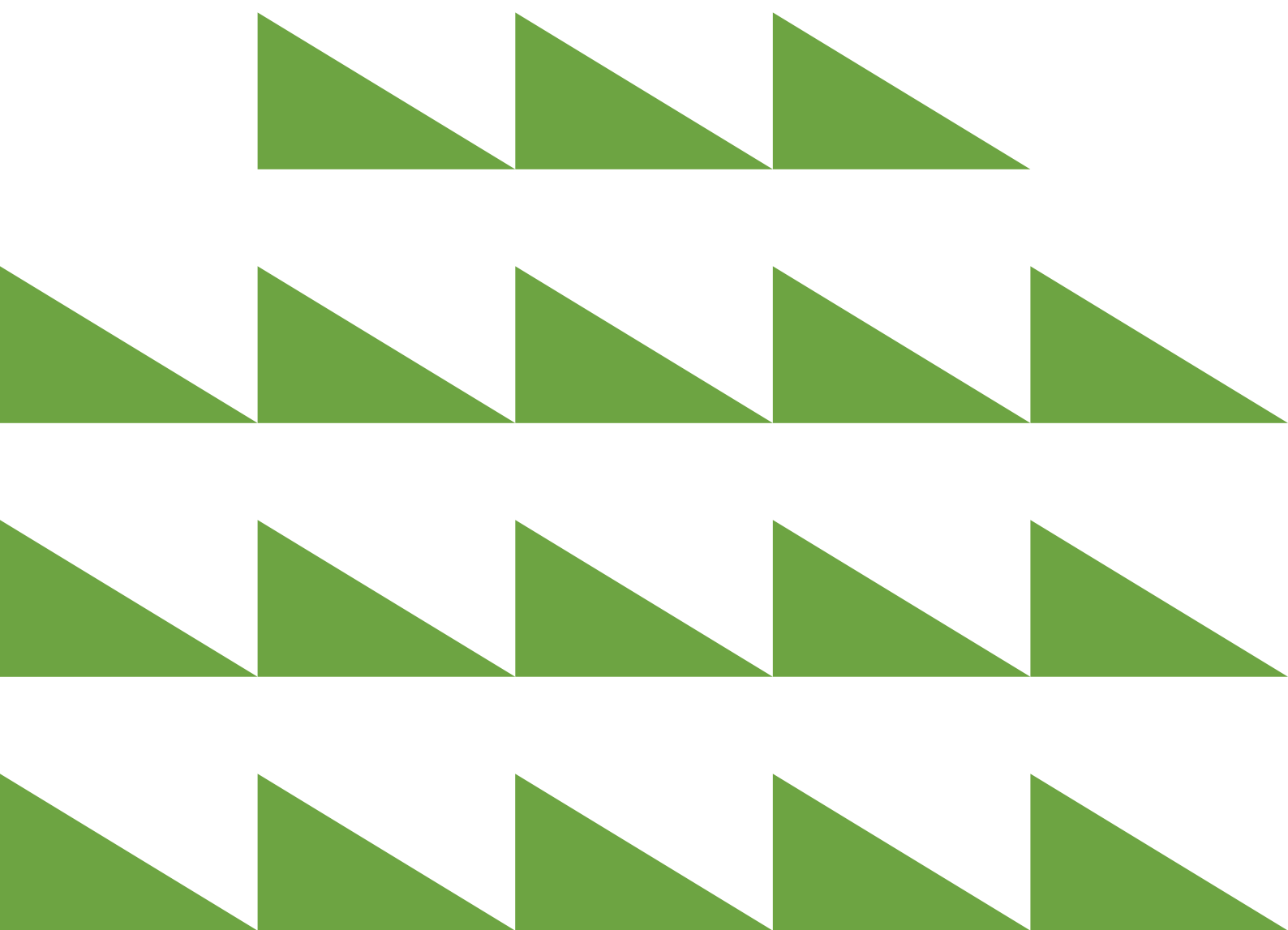


# Audit of complaints investigated by Professional Standards Command, Victoria Police

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June 2018



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## Definitions

Acronym/Term	Explanation
AC	Assistant Commissioner
ARM	Accountability and resource model
CCTV	Closed-circuit television
CMS	IBAC's case management system
DAU	Discipline Advisory Unit (Victoria Police)
DAT	Drug and alcohol test
DCN	Discipline charge notice
DHHS	Department of Health and Human Services
IBAC	Independent Broad-based Anti-corruption Commission
IMG	Integrity Management Guide
Interpose	Victoria Police investigation, intelligence and registry management system
LEAP	Law Enforcement Assistance Program (a Victoria Police database)
MOU	Memorandum of understanding
OMCG	Outlaw motor cycle gang
OPP	Office of Public Prosecutions
PCU	Police Conduct Unit
PDA	Victoria Police professional development and assessment plan
PSC	Professional Standards Command (Victoria Police)
PSO	Protective services officer
Reportable Offence	An offence referred to in Schedule 4 of the Victoria Police Act
ROCSID	Register of Complaints, Serious Incidents and Discipline (a Victoria Police database)
SOPs	Standard operating procedures
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VPM	Victoria Police Manual
VPMG	Victoria Police Manual Guideline
VPMP	Victoria Police Manual Policy

# 1 Overview

As part of our work to determine how effectively Victoria Police handles complaints against police officers, the Independent Broad-based Anti-corruption Commission (IBAC) audited a sample of investigations conducted by Professional Standards Command (PSC) during the 2015/16 financial year. This audit assessed whether PSC's complaint investigations were thorough and impartial and met the standards required for the handling of such serious allegations. IBAC identified that there are aspects of PSC's complaint handling processes that are concerning and require improvement.

The audit examined how effectively complaints involving more serious allegations of police misconduct or corruption concerning Victoria Police officers – warranting investigation by PSC – are investigated. IBAC audited 59 PSC investigations into a range of complaints about Victoria Police officers, including 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.

PSC is the central area within Victoria Police responsible for the organisation's ethical health and integrity. It does this through a range of activities, including the intake and triaging of complaints made about Victoria Police, complaint investigations, strategic research, and development of intelligence-based responses to probity issues.

All complaints involving Victoria Police officers are assessed by PSC and classified according to the type and seriousness of allegations made. The majority of complaints received by Victoria Police are then referred to the Victoria Police regions, departments or commands for investigation. Only a small proportion of complaints – those involving allegations of serious misconduct or corruption – are investigated by PSC.

As part of the audit, IBAC examined relevant Victoria Police policies and conducted data analysis case studies. IBAC has made recommendations for Victoria Police to improve the way in which PSC investigates complaints. In October 2017 Victoria Police accepted these recommendations in principle. In April 2018 IBAC finalised the recommendations in this report following further consultations. IBAC will now monitor how Victoria Police implements these recommendations.

In addition to auditing how Victoria Police handles complaints, IBAC's independent oversight of Victoria Police also includes reviews of selected matters investigated by Victoria Police, to highlight any concerns at the individual as well as the system-wide level. IBAC also undertakes a range of other independent oversight activities.

These independent audits help Victoria Police build capacity to prevent corrupt conduct and police misconduct by identifying areas of improvement around complaint handling. IBAC's audits also identify good practice that could be considered more broadly by Victoria Police. In doing so, these audits help build public confidence in the integrity of Victoria Police's processes and in IBAC's independent police oversight role.

## 1.1 Key findings

IBAC's audit was undertaken to identify how PSC investigates serious complaints about Victoria Police officers, including allegations of serious misconduct and corruption. The audit identified areas for improvement across the areas examined in the audit, which have informed this report's key findings and recommendations.

- *Poor management of conflicts of interest:* The vast majority of files audited (95 per cent) did not explicitly address potential or actual conflicts of interest between investigators and subject officers.
- *Failure to consistently consult with the Office of Public Prosecutions:* Auditors considered that Victoria Police did not consistently consult with the Office of Public Prosecutions in relation to reportable offences as required under section 127(2) of the *Victoria Police Act 2013*.
- *Inadequate recommended actions:* IBAC auditors disagreed with the action recommended by Victoria Police in 15 per cent of files. This included two matters where it appeared the Assistant Commissioner of PSC downgraded the recommended disciplinary action without clear reasons.
- *Probity concerns:* The audit also identified that some PSC investigators had complaint histories that raised issues of concern and could adversely affect confidence in the outcome of investigations and PSC's reputation.
- *Inappropriate file classification:* The way complaint files are classified by PSC determines how they are managed. Issues were identified with the way in which the work file classification (known as a C1-0 file) is used, which appears to extend well beyond its stated purpose of undertaking preliminary inquiries. This included the use of the work file classification for complaints that contained, for example, allegations which should have been classified as a criminality off-duty (C3-3 file) or corruption (C3-4 file). The practice of reclassifying a matter as a work file after an investigation has been completed on the basis that the file contained 'intelligence only', was also considered inappropriate.
- *Failure to recommend broader organisational improvements:* PSC investigators identified a range of possible policy and procedural improvements in 27 per cent of files. However, no files formally recommended 'action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures' as is recommended in the Victoria Police Manual. This is despite the fact that some of those recommendations made by police identify opportunities for broader application across the organisation.

### 1.2 Recommendations

Following IBAC's audit of complaints investigated by PSC, IBAC recommends that Victoria Police:

1. reviews the definition and use of the C1-0 work file classification, and formalises arrangements to notify IBAC of matters classified as work files<sup>1</sup>
2. considers the checks undertaken and criteria applied when recruiting new PSC investigators as part of its review of probity issues
3. ensures the Office of Public Prosecutions is consulted as soon as possible when Victoria Police forms a reasonable belief that a reportable offence has been committed, consistent with section 127(2) of the Victoria Police Act
4. ensures advice provided by the PSC Discipline Advisory Unit and reasons for key decisions, including those of the Assistant Commissioner PSC, are clearly documented and attached to the investigation file
5. ensures policy and procedural improvements identified by investigators are formally recorded as recommended action, and implements measures to share those learnings across the organisation.

IBAC also reiterates recommendations made in IBAC's *Audit of Victoria Police complaints handling systems at regional level* (2016) and *Audit of Victoria Police oversight files* (2018) in relation to:

- requiring investigation plans to be completed and attached to complaint files, noting that this is particularly relevant for the serious and complex matters that PSC primarily handles
- requiring that the official conflict of interest form is completed for all investigation files, noting that PSC's independence from other Victoria Police work areas does not negate the need to identify and manage an investigator's actual, potential and/or perceived conflict of interest in relation to a specific matter
- reviewing the system of determinations to reduce and simplify determination categories, to help ensure clarity for investigators, complainants and subject officers
- providing investigators with guidance and training on the Victorian Charter of Human Rights to assist in identifying human rights that have been engaged by a complaint or incident.

Victoria Police has accepted IBAC's recommendations and IBAC will monitor their implementation. IBAC acknowledges that Victoria Police is reviewing its complaint handling and discipline system as part of its response to the Victorian Equal Opportunity and Human Rights Commission *Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police*. It is understood that this review should address some of the issues identified in this audit.

IBAC also acknowledges that Victoria Police has recently taken steps to improve the identification and management of conflicts of interest in complaint investigations, including through the introduction of a new form. IBAC continues to liaise with Victoria Police to improve impartiality in its complaint handling processes.

<sup>1</sup> In September 2017 Victoria Police started notifying IBAC by automated email whenever a C1-0 work file is created. This process should ensure IBAC is notified of all work files.



### 1.3 Audit methodology

The audit scope included all files classified as work files (C1-0) or corruption complaints (C3-4) as well as any other files that included an allegation of assault investigated and closed by PSC during the 2015/16 financial year. These file classifications and allegation types were selected to form IBAC's sample in order to focus on the most serious complaints investigated by PSC. Broader issues relating to other complaint classifications have been highlighted in IBAC's 2016 *Audit of Victoria Police complaints handling systems* at regional level and were not considered to warrant further examination in relation to PSC at this time.

Of the 221 files closed by PSC in 2015/16, 64 files fit (29 per cent) this criteria. Of these 64 files, 59 were audited.<sup>2</sup> Hard copy files were audited and, where relevant, IBAC examined information stored on Victoria Police's Register of Complaints, Serious Incidents and Discipline (ROCSID) and Interpose, Victoria Police's investigation, intelligence and registry management system.

Figure 1 outlines the audited files by classification upon closure. Almost half of the sample were work files, a quarter were classified as corruption complaints files and the remainder (all involving assault allegations) were classified as complaints involving criminality not connected to duty, misconduct connected to duty or minor misconduct.

<sup>2</sup> The remaining five files were unavailable at the time of the audit due to legal or disciplinary proceedings.

**FIGURE 1: AUDITED FILES BY CLASSIFICATION ON CLOSURE**

File type	Classification	Number of files audited	Proportion of audit sample
<b>Work file</b> Allegations that need some preliminary inquiry and assessment by PSC before a full investigation can be conducted	C1-0	27	46%
<b>Minor misconduct</b> 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	C2-1	2	3%
<b>Misconduct connected to duty</b> 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	C3-2	7	12%
<b>Criminality not connected to duty</b> Includes off-duty conduct punishable by imprisonment, off-duty alcohol or drug offences, criminal associations, and summons to court for any traffic matter	C3-3	8	14%
<b>Corruption</b> 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	C3-4	15	25%
	<b>Total</b>	<b>59</b>	<b>100%</b>

Each file was examined against an audit tool to assess the adequacy of PSC's management of the complaint<sup>3</sup> covering five broad areas:

- *pre-investigation process* including the process of identifying allegations, classifying and allocating complaints, notifying IBAC, identifying subject officers, identifying conflicts of interest, and preparing investigation reports
- *investigation process* with a focus on identifying and contacting relevant parties and evidence
- *outcomes* of the investigation including any findings, recommendations, human rights considerations, how the investigation was supervised and reviewed, and how outcome advice was communicated to complainants and subject officers
- *timeliness* of the investigation process
- *record keeping*.

IBAC's Assessment and Review area reviews selected Victoria Police complaints based on similar criteria. Those reviews make specific recommendations to address issues that are identified in individual complaint investigations, some of which are handled by PSC. In comparison, this audit examines the adequacy of PSC's complaint investigations more broadly.

### 1.3.1 Consultations with Victoria Police

IBAC formally advised the Chief Commissioner of Victoria Police of its intention to conduct the audit. IBAC engaged with senior PSC officers to assist in determining the scope of the audit and ongoing assistance has been provided by PSC to provide access to files within the audit's scope. The draft key findings were provided to Victoria Police, with a full draft of the report provided to the Deputy Commissioner Capability to confirm factual accuracy.

### 1.3.2 Limitations

The sample drawn for this audit represents 27 per cent of the 221 files closed by PSC in 2015/16. The audit aimed to assess how the most serious complaints are handled by PSC. The sample was not drawn randomly and is not therefore representative of all file types investigated by PSC. Rather, the sample of 59 files includes all available C1-0 and C3-4 files and at least 10 per cent of the available C3-3, C3-2 and C2-1 files closed by PSC between 1 July 2015 and 30 June 2016 (selected on the basis that those files contained an 'assault' allegation).

Five IBAC officers undertook the auditing process. Controls were put in place to maximise consistency in the audit process. This included the use of guidance notes to provide context and clarification, and regular meetings of the audit team to discuss and resolve issues. However, it is acknowledged that the audit process relied upon the exercise of judgment by each audit officer.

<sup>3</sup> A copy of the audit tool is included as an appendix to this report.

## 2 Victoria Police Professional Standards Command

### 2.1 Introduction

Professional Standards Command is the central area within Victoria Police responsible for the organisation's ethical health and integrity. As at March 2018, PSC employed 200 full-time equivalent (FTE) staff and is comprised of five divisions:

- Conduct and Professional Standards Division
- Investigations Division
- Intelligence, Innovation and Risk Division
- Support Services Division
- Forensic Investigations Division.

The Police Conduct Unit (PCU) is located in the Conduct and Professional Standards Division, and receives and classifies all complaints about Victoria Police. The majority of complaints are referred to the regions, departments or commands for investigation.

A small proportion of complaints are investigated centrally by PSC's Investigations Division. The complaints investigated by PSC generally contain more serious allegations such as allegations of serious criminality, serious corruption, targeted or proactive investigations and serious breaches of Victoria Police discipline. The Division employs 54 investigators (FTE). During 2015/16, 243 files (11 per cent of all matters received by Victoria Police in the period) were retained by PSC for investigation and 211 files were closed by PSC.

#### IBAC'S VICTORIA POLICE OVERSIGHT ROLE

IBAC plays a vital role in providing independent oversight of Victoria Police. IBAC's role includes:

- receiving complaints and notifications about corrupt conduct and police personnel conduct (including complaints received by Victoria Police and mandatorily reported to IBAC)
- assessing those complaints and notifications to determine which will be referred to Victoria Police for action, which will be dismissed, and which will be investigated by IBAC
- 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 by IBAC to ensure those matters were handled appropriately and fairly
- oversighting deaths and serious injuries associated with police contact pursuant to a standing 'own motion'
- conducting 'own motion' investigations about police personnel conduct or corrupt conduct
- conducting private and public examinations to assist investigations into police personnel conduct and, in the case of public examinations, exposing systemic issues, encouraging people with relevant information to come forward and to serve as a deterrent to others
- ensuring police officers have regard to the Charter of Human Rights, including through reviews and audits of Victoria Police complaint investigations
- 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.

## 2.2 Legislation and policies relating to Victoria Police complaints and investigations

The *Victoria Police Act 2013* provides a legislative regime in relation to complaints about police.<sup>4</sup> Under the *Victoria Police Act*, Victoria Police is required to:

- give IBAC details in writing of:
  - a complaint about the misconduct of a police officer or protective services officer (PSO) as soon as practicable after a complaint is made
  - an investigation as soon as practicable after commencing an investigation into any alleged misconduct by a police officer or PSO<sup>5</sup>
- notify IBAC of:
  - a proposed attempt to resolve a complaint by conciliation
  - the results of any attempts to resolve a complaint by conciliation<sup>6</sup>
- report to IBAC in writing on the:
  - progress of an investigation, as often as requested by IBAC
  - results and any actions taken or proposed to be taken on completion of a complaint investigation.<sup>7</sup>

After IBAC receives a complaint investigation report from Victoria Police, IBAC may also request that the Chief Commissioner take action that IBAC considers appropriate. The Chief Commissioner can either take the action requested or explain why that action is not being taken.<sup>8</sup>

The decision to allocate a matter to PSC's Investigations Division is guided by the *Professional Standards Command Accountability and Resource Model* (PSC ARM).<sup>9</sup> Under the PSC ARM the Category 1 matters for which PSC has primacy are identified as:

- allegations of serious criminality involving Victoria Police employees
- allegations of serious corruption involving Victoria Police employees
- issues posing a significant reputational risk to Victoria Police
- oversight of deaths and serious injury to persons directly resulting from police-related incidents; including police custody, police operations, pursuits and critical incidents
- targeted or proactive investigations
- allegations relating to serious breaches of Victoria Police discipline
- other matters by direction of the Assistant Commissioner PSC.

Relevant Victoria Police policies and procedures are outlined in this report in relation to specific issues considered as part of IBAC's audit.

<sup>4</sup> *Victoria Police Act 2013*, Part 9 addresses complaints and investigations.

<sup>5</sup> *Victoria Police Act 2013*, s 169(2) and (3).

<sup>6</sup> *Victoria Police Act 2013*, s 170(2).

<sup>7</sup> *Victoria Police Act 2013*, s 170(1) and (3).

<sup>8</sup> *Independent Broad-based Anti-corruption Commission Act 2011*, ss 160 and 161.

