigns in disgrace over link to racist and obscene posts’, *The Age*, 26 February 2018.


IBAC, Audit of Victoria Police complaints handling systems at regional level—summary report, Melbourne, September 2016.

IBAC, Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016.


IBAC, Guidelines for making and handling protected disclosures, Melbourne, October 2016.

IBAC, Guidelines for protected disclosure welfare management, Melbourne, October 2016.

IBAC, IBAC and oversight of Victoria Police, Melbourne, 2016.

IBAC, Operation Ross: an investigation into police conduct in the Ballarat Police Service Area, Melbourne, November 2016.

IBAC, Special report concerning illicit drug use by Victoria Police officers, Melbourne, December 2016.


IBAC, Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018.


IBAC, Information for protected disclosure coordinators, Melbourne, 2018.

IBAC, What is a protected disclosure?, Melbourne, 2018.


IBAC, Thinking of reporting corruption or misconduct? You may have protections, Melbourne, 2018.


Kennedy, GA, *Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian police officer: interim report*, Western Australian Government Printer, Perth, December 2002.

Kennedy, GA, *Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian police officer: final report*, Western Australian Government Printer, Perth, 2004.


Leonard, William, and Bianca Fileborn, *Policing for same sex attracted and sex and gender diverse (SSASGD) young Victorians*, Monograph Series No 110 GLHV@ARCSHS, La Trobe University, Melbourne, 2018.


McKenzie, Nick, 'A violent crime, a brutal police response', The Age, 3 April 2018.

McKenzie, Nick, 'Drunk, disorderly—and slammed head-first into a cell door', The Age, 4 April 2018.

National Alternative Dispute Resolution Advisory Council, Dispute resolution terms: the use of terms in (alternative) dispute resolution, Attorney-General's Department (Cth), Canberra, 2003.

National Alternative Dispute Resolution Advisory Council, Your guide to dispute resolution, Attorney-General’s Department (Cth), Canberra, 2012.


Office of Police Integrity, A fair and effective Victoria Police discipline system, Melbourne, 2007.


Office for Public Integrity (South Australia), *Making a complaint against a police officer*, n.d.

Office for Public Integrity (South Australia), *New police complaints scheme*, September 2017.


Bibliography


Victoria Police, *Equality is not the same: Victoria Police response to community consultation and reviews on field contact policy and data collection and cross-cultural training*, Melbourne, 2013.


Bibliography