<sup>9</sup> Victoria Police 2015, *Professional Standards Accountability and Resource Model 2015/2016*.

## 2 Victoria Police Professional Standards Command

The Victoria Police Manual (VPM) contains policy guidance governing the handling of complaints. The VPM is comprised of policies (VPMP), which set the mandatory minimum standards, and guidelines (VPMG), which support the interpretation and application of the policies. The Intelligence, Innovation and Risk Division within PSC is responsible for maintaining the professional and ethical standards component of the VPM.

PSC has developed an Integrity Management Guide (IMG) 'to assist police officers who are required to conduct investigations into allegations of criminality, unethical behaviour and misconduct involving members of Victoria Police personnel'.<sup>10</sup> While not a formal policy under the VPM, the terminology used in the IMG suggests that all complaint investigations should be conducted in a manner consistent with the IMG.

### 2.3 Previous IBAC audits

In September 2016 IBAC published an *Audit of Victoria Police complaints handling systems at regional level*. That report made recommendations in relation to Victoria Police complaint handling processes.

In March 2018 IBAC published an *Audit of Victoria Police's oversight of serious incidents*. That report made recommendations in relation to Victoria Police's oversight and investigation of serious incidents including deaths or serious injuries that followed contact with police.

Victoria Police has accepted all of the recommendations made in both these reports.

This audit of complaints investigated by PSC builds on the findings and recommendations made in the previous two audits, noting areas where this review suggests PSC could benefit from similar improvements and guidance.

<sup>10</sup> Victoria Police 2015, Integrity Management Guide, paragraph 1.

## 3 Findings from the PSC audit

IBAC's audit examined how PSC conducts investigations by considering five aspects of the complaint investigation process, namely:

- pre-investigation
- investigation
- outcomes
- timeliness
- record keeping.

The following sections outline relevant Victoria Police policies applying to each area, the data collected through the audit and, where appropriate, suggestions for improvements.

### 3.1 Pre-investigation process

#### 3.1.1 Key findings

Before a complaint investigation commences, it is necessary to accurately identify the key allegations and subject officers, classify the complaint, allocate the file to an investigator, formally consider any conflicts of interest from the outset and develop an investigation plan.

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.

Consideration of complaint histories was inconsistent across the files included in the audit. Of the 46 files that formally identified at least one subject officer in ROCSID, 19 files (41 per cent) contained copies of the subject officers' complaint histories, including 14 files that discussed those histories in some way. This is substantially higher than the five per cent of files that contained complaint histories in IBAC's 2016 regional complaints audit. Auditors identified a further four files in which there was no discussion or attachments to indicate that complaint histories had been considered, even though at least one subject officer had a complaint history relevant to the current complaint.

### 3 Findings from the PSC audit

Conflicts of interest were generally poorly addressed. Auditors only identified one file that attached an official conflict of interest form 1426 and a further two files that addressed conflicts of interest in other ways. While PSC may be physically removed from other areas of Victoria Police, its officers are not immune from potential conflicts of interest. Most, if not all, PSC investigators have previously worked elsewhere in Victoria Police and may have come into contact with officers who are the subject of a complaint in other ways. In terms of oversight, documentation is the primary way IBAC can assess the extent to which Victoria Police appropriately identifies and manages conflicts of interest. Such oversight is important to ensure public confidence in the impartiality of the Victoria Police complaint handling system.

The audit did not identify many matters where investigators had complaint histories relevant to the specific matter they were investigating. However some investigators had complaint histories that raised general probity concerns which PSC may wish to consider, to ensure its staff and practices are beyond reproach and have the confidence of complainants, subject officers and the general public.

Risks arising out of complaints were generally well identified and the audit considered that investigators took reasonable steps to apply formal or informal interim action where appropriate. While 51 of the complaint investigations audited by IBAC (86 per cent) were managed on Interpose and contained activity log details, auditors were only able to identify a formal investigation plan on 12 files (20 per cent). Formal complaint investigation plans are important for transparency, to document what investigators intended to do and explain any changes in the approach to the investigation. In particular, only two of the 10 files that had a criminal or disciplinary brief attached also had an investigation plan attached.

#### 3.1.2 Characterisation of allegations and classification

##### 3.1.2.1 Policy and practice

All complaints are received, processed and classified by the PCU according to the VPM.<sup>11</sup> Classification is important because it plays a role in determining what matters are retained by PSC, what matters are notified to IBAC, what allegations are recorded in a subject officer's complaint history in ROCSID, and the time frames that apply to the investigation.

Once classified, the PCU creates a file and enters preliminary details in ROCSID. In general, the responsible PCU sergeant determines whether a matter should be allocated to the regions or PSC for investigation with reference to the ARM. However, more complex matters may be referred to PSC superintendents for discussion or taken to the weekly Tasking and Coordination meeting to discuss allocation. For matters allocated to PSC, the file is sent to the Commander, Investigations Division. The file is then assigned to the relevant investigation unit manager for allocation to an investigator.

Specific allegations are not identified or highlighted by the PCU. Investigators are generally left to identify the allegations raised in the initial complaint and any additional allegations in the course of the investigation. Unlike regional investigators, PSC investigators have direct access to ROCSID and can enter details of the allegations directly into ROCSID.

<sup>11</sup> Victoria Police Manual Guidelines, Complaint management and investigations, section 1.1 and Victoria Police 2015, Integrity Management Guide, paragraph 222.



### 3.1.2.2 Analysis: allegations

The 59 files in the audit involved 118 allegations in ROCSID, the majority of which were characterised as malfeasance, assault or duty failure.<sup>12</sup>

Auditors disagreed with the characterisation of allegations in 30 files (51 per cent of the sample) because those files:

- understated the number of allegations in ROCSID and the file (21 files)
- characterised allegations poorly in the file (seven files)
- overstated the number of allegations in ROCSID (two files).

Some allegations may only become apparent in the course of an investigation. However, those that are clearly stated in a complaint or identified by the investigator from the outset, should be accurately listed and characterised to make sure they are investigated appropriately.

Examples of matters identified by IBAC's auditors that did not adequately identify allegations from the outset included:

- A file that listed one allegation of manhandling but failed to list allegations of property damage and human rights breaches. In that matter the complainant sought compensation for property damage during the execution of a search warrant, and alleged that female occupants were not allowed to 'cover up' at the time of entry, in accordance with their religious beliefs.
- A file that listed one allegation of criminal association but failed to list an allegation of unauthorised comment. In that matter the complainant raised concerns that a police officer was associating with outlaw motor cycle gang (OMCG) members, and made a public comment in relation to a police project on social media.
- A file that listed one allegation of duty failure but failed to list an allegation of improper conduct. In that matter the complainant raised concerns a police officer failed to submit a declarable association and may have been involved in illegal betting.

The audit also identified 13 matters where there were inconsistencies between the allegations recorded in ROCSID and the details recorded in the file. This included two thorough investigations that resulted in discipline charges that were not fully reflected in ROCSID. In one matter the police officer was served with a discipline charge notice (DCN) that listed one charge for disgraceful conduct in relation to six instances of sexual harassment. This was reflected in ROCSID as one allegation of 'Behaviour – Improper – Not specified'. In the other matter the police officer was served with a DCN that listed three charges for improper conduct in relation a declarable association, the purchase and sale of suspicious and stolen power tools, and secondary employment without approval. This was reflected in ROCSID as one allegation of 'Malfeasance – Receiving/handling – Stolen property'.

<sup>12</sup> Forty-six allegations (39 per cent) were characterised as malfeasance (including drug offences, criminal associations and pervert the course of justice allegations), 31 allegations (26 per cent) were characterised as assault (including 'serious' and 'minor' assaults) and 14 allegations (11 per cent) were characterised as duty failure.

### 3 Findings from the PSC audit

#### CASE STUDY 1

Complete and accurate data is essential to proactive identification of emerging patterns or issues, as highlighted in this case study.

An anonymous complaint raised three allegations involving officers from a particular division, adding that senior management repeatedly failed to act. The PSC investigator verified that the three incidents involved:

- a reckless driving incident in which officer A did a 'wheel stand' on his motorbike but was not booked by the intercepting officer, who also cancelled a request for assistance when he realised the rider was a police officer
- a separate speeding incident in which officer A submitted a statutory declaration that nominated an unnamed potential buyer as the rider of the motorbike
- a driving under the influence incident in which officer B was detected driving erratically and asked the intercepting officers not to conduct a breath test.

As a result, one allegation of 'pervert the course of justice' was recorded in ROCSID against each police officer in relation to their attempts to avoid the speeding fine and the breath test. However, the traffic offences themselves (reckless driving, speeding and drink driving) were not listed as allegations.

At the conclusion of the matter, the investigator also searched for 'traffic offences' in ROCSID, and identified eight traffic offence allegations that were relevant to the division over the previous three years. PSC concluded that this was not indicative of a high-risk driving culture within the division.

However, the value of the investigator's analysis is questionable. The fact that clear allegations of traffic offences raised in this complaint – namely, reckless driving, speeding and drink driving – were not recorded in ROCSID raises questions about the accuracy of the data more generally.

#### 3.1.2.3 Analysis: classification

Auditors disagreed with the initial classification of 16 complaints (27 per cent of the sample). Issues identified with classification involved the use of:

- work file (C1-0) or correspondence (C1-6) classifications for matters that raised clear allegations involving an identifiable subject officer from the outset (11 files)
- minor misconduct, misconduct connected to duty or corruption (C2-1, C3-2 or C3-4) classifications in circumstances where the chosen classification did not reflect the main allegation in the file (five files).

The C1-0 classification is officially a 'work file' classification,<sup>13</sup> which is used for 'allegations that require preliminary inquiry and assessment *before* a full investigation can be conducted'.<sup>14</sup> In the absence of further guidance to indicate what is required before a full investigation can be conducted, auditors took the view that there was no reason for a matter to remain a work file once clear allegations and subject officers could be identified.<sup>15</sup>

<sup>13</sup> VPMG, Complaint management and investigations, section 1.1.

<sup>14</sup> Victoria Police 2015, Integrity Management Guide, paragraph 222.

<sup>15</sup> The lack of an identifiable subject officer should not preclude an investigation; however, for the purpose of the audit these two criteria were used to identify matters that should have been classified as C2-1, C3-2, C3-3 or C3-4 complaints from the outset.

Auditors disagreed with 10 of the 27 files originally classified as work files in the sample (37 per cent) on the basis that the complaint contained clear allegations involving identifiable police officers. Of the 10 disputed work files:

- eight contained clear allegations of criminality not connected to duty involving identifiable police officers, suggesting a C3-3 classification would have been more appropriate<sup>16</sup>
- two contained clear allegations of corruption involving identifiable police officers, suggesting a C3-4 classification was appropriate.

Two files remained work files even after criminal interviews had been conducted, at which point it is arguable that the allegations had crystallised sufficiently to warrant reclassification. Auditors took the view that these two matters should have been reclassified as corruption (C3-4) and criminality not connected to duty (C3-3) complaints respectively.

## CASE STUDY 2

A detective made a complaint to PSC after a police officer was named by two suspects in an espionage investigation. One suspect allegedly told the detective that the police officer gave him advice on how to avoid a charge. The second suspect mentioned the police officer's name at trial, stating that he had visited the subject officer's house.

Despite allegations that the police officer attempted to pervert the course of justice and was associating with criminals, no allegations were listed in the investigation report, which stated that the work file involved an intelligence probe only.

The file was ultimately closed as a work file with a determination of 'for intelligence purposes' in ROCSID in relation to one allegation of 'malfeasance – criminal association'. However, 'criminal association' is explicitly identified in the IMG as an allegation that warrants classification as a complaint of criminality not connected to duty.

Moreover, based on this evidence, auditors considered that a determination of 'unable to determine' would be more appropriate to reflect that 'the available evidence does not permit the investigating officer to establish whether the complaint is true or not'. An intelligence report outlining the investigator's concerns could also have been submitted, if the investigator thought it warranted.

<sup>16</sup> Allegations identified in those files included criminal associations, assault off duty, and drug use or possession involving identifiable police officers.

## 3 Findings from the PSC audit

### 3.1.2.4 Analysis: reclassification

Of the 59 files in the sample 10 were reclassified. This included six complaints that were upgraded to a corruption or criminality classification<sup>17</sup> and four files that were downgraded to a work file.<sup>18</sup>

The PSC Conduct and Professional Standards Division Standard Operating Procedures (SOPs) state a complaint should not be reclassified unless an investigation reveals a different allegation or the allegation has been changed by the complainant.<sup>19</sup>

IBAC's auditors disagreed with the reclassification of five complaints. This included:

- one work file that was reclassified as a corruption complaint (C3-4) on closure, but warranted classification as a complaint of criminality not connected to duty (C3-3), for allegations of drug possession and misuse of ammunition
- two corruption complaints (C3-4) and one minor misconduct complaint (C2-1) that were reclassified as work files on closure on the basis they contained 'intel only'
- one complaint of criminality not connected to duty (C3-3) that was reclassified as a work file on closure on the basis that PSC wished to retain the allegation 'for intelligence' without alerting the subject officer to the complaint.

If Victoria Police concludes that an allegation cannot be proven based on the available information, but suspects that there may be some substance to the allegation, a valid determination (such as 'unable to determine') should be made. The investigator could then recommend that the information be considered for intelligence purposes (with restrictions placed on the file where necessary) rather than reclassifying the complaint as a work file that contains 'intel only'.

Once allegations have been identified that warrant classifying the matter as a notifiable complaint, it is not clear why it would ever be appropriate to later reclassify the complaint as a work file. One of the risks in allowing files to be reclassified as work files on closure is that they can be closed prematurely.

#### CASE STUDY 3

An allegation of criminal association involving a police officer was determined to be unfounded, as the investigation was unable to confirm that the officer's associate had a criminal history or identify intelligence to suggest involvement in criminal activity.

Auditors disagreed with the decision to reclassify the C3-3 file as a C1-0, noting that this conflicts directly with the instructions in PSC's SOPs which state that 'if a matter was originally a C3-2 matter but was unfounded or untrue, the matter still remains a C3-2 and should be finalised accordingly'.<sup>20</sup>

<sup>17</sup> Originally classified as work files, correspondence or management intervention files.

<sup>18</sup> Originally classified as minor misconduct, criminality or corruption.

<sup>19</sup> PSC Conduct and Professional Standards Division SOPs 2014, Version 14, section 25.

<sup>20</sup> PSC Conduct and Professional Standards Division SOPs 2014, Version 14, section 25.

## CASE STUDY 4

The following is an example of a complaint that was closed prematurely without investigating the identified allegation, namely, whether the police officer had a declarable association.

A complaint was generated when a former Victoria Police officer (dismissed following a criminal conviction for drug related offences) was found to be living with a relative (the subject officer) temporarily while he completed landscaping work for them.

After conducting preliminary enquiries, PSC concluded the matter did not require investigation and could be filed as intelligence on the basis that the former officer normally resided interstate.

The VPM states that a declarable association includes any association that 'may reflect adversely on the employee's standing and reputation in the eyes of the community as a Victoria Police employee'.<sup>21</sup> The policy does not state that associations are limited to those that involve close physical proximity.

It is not clear why PSC closed the file without investigating the extent of the association.

Auditors agreed that preliminary enquiries were warranted to clarify the allegations in relation to 17 complaints that were initially classified as work files. Two of those matters were subsequently reclassified as criminality not connected to duty or corruption complaints (C3-3 and C3-4). However, auditors also considered that the nature of the allegations (which are recorded in ROCSID) were clarified in a further 14 work files that were not reclassified. Auditors considered it reasonable to finalise one matter as a C1-0 file on the basis that preliminary enquiries confirmed the complaint involved a case of mistaken identity.

## 3.1.3 IBAC notification

### 3.1.3.1 Policy and practice

Victoria Police is obliged to notify IBAC of complaints received about corrupt conduct or police personnel misconduct by a Victoria Police employee or police recruit.<sup>22</sup> In practice, an automated email is sent to IBAC by Victoria Police when a file is classified as a notifiable C2-1, C3-2, C3-3 or C3-4 complaint. Until recently, that notification did not include C1-0 files as they are not considered complaints. However, from September 2017 Victoria Police started notifying IBAC of these files.

### 3.1.3.2 Analysis: IBAC notification

The audit only identified one instance where Victoria Police failed to advise IBAC of a notifiable complaint. That complaint (discussed in case study 5) was one of the four work files reclassified by PSC – all of which were reclassified as complaints of corruption (C3-4) or criminality not connected to duty (C3-3) – involving allegations of a serious nature.

## CASE STUDY 5

In the following matter, a work file was not reclassified as a criminality complaint (C3-3) until after the PSC investigation was completed, despite identifying possible criminal charges. As a result, PSC also failed to notify IBAC of the complaint.

In the course of preparing criminal charges against a subject officer for obscene exposure, PSC identified a separate sexual harassment issue, created a separate work file and undertook preliminary enquiries to identify relevant victims and complainants.

The matter was thoroughly investigated by PSC and ultimately identified six instances of sexual harassment which resulted in the approval of a DCN by the Assistant Commissioner PSC. While PSC reclassified the file on closure (837 days after the complaint was initiated), the matter was never notified to IBAC.

<sup>21</sup> Victoria Police Manual Policy, Conflicts of interest, section 5 and VPMG, Declarable associations, section 2.

<sup>22</sup> *Victoria Police Act 2013*, s 169(2) and (3) in relation to misconduct and the *Independent Broad-based Anti-corruption Commission Act 2011*, s 57(2) and (3) in relation to corrupt conduct or police personnel misconduct.

### 3 Findings from the PSC audit

Three work files were ultimately notified to IBAC following reclassification as corruption complaints (C3-4). This did not occur until:

- three hundred and thirty-five days after receipt, and, 124 days after the investigator's report was marked as completed in ROCSID
- seven hundred and thirty days after receipt, at which point the investigator's report was marked as completed in ROCSID
- fifty-six days after receipt, at which point the investigator's report was marked as completed in ROCSID.

In circumstances where IBAC is not notified until after completion of PSC's investigation, IBAC's ability to effectively oversight these matters is severely limited. This was also noted in IBAC's 2016 audit of how Victoria Police handles complaints at the regional level. If IBAC is not notified of complaints, this has the potential to limit IBAC's capacity to oversight PSC files, monitor trends in complaints against police and identify Victoria Police officers attracting disproportionately high numbers of complaints.

All of the work files in the audit contained serious allegations. Descriptions of these allegations recorded in ROCSID included 'sexual offence – rape', 'receiving/handing – stolen goods', 'threats to kill', 'interference in investigation', 'information misuse', 'drug use', 'assault' and 'criminal associations'. These types of allegations warrant notification to IBAC. It is anticipated that the new procedure of notifying work files will allow IBAC to independently consider those allegations in a timely manner.

Of the 23 work files that were not reclassified, auditors disagreed with the initial work file classification of eight files. Auditors also took the view that all but one of the 15 files that reasonably involved preliminary enquiries ultimately warranted reclassification and notification as complaints involving misconduct connected to duty, criminality not connected to duty or corruption (C3-2, C3-3 or C3-4 matters), an example of which is discussed in case study 6.

#### CASE STUDY 6

Despite raising clear allegations of a serious nature, the following matter was classified as a work file and was never notified to IBAC.

While in custody at a New South Wales police station, a complainant alleged that a named Victoria Police officer made threats to kill, used drugs and attempted to pervert the course of justice. A USB containing photos of text messages allegedly sent by the police officer was later left at the same police station.

This complaint was classified as a work file. PSC's enquiries included interviews with two complainants and three civilian witnesses, execution of a search warrant on the subject officer's home, seizure of mobile phones and analysis of call charge records, a targeted drug test and a criminal interview of the subject officer.

While the matter may have required preliminary enquiries to clarify the allegations, the complaint ultimately warranted reclassification. A total of seven allegations were listed on the file including 'assault (serious) – striking – fist', 'malfeasance – threats to kill' and multiple allegations of 'malfeasance – pervert justice – interference in investigation'. According to the IMG, these allegations clearly warrant classification as a corruption complaint (C3-4).

The file was closed as a work file after 500 days, with four allegations marked as 'unable to determine' and three as 'unfounded'.

The seriousness of the allegations, extent of the enquiries conducted and definitiveness of the 'unfounded' determinations suggest that in practice, this work file proceeded to a full investigation. However, IBAC only became aware of this complaint as a result of the audit.

These matters suggest that the work file classification should be reviewed to ensure that:

- the scope of the work file classification is well defined, and has short time frames, to reflect the preliminary nature of those enquiries
- work files are reclassified, notified to IBAC and progress to 'a full investigation' in a timely manner, occurring as soon as notifiable complaint allegations are identified (ie not upon closure of the matter).

It is understood that Victoria Police's review of the complaints and discipline process (arising out of the Victorian Equal Opportunity and Human Rights Commission review into sex discrimination and sexual harassment in Victoria Police) may result in changes to the classification process, including the possible removal of the work file (C1-0) classification.

### **3.1.4 Identification of police officers who are the subject of the complaint**

#### **3.1.4.1 Policy and practice**

ROCSID categorises an officer's involvement in a complaint in two ways:

- 'member involved' refers to an officer who is the subject of a complaint or a performance issue
- 'person involved member' refers to an officer involved in an incident but where there is no complaint or apparent performance issue about that officer.

At present Victoria Police does not have a formal policy to determine when complaint histories should be considered. However, in response to recommendations IBAC made in its 2016 audit of Victoria Police's complaint handling at the regional level, PSC advised that complaint histories for 'members involved' are now attached to all complaint files forwarded to investigators. This issue was also identified in IBAC's Operation Ross which investigated incidents involving alleged excessive use of force by some Victoria Police officers at the Ballarat police station.<sup>23</sup> In addition, IBAC is advised that PSC is currently undertaking a broader review of probity issues which may provide further clarity in relation to how complaint history information is considered by investigators.<sup>24</sup>

Unlike complaint investigators in regions and departments, all PSC investigators have direct access to ROCSID, allowing them to check histories directly. As such, all PSC investigation reports should include commentary on the investigator's consideration of the officers' complaint histories.

#### **3.1.4.2 Analysis: identification of officers who are the subject of the complaint**

Of the 59 files audited, 46 files (78 per cent) formally identified at least one 'member involved' in ROCSID, while 13 files (22 per cent) did not identify any subject officers.

Auditors disagreed with the police officers identified as the subject of the complaint in 14 files (24 per cent). Reasons for disagreeing fell into three main categories, namely failure to:

- list all identified members involved in ROCSID (seven files)
- correctly identify members involved in the investigation report or ROCSID (two files)
- pursue available lines of inquiry to identify relevant subject officers in matters where no subject officers were listed in the investigation or ROCSID (five files).

<sup>23</sup> IBAC, *Operation Ross: An investigation into police conduct in the Ballarat Police Service Area*, November 2016.

<sup>24</sup> PSC has advised that following IBAC's *Operation Ross*, Victoria Police is reviewing probity issues including the provision of complaint histories to inform complaint investigations.

### 3 Findings from the PSC audit

Failure to list identifiable subject officers can result in allegations not being properly investigated, as highlighted in case study 7.

#### CASE STUDY 7

A complaint alleged that an officer was detected riding his motorbike recklessly, noting that 'senior management were aware of the incident but did not take any action' because they 'do not want the intercepting sergeant to be charged for failing to charge [the rider] and giving false information to communications'.

The investigation report contained details of the intercepting sergeant's:

- call to police communications in which he reports that he 'lost sight of the vehicle'
- running sheet which states he 'obs[erved] MC on rear wheel exiting [street]. Attempted to int[ercept] solo lost sight of same whilst requesting assist'.

In a statement, the sergeant stated 'the rider observed the police vehicle and immediately indicated... I then cancelled the [request for assistance] as I identified the rider to be [the subject officer]'.

Despite confirming that the sergeant did not lose sight of the vehicle as recorded in his running sheet, but stopped and spoke to the rider, only the officer riding the motorbike was recorded as a subject officer. PSC did not investigate the sergeant's alleged false report, or make any enquiries in relation to senior management's knowledge of the incident, ignoring significant issues raised in the complaint.

While it is not always possible to identify the relevant police officers, investigators should take reasonable steps to pursue available lines of inquiry. The following case study provides an example of a matter in which extensive efforts were made by the investigator to identify relevant subject officers.

#### CASE STUDY 8

Victoria Police received an historic allegation of rape dating back 17 years involving an unidentified subject officer. In an attempt to identify the subject officer the PSC investigator:

- reviewed the victim's medical records to narrow down the time frame for the offence
- audited LEAP to identify any Victoria Police officers who had contact with the complainant during the relevant period
- analysed rosters and details of officers who worked at the relevant police station
- approached people nominated by the complainant as having possible knowledge of the offence, including a former landlord and a friend, who were unable to assist.

Based on the available information, the investigator compiled photo boards of possible suspects as they would have appeared at the time of the incident. Those photos were presented to the complainant who identified one picture, noting that he 'looks similar to the person that came around'. While the investigation was not able to positively identify the offender, auditors considered that the investigation was thorough and exhausted all available avenues of inquiry.



### 3.1.4.3 Analysis: complaint histories of officers who are the subject of the complaint

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.

Of the 46 files that formally identified at least one subject officer in ROCSID, 19 files (41 per cent) contained copies of the subject officers' 'full employee history report – complaints and compliments' (complaint history report), including 14 files that also discussed those histories in some way.<sup>25</sup> A further 12 files discussed subject officers' complaint histories but did not attach a copy.

Auditors also reviewed the complaint histories of all identified subject officers to consider whether the complaint history was relevant to the current investigation. Complaint histories were considered relevant if the subject officer had a significant number of complaints, similar allegations in the recent past, or another complaint that was being investigated at the same time.

The audit considered that 17 files involved at least one subject officer whose complaint history was relevant to the current investigation. This included files where a subject officer's complaint history included:

- 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).

In four of these 17 files, auditors were not able to identify notes or other evidence on the file to indicate that complaint histories had been considered. While IBAC understands that all PSC investigators have access to ROCSID, it is not possible to say whether the history of a subject officer has been considered if it is not discussed in any way or attached to the file.

### CASE STUDY 9

A complaint alleged that a police officer was involved in two assaults that involved:

- hitting a 16 year old in the head during arrest, and
- spraying a woman with capsicum foam to bring about compliance during an eviction.

A review of the subject officer's complaint history indicated he received 11 complaints in the previous three and a half years, including the following matters in which:

- a complainant alleged he was pushed to the ground by the subject officer during arrest, causing him to graze his left eyebrow and right cheek
- a complainant alleged he was pursued on foot by police, including the subject officer, during which he 'fell and struck his head on the ground as he was being apprehended'
- one of the subject officer's children alleged that he 'occasionally kicks them when he gets mad'
- a complainant alleged that he was restrained while a police dog bit him, following which the subject officer allegedly knelt on his ankle near the dog bite and 'laughed that they were going to have to amputate his leg'
- a complainant alleged that police, including the subject officer, pushed her shoulder aggravating an existing injury before handcuffing her and 'shoving her in a divisional van'.

At the time of the audit, the subject officer had recently been promoted to sergeant and accrued a further assault allegation made by a treating counsellor in relation to an allegation made by another child of the subject officer.

While none of allegations listed above were substantiated, the officer's complaint history should have been considered in its entirety, rather than processing each new complaint in isolation.

<sup>25</sup> References to complaint history reports for subject officers relate to ROCSID report EHR01S, 'Full Employee History Report – Complaints and Compliments'.

### 3 Findings from the PSC audit

Complaint histories can also help identify welfare issues and opportunities for early intervention. For instance, one file raised concerns about an officer driving under the influence of alcohol. That officer had been admonished for improper behaviour while intoxicated 18 months earlier. Considered together, these two matters may suggest a pattern of alcohol misuse warranting consideration of welfare measures to support the police officer. However, the earlier matter was not discussed in the file.

#### 3.1.5 Conflict of interest

##### 3.1.5.1 Policy and practice

Prior association with a subject officer does not necessarily preclude an investigator from handling a matter, however 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.

The VPM complaints and discipline policy requires investigators to be aware of impartiality issues and provides guidance around how to respond to conflicts of interest.<sup>26</sup>

Investigators are required to complete a conflict of interest form (form 1426) before commencing an investigation. That form contains four key questions that prompt the investigator to consider whether they currently or previously worked, socialised, trained or worked at the same location as any of the identified people in the investigation. Once the investigator has answered those questions, form 1426 must be approved by the investigator's supervisor who is required to develop a conflict management plan if needed.

The majority of PSC investigations involve situations where the investigator is attached to another unit and is not, therefore, a current colleague of the officer who is the subject of the complaint. However, most if not all PSC investigators have worked in other areas of Victoria Police. As such, they will come across matters involving officers with whom they have trained, worked and socialised. Those associations may not actually cause an investigator to be biased, however there is a risk that a failure to consider any real or perceived conflicts could compromise an investigation and undermine PSC's standing as an independent complaint investigation unit within Victoria Police.

<sup>26</sup> VPMP, Complaints and discipline, section 6.2.

As a result of a recommendation IBAC made in its 2016 audit of Victoria Police's complaint handling at the regional level, Victoria Police advised IBAC that a blank conflict of interest document is now attached to all hard-copy files or uploaded onto Interpose for complaint investigations.

IBAC continues to liaise with Victoria Police on this issue, emphasising the important role rigorous conflict of interest processes play in demonstrating impartiality in complaint investigations.

In response to concerns raised by IBAC, Victoria Police has taken a number of steps to improve its management of conflict of interest issues in complaint investigations, including the introduction of a revised conflict of interest form and requiring all Assistant Commissioners and Department Heads to lead a discussion with leadership teams in relation to addressing conflicts of interest in complaint investigations.

### 3.1.5.2 Analysis: failure to consider conflicts of interest

In 56 of the 59 files (95 per cent) 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. That file contained two conflict of interest forms: one completed by the initial investigator who noted that he supervised the subject officer for two years (resulting in the file being reallocated), and one completed by the investigator who completed the matter, and who noted that he did not have any conflicts.

Auditors identified two other files that addressed conflicts of interest but not via the formal process. In one complaint the subject officer was a PSC investigator. While not formally documented using form 1426, various emails and other notes on the file suggest that the file was allocated to an officer in the PCU who was considered to be sufficiently removed from Investigations Division. The other file involved a conflict of interest at the point of issuing workplace guidance: the subject officer's senior sergeant noted he was present at one incident discussed in the complaint and therefore requested that another officer provide the subject officer with workplace guidance.

It appears PSC investigators may not be completing form 1426 because they consider their independence is guaranteed by virtue of working at PSC. This is not the case.

### 3.1.5.3 Analysis: seniority of PSC investigators relative to the subject officer

IBAC's 2016 audit of complaint handling at the regional level noted the importance of ensuring that investigators are of a more senior rank to subject officers. This is to avoid actual or perceived conflicts of interest, as well as practical issues associated with investigators questioning or recommending sanctions against their peers or more senior officers. This is equally true of PSC investigators.

Of the 46 files that formally identified at least one subject officer, 11 files (24 per cent) were investigated by an officer who was not of an appropriately higher rank than at least some of the subject officers. Specifically:

- two complaints were investigated by an officer of a lower rank than some of the subject officers they were investigating
- nine complaints were investigated by an officer of the same rank as some of the subject officers they were investigating.

### 3 Findings from the PSC audit

Most files did not contain notes detailing the strategies employed by PSC to mitigate an investigator's lack of seniority. However, in one complaint involving an inspector, the investigating sergeant's inspector attended the discipline interview as the corroborator because of the subject officer's rank. At the end of the interview the corroborator advised the subject officer that the outcome of the investigation is 'not a decision... I can make [and that] any investigations that deal with inspectors [go to the] superintendent and/or the assistant commissioner [because] it wouldn't be right for me to be sitting here judging or deciding what should happen to a fellow inspector'. While this matter indicates that the investigators were aware of the need to involve a more senior officer, the fact that the senior officer was still only of equal rank as the subject officer suggests it may be difficult to engage suitably senior investigators when subject officers are highly ranked.

PSC advised IBAC that most of its investigators are now detective sergeants or more senior, to avoid difficulties associated with senior constables investigating more senior officers, and to address concerns raised in a 2012 internal review which identified issues with the quality of investigations conducted by detective senior constables.

#### 3.1.5.4 Analysis: complaint histories of investigators

Officers who undertake investigations should be of excellent character and not have a history of complaints that would raise concerns about their impartiality or ability to investigate a complaint.

The audit identified only one file where the investigator's complaint history suggested a pattern of issues relevant to the file they were investigating. In that matter, a complaint involving an allegation of off-duty assault was allocated to an investigator who had three allegations of assault recorded in his complaint history (although none were substantiated). In these circumstances, it may have been prudent to reallocate the file. That is not to suggest that the investigator's complaint history adversely affected his investigation of this file. While the investigation failed to discuss a prior assault in the subject officer's complaint history, the investigator ultimately recommended disciplinary action.

The 59 files audited were investigated by 33 different investigators attached to PSC. While not relevant to any particular file investigated, auditors identified three PSC investigators with complaint histories that raised general probity issues, including:

- a sergeant who had two proven discipline charges (albeit from 1998 and 2007)
- a sergeant who was the subject of a rape allegation in 2009 (which was withdrawn) and two substantiated determinations, including one for indecent sexual behaviour with a junior officer in a public place, which resulted in a proven discipline charge
- a sergeant who had a proven discipline charge (from 2009) and a recent substantiated determination for predatory behaviour (from 2016).

Given PSC's role investigating the conduct of Victoria Police officers, its investigators should be of excellent character to ensure that complainants, subject officers and others have confidence in the process. IBAC is advised that PSC is currently undertaking a general review of probity. As part of that review, it would be prudent for PSC to consider its own recruitment processes – including the checks undertaken and criteria applied when recruiting new investigators to PSC – to ensure that PSC employs staff of the highest integrity.

### 3.1.6 Investigation planning

#### 3.1.6.1 Policy and practice

IBAC's 2016 audit of complaint handling at the regional level recommended that Victoria Police require investigation plans, investigation logs and final checklists to be completed and attached to complaint investigation files. During 2017, Victoria Police rolled out the use of an electronic investigation and intelligence registry management system, known as Interpose, to manage complaint investigations. Interpose allows supervisors to make better use of investigation plans and actively scrutinise the progress of an investigation.

PSC investigators have been required to manage their complaint investigations on Interpose since 2006. The IMG states that PSC investigators must maintain an Interpose log detailing the status and progress of a criminal investigation and use ROCSID for monthly reporting purposes.<sup>27</sup> The IMG notes that 'time spent on planning is never wasted and every aspect of the investigation must be carefully considered in the first instance' and states that 'a detailed investigation plan should be prepared and submitted to the relevant manager for approval of all investigations'.<sup>28</sup>

While these requirements only appear to apply to criminal investigations, it would be prudent to prepare a plan for all of the serious and complex matters that make up most of PSC's investigations. This would ensure an investigation addresses all relevant elements of a complaint, and explain action taken or not taken.

#### 3.1.6.2 Analysis: issues with investigation planning

PSC retains the most serious and complex matters for investigation. However, only 20 per cent of the files audited contained a formal investigation plan.

For the purpose of this audit, a formal investigation plan was considered to include any documents or information on the file that could be interpreted as formal pre-planning for the investigation. On this basis, 12 files were considered to contain a formal investigation plan. This included files that contained:

- detailed plans that identified possible lines of inquiry, investigation strategies, resource requirements, persons of interest and risks (five files)
- very basic information entered into the Interpose planning tab – for instance, one file did not identify any strategies or lines of inquiry beyond stating that it was an intelligence probe; another only identified one objective and one strategy (five files)
- information that clearly guided the investigation, such as contact lists, avenues of inquiry and results, but were not characterised or signed off by a manager as a formal investigation plan (two files).

Interpose also has the capacity to log avenues of enquiry pursued by an investigator (such as contact made with subject officers, complainants and witnesses). Of the 59 files audited, 50 (85 per cent) were managed on Interpose, all of which logged activities to varying extents. While this is useful as a means of reviewing actions taken, investigation plans should still be developed at the start of an investigation and amended as the matter proceeds.

The audit also considered whether any criminal or disciplinary briefs were attached to the file (regardless of whether charges were pursued). Auditors were only able to identify investigation plans for two of the 10 files that contained a criminal or disciplinary brief.

<sup>27</sup> Victoria Police 2015, Integrity Management Guide, paragraph 73.

<sup>28</sup> Victoria Police 2015, Integrity Management Guide, paragraph 75 and 79. The section on 'Managing investigations' discusses investigation management generally and even notes at one point that managers should assess the probable outcome, namely whether criminal or disciplinary charges are contemplated, however the entire section appears under a heading 'Criminal investigations', suggesting that these requirements are limited to those investigations.

## 3 Findings from the PSC audit

While it is possible that investigation plans were prepared but saved elsewhere by the investigator, plans should be saved in Interpose or placed on the file and reviewed regularly. This would ensure the investigation is on track and help to provide a transparent record of the intended lines of enquiry for the more serious and complex matters handled by PSC.

### 3.1.7 Risk management

#### 3.1.7.1 Policy and practice

Part 7 of the Victoria Police Act states that an officer can be transferred, directed to take leave, or suspended with or without pay if:

- the officer has been charged with a breach of discipline or an offence punishable by imprisonment; or
- Victoria Police reasonably believes that the officer has committed a breach of discipline, or an offence punishable by imprisonment.<sup>29</sup>

These formal interim measures only apply where criminal or disciplinary charges are contemplated. The Victoria Police intranet notes that while these interim action options are available, suspension should only be considered if the workplace risk cannot be mitigated. That guidance also notes that 'risk assessment must be completed for each (interim action) application and/or if circumstances change. Risk assessment considers risk to all employees, including subject employees, investigation integrity, reputation and/or community confidence in Victoria Police'.

More serious, complex matters are more likely to give rise to a range of risks while potentially taking longer to investigate. IBAC's audit therefore considered whether more general risk assessments were conducted in PSC investigations to identify issues that warranted immediate action (before completion of the investigation).

#### 3.1.7.2 Analysis: risk management

IBAC's audit found that where a complaint gave rise to immediate risks that warranted action before completion of the complaint investigation, PSC investigators generally took appropriate action. Sixteen files (27 per cent) were identified as involving risks that required interim action.

Action taken by investigators included:

- formal interim action in relation to eight subject officers (six files)
- informal interim action in relation to 10 subject officers (10 files).

Formal interim action recorded in ROCSID included:

- suspension with and without pay in relation to four subject officers
- transfer in relation to six officers.<sup>30</sup>

Informal interim action included:

- revocation of an officer's ROCSID access in response to an allegation of inappropriately accessing and releasing information about complaints
- liaison with mental health services about a complainant's welfare before seeking a formal statement to progress a complaint
- liaison with the Department of Health and Human Services (DHHS) about possible immediate risks concerning young people.

Interim action was not taken by Victoria Police in relation to identified risks in one matter involving allegations of sexual harassment because the subject officer was already suspended with pay for a separate complaint.

<sup>29</sup> Victoria Police Act ss 126, 127 and 135.

<sup>30</sup> Formal interim action totals more than eight because some subject officers had more than one type of interim action applied in relation to the file that was audited.

## 3.2 Investigation process

### 3.2.1 Key findings

IBAC's audit of PSC investigations identified that investigators generally made contact with relevant parties as part of the investigation process. Specifically, contact was made with:

- complainants in 22 of the 26 files (85 per cent) that identified a contactable complainant
- civilian witnesses in 18 of the 34 files (53 per cent) that identified a contactable civilian witness
- police witnesses in 24 of the 28 files (86 per cent) that identified a police witness.

Subject officers were contacted in 27 of the 46 files (59 per cent) where subject officers were formally identified. In total, 12 subject officers were criminally interviewed. This included two subject officers listed in two C1-0 work files that the auditors found should have been reclassified as complaints of corruption (C3-4) or criminality not connected to duty (C3-3) by the time criminal interviews were conducted if not earlier. Of the 19 files that identified subject officers but did not contact them, the reasons for not making contact were recorded in 14 files. In seven of these files, it was stated that contact was not required in relation to a work file.

According to auditors, 25 files (42 per cent) did not appear to have appropriately considered evidence relevant to the investigation. This included 15 matters that failed to discuss evidence that IBAC auditors considered essential to an adequate assessment of the allegation. Evidence that was most frequently overlooked included drug and alcohol tests, LEAP checks, email or internet audits, CCTV footage and use of force forms.

All 59 files audited were reviewed by a senior Victoria Police officer on completion, however most reviews involved endorsement without further comment.

### 3.2.2 Contact with relevant parties

#### 3.2.2.1 Policy and practice

Effective communication with relevant parties is an essential part of any investigation. Complainants and members of the public who are directly involved in an incident must be informed of the progress and key stages in an investigation. This should include the results and the action taken or proposed to be taken at the completion of the investigation as directed under the *Victims' Charter Act 2006*.

The IMG notes that 'the circumstances of the investigation and the type of complaint will frequently control the order of interviews (however) as a general rule, interviews should be conducted in the following order:

- complainant
- other civilian witnesses
- members of Victoria Police personnel who are witnesses
- review of circumstantial and scientific evidence
- subject members of Victoria Police personnel (if multiple members are the subject of a complaint, it is preferable to interview all members simultaneously)<sup>31</sup>.

#### 3.2.2.2 Analysis: contact with complainants

Of the 59 files audited, 43 (73 per cent) were recorded as automatically generated complaints.<sup>32</sup> In instances where ROCSID recorded that the complaint was automatically generated, but also identified some other person as a complainant in any way, the other person has been counted as the primary complainant for the purpose of seeking clarification or providing outcome advice pursuant to section 172 of the Victoria Police Act.

<sup>31</sup> Victoria Police 2015, Integrity Management Guide, paragraph 85.

<sup>32</sup> Automatically generated complaints are generated by Victoria Police when a police officer submits a report as part of their duties. In those matters 'Victoria Police' is recorded as the complainant in ROCSID – without identifying the specific officer who submitted the report. In these matters it is assumed that the complainant is not personally aggrieved.

### 3 Findings from the PSC audit

In 32 files (54 per cent), the primary complainant was external to Victoria Police. This included:

- seventeen complaints where the primary complainant was an identifiable member of the public
- eleven complaints where the primary complainant was anonymous
- four complaints where the primary complainant was another agency (such as interstate police or other Victorian agency).

In 27 files (46 per cent), the primary complainant was from within Victoria Police. This included:

- twenty-two complaints in which the Victoria Police officer who made the complaint was not personally involved in the incident in question
- five complaints in which a Victoria Police officer was injured by another Victoria Police officer in an off-duty incident.<sup>33</sup>

Of the 59 files audited, 33 (56 per cent) involved complainants who could not be contacted either because the complaint was lodged anonymously or because the complaint was generated internally by a Victoria Police officer in the course of their work.

Making contact with complainants in the early stages of an investigation is most important in relation to complaints received from the public – to acknowledge receipt of the complaint, explain the process and clarify details of the complaint. However, for internal police complaints it is not generally necessary for the investigator to contact the police complainant because they are not aggrieved, do not require ongoing updates and are more likely to include all the relevant information in their initial report, minimising the need to clarify details.

Contact was made with all relevant complainants in the majority of files (22 of 26 files, or 85 per cent) where a contactable complainant was identified. As shown in Figure 2, of these 22 files, a member of the public was the primary complainant in 14 matters. Another agency was the primary complainant in four matters, and a Victoria Police officer was the victim of the incident in question in four matters.

**FIGURE 2: CONTACT WITH COMPLAINANTS WHO COULD BE CONTACTED<sup>34</sup>**

Primary complainant	No complainants contacted but reasons given	Only some complainants contacted, but reasons given	All complainants contacted	Total
Other agency	0	0	4	4
Police	1	0	4	5
Public	1	2	14	17
<b>Total</b>	<b>2</b>	<b>2</b>	<b>22</b>	<b>26</b>
<b>Proportion of total</b>	<b>8%</b>	<b>8%</b>	<b>85%</b>	<b>100%</b>

<sup>33</sup> All five complaints that involved police officers who were injured by another Victoria Police officer or the victim of the incident were formally recorded in ROCSID as automatically generated complaints, however they have been counted as contactable complainants for the purpose of the audit because it was considered that their evidence was key to the investigation and the nature of their involvement warranted advice about the outcome of the investigation.

<sup>34</sup> Percentages may not add to 100 due to rounding.



Auditors identified four files in which relevant complainants were not contacted. In two files the investigator only contacted some of the relevant complainants. Notes on those files indicated that in both matters, some complainants declined or refused to provide further information.

In a further two files the investigator did not contact any of the relevant complainants. Notes on one file indicated that the public complainant, who was interstate, declined to participate further, while the other file involved a detailed report from the former officer in charge of a police station – which did not require further follow up. The audit did not identify any matters where investigators did not contact relevant complainants and failed to note the reasons.

### 3.2.2.3 Analysis: contact with civilian witnesses

The audit identified 34 complaints that involved at least one relevant civilian witness. Contact was made with all relevant civilian witnesses in 18 of the 34 complaints (53 per cent) in which a civilian witness was identified. Reasons were recorded for not contacting relevant civilian witnesses in seven files. Those reasons included:

- the witnesses' unwillingness to be involved (three files)
- the witnesses' involvement in potential criminal offence (three files)
- a decision not to involve the children of a subject officer (one file).

Auditors identified nine complaints where the investigator did not contact relevant civilian witnesses and did not provide reasons. While not always clearly documented, it was possible for auditors to deduce why the investigator had not contacted witnesses in most of these matters. For example, in one matter it appeared a relevant witness was overseas, and in another the witness had already been interviewed by other police. However, in two matters it appeared civilian witnesses were identified but overlooked, and not contacted, as discussed in case study 10.

### CASE STUDY 10

In one matter, the complainant clearly identified the wife of the subject officer as a civilian witness to some of the events described in the complaint. However, the final investigation report concluded that 'no witnesses have been identified that could afford direct evidence'. The file does not contain any notes to indicate why the subject officer's wife was not contacted. No other information was available on the file to indicate why the witness nominated by the complainant had not been contacted.

### 3.2.2.4 Analysis: contact with police witnesses

The audit identified 28 complaints that involved at least one relevant police witness. Contact was made with all relevant police witnesses in 24 of the 28 complaints (86 per cent) in which a police witness was identified.

In one of the four complaints in which a police witness was not contacted, notes logged in Interpose suggest the investigator intended to contact a named police witness, however there is no record of any actual contact or notes to indicate why that officer was not contacted. In the three remaining complaints, auditors noted that police witnesses were not contacted because the investigator did not consider any to be relevant witnesses. In two of those files, specific officers were mentioned (without noting that they could be witnesses), while the third file noted that the incident occurred at a police function where attendees could have been identified, but were not.

### 3.2.2.5 Analysis: contact with subject officers

Identifiable subject officers were identified in 46 of the 59 files audited (78 per cent). The total number of identifiable subject officers was 56. As shown in Figure 3, subject officers were contacted in 27 files (59 per cent of the 46 files where subject officers were formally identified).

### 3 Findings from the PSC audit

**FIGURE 3: CONTACT WITH IDENTIFIED SUBJECT OFFICERS**

All identified subject officers contacted?	Count	Proportion of files that identified a subject officer
No, and no reasons given	5	11%
No, but reasons given	14	30%
Yes	27	59%
<b>Total</b>	<b>46</b>	<b>100%</b>

Of the 14 complaints where investigators did not contact subject officers but recorded reasons, reasons included:

- a decision to file the matter as intelligence using the work file classification (seven files)
- interviews having already been conducted by other (non-PSC) police (four files)
- resignation or termination of the subject officer’s employment before the complaint could be investigated (three files).

The decision not to contact subject officers when a matter is filed as intelligence appears to be supported by the VPM complaint management and investigations guidelines. These guidelines state that subject officers should generally be advised of the outcome and action taken in relation to an investigation, unless the file is classified as a work file or a corruption complaint (C1-0 or C3-4) or where the provision of that advice could jeopardise the investigation or future investigations.<sup>35</sup>

However, it is noted that allegations recorded on a work file appear on a subject officer’s complaint history report. As such, in all but the most exceptional circumstances (which should be documented), subject officers should be afforded an opportunity to respond to allegations, as a matter of procedural fairness.

Two of the five complaints that did not record reasons for the lack of contact contained notes suggesting the investigator intended to contact the subject officer, but there was no indication in the final report that such contact had been made or an explanation why the proposed action was not pursued.

The 26 complaints in which identified subject officers were contacted involved:

- twelve criminal interviews with subject officers in relation to 10 files
- fifteen disciplinary interviews with subject officers in relation to 13 files
- thirteen statements taken from subject officers in relation to 10 files.

Additional notes in terms of contact with subject officers indicate that other types of contact with subject officers included:

- service of a show cause notice as to why the officer should remain employed by Victoria Police
- drug testing (without any formal interview or statement)
- informal discussion during the execution of a search warrant at the subject officer’s home (without any formal interview, statement or drug test).

Both criminal and disciplinary interviews were conducted in relation to four complaints. In three of those matters, criminal proceedings were not authorised (due to lack of evidence, or unwillingness of victims to pursue the matter); however, disciplinary action was later considered. In the fourth matter, officers involved in the primary allegation of assault were interviewed criminally, which resulted in findings of ‘not substantiated’; however, their senior officers were subsequently subject to disciplinary interviews about their roles supervising the incident in question.

<sup>35</sup> VPMG, Complaint management and investigations, section 6.2.

### 3.2.3 Evidence

#### 3.2.3.1 Policy and practice

The IMG lists a range of actions to be considered when a complaint is received, concluding that initial action should involve ‘completing all reasonable avenues of initial enquiry’.<sup>36</sup> The IMG also lists material that should be considered in terms of compiling the file.<sup>37</sup>

Based on the items in those two lists, the audit assessed whether the following types of evidence were relevant to the complaint and if so, whether it had been considered by the investigator, namely:

- LEAP reports
- running sheets
- attendance or custody module reports
- rosters
- CCTV or audio recordings
- medical records
- photographs
- incident fact sheets
- use of force forms
- email or internet audits
- call charge records
- scene attendance and door knocks
- targeted drug and alcohol tests.

Auditors also noted any other information considered and assessed, and whether all relevant evidence was considered.

#### 3.2.3.2 Analysis: evidence

The audit identified 25 files (42 per cent) that did not appear to have appropriately considered evidence relevant to the investigation. This included:

- fifteen complaints where key evidence was not considered at all
- five complaints where evidence was only partially considered
- five complaints with minor shortcomings in the evidence considered.

In 15 complaints, auditors found that key evidence relevant to the allegation was not considered, including LEAP records, CCTV footage, email or internet audits, and targeted drug tests.

<sup>36</sup> Victoria Police 2015, Integrity Management Guide, paragraph 49.

<sup>37</sup> Victoria Police 2015, Integrity Management Guide, paragraph 157.

### 3 Findings from the PSC audit

#### CASE STUDY 11

Where evidence is available that could be assessed, complaint investigators have a duty to consider that material.

In the following matter, a DHHS officer lodged a complaint after a young person reported that he had been assaulted in custody. Although the young person did not know the names of the officers involved, he noted that the officer who interviewed him was involved in the assault.

The investigator could have, but did not review:

- rosters to confirm who was working at the time of the incident
- CCTV footage from the police cells to verify the alleged conduct – noting that a review of that information may have exculpated police officers.

The complaint was closed with a determination of 'not proceeded with' when the complainant failed to attend a pre-arranged meeting with the PSC investigator and a DHHS representative. No attempt was made to test the veracity of the allegation based on the information available to police.

In comparison, the NSW Police Force Complaint Handling Guidelines state:

Regardless of the wishes of the complainant or victim, the determination in relation to the investigative approach to be taken in response to a complaint should be made on the information available. A decision to decline a complaint investigation should not be made solely on the basis of the complainant's wishes.<sup>38</sup>

This ensures that complaints – which can provide an organisation with feedback about the effectiveness of its practices and procedures – are not overlooked when a complainant no longer wishes to be involved.

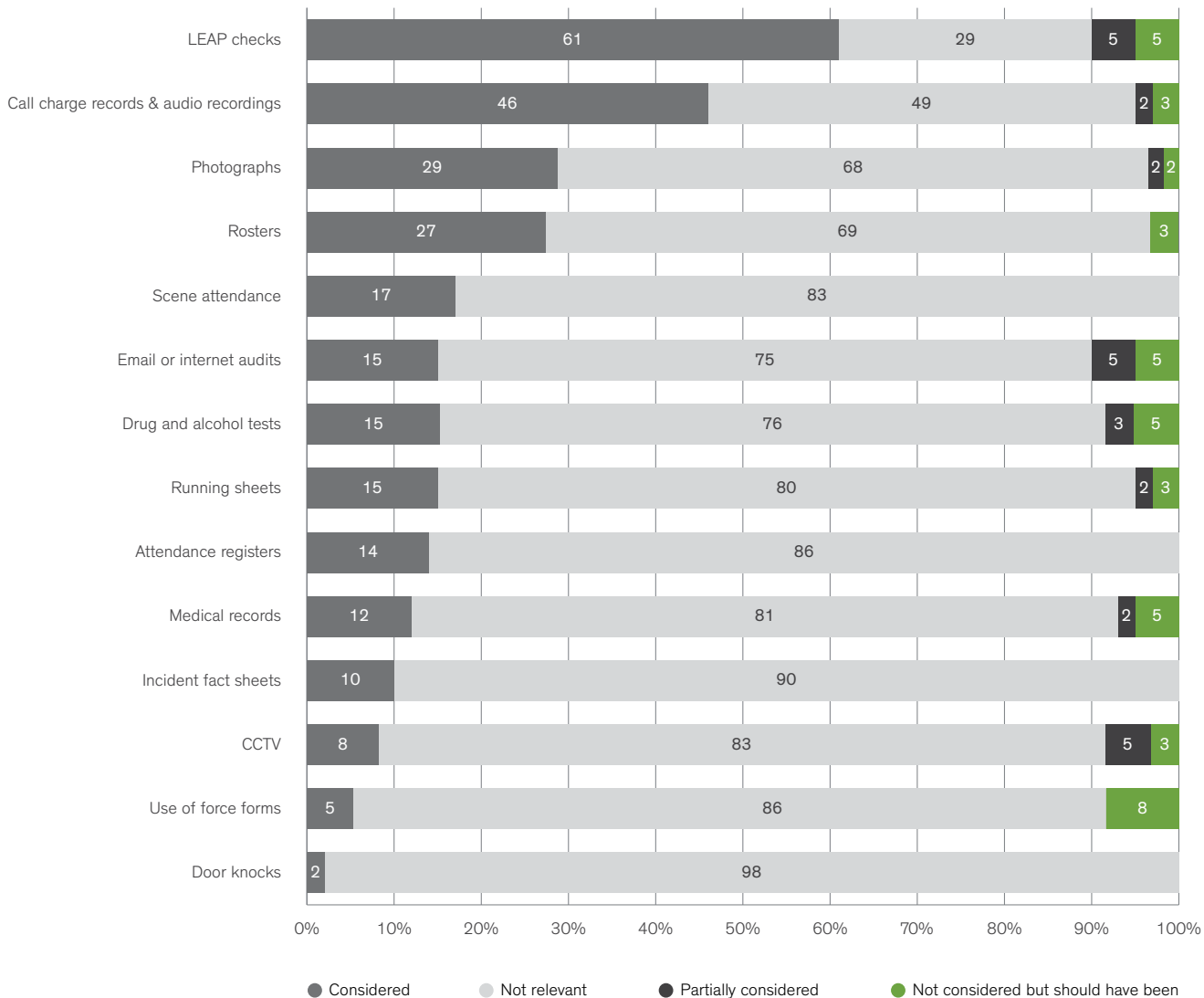
Auditors considered that evidence was only partially considered in five complaints. Evidence was recorded as being 'partially considered' if material (such as LEAP records, CCTV footage or call charge records) was attached to the file but involved a cursory review or had an inexplicably narrow scope. For example, in one matter where a criminal association was alleged, the investigator only considered seven days of call charge records before concluding that there was no contact between the subject officer and the alleged associate.

Auditors considered that a further five complaints involved relatively minor shortcomings in the consideration of evidence. This included failing to consider use of force forms, historical running sheets and secondary lab tests (to confirm a negative primary test). Although these should have been included, they were not likely to alter the determination.

Figure 4 provides a summary of the types of relevant evidence considered, partially considered and not considered in the 59 files audited.

<sup>38</sup> NSW Police Force 2016, Complaint Handling Guidelines, p 26.

**FIGURE 4: EVIDENCE CONSIDERED**



Note: Percentages may not add to 100 due to rounding.

The types of evidence most frequently overlooked by investigators were:

- LEAP checks (six files)
- email or internet audits (six files)
- CCTV footage (five files)
- drug and alcohol tests (five files)
- use of force forms (five files).

Auditors identified nine files in which a targeted drug and alcohol test (DAT) was considered. This included four complaints in which a targeted DAT was proposed by the investigator but not approved.

Case study 12 is an example of a matter where an investigator’s request for a DAT was declined for reasons that auditors did not consider appropriate.

### 3 Findings from the PSC audit

#### CASE STUDY 12

A report was made to police about an aggravated burglary. The victim admitted the burglary occurred the day after he hosted a two-day party at which cocaine and speed had been used, suggesting the offenders may have been looking for drugs. He indicated that an acquaintance who attended the party as a guest (a senior constable) advised him to call 000 about the burglary.

The matter was reported to PSC by the local Criminal Investigation Unit (CIU) responsible for investigating the burglary. The PSC investigator established the following:

- Numerous phone calls were made between the victim and the subject officer (the senior constable) following the burglary.
- When contacted by the local CIU, the subject officer told detectives he did not know the victim well and had only met him for the second time when he visited the victim at his apartment for a drink (on one of the days that the party took place).
- On the two days of the party, the subject officer was on rest days. He then took the next three days as sick leave (without a medical certificate) followed by a further three days of carer's leave.

The investigator applied to conduct a targeted drug and alcohol test (DAT) on the subject officer. The application was supported by his acting superintendent but rejected by the PSC Tasking and Coordination Committee. While the reasons for the committee's decision are not documented on the file, a memo from the acting superintendent suggests the application was not approved because the subject officer was about to be charged with perverting the course of justice in relation to a separate matter.

Given that the criminal investigation had not reached its conclusion, it would have been prudent to conduct a targeted DAT as requested by the investigator, noting that this could have provided Victoria Police with further grounds for dismissal.

Of the five complaints in which a targeted DAT was approved, none returned a positive result. However, issues were identified in three cases, potentially undermining the value of those tests as suggested in case studies 13, 14 and 15.

#### CASE STUDIES 13, 14 AND 15

The following case studies describe three separate incidents in which targeted drug and alcohol tests were conducted.

- An anonymous Facebook post, which alleged drug use by a named officer, took more than four months to be notified to PSC. While a hair sample was taken within a fortnight of notification, the time lapse between detection and testing may have impeded the accuracy of the test.<sup>39</sup>
- A targeted DAT form indicated that the subject officer was directed to provide breath and urine samples. While the final report states that the results were 'negative for alcohol, drugs of dependence and steroids', the urine test result is reported as 'Negative – Cancelled test', suggesting that the testing did not proceed.
- A targeted DAT form indicated that the subject officer was directed to provide hair and urine samples, however the results indicate that breath and urine tests were conducted, both of which are inferior to hair testing.

IBAC acknowledges that Victoria Police is undertaking a comprehensive review of its current drug testing regime in response to IBAC's 2016 *Special report concerning illicit drug use by Victoria Police officers: Operations Apsley, Hotham and Yarrowitch*. To date, identified opportunities for improvement have included increased random drug testing as part of PSC investigations, and the centralised coordination of all targeted drug testing. This audit reiterates the importance of timely and appropriate drug testing.

<sup>39</sup> Details on the file indicate the complaint was posted on Facebook in June 2015, however PSC was not notified until 13 October 2015, after which the DAT was conducted on 29 October 2015.

## 3.2.4 Supervision and review

### 3.2.4.1 Policy and practice

In terms of ongoing supervision, the IMG states that a progress report must be submitted to the investigation manager on a monthly basis along with a summary of the action required to complete the file.<sup>40</sup>

In terms of quality review, all files contain a quality control checklist which contains a list of tick boxes in relation to the allegations, persons involved, determinations, actions and record keeping requirements. This checklist is completed by the unit manager on closure. PSC has advised that while there are no guidelines governing the completion of the checklist, the template is being reviewed following IBAC's regional audit and PSC considers that there has been constant improvement in relation to quality control.

### 3.2.4.2 Analysis: supervision and review

All 59 files audited by IBAC were reviewed by a senior Victoria Police officer, most of which appear to have been endorsed without further comment. The audit identified seven complaints (12 per cent) in which a supervisor noted that further consideration was required in relation to:

- the need to address additional allegations (three files)
- lines of enquiry or further evidence that should be pursued/obtained (five files)
- the proposed determination (one file)
- the recommended action (one file).<sup>41</sup>

In an additional three complaints, senior officers noted the need to provide advice to relevant parties, including the complainant, other work units or other agencies.

## 3.3 Outcomes

### 3.3.1 Key findings

More allegations were substantiated in this audit compared with IBAC's 2016 audit. The substantiation rate of 15 per cent on an allegation basis (or 19 per cent on a file basis) for the PSC files considered in the audit was twice the nine per cent substantiation rate (on a file basis) in the 2016 regional complaints audit and comparable to overall police complaint substantiation rates in other jurisdictions (on an allegation basis). IBAC's audit found that the five determinations reached most often were:

- 'unfounded' (21 allegations)
- 'substantiated' (18 allegations)
- 'not substantiated' (17 allegations)
- 'unable to determine' (17 allegations)
- 'for intelligence purposes' (15 allegations).

Taken together, these five determinations accounted for 74 per cent of all determinations.

Auditors disagreed with the determinations made by Victoria Police in 10 files (17 per cent) on the basis that there was either sufficient evidence to substantiate an allegation that was not substantiated or insufficient evidence to support determinations of 'exonerated', 'withdrawn', 'not substantiated' or 'unfounded'. In addition, 15 allegations on work files resulted in a determination of 'for intelligence purposes', which is not a valid determination under the VPM.

IBAC understands that Victoria Police is committed to simplifying the system of determinations as recommended in IBAC's 2016 regional complaints audit. This audit of files investigated by PSC adds further weight to the arguments in favour of simpler determinations.

<sup>40</sup> Victoria Police 2015, Integrity Management Guide, paragraph 217.

<sup>41</sup> Issues identified total more than eight because multiple issues were identified by supervisors in some files.

### 3 Findings from the PSC audit

At present, when a determination of 'substantiated' is reached, the investigator will recommend action which could range from criminal charges to workplace guidance. However, because the majority of allegations considered in the audit were not 'substantiated', the actions recommended most often were 'no action' (75 allegations) followed by 'filed as intelligence' (14 allegations) which together accounted for 76 per cent of all recommendations.

Of the 18 allegations that were effectively substantiated, 'workplace guidance' was the most common action recommended (nine allegations) followed by 'admonishment' (six allegations) and 'discipline hearing' (four allegations).

IBAC auditors were not able to locate formal written advice on four of the 11 files that contained some indication that advice had been sought from the Discipline Advisory Unit (DAU). Given the pivotal role of DAU advice in determining the action that will be taken in relation to a subject officer, details of the request and advice provided should be clearly documented and attached to each file.

Auditors disagreed with the action recommended in nine files (15 per cent). This included two matters in which discipline charges were downgraded to management action and two matters in which Victoria Police did not consult with the Office of Public Prosecutions (OPP) despite establishing a reasonable belief that a reportable offence had been committed. In one matter, the Assistant Commissioner PSC determined workplace guidance was warranted rather than formal discipline action, thus avoiding the need to consult the OPP in relation to a reportable offence. In another, the Assistant Commissioner PSC determined that consultation was not required because the assaults on civilian victims only involved summary assaults while the police victim was unwilling to proceed with criminal charges – even though the requirement to consult is predicated on reasonable belief that the offence has been committed, not reasonable belief that the charge will be successful at court. This issue is discussed further in section 3.3.3.3.

Areas for possible improvement to Victoria Police policy and procedure were identified by investigators in 16 files (27 per cent). However, none of those files formally recorded 'action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures' as advised in the VPMG complaint management and investigations.

Auditors noted that a number of files audited suggested that Victoria Police has strengthened its approach in investigations of allegations of sexual harassment and sexual assault. However, Victoria Police could do more to demonstrate that it values officers who raise concerns about the conduct of their colleagues and will support them through the complaint handling process.

The audit identified that human rights were not adequately dealt with in 20 files (34 per cent). Of the files that did discuss human rights, some failed to identify relevant human rights issues, while others only considered human rights insofar as they concerned the subject officer.

Of the 26 files in which a contactable complainant was identified, 14 had attached a copy of a final outcome letter to the complainants (54 per cent). In addition, four of the remaining 12 files contained notes that indicated why the complainant was not provided with an outcome letter.

Of the 46 files that formally identified subject officers, 22 had attached a copy of a final outcome letter to the subject officers (48 per cent), however three of those letters did not accurately advise the subject officers of the allegations or determinations recorded against them in ROCSID. In addition, 21 of the remaining 24 files did not require advice because the subject officer was identified in relation to a work file or corruption complaint (C1-0 or C3-4).

#### 3.3.2 Determinations

##### 3.3.2.1 Policy and practice

The VPMG on complaint management and investigations states that an investigation report is to 'address each allegation subject to investigation by one of the following determinations' shown in Figure 5.<sup>42</sup>

<sup>42</sup> VPMG, Complaint management and investigations, section 12.2.



**FIGURE 5: DETERMINATIONS LISTED IN THE VICTORIA POLICE MANUAL**

Determination	Description
Substantiated	complaint found to be true
Lesser deficiency	a matter uncovered during an investigation not forming part of the complaint laid (such as a failure to complete an official document), requiring remedial action
Not substantiated	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
Unable to determine	the available evidence does not permit the investigator to establish whether the complaint is true or not
Not proceeded with	the complaint is not proceeded with, due to the unwillingness of the complainant to supply information but is unwilling to withdraw the complaint, or there is some other reason for being unable to take the complaint further
Withdrawn	a complainant having made a formal complaint, of their own volition makes a request that the complaint investigation cease
No complaint	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
Unfounded	the available evidence clearly establishes that there are no grounds for the complaint whatsoever
Exonerated	the evidence clearly establishes that a particular employee is not involved in a complaint or is completely free from blame
False report	there is sufficient evidence to charge the complainant with making a false report to police.

IBAC's 2016 audit of complaint handling at the regional level found that:

- nine per cent of files had at least one allegation with a determination of 'substantiated'
- fourteen per cent of files contained determinations that were not considered appropriate by auditors, including instances where material on the file appeared to substantiate an allegation, yet a determination of 'substantiated' was not made.

The 2016 report also noted that Victoria Police undertook a review in 2012 which recommended that the system of determinations should be simplified to two possible findings, namely 'case to answer' and 'no case to answer', noting that the current system of determinations can cause confusion and anxiety among officers. Although this recommendation was not implemented, it is understood that Victoria Police is now committed to simplifying the categories of determinations.

### 3 Findings from the PSC audit

The 2016 audit also noted that it should be reinforced with investigators that a complaint should be assessed on the balance of probabilities. A clear statement of the standard of proof for complaint investigations in the IMG could assist investigators. For instance, the NSW Police Force Complaint Handling Guidelines state that ‘each finding will need to be determined on the balance of probabilities (civil standard of proof). This means that the finder of the facts must be reasonably satisfied that something is more likely than not to have happened’.<sup>43</sup>

#### 3.3.2.2 Analysis: determinations

Figure 6 summarises the determinations reached in the 59 files audited. Overall:

- ‘for intelligence purposes’ was the most common determination on a file basis (22 per cent of files)
- ‘unfounded’ was the most common determination on an allegation basis (18 per cent of allegations).<sup>44</sup>

**FIGURE 6: DETERMINATIONS BY FILE AND BY ALLEGATION**<sup>45</sup>

Determinations	Files (n=59)		Allegations (n=118)	
	Count	Proportion	Count	Proportion
Withdrawn	0	0%	2	2%
Not finalised	1	2%	1	1%
False report	1	2%	1	1%
No complaint	1	2%	3	3%
Exonerated	2	3%	11	9%
Not substantiated	4	7%	17	14%
Not proceeded with	6	10%	12	10%
Unable to determine	10	17%	17	14%
Unfounded	10	17%	21	18%
Substantiated	11	19%	18	15%
For intelligence purposes	13	22%	15	13%
<b>Total</b>	<b>59</b>	<b>100%</b>	<b>118</b>	<b>100%</b>

<sup>43</sup> NSW Police Force 2016, Complaint Handling Guidelines, pp 42 and 60.

<sup>44</sup> If a file resulted in a number of different determinations, the determination for that file was identified according to the order of determinations listed in Figure 6 which prioritises adverse findings over others, on the basis that adverse findings are more likely to result in some form of recommended action.

<sup>45</sup> Percentages may not add to 100 due to rounding.

The substantiation rate of 15 per cent on an allegation basis (or 19 per cent on a file basis) for the PSC files audited was comparable to the *overall* substantiation rate of 16 per cent for Tasmania Police and 17 per cent for NSW Police (on an allegation basis),<sup>46</sup> and double the nine per cent substantiation rate (on a file basis) in the 2016 regional audit. However, the Tasmanian Integrity Commission's 2016 audit also noted that when substantiation rates were broken down, 44 per cent of the more serious Class 2 allegations (usually handled by PSC) were sustained, while only seven per cent of the less serious Class 1 allegations (which are usually handled at the regional level) were sustained.<sup>47</sup>

Direct comparisons cannot be made based on the samples drawn for IBAC's regional audit and PSC audit. However, the higher substantiation rate for allegations investigated by PSC may be due in part to the fact that matters retained by PSC for investigation are more likely to result in charges or other discipline action if substantiated.

Auditors queried the determinations made by PSC in 14 files (24 per cent) which recorded determinations that are not listed in the VPMG. While one file may have recorded a determination of 'not finalised' in error, 13 work files recorded a determination of 'for intelligence purposes', suggesting this is not a one-off administrative error. In each of those files auditors found that a determination of 'unable to determine' or 'not proceeded with' would more accurately reflect the investigation findings. Auditors noted that an investigator could then recommend that the matter be 'filed for intelligence' if the content was considered to be of value for intelligence purposes.

Auditors also disagreed with determinations made by PSC in 10 files (17 per cent) on the basis that there was either:

- insufficient evidence to support determinations of 'exonerated', 'withdrawn', 'not substantiated' and 'unfounded' (six files) – for example, two drug use allegations were determined to be 'exonerated' and 'unfounded' without conducting a drug test or putting the allegation to the subject officer
- sufficient evidence to substantiate an allegation in circumstances where determinations of 'not proceeded with', 'withdrawn', 'unable to determine' or 'not substantiated' were reached (four files), as discussed in case study 16.

<sup>46</sup> NSW Police Force 2016, *Annual Report 2015/16* reported a 16.67 per cent substantiation rate for the 8,340 allegations made against police officers in the 2015-16 financial year, p 95. Tasmania Integrity Commission 2016, *An audit of Tasmania Police complaints finalised in 2015*, reported an average substantiation rate of 16 per cent for the 1,010 allegations finalised over 2013-15, p 8.

<sup>47</sup> Tasmania Integrity Commission 2016, *An audit of Tasmania Police complaints finalised in 2015*, p 8 in relation to the 1,010 allegations finalised over the three years from 2013 to 2015.

### 3 Findings from the PSC audit

#### CASE STUDY 16

The following case study provides an example of a matter where PSC reached a conclusion of 'unable to determine' which was disputed by IBAC auditors.

An anonymous complaint alleged that an off-duty officer avoided a speeding ticket (for travelling at 114 km per hour in a 60 zone) by providing a false story.

In the subject officer's statutory declaration, he nominated an unnamed person as the driver. However, the traffic camera recorded an image showing the rider wearing a jacket and helmet belonging to the subject officer.

The PSC investigation reviewed the unresolved Traffic Camera Office investigation in which the subject officer claimed a prospective purchaser for his motorbike turned up at his home to test drive the bike without protective riding gear – so the subject officer loaned him his jacket and helmet for the test drive. PSC also obtained details of the subject officer's online advertisement and statements from the two people who responded to the advertisement, including the purchaser, who picked the motorbike up the day after the speeding ticket.

In his report, the investigator:

- highlighted significant doubts that the subject officer would loan his personal riding gear to an unknown person
- noted that the officer's address was not part of the advertisements, meaning that the rider must have contacted the officer to arrange a test drive
- observed that the actual purchaser had already paid a deposit, denied sending someone to test drive the motorbike the day before he picked it up, adding that he would be upset if the subject officer let someone else test drive the motorbike after taking his deposit.

While appearing to conclude that the complaint could be substantiated on the balance of probabilities, the allegation was recorded as 'unable to determine'.

The audit also identified inconsistencies between ROCSID and the files in relation to the recording of determinations in 20 matters. This included:

- recording an invalid determination in ROCSID, even though the investigator made a valid determination in their final report or vice versa (seven files)
- using 'exonerated', 'unfounded' and 'not substantiated' interchangeably (four files)
- not appearing to record a determination in the file, while ROCSID recorded determinations of 'substantiated' or 'not finalised' (two files).

IBAC auditors also identified two matters where the subject officer was advised that an allegation was either not proceeded with or not substantiated, while ROCSID records those allegations as substantiated. While both resulted in workplace guidance for other substantiated allegations, as a matter of procedural fairness, a subject officer should be advised of all substantiated findings to allow them the opportunity to respond.

In five matters, it was apparent that the difference in the determinations recorded in ROCSID and the file was due to the determination (and on occasions the allegation) being changed on review. Some of these changes were appropriate, while others were not. This is highlighted in case studies 17 and 18.

## CASE STUDIES 17 AND 18

- A complaint was initiated when tradesmen working on a police station located two imitation firearms and a can of OC spray in the ceiling cavity. One allegation of secretion of weapons was determined as 'substantiated' by the investigator. On review, the allegation was changed to one of failure to account for property with a determination of 'for intel purposes'. By changing the allegation from one of concealment to one of failing to account, the supervisor effectively shifted the focus from the location of the items, which could be substantiated (given that the items were in fact hidden in the ceiling cavity), to one of responsibility for property, which could not be substantiated (given that the investigation was not able to determine who was responsible for those items). Auditors did not consider this appropriate.
- An allegation of assault was initially determined to be 'exonerated' by the investigator, who noted that the victim did not dispute that her head injuries were caused by not wearing a seatbelt during a pursuit. On review, the supervising superintendent noted that 'unsubstantiated' or 'unable to determine' would be more appropriate, as the victim did not resile from her assertion that she was punched in the head by unidentified police officers. The determination was ultimately changed from 'exonerated' to 'not substantiated'. Auditors considered this appropriate.

The various ways in which determinations have been applied in the audited PSC files adds further weight to the recommendation that the system of determinations should be simplified to ensure greater consistency and fairness, and to reduce the potential for ambiguity. It is understood Victoria Police is committed to a significant simplification of determinations.

### 3.3.3 Recommended action

#### 3.3.3.1 Policy and practice

Complaints provide an important opportunity to identify problems of a systemic nature. Complaints can help to highlight issues the organisation is not aware of and point to opportunities for early intervention before a matter escalates. PSC is well placed to identify broad systemic issues and ensure that learnings are shared across the organisation. The VPM complaint management and investigations guidelines states 'if action against the employee is required, the investigator should recommend that action is required'. It goes on to note that recommended action might include management intervention, no action, admonishments, discipline charges, criminal charges, action in accordance with the VPMG, managing underperformance, and/or action on any identified deficiencies in Victoria Police premises, equipment, policies, practices or procedures.<sup>48</sup>

<sup>48</sup> VPMG, Complaint management and investigations, section 12.3.

### 3 Findings from the PSC audit

If a complaint raises allegations involving a criminal offence, criminal proceedings must be pursued before starting disciplinary proceedings. Ideally, Victoria Police should consult with the OPP early in the process. To ensure that a criminal prosecution is not compromised by disciplinary proceedings, section 127(2) of the Victoria Police Act provides that Victoria Police must consult with the OPP before charging an officer with a breach of discipline if Victoria Police reasonably believes that the officer has committed a reportable offence (as described in Schedule 4 of the Victoria Police Act).<sup>49</sup>

Reviews of police complaint handling in Tasmania and NSW note that the more serious an allegation is, the more important it is to ensure that the investigation is handled independently and that independent advice is sought. It is good practice for police to seek the opinion of the OPP as early as possible where there appears to be substance to an allegation that a police officer has committed a criminal offence.<sup>50</sup>

PSC's Investigations Division includes a dedicated Discipline Advisory Unit (DAU) which assists investigators with all aspects of the discipline process, including the need to consult the OPP. The IMG notes that where investigations reveal and recommend discipline action 'investigators should consult the DAU to establish the requirements in proving the alleged breach [noting that] consultation at the earliest opportunity is essential for expedient resolution'.<sup>51</sup>

IBAC's 2016 audit of Victoria Police's complaint handling at the regional level found that where action was recommended, it usually took the form of management intervention. In that audit, IBAC found that 10 per cent of files included a recommendation that was assessed as inappropriate. This included instances where workplace guidance was recommended, when the auditors assessed that a more serious action was warranted.

As a result of recommendations IBAC made in the 2016 audit, Victoria Police advised it will consider making it a requirement that any workplace guidance is recorded on a subject officer's professional development and assessment plan (PDA).

#### 3.3.3.2 Analysis: recommended action

Figure 7 summarises the recommended action in the 59 audited files. Overall, 56 per cent of files (72 per cent of allegations) resulted in 'no action',<sup>52</sup> while a further 24 per cent of files (12 per cent of allegations) resulted in the matter being 'filed as intelligence'.<sup>53</sup>

<sup>49</sup> Section 127(2) of the Victoria Police Act states 'If the Chief Commissioner or authorised person reasonably believes that the police officer or protective services officer has committed an offence referred to in Schedule 4, the Chief Commissioner or authorised person must not charge the officer with the commission of a breach of discipline until the Chief Commissioner or authorised person has consulted the Director of Public Prosecutions.'

<sup>50</sup> Tasmanian Integrity Commission 2016, *An audit of Tasmania Police complaints finalised in 2015*, pp 11-12 notes that that audit identified two complaints where Tasmania Police did not follow the principal legal officer recommendation to seek advice from the DPP; NSW Ombudsman 2016, *Annual Report 2015/16*, pp 48-49 notes that the agreement between the NSWPF and the DPP should be revised to provide police officers with better guidance about the types of matters that require consultation with the DPP.

<sup>51</sup> Victoria Police 2015, Integrity Management Guide, paragraph 171.

<sup>52</sup> The 'no action' count includes 10 allegations recorded in ROCSID as 'unable to determine', 'withdrawn', 'not proven', 'not proceeded with', 'not identified', 'no file', 'no action (resigned)' and 'decline to proceed'.

<sup>53</sup> If a file resulted in a number of different recommended actions, the recommended action for that file was identified according to the following order (which prioritises criminal and discipline proceedings over management action): court hearing, discipline hearing, admonishment, counselled formally, counselled informally, workplace guidance, performance improvement plan, performance monitoring, conciliated, accepted explanation, satisfied with action, no action, and filed as intelligence.

**FIGURE 7: RECOMMENDED ACTION BY FILE AND BY ALLEGATION**

Recommended action	Files (n=59)		Allegations (n=118)	
	Count	Proportion	Count	Proportion
Admonishment	3	5%	6	5%
Discipline Hearing	4	7%	4	3%
Workplace Guidance	5	8%	9	8%
Filed as Intelligence	14	24%	14	12%
No Action	33	56%	85	72%
<b>Total</b>	<b>59</b>	<b>100%</b>	<b>118</b>	<b>100%</b>

Of the 19 allegations that were substantiated (including the one determination of 'not finalised'), workplace guidance was the most common recommended action, followed by admonishment and discipline hearing.

Workplace guidance was provided in relation to five files (nine allegations). This represents eight per cent of all files in the audit and 42 per cent of the 12 files that resulted in at least one substantiated finding. Workplace guidance constitutes a form of management intervention designed to constructively address a subject officer's performance issue as opposed to punitive action.

An admonishment notice was issued in relation to three files (six allegations). This represents five per cent of all files in the audit and 25 per cent of the 12 files that resulted in at least one substantiated determination. Admonishment notices are intended to be used when there is a minor breach of discipline and may be issued by a supervisor or a PSC investigator. It is not part of the statutory discipline regime and is an alternative to the formal discipline process.

Discipline charges were recommended in relation to four files (four allegations). This represents three per cent of all files in the audit and 33 per cent of the 12 files that resulted in at least one substantiated determination. Two of these matters resulted in proven findings at discipline hearing while the remaining two were not heard because the subject officer resigned or was dismissed (in relation to another matter) prior to hearing. It should also be noted that three files excluded from the audit were excluded because criminal proceedings were in progress.

Auditors disagreed with the recommended action in nine files (15 per cent) on the basis that:

- Victoria Police did not consult with the OPP, although it appeared the investigator had established reasonable belief that a reportable offence has been committed (two files) as discussed in section 3.3.3.3
- some action was warranted in matters where a recommendation of 'no action' or 'filed as intelligence' was made (five files)
- discipline charges recommended by the DAU and/or investigators were downgraded by the Assistant Commissioner PSC in circumstances where there was a prima facie case to answer (two files).

### 3 Findings from the PSC audit

#### CASE STUDY 19

In the following case study, an admonishment notice was issued for conduct that IBAC auditors considered to warrant a discipline charge.

Following an off-duty incident, PSC conducted an investigation in which a subject officer was found to have:

- associated with a person he knew used illicit drugs and associated with OMCG members
- advised that person that another off-duty officer suspected him of dealing drugs, which caused the person to assault the off-duty officer
- failed to notify police or offer assistance to attending officers on becoming aware of the assault.

The PSC investigator prepared a discipline brief but did not formally recommend any action, instead opting to submit the brief to the DAU within PSC 'for consideration of sanctions/outcome'.

While there is no record of the DAU's assessment of the brief, a file note from the Assistant Commissioner's staff officer to the DAU indicates that the Assistant Commissioner 'reviewed the investigation file...[and] after considering the facts and actions of [the subject officer] he has deemed that an admonishment is appropriate in the circumstances'. No further explanation could be identified on the file.

While the Assistant Commissioner appears to have downgraded the recommended action of a discipline charge to admonishment notice, the admonishment notice served on the subject officer states that 'all of this behaviour is improper and conduct likely to diminish public confidence which is in breach of Victoria Police Act s125 (l) (j) & (h)', suggesting that the subject officer had a case to answer at a discipline hearing.

#### CASE STUDY 20

Following an off-duty incident, a subject officer was charged with assault by interstate police (charges were later dropped due to the victim's reluctance to attend court and the possibility that the court could accept the subject officer's claim of self-defence).

After reviewing CCTV footage of the incident, taking statements from the attending police and conducting a discipline interview with the subject officer, the PSC investigator recommended discipline charges. This recommendation was supported by the DAU and a discipline charge notice was prepared in relation to conduct likely to bring Victoria Police into disrepute.

In recommending discipline charges, the DAU officer noted that CCTV showed the intoxicated subject officer:

- became involved in a verbal altercation with a passer-by
- escalated the incident by taking hold of the passer-by's arm, advancing towards him and punching him in the face with a closed fist causing him to fall 'with considerable force'
- leant over the passer-by in an aggressive manner and yelled at him while the person lay motionless on the footpath.

The DAU concluded that 'the CCTV footage shows the amount of force used by [the subject officer] was disproportionate to any threat posed by [the other party] and [the subject officer's] actions could have resulted in [the other party] sustaining serious head injuries'. The file indicates the managers of both the DAU and the Investigations Division agreed that the subject officer had a case to answer at a discipline hearing. However, on review, the Assistant Commissioner PSC downgraded the recommended discipline charge to workplace guidance on the basis that 'this is an arguable case of self-defence and I give the benefit of the doubt to [the subject officer]'. The subject officer was ultimately provided with workplace guidance in relation to 'the consumption of alcohol and situational awareness' as a police officer.



The audit identified 13 matters where there were inconsistencies in the recommended action recorded in ROCSID compared with the file. This included a number of administrative issues involving matters that:

- did not record all the action recommended in the file in ROCSID (two files)
- used 'no action' and 'file for intelligence' interchangeably (two files)
- listed a determination (such as 'unable to determine') or other comments (such as 'no file') as the recommended action in ROCSID (six files).

In a further three matters, it was apparent that the difference in the recommended action recorded in ROCSID and on the file was due to the recommendation being changed upon review. This included one matter where the DAU's initial advice that no action was necessary was queried by the investigator's supervisor, then changed to a recommendation for discipline action which was not authorised by the Assistant Commissioner PSC, as discussed in case study 21.

## CASE STUDY 21

Following an investigation in which an officer stopped for erratic driving was found to have attempted to dissuade junior officers from conducting a preliminary breath test (PBT), the investigator recommended no further action.

In an email to his manager, the investigator advised that his recommendation was based on verbal advice from the DAU that no further action was required because 'it would not be abnormal for a serving member to try to persuade the intercepting member to not take action (ie PBT/speed)'.

The investigator's supervisor disagreed, expressing concern with the precedent it would set. He requested consultation with the Assistant Commissioner PSC.

A file note of the Assistant Commissioner PSC's decision indicates he was satisfied that the subject officer asked not to be breath tested and told junior officers 'there goes my job'. However, the Assistant Commissioner went on to direct that an admonishment notice was the most appropriate action considering the time since the conduct (16 months), the subject officer's subsequent promotion, and the fact that the subject officer ultimately submitted to a PBT without resistance.

### 3 Findings from the PSC audit

While the majority of the DAU's work involves providing advice in relation to discipline briefs and assisting in the discipline charge process, the DAU also provides investigators with advice in relation to any disciplinary issues.

In total, 11 of the 59 files audited contained some indication that advice had been sought from the DAU. This included all four files that resulted in discipline charges, all three files that resulted in admonishment notices, three of the five files that resulted in workplace guidance and one file that resulted in no action.<sup>54</sup>

Auditors were unable to locate formal written advice outlining the DAU's assessment on four of the 11 files. For instance, in one matter a criminal brief of evidence was prepared but not authorised on the basis that the victim of the alleged assault declined to press charges. Notes on the file and ROCSID indicate the matter was referred to the DAU for review. However, the only indication of that review is a handwritten note by the investigation manager which states 'it has been confirmed with DAU that no discipline action was required'. Given the pivotal role that DAU advice can play in determining action that will be taken, details of the request and advice provided should be documented and attached to each file.

#### 3.3.3.3 Analysis: consultation with the OPP

If Victoria Police reasonably believes that an officer has committed a reportable offence (of the kind listed in Schedule 4 of the Victoria Police Act) Victoria Police must consult with the OPP before charging the officer with a breach of discipline. Two of the complaints considered in IBAC's audit proceeded to discipline hearings. Both matters involved allegations of assault by off-duty intoxicated police officers.<sup>55</sup> In both matters investigators noted that: the victim was injured but did not wish to press criminal charges; the allegations were reportable offences within the meaning of Schedule 4 of the Victoria Police Act; and section 127(2) requires that the Assistant Commissioner PSC consult with the OPP before charging the police officer with a breach of discipline. Despite these similarities, Victoria Police did not deal with these subject officers in a consistent manner, as discussed in case studies 22 and 23.

<sup>54</sup> The two files that resulted in workplace guidance without consulting the DAU involved the formal recording of workplace guidance that had occurred four years prior and action that was changed at the request of IBAC.

<sup>55</sup> Auditors agreed that the two other matters that involved discipline charges did not require consultation under s127. One involved allegations of sexual harassment. The other involved allegations of declarable association, secondary employment without approval and reckless purchase and handling stolen goods in circumstances where the investigation could not establish reasonable belief.

## CASE STUDIES 22 AND 23

The following case studies involved similar fact matters which were handled differently in relation to section 127(2). Both concerned reportable offences but PSC only consulted with the OPP in one matter before laying discipline charges.

- In the first matter, the acting Assistant Commissioner PSC followed the investigator's recommendation and consulted the OPP, noting he believed the matter should proceed by way of discipline hearing 'given the victim's reluctance to give evidence at any criminal hearing in relation to the matter', which would reduce the likelihood of a conviction. The OPP agreed and the matter proceeded to discipline hearing.

Commenting on the seriousness of the offence, the hearing officer noted 'this was an unprovoked attack [by the subject officer which involved] grabbing [the victim] in a headlock forcing him to the ground causing his face to strike the bitumen... and holding him pinned to the ground with the assistance of his mate'.

The subject officer was sanctioned with a six-month good behaviour bond, a \$3,000 fine and ineligibility for promotion or transfer for 12 months.

- In the second matter, the then Assistant Commissioner PSC disagreed with the investigator's recommendation and (without consulting the OPP) instructed the investigator to issue a discipline charge on the basis the assaults against the civilian victims only amounted to summary offences (which are not considered Schedule 4 offences) and the off-duty police victim was unwilling to press criminal charges in relation to the indictable offence, noting that this would reduce the likelihood of a conviction.

Commenting on the seriousness of the offence, the hearing officer noted that the subject officer 'triggered this incident by pushing [a civilian] for no apparent reason... created a dangerous, hostile, volatile environment resulting in ... three civilians and [a] senior constable ... being assaulted. The civilians received minor injuries and torn clothing [while the senior constable] received a cut to his eyebrow requiring 3-4 sutures and bruising and swelling to his face equivalent to a serious injury'.

The subject officer was sanctioned with a transfer and demotion for 12 months and ordered to compensate the victim \$100 for damage caused to his glasses, donate \$1,000 to police legacy, and undertake alcohol and anger management counselling.

### 3 Findings from the PSC audit

Section 127(2) of the Victoria Police Act states that the obligation to consult with the OPP applies 'if the Chief Commissioner or authorised person reasonably believes that the police officer or protective services officer has committed an offence referred to in Schedule 4'. There is no reference to the likely success of criminal charges, the quality of the evidence, or the willingness of the victim to be involved.

In response to enquiries made by IBAC, Victoria Police advised that it has a memorandum of understanding (MOU) in place with the Director of Public Prosecutions in relation to section 127 of the Victoria Police Act. That MOU is only concerned with offences that relate to section 227 of the Act, namely, summary offences involving unauthorised access to, use of or disclosure of police information.<sup>56</sup> Victoria Police also advised that based on discussions with the DPP in 2016, the Assistant Commissioner PSC only consults where it is considered there is sufficient admissible evidence to inform a reasonable prospect of conviction.

IBAC considers it unlikely that the words 'reasonably believes' were intended to require that Victoria Police have sufficient evidence to secure a conviction. When the provision was first introduced into legislation, parliamentary debate noted that the provision was intended to 'make the public confident that when a police officer is under investigation for a criminal offence a reference will be given, firstly, to the DPP to see if charges will be laid before the matter progresses any further, and secondly, to assure the public that the police will not be treated differently from the public at large'.<sup>57</sup>

IBAC considers it was appropriate for consultation to occur with the OPP in case study 22. However, it is considered the decision not to consult in case study 23 on the basis that the then Assistant Commissioner considered there was insufficient evidence to support a conviction, defeats the purpose of section 127(2).

In another matter, the Assistant Commissioner PSC appears to have authorised non-disciplinary action, namely workplace guidance in a matter involving a Schedule 4 offence. This decision effectively circumvented the requirement to consult with the OPP. This matter is discussed in case study 24.

These matters suggest that clearer guidance may be required to ensure that, in accordance with section 127(2), Victoria Police consults with the OPP where there is sufficient information for the Chief Commissioner to form a reasonable belief that the subject officer has committed a reportable offence before taking any discipline or lower level managerial action. This will ensure that subject officers and complainants can have confidence that similar fact matters will be handled consistently.

<sup>56</sup> The MOU states that Victoria Police will have met the s127 requirement to consult with the DPP by providing six-monthly advice on matters that technically constitute a s227 offence, which have been handled as a breach of discipline on the basis that they fall within one of the scenarios outlined in that document.

<sup>57</sup> *Victorian Parliamentary Debates*, Legislative Assembly, 16 December 1999, 1252 (Peter Ryan), in relation to the Police Regulation (Amendment) Bill 1999, clause 71(2).

## CASE STUDY 24

A senior constable received information from a registered human source suggesting that the officer's domestic partner was dealing drugs. A complaint was later made alleging the subject officer relayed that information to her partner. The PSC investigator focused on whether the subject officer disclosed that the information came from a 'registered human source' or simply told her partner that a 'crook' had alleged he was dealing drugs.

In the final report, the investigator noted that unauthorised disclosure of police information is a Schedule 4 offence which would require consultation with the OPP to proceed by way of discipline notice, 'however if the AC PSC determines that the matter be appropriately dealt with by means of admonishment or workplace guidance, consultation with the OPP is not required'.

Documents on the file indicate that the Assistant Commissioner PSC was advised the matter involved a 'mandatory consult under 127 but only if discipline charging. If workplace guidance or admon this arguably jumps the need for consult. Potential precedent setting decision with medium risk'.

Following a review of this matter by IBAC's Assessment and Review team, IBAC wrote to Victoria Police noting the reasons for providing workplace guidance were not documented. IBAC also noted that this was concerning, given that the investigation appeared to suggest that a discipline charge was warranted. In response, Victoria Police stated 'the incident in question arose as a result of a lack of judgement without criminal intent on the part of the subject member'.

Section 227 of the Victoria Police Act states that a member of Victoria Police 'must not, without reasonable excuse, access, use or disclose any police information'. 'Intent' is not an element of the offence and IBAC auditors could not identify any discussion of possible 'reasonable excuse' in the investigation file.

### 3.3.3.4 Analysis: organisational learnings and policy issues identified by Victoria Police investigators

Complaints can help identify organisational issues and opportunities for professional development. As the central area responsible for overseeing, coordinating and investigating complaints within Victoria Police, PSC plays a critical role in identifying broader issues arising out of complaints that could be addressed through policy or other initiatives at the organisational level.

Of the 59 files audited by IBAC, 16 (27 per cent) identified areas for possible improvement to Victoria Police policy and procedures. However, Victoria Police did not formally recommend 'action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures' as advised in the VPM complaint management and investigations guidelines.<sup>58</sup> This is a missed opportunity to formally document, improve and address issues.

While no formal recommendations were made, a number of investigations identified did highlight important issues and suggested practical solutions that warranted broader organisational consideration as discussed in case studies 25 and 26.

<sup>58</sup> VPMG, Complaint management and investigations, section 12.3.

### 3 Findings from the PSC audit

#### CASE STUDY 25

Two files involved allegations that unsworn Victoria Police employees were using drugs. However, targeted drug and alcohol tests could not be conducted because the employees worked in Record Services Division (RSD). The Victoria Police Act states that an unsworn employee can only be directed to undergo a DAT if the person works in a designated work unit or carries out a designated work function.<sup>59</sup> RSD was not a designated area for testing.

In one file audited by IBAC, the investigator identified this drug testing of specific work units as an organisational issue, noting that RSD is responsible for maintaining the security and integrity of all criminal records and warrant documentation, and that an employee with a substance abuse issue could be compromised, thus creating a significant security risk for Victoria Police. Accordingly, the investigator recommended that the Victoria Police Drug and Alcohol Testing Unit take steps to have RSD declared a 'designated workplace and designated work function' for the purpose of drug and alcohol testing.

It is not clear from the file whether this recommendation was actioned by Victoria Police.

IBAC acknowledges that Victoria Police is undertaking a comprehensive review of the current drug testing regime and has identified the need to review high risk areas within designated workplaces.<sup>60</sup>

Three files in the audit concerned issues arising from a personal relationship breakdown between two officers who had lived and worked in a regional area for more than two decades. In relation to the main file, the investigator concluded senior management could have done more when they initially became aware of the situation. This is outlined in the case study on the following page.

<sup>59</sup> *Victoria Police Act 2013*, s 90(1).

<sup>60</sup> *IBAC, Special report concerning illicit drug use by Victoria Police officers: Operations Apsley, Hotham and Yarrowitch*, December 2016, Recommendation 1, and 30 June 2017 progress report from Victoria Police.

## CASE STUDY 26

A total of eight ROCSID records were created over 16 months relating to two officers following the breakdown of their marriage. The matters included allegations of drug use and trafficking, attempts to pervert the course of justice, assaults and possession of unlicensed firearms. Some of these files were managed locally.

At the conclusion of his investigation, the PSC investigator noted that station management's failure to intervene adversely affected morale at the station as well as the division's service delivery. To address this, the investigator suggested that:

At the earliest opportunity when the personal relationship breakdown was identified by management, a plan should have been implemented and conveyed to both parties outlining:

- the minimum level of professionalism required by both members
- the impact of their personal lives upon other members working at the station
- consequences of any identified breaches of discipline or legislation (ie workplace bullying)

- welfare and counselling services available
- negotiation by consent for a short-term transfer to neighbouring stations to mitigate any ongoing workplace tension
- relevant PDA entries for both parties outlining the minimum professional standards required from sworn members both on and off duty without reference to their personal circumstance linked to a performance discussion
- consequences of any ongoing identified breaches of policy or legislation and support from divisional management to direct members to move work locations if required.

Relationship breakdowns between married colleagues are not uncommon and Victoria Police is likely to encounter similar issues in future. It would have been prudent for Victoria Police to circulate the organisational learnings identified by this investigator to assist other commands to identify and manage similar situations.

### 3.3.3.5 Analysis: trends and issues identified in the audit sample

While it is acknowledged that the audit sample was relatively small, the audit identified a number of broader issues. The following discussion provides an example of an area in which Victoria Police has made progress, as well as an area for further improvement.

Four files in the audit suggest that recent initiatives adopted by Victoria Police to address issues of predatory behaviour, sexual harassment and bullying are having a positive effect. This is illustrated in case studies 27 and 28.

### 3 Findings from the PSC audit

#### CASE STUDY 27

In 2011 it was alleged the subject officer, while intoxicated at an official function, groped three female colleagues. At the time, the Ethical Standards Department advised local management they should handle the matter as no formal complaint had been made. Local management made enquiries with the victims (who all confirmed the inappropriate behaviour but declined to make a formal complaint or provide statements) and the subject officer (who made admissions). An entry was made in the subject officer's PDA and he was directed to undertake additional equity and diversity training, and submit a 500-word essay on standards of behaviour. No complaint was recorded in ROCSID.

Following the arrest of the subject officer for unrelated alleged sex offences four years later, local management provided details of the 2011 matter to PSC. The three victims from 2011 were again contacted but reiterated they did not want to pursue the matter or make further statements. However, the investigation concluded that given the subject officer's previous admission, the original allegations were substantiated, with the action recorded as workplace guidance.

The final report acknowledged the original investigation would not have been considered adequate in the current environment. It also stated that 'with the creation of Taskforce Salus, the publishing of the VEOHRC Review [into sex discrimination and sexual harassment in Victoria Police] and the establishment of the VEOHRC Review Engagement Team, Victoria Police has made significant advances in its approach to preventing and responding to issues of sexually inappropriate behaviour'.

#### CASE STUDY 28

In the course of preparing charges against a subject officer for wilful exposure, PSC became aware of other allegations of inappropriate sexual conduct by the same subject officer over a period of time. As a result, PSC initiated an investigation which identified six specific instances of inappropriate conduct by the male officer towards female colleagues.

The file was treated as a protected disclosure to protect and manage the complainants and witnesses. A Discipline Charge Notice was ultimately served but not heard following the subject officer's dismissal in relation to the wilful exposure matter.

These matters suggest Victoria Police is adopting a serious approach to dealing with allegations of sexual harassment and sexual assault, and is sending a clear message to both victims and offenders that Victoria Police will not tolerate such conduct.

However, IBAC's audit of complaints investigated by PSC also identified eight files that raised concerns about the way Victoria Police views complaints and its treatment of officers who make complaints about their colleagues. This is highlighted in the following case studies regarding organisational culture towards police who make complaints.



## CASE STUDIES 29 AND 30

In the following matters (previously discussed in case studies 22 and 23) IBAC auditors considered that PSC could have done more to support the police victims and promote a culture of integrity.

- In the first matter, PSC investigated an allegation of assault involving two off-duty officers. According to the complaint, as Officer A got out of a taxi, Officer B got in and flashed his badge to the driver, stating that he had money to pay the fare when the taxi driver told him the fare was pre-pay only. Officer A told Officer B to do as requested and pre-pay the driver. An altercation then ensued, with Officer B attacking Officer A. This prompted the taxi driver to call 000 and the occupants of a passing car to stop to offer assistance.

A criminal brief was prepared but proceeded to discipline hearing with the agreement of the OPP on the basis that Officer A was not willing to testify. Officer B was charged with one count of bringing Victoria Police into disrepute, which was found to be proven.

In his reasons for decision, the hearing officer noted the victim police officer 'refused to give evidence for the criminal charges [and] did not want [Officer B] charged internally [because] he did not want to be branded a 'dog' for giving evidence against another member [noting that] this caused [Officer B] further stress, angst and embarrassment'. IBAC auditors could not locate any notes on file to indicate what measures PSC took to reassure Officer A that Victoria Police would take action if he was victimised for assisting with the complaint.

- In the second matter, PSC investigated an allegation of multiple assaults following a police work Christmas party that had progressed to another venue. A number of officers were intoxicated and got into an argument with civilians on the dance floor. When the situation escalated, the manager closed the premises for safety reasons. As a result of the incident, three officers were investigated in relation to assaults on three civilians and one off-duty officer who had attempted to restrain one subject officer at the behest of his senior officer.

The investigator's manager argued that one public interest consideration for not charging the subject officer with assault included the 'potential for detrimental action against [the victim officer]' if he was required to give evidence against the subject officer. If a police officer is victimised for making or assisting with the investigation of a complaint Victoria Police can charge the person who caused, incited or permitted the detrimental action with an offence under section 173 of the Victoria Police Act.

Despite acknowledging that the officer might be victimised for assisting with the complaint, the file does not contain any indication that PSC reassured the victim that Victoria Police would take appropriate action if he was victimised.

In his statement, the victim officer sought to excuse the conduct of the subject officer who assaulted him, stating that he was just trying to protect his friend (who was being restrained by the victim officer) and probably didn't know who he was because it was dark and he was new to the command.

However, in his reasons for decision, the hearing officer noted 'the fact that [the subject officer] believed [the victim] to be a member of the public does not excuse his behaviour or the degree of force used', noting that 'it is very confronting to watch the CCTV footage knowing police member[s] are involved'.

### 3 Findings from the PSC audit

Officers who are either witnesses to suspected misconduct or corruption, or the victims of such conduct, must be supported to make complaints about their colleagues. It takes courage to make a complaint against a fellow officer and every effort should be made to encourage officers to speak up when they see something that is not right and to support them through the process.

Unfortunately, PSC's handling of the matters outlined above suggests that Victoria Police does not sufficiently value employees who identify issues or make complaints about colleagues by failing to sufficiently:

- impress upon police officers who are the victims of off-duty assaults that they have a duty to assist Victoria Police to investigate the subject officers
- recognise that a victim can and should be protected under the Victoria Police Act if detrimental action results, rather than suggesting it is in the public interest not to pursue a matter to avoid the possibility of detrimental action.

Indeed, in both matters investigators were at pains to note that the police victim declined to make a complaint and only provided investigators with details when directed to do so, perhaps perpetuating the idea that a good police officer only reports the poor conduct of others when required to do so.

#### 3.3.4 Human rights

##### 3.3.4.1 Policy and practice

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) requires Victoria Police to act in a way that is compatible with human rights and to ensure decision making gives proper consideration to relevant human rights.

To give effect to those provisions, the IMG states that Victoria Police has an obligation to comply with the Charter in its day-to-day operations as well as in the handling of complaints. It notes that compliance by investigators is three-fold:

- the obligation to address human rights issues stated in a complaint, or as discovered in the course of an investigation
- the obligation to the complainant and the subject member
- any human rights breach must be recorded on both ROCSID and discussed in the final report.<sup>61</sup>

As a result of recommendations IBAC made in its 2016 audit of Victoria Police's complaint handling at the regional level, PSC advised a new program is being developed to replace the Integrity Management Program and that associated resources would include a more detailed component on human rights in the context of complaint investigations.

PSC has also produced a human rights 'ready reckoner' which provides a list and brief explanation of the human rights most likely to be engaged, and outlines the key questions members must ask in relation to human rights.

<sup>61</sup> Victoria Police 2015, Integrity Management Guide, paragraphs 204 and 205.

### 3.3.4.2 Analysis: human rights

The IBAC audit identified that human rights were not adequately dealt with in 20 of the 59 files audited (34 per cent). This included files that:

- mentioned human rights in some way but failed to identify human rights issues relevant to the file (14 files)
- failed to address human rights issues at all, including human rights issues relevant to the file (three files)
- only discussed human rights insofar as they related to the conduct of the complaint investigation process and the rights of the subject officer (three files).

Examples of human rights issues that should have been addressed but were not, included:

- 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)
- 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).

These observations were consistent with IBAC's 2016 regional audit and 2018 audit of oversight files. Both audits found that human rights were not addressed in the majority of files audited and that 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'.

### 3.3.5 Outcome advice to complainants and subject officers

The VPM complaint management and investigations guidelines states:

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 such as the charging of an offender, bail proceedings, outcomes of any court proceedings, appeals or discipline proceedings
- informed in writing of the results and the action taken or proposed to be taken at the completion of the investigation.<sup>62</sup>

The last point reflects the requirements of section 172 of the Victoria Police Act, which states that 'the Chief Commissioner must in writing advise the complainant of the results of the investigation and the action taken or proposed to be taken' unless it would be contrary to the public interest.

The guidelines also state that unless an investigation is classified as work file or a corruption complaint (C1-0 or C3-4), employees are to be informed in writing about the result of an investigation and the action taken or proposed to be taken unless to do so could jeopardise the investigation or future investigations.<sup>63</sup>

<sup>62</sup> VPMG, Complaint management and investigations, section 6.1.

<sup>63</sup> VPMG, Complaint management and investigations, section 6.2.

### 3 Findings from the PSC audit

#### 3.3.5.1 Analysis: updates and outcome advice to complainants

Of the 26 files in which a contactable complainant was identified, 10 contained documents that indicated complainants were updated during the investigation and 12 contained documents that indicated a final outcome letter was sent. This included seven matters where public complainants were updated during the investigation and sent a final outcome letter.

The audit did not identify any issues with the 12 outcome letters to complainants that were located on files, all of which were considered to adequately explain the results of the investigation and action taken.

Of the 12 files that did not contain evidence to indicate that a final outcome letter was sent to the complainant:

- eight files did not contain any notes to indicate why the complainant was not advised of the outcome
- two files contained notes that suggested the complainant did not want any further involvement in the matter
- one file noted that the complainant was kept up to date and advised of the outcome through regular meetings
- one file recommended that the complainant be notified in writing but did not attach a copy of correspondence to confirm that this occurred.

#### 3.3.5.2 Analysis: outcome advice to subject officers

Of the 46 files that formally identified subject officers, 22 contained documents that indicated a final outcome letter was sent to the subject officers. Three of those letters did not accurately advise the subject officers of the allegations or determinations recorded against them in ROCSID. In those letters the subject officer was:

- advised of the outcome in relation to one allegation of assault, but was not advised of another allegation of theft which is recorded in ROCSID against the subject officer as a determination of 'withdrawn'
- advised that two allegations of assault and behaviour under the influence of alcohol were not proceeded with and not substantiated respectively, however ROCSID records that the allegation of behaviour under the influence of alcohol was substantiated and resulted in workplace guidance
- advised that four allegations of assault and pervert the course of justice were not proceeded with, however ROCSID records that one allegation of assault and one allegation of use of position were substantiated resulting in workplace guidance.

Of the 24 files that did not contain evidence to indicate that a final outcome letter was sent to the subject officer:

- Twenty-two were classified as work files or corruption complaints (C1-0 or C3-4) on closure which – according to the VPMG – means outcome advice to the subject officer is not required. This includes one corruption complaint that contained a copy of the signed admonishment notice which indicates the subject officer would have been aware of the findings and action taken.
- One complaint of criminality not connected to duty (C3-3) contained notes to indicate it was not necessary to formally advise the subject officer of the outcome because he received workplace guidance in 2011 after admitting to the allegations.
- One minor misconduct complaint (C2-1) did not contain any notes to indicate why the subject officer was not advised of the outcome.

## 3.4 Timeliness

### 3.4.1 Key findings

Timely complaint investigation and resolution is a key element of a fair and responsive complaint handling system. Victoria Police has internal time frames for completing complaint investigations, which vary depending on the file classification.

In relation to the file types considered in this audit, the VPM states that work file and corruption complaint investigations should be completed within 152 days of being lodged with PSC.<sup>64</sup> The remainder of the files have a 90-day time frame.<sup>65</sup> Those time frames may be extended in certain circumstances, which are set out in the VPM.

As with criminal investigations, failure to act on a complaint in a timely manner can result in loss of evidence, limit the options available to remedy the complaint, and add to the ordeal of both the complainant and the police officer who was complained about.

IBAC's audit did not identify any systemic delays in the classification of files by PSC PCU or allocation of files to PSC Investigations Division.

In terms of time taken to investigate:

- twenty-three of the 42 files finalised work files or corruption complaints (C1-0 and C3-4) (55 per cent) were completed within the 152-day time frame while 19 (45 per cent) took more than 152 days to complete
- seven of the 17 files finalised as complaints of minor misconduct, misconduct connected to duty or criminality not connected to duty (C2-1, C3-2 and C3-3) (41 per cent) were completed within the 90-day time frame, while 10 (59 per cent) took more than 90 days to complete.

While the audit did not identify any matters where delays clearly compromised the investigation, it is important that delays are minimised, given that involvement in a complaint investigation can be very stressful for both complainants and subject officers. It is therefore important that investigations are conducted in a timely manner.

Extensions were sought and approved in relation to 23 files ranging in total length from 30 to 524 days. While requests and approvals were not attached to 14 files (61 per cent), auditors noted that based on the information available on the file and in ROCSID:

- twenty-two files involved extensions that were not approved by an officer of sufficient rank contrary to the VPMG requirements
- seventeen files involved extensions that were made after the original due date or expiry of the preceding extension contrary to the VPMG requirements
- twelve files involved extensions for reasons that were questionable.

When approved extension periods were taken into consideration (regardless of whether auditors agreed with the reasons or the process followed), the audit identified 15 files (25 per cent) that were delayed beyond agreed time frames. Those files took between four and 24 months to complete and involved delays of between four and 240 days beyond approved extension periods.

### 3.4.2 Registration, classification and allocation

#### 3.4.2.1 Policy and practice

There are no specific policies that set out time frames for registration, classification or allocation.

#### 3.4.2.2 Analysis: timeliness of registration, classification and allocation

The extension requirements are designed to ensure that reasons for extensions are properly scrutinised and that complaint investigations progress in a timely manner.

<sup>64</sup> C1-0 work files and C3-4 corruption complaints.

<sup>65</sup> C 2-1 minor misconduct, C3-2 misconduct connected to duty and C3-3 criminality not connected to duty complaints.

**FIGURE 8: TIME TAKEN TO REGISTER, CLASSIFY AND ALLOCATE**

Process	Number of days taken				Total
	0 to 10	11 to 20	20+	Other	
Registration	26	5	18	10	59
Classification	49	2	8	0	59
Allocation	47	6	6	0	59

The eight files that took more than 20 days to classify included one file that was recorded as taking 233 days to classify. This was due to the complaint not being classified and entered onto ROCSID until the end of the investigation which started seven months earlier.<sup>66</sup> While this represents poor record keeping practice, auditors were satisfied the delay in classification did not adversely affect the investigation, which was handled appropriately. Other shorter delays were associated with internal communications, administrative issues (including loss of the file and protected disclosure assessment requirements), and the receipt of further evidence.

The six files that took more than 20 days to allocate included one file that took 211 days to allocate to an investigator, due in part to the fact that the subject officer was attached to PSC Investigations Division. Notes on the file suggest that although more than one attempt was made to allocate the file to a PSC employee outside the Investigations Division, other areas of PSC did not have capacity to handle the matter. Other shorter delays were associated with internal file movements, preliminary intelligence enquiries, and other reasons that were not clear.

### 3.4.3 Investigations and extensions

#### 3.4.3.1 Policy and practice

The VPM complaint management and investigations guidelines specify time frames within which complaint files must be completed. These time frames are calculated as the period between the date the complaint or incident was lodged with PSC; and the date the investigation is completed and any required action is approved by PSC. Time frames relevant to files within the scope of the PSC audit are shown below in Figure 9.

**FIGURE 9: TIME FRAMES FOR COMPLETION OF PSC FILES WITHIN THE SCOPE OF THE AUDIT**

Complaint type	Classification	Days
Work file	C1-0	152
Minor misconduct	C2-1	90
Misconduct connected to duty	C3-2	90
Criminality not connected to duty	C3-3	90
Corruption	C3-4	152

<sup>66</sup> This matter was ultimately classified as a work file.

The VPMG allow extensions in certain circumstances. The guidelines state the request for extension and the approval must be attached to the file.<sup>67</sup> PSC's standard operating procedures state that extension requests, approvals and rejections must be recorded in ROCSID.<sup>68</sup>

A request for extension must be made before the due completion date and must be approved by:

- a local area commander (generally an inspector or higher) for a first extension of up to 30 days
- a department head (generally an Assistant Commissioner) for subsequent extensions.

The guidelines also specify that extensions should not be granted for the following reasons:

- subject officer is on leave or rest days
- investigator is on leave or rest days
- complainant failed to make or return contact with the investigator
- complainant is refusing to cooperate.<sup>69</sup>

While an investigation can be suspended if a delay is caused by an external factor, the guidelines state that managers should first consider reallocating the file to another investigator.<sup>70</sup>

### 3.4.3.2 Analysis: investigations and extensions

Of the 42 files finalised as work files or corruption complaints (C1-0 and C3-4) in the sample, the majority 23 (55 per cent) were completed within the 152-day time frame, while 19 (45 per cent) took more than 152 days to complete.

Of the 17 files finalised as complaints of minor misconduct, misconduct connected to duty or criminality not connected (C2-1, C3-2 and C3-3 files) in the sample, seven (41 per cent) were completed within the 90-day time frame while 10 (59 per cent) took more than 90 days to complete.

Extensions were sought and approved in relation to 23 files which ranged in total length from 30 to 534 days. Taking into account approved extensions, the audit identified 15 files that were delayed.

<sup>67</sup> VPMG, Complaint management and investigations, section 6.6.

<sup>68</sup> *Victoria Police 2014, Conduct and Professional Standards Division standard operating procedures*, p 22.

<sup>69</sup> VPMG, Complaint management and investigations, section 6.6.

<sup>70</sup> VPMG, Complaint management and investigations, section 6.7.

### 3 Findings from the PSC audit

**FIGURE 10: TIME FRAMES FOR COMPLETION OF PSC FILES WITHIN THE SCOPE OF THE AUDIT**

Classification	Completed within approved period			Delayed	Classification total
	90 days for C2-1, C3-2 or C3-3	152 days for C1-0 or C3-4	Approved extension		
C2-1	2	n/a	0	0	2
C3-2	1	n/a	2	4	7
C3-3	4	n/a	2	2	8
C1-0	n/a	18	2	7	27
C3-4	n/a	5	8	2	15
<b>Time frame total</b>	<b>7</b>	<b>23</b>	<b>14</b>	<b>15</b>	<b>59</b>

The 15 files that were delayed took between four and 24 months to complete and involved delays of between four and 240 days. This included:

- ten files that noted reasons for delays which included liaison with police in other jurisdictions, time taken to consider reparations for the complainant, complexity of the file including subsequent counter complaints, geographical distance, pending legal proceedings or advice from the OPP and competing work pressures
- three files that did not note the reasons for delays, all of which involved delays of only a few days or weeks
- two files that were not technically delayed because they were reclassified as work files extending the final time frame by 62 days, however that reclassification did not occur until after the original 90-day time frame (for a C2-1 and a C3-3) expired.<sup>71</sup>

The audit did not identify any matters in which there were concerns that delays compromised the investigation.

Of the 23 files where extensions were sought, 14 (61 per cent) did not contain the extension request or approval. As well as being contrary to procedure, this lack of documentation made it difficult for auditors to assess whether extensions were justified, whether they had been approved by the appropriate officer and the length of extension that was granted.

<sup>71</sup> One file was not reclassified until 62 days after the 90-day time frame expired for a C3-3 file and another was not reclassified until 29 days after the 90-day time frame expired for a C2-1 file.



Based on the information available on the file and in ROCSID, auditors had concerns about the reasons for the extension requests in 12 of 23 files. This included extensions sought and granted:

- for no documented reason (that is, there were no extension requests on the file and ROCSID either records the reason for the extension as 'admin requirement' or 'as per monthly review' or does not contain any reasons) (eight files)
- after the investigation report had been signed off and/or subject officer has been advised of the outcome (four files)
- because the investigator was on leave (three files)
- for other questionable reasons, such as loss of the file (two files).<sup>72</sup>

Based on the available information, auditors considered that 22 files involving extensions were not approved by a sufficiently ranked officer as required in the VPMG:

- Seventeen initial extension requests that exceeded 30 days (ranging in length from 60 to 421 days) were not approved by a superintendent or higher.<sup>73</sup> This included one file in which a senior sergeant approved an initial 170-day extension.
- Thirteen files involved subsequent extensions that were not approved by the department head (namely the Assistant Commissioner PSC). This included one file that involved five extension requests totalling 425 days. While the first request for 30 days was appropriately approved by an inspector, the subsequent requests for 30, 181, 92 and 92 days were not approved by the Assistant Commissioner.

Auditors also noted that 17 files involved extension applications that were not made before the original due date or preceding extension expired as discussed in case studies 31 and 32.

<sup>72</sup> This list of issues totals more than 12 files because some files raised more than one issue in relation to the reasons for extension requests.

<sup>73</sup> Note that the 451-day extension was approved by the then acting Assistant Commissioner PSC, noting that the file had been allocated to an investigator after the due date.

#### CASE STUDIES 31 AND 32

- In a matter that involved a total extension period of 534 days:
  - the first extension request was made two months after the initial 152-day time frame expired for a C3-4
  - the second request was made six months after the first extension expired
  - the third request was made a week after the second extension expired.

While notes in ROCSID indicate the first extension was due to delays in data analysis and preparation of the briefs of evidence, no reasons were recorded for the last two extensions, both of which were made after the subject officer resigned.

- In a matter that involved a total extension period of 255 days:
  - the first extension request was made four months after the initial 152-day time frame expired for a C3-4
  - the second request was made two months after the first extension expired and four days after the subject officer was served with an admonishment notice.

## 3.5 Record keeping

### 3.5.1 Key findings: record keeping

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 of trends and patterns relies on complete and correct data.

All of the 59 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 DAU 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. This could include document naming protocols and minimum requirements in relation to the use of the investigation plan tab.

### 3.5.2 Policy and practice

The IMG states that documents should be attached chronologically from the back of the file, and should include final and interim reports, investigation plans, statements, medical reports and other relevant evidence.<sup>74</sup>

<sup>74</sup> Victoria Police 2015, Integrity Management Guide, paragraph 155.

### 3.5.3 Analysis: record keeping

Issues were identified with the documentation included on all 59 files audited. Issues identified in relation to record keeping on files included:

- twenty-seven files that identified at least one subject officer but failed to attach the subject officers' complaint histories
- fifty-six files that did not attach a conflict of interest form or contain any other documents to indicate that conflicts of interest were otherwise considered
- forty-seven files that did not contain a formal investigation plan, including two matters that involved the preparation of criminal or disciplinary briefs
- nine of 11 files where advice was sought from the DAU but that advice was not attached
- twelve files that identified a contactable complainant but did not attach a copy of the outcome letter sent to the complainant as required by section 172 of the Victoria Police Act
- fourteen files that involved extensions but failed to attach the requests and approvals as required by the VPM complaint management and investigations guidelines.

All 59 audited files were reviewed by a senior Victoria Police officer, most of which appear to have been endorsed without further comment.

Auditors identified issues with the information recorded in ROCSID in relation to 19 files. Issues identified in relation to ROCSID records included:

- nine files that did not correctly identify or list all identified subject officers
- seven files that recorded an invalid determination
- three files that recorded invalid actions or failed to record all the actions recommended in the file
- a prior complaint mentioned in a discipline hearing was not included on the subject officer's complaint history, even though it resulted in an admonishment notice.

Auditors were able to identify associated Interpose records for 51 files (86 per cent). While Interpose includes an investigation plan tab, only five files used that tab (to prepare basic plans), while a further six had uploaded some other planning documents in Interpose.

Interpose is set up to facilitate use of a container to record notes associated with the progress of the investigation and an associated container to house documents that relate to the investigation. Material saved in the document container attached to the investigation was not named consistently. At times, a link might contain one document that was accurately named, such as 'CCR data for [person A]'. At other times, a link might contain a large number of documents under a general description, such as 'G drive documents'. It is difficult to see how a manager can effectively navigate the information saved to Interpose in this way, much less monitor the progress or quality of the investigation.

## 4 Conclusion

As the dedicated Victoria Police complaint investigation unit with specialist expertise, PSC's Investigations Division should exemplify best practice in complaint handling. Complaint investigations are not an additional responsibility for officers attached to this unit (as they are for those investigating complaints in regions, departments and commands); rather, such work represents their core business.

Recognising that PSC investigates the more serious complaints including allegations of serious misconduct and corruption, IBAC's audit of a sample of investigations conducted by PSC in 2015/16 was undertaken to examine how Victoria Police handles these more serious complaint allegations.

The audit examined five broad areas including the investigation process, timeliness of the investigations and outcomes. Across all five areas, IBAC identified areas for improvement, which have informed this report's key findings and recommendations. Victoria Police has accepted these findings.

Some of these issues, including inadequate management of conflicts of interest and poor identification of human rights issues, have been previously highlighted in IBAC's 2016 *Audit of Victoria Police complaints handling systems at regional level* and 2018 *Audit of Victoria Police oversight of serious incidents*.

IBAC acknowledges that Victoria Police has initiated changes to improve its complaint handling processes. These changes include undertaking a wide-ranging review of its complaint handling and discipline system as part of the response to VEOHRC's 2015 report on sex discrimination and sexual harassment in Victoria Police. Indeed, PSC's strengthened approach to allegations of sexual harassment and sexual assault in the wake of the 2015 VEOHRC review and the creation of Taskforce Salus was evident in the sample reviewed.

However, the audit also identified concerns with how PSC handles complaints, including files that suggest there is room to improve the reporting culture among police officers, a failure to consistently document reasons for decisions about possible disciplinary action, and a range of uses for the C1-0 work file classification which appear to extend well beyond the stated purpose of undertaking preliminary enquiries.

PSC should be the exemplar for complaint investigation within Victoria Police. While the audit identified that PSC does many things well, there is scope for improvement to ensure best practice in complaint handling and investigation by PSC.

## 4.1 Summary of recommendations

The following recommendations are made to Victoria Police to help improve the management of complaints investigated by PSC. IBAC recommends that Victoria Police:

1. reviews the definition and use of the C1-0 work file classification, and formalises arrangements to notify IBAC of matters classified as work files<sup>75</sup>
2. considers the checks undertaken and criteria applied when recruiting new PSC investigators as part of its review of probity issues
3. ensures the Office of Public Prosecutions is consulted as soon as possible when Victoria Police forms a reasonable belief that a reportable offence has been committed consistent with section 127(2) of the Victoria Police Act
4. ensures advice provided by the PSC Discipline Advisory Unit and reasons for key decisions, including those of the Assistant Commissioner PSC, are clearly documented and attached to the investigation file
5. ensures policy and procedural improvements identified by investigators are formally recorded as recommended action, and implements measures to share those learnings across the organisation.

<sup>75</sup> In September 2017 Victoria Police started notifying IBAC by automated email whenever a C1-0 work file is created. This process should ensure IBAC is notified of all work files.

## 5 Appendix – Audit Instrument

### 5.1 Pre-investigation process

Issue	Audit instrument questions
Identification of allegations	<ul style="list-style-type: none"> <li>• Form of original complaint</li> <li>• Count of allegations in ROCSID</li> <li>• Count of allegations in the file</li> <li>• Does the audit officer agree with the number of allegations?               <ul style="list-style-type: none"> <li>– If no: Reason for disagreeing with the number of allegations</li> </ul> </li> <li>• Does the audit officer agree with the characterisation of the allegations?               <ul style="list-style-type: none"> <li>– If no: Reason for disagreeing with the characterisation of the allegations</li> </ul> </li> <li>• Is a brief attached to the file?               <ul style="list-style-type: none"> <li>– Comment on brief</li> </ul> </li> </ul>
Classification	<ul style="list-style-type: none"> <li>• Does the audit officer agree with the complaint classification</li> <li>• If no: Reason for disagreeing with the complaint classification               <ul style="list-style-type: none"> <li>– Was the complaint reclassified? If yes:                   <ul style="list-style-type: none"> <li>– Date reclassified</li> <li>– Original and final classification</li> <li>– Reason for reclassification</li> </ul> </li> <li>– Does the audit officer agree with the complaint reclassification? If no: Reason for disagreeing with reclassification</li> <li>– Days to reclassify</li> <li>– Did timing of reclassification adversely affect notification and/or investigation?</li> </ul> </li> </ul>
Notification to IBAC	<ul style="list-style-type: none"> <li>• Date notified to IBAC               <ul style="list-style-type: none"> <li>– If not notified: Should IBAC have been notified?</li> </ul> </li> <li>• Comment on notification</li> </ul>
Identification of subject officers	<ul style="list-style-type: none"> <li>• Count of 'member complained against' (as recorded in ROCSID)</li> <li>• Highest ranking 'member complained against'</li> <li>• Count of officers that could not be identified</li> <li>• Does the audit officer agree with the count and identification of members complained against?</li> <li>• Comment on number and/or identification of members complained against</li> </ul>

Complaint history checks	<ul style="list-style-type: none"> <li>• Subject officers' complaint histories attached</li> <li>• Do the subject officers have complaint histories relevant to the current complaint?</li> <li>• Were the relevant complaint histories discussed on the file in any way?</li> <li>• Comment on consideration of subject officers' relevant complaint histories</li> </ul>
Conflicts of interest	<ul style="list-style-type: none"> <li>• Has VP Form 1426 (Oversight/Investigation Conflict of Interest Questionnaire and Approval) been completed?</li> <li>• Was a conflict of interest otherwise identified by Victoria Police?</li> <li>• Comment on conflicts of interest</li> <li>• Rank of primary investigator</li> <li>• Does the investigator have a relevant complaint history in ROCSID which could affect their ability to investigate this matter?</li> <li>• Comment on investigator's relevant complaint history</li> <li>• Was the choice of investigator appropriate? <ul style="list-style-type: none"> <li>– If no: Comment on choice of investigator</li> </ul> </li> </ul>
Investigation plans and risk management	<ul style="list-style-type: none"> <li>• Was a formal investigation plan prepared from the outset? <ul style="list-style-type: none"> <li>– If yes: Where were the planning documents found</li> </ul> </li> <li>• Comment on planning documents (or lack of)</li> <li>• Did the complaint give rise to any risks that warranted immediate action? <ul style="list-style-type: none"> <li>– If yes: Describe the issues that warranted interim action</li> <li>– If yes: Was any interim action taken?</li> </ul> </li> <li>• Comment on risks and/or action taken</li> </ul>

## 5.2 Investigation process

Issue	Audit instrument questions
Contact with complainant	<ul style="list-style-type: none"> <li>• Count of identifiable public complainants</li> <li>• Count of identifiable internal police complainants</li> <li>• Other complainant type</li> <li>• Comment on identification of complainants</li> <li>• Count of complainants contacted by investigators</li> <li>• Were all relevant complainants contacted?                             <ul style="list-style-type: none"> <li>– If no contact but reasons given: What reason was given?</li> </ul> </li> <li>• Comment on initial contact with complainant</li> </ul>
Contact with civilian witnesses	<ul style="list-style-type: none"> <li>• Count of identifiable civilian witnesses</li> <li>• Comment on identification of civilian witnesses</li> <li>• Count of civilian witnesses contacted by investigators</li> <li>• Were all relevant civilian witnesses contacted?                             <ul style="list-style-type: none"> <li>– If no contact but reasons given: What reason was given?</li> </ul> </li> <li>• Comment on contact with civilian witnesses</li> </ul>
Contact with police witnesses	<ul style="list-style-type: none"> <li>• Count of identifiable police witnesses</li> <li>• Comment on identification of police witnesses</li> <li>• Count of police witnesses contacted by investigators</li> <li>• Were all relevant police witnesses contacted?                             <ul style="list-style-type: none"> <li>– If no contact but reasons given: What reason was given?</li> </ul> </li> <li>• Comment on contact with police witnesses</li> </ul>



Contact with subject officers	<ul style="list-style-type: none"> <li>• Count of subject officers</li> <li>• Count of subject officers contacted by investigators</li> <li>• Count of subject officers subject to: <ul style="list-style-type: none"> <li>– Criminal interview</li> <li>– Disciplinary interview</li> <li>– Formal statement</li> </ul> </li> <li>• Count of subject officers who resigned during investigation</li> <li>• Were all relevant subject officers contacted? <ul style="list-style-type: none"> <li>– If no contact but reasons given: What reason was given?</li> </ul> </li> <li>• Were interviews with subject officers conducted at the end of the investigation?</li> <li>• Comment on contact with subject officers</li> </ul>
Evidence considered	<ul style="list-style-type: none"> <li>• What evidence was or should have been considered?</li> <li>• Comment on evidence</li> </ul>
Review of investigation	<ul style="list-style-type: none"> <li>• Was the investigation reviewed by a supervisor? <ul style="list-style-type: none"> <li>– If yes: Did the supervisor identify the need for further work?</li> <li>– Comment on supervisor's review</li> </ul> </li> <li>• Was this investigation reviewed by IBAC? <ul style="list-style-type: none"> <li>– If yes: Note any issues identified in IBAC review and how they were addressed by Victoria Police</li> </ul> </li> </ul>

### 5.3 Outcomes

Issue	Audit instrument questions
Determinations	<ul style="list-style-type: none"> <li>• Most substantial determination recorded in ROCSID</li> <li>• Do the determinations in ROCSID reflect those in the final report and final letters?                             <ul style="list-style-type: none"> <li>– Comment on differences between determinations in the final report, the final letters and ROCSID</li> </ul> </li> <li>• Were the final determinations appropriate?</li> <li>• Comment on final determinations that are not considered appropriate</li> </ul>
Actions	<ul style="list-style-type: none"> <li>• Most severe action recorded in ROCSID</li> <li>• Do the actions in ROCSID reflect those in the final report and final letters?                             <ul style="list-style-type: none"> <li>– Comment on differences between actions in the final report, the final letters and ROCSID</li> </ul> </li> <li>• Were the actions appropriate?</li> <li>• Comment on actions that are not considered appropriate</li> </ul>
Disciplinary and/or criminal proceedings	<ul style="list-style-type: none"> <li>• Were disciplinary and/or criminal charges laid?</li> <li>• Was advice sought from the DAU or the OPP?</li> <li>• Describe the charges laid (or recommended by the investigator, DAU or OPP if not pursued)</li> <li>• Outcome of disciplinary and/or criminal proceedings (or details of how decision was reached if charges were not pursued)</li> </ul>
Organisational learnings	<ul style="list-style-type: none"> <li>• Does the final report identify any policy or procedural issues?                             <ul style="list-style-type: none"> <li>– Comment on policy or procedural issues that were or should have been identified</li> <li>– Has any action been taken to progress recommendations in relation to issues identified?</li> <li>– Comment on action taken in relation to identified policy or procedural issues</li> </ul> </li> </ul>

Consideration of human rights	<ul style="list-style-type: none"> <li>• Does the final report address human rights issues? <ul style="list-style-type: none"> <li>– Comment on human rights issues that were or should have been addressed</li> <li>– Has any action been taken in relation to identified human rights breaches?</li> <li>– Comment on action taken in relation to identified human rights breaches</li> </ul> </li> </ul>
Communication of progress and outcome to complainants	<ul style="list-style-type: none"> <li>• Was the complainant updated on the progress of the investigation? <ul style="list-style-type: none"> <li>– If yes: How was the complainant updated?</li> <li>– If no: What was the reason for the lack of contact?</li> </ul> </li> <li>• Comment on progress updates to complainant</li> <li>• Is the final letter to complainants attached to the file? <ul style="list-style-type: none"> <li>– If yes: Does the letter clearly explain the results and details of the action to be taken (as per s 172 VPA)?</li> <li>– If no: Does the file note the public interest reason for not advising of the outcome (as per s172(2) VPA)?</li> </ul> </li> <li>• Comment on final letter or advice to the complainant</li> </ul>
Communication of outcome to subject officers	<ul style="list-style-type: none"> <li>• Are outcome letters to subject officers attached to the file? <ul style="list-style-type: none"> <li>– If yes: Does the outcome letter to the subject officer clearly identify the findings and the action to be taken?</li> </ul> </li> <li>• Comment on outcome letter or advice to subject officers</li> </ul>

## 5.4 Timeliness

Issue	Audit instrument questions
Time taken to register, classify and allocate	<ul style="list-style-type: none"> <li>• Date in ROCSID when:                             <ul style="list-style-type: none"> <li>– Incident occurred</li> <li>– Complaint received by Victoria Police</li> <li>– Complaint allocated to investigator</li> </ul> </li> <li>• Calculate days from:                             <ul style="list-style-type: none"> <li>– Incident to receipt (time taken to lodge complaint)</li> <li>– Receipt to classification (time taken to classify)</li> <li>– Classification to allocation (time taken to allocate)</li> </ul> </li> <li>• Was there any delay in classification and/or allocation?</li> <li>• Comment on reasons for delay in classification and/or allocation</li> </ul>
Time permitted to investigate	<ul style="list-style-type: none"> <li>• Date in ROCSID when investigation was due to be completed</li> <li>• Total days permitted to complete investigation (from receipt to official due date)</li> <li>• Total extension period granted (as suggested by official due date)</li> <li>• Does the audit officer agree that this period of extension/suspension was approved?</li> <li>• Are extension requests and approvals attached to the file?</li> <li>• What reasons were noted for extensions sought?</li> <li>• Were the extensions reasonable?                             <ul style="list-style-type: none"> <li>– Comment on reasons for and/or length of extension</li> </ul> </li> <li>• Was the extension approved in accordance with the VPMG?                             <ul style="list-style-type: none"> <li>– Comment on approval process</li> </ul> </li> </ul>
Time taken to investigate and consequences of delays	<ul style="list-style-type: none"> <li>• Date in ROCSID when investigation was completed</li> <li>• Days to investigate</li> <li>• Days overdue</li> <li>• Was the investigation completed within the time frames set out in the VPMG? If no:                             <ul style="list-style-type: none"> <li>– What was the primary reason for delay in investigation?</li> <li>– Based on the available information, did the delay compromise the integrity of the investigation in any way?</li> <li>– General comment on delay</li> </ul> </li> </ul>

## 5.5 Record keeping

Issue	Audit instrument questions
Completeness of documents on file	<ul style="list-style-type: none"><li>• Was all relevant documentation included in the file?<ul style="list-style-type: none"><li>– Comment on the file</li></ul></li><li>• Were all relevant fields accurate and complete in ROCSID?<ul style="list-style-type: none"><li>– Comment on ROCISD</li></ul></li><li>• Was the complaint managed on Interpose?</li></ul>

