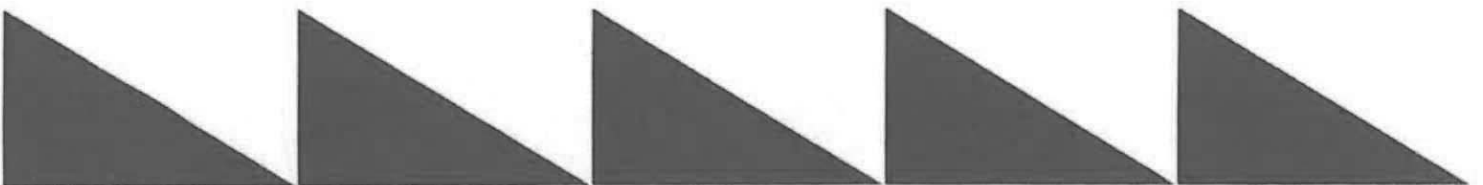


Report to the Minister for Police

Pursuant to section 70N of the *Sex Offenders Registration Act 2004* (Vic)

1 January 2015 to 31 December 2016



Authorised and published by the
Independent Broad-based Anti-corruption Commission,
Level 1, 459 Collins Street, Melbourne.

June 2018

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Definitions

	Explanation
ACIC	Australian Criminal Intelligence Commission
BDM	Victorian Registry of Births, Deaths and Marriages
Chief Commissioner	Chief Commissioner of Victoria Police
Compliance manager	sworn Victoria Police personnel responsible for the management of RSOs
DHHS	Department of Health and Human Services
DOJR Secretary	Secretary of the Department of Justice and Regulation
FAC	Firearms Appeals Committee
IBAC	the Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i>
IBAC inspectors	IBAC officers authorised to inspect the Register
Inspection period	1 January 2015 to 31 December 2016
ISP	Internet Service Provider
NCOS	National Child Offender System
NORO	Notice of Reporting Obligations
Policy rules	Policy Rules contained in the Victoria Police Manual relating to the management of RSOs
Procedures and guidelines	Procedures and Guidelines contained in the Victoria Police Manual relating to the management of RSOs and maintenance of the Register
RSO	Registered Sex Offender
SOR database	Victoria Police Sex Offender Register Database
Supreme Court	the Supreme Court of Victoria
The Act	<i>Sex Offenders Registration Act 2004 (Vic)</i>
The Register	Victoria Police Register of Sex Offenders
The Registry	the division of Victoria Police responsible for maintaining the Register
The Regulations	<i>Sex Offender Registration Regulations 2014 (Vic)</i>
VPM	the Victoria Police Manual

1 Background

1.1 Legislative Framework

The purpose of the *Sex Offenders Registration Act 2004* (Vic) (the Act) is set out in section 1 as follows:

1. Purpose and outline

The purpose of this Act is:

- a. to require certain offenders who commit sexual offences to keep police informed of their whereabouts and other personal details for a period of time:
 - i. to reduce the likelihood that they will re-offend; and
 - ii. to facilitate the investigation and prosecution of any future offences that they may commit
- b. to prevent registered sex offenders working in child-related employment
- c. to empower the IBAC to monitor compliance with Parts 3 and 4 of this Act
- d. to provide for the making of prohibition orders to prevent RSOs engaging in certain conduct.

The Independent Broad-based Anti-corruption Commission (IBAC) is required under section 70L of the Act to monitor the Chief Commissioner of Police's (Chief Commissioner) (and any other authorised persons') compliance with Parts 3 and 4 of the Act.¹

In order to fulfil IBAC's function of monitoring compliance, section 70N of the Act permits authorised IBAC officers (IBAC inspectors) to exercise certain powers, including inspecting the Victoria Police Register of Sex Offenders (the Register).

Under section 70O of the Act IBAC may also report to the Minister for Police on the results of its inspections and the Chief Commissioner's (and any other authorised persons') general compliance with Parts 3 and 4 of the Act.

Beginning in 2013, IBAC monitored compliance with Part 4 of the Act and reports were provided only to the Minister for Police and the Chief Commissioner.

Commencing 1 February 2017, IBAC's function under the Act was amended and expanded to include Part 3 (and 4) of the Act. Pursuant to section 70O, IBAC's inspection reports are now to be laid before each House of Parliament within 15 sitting days after the day on which the Minister receives the report.

A draft copy of this report was provided to the Chief Commissioner for consultation and comment.

¹ For more information, see page 7.

1.2 The Register

Section 62(1) of the Act requires the Chief Commissioner to establish and maintain a Register of Sex Offenders (RSOs). The Register is to contain the information referred to in section 62(2) of the Act in respect of each RSO (to the extent known by the Chief Commissioner).

Currently the information required to be recorded in the Register is held on the National Child Offender System electronic database, known as 'NCOS', as well as hardcopy files relevant to each RSO. NCOS is a national database operated by the Australian Criminal Intelligence Commission (ACIC) that is also used by other law enforcement agencies.

NCOS is intended to contain information reported by RSOs to operational members of Victoria Police and the Registry under the Act. This information is initially recorded in hardcopy files specific to each RSO, and later entered into NCOS. Information received from other government bodies relevant to the administration of the Act is also entered into NCOS.

The move to a single electronic database

Prior to the end of 2016, the information required to be recorded in the Register was divided between two electronic databases: NCOS, and Victoria Police's dedicated 'Sex Offender Register' database, known as the 'SOR database'.

The complexity and risks associated with effectively managing a divided Register, as well as hardcopy files, has been the subject of previous discussion between IBAC and the Registry. The move to a single electronic register was considered necessary to ensure the integrity and reliability of information contained in the Register. IBAC acknowledges the considerable work of the Registry² in consolidating the electronic databases.

Limited reporting functionality

There is currently limited reporting functionality in NCOS. A reporting tool for interrogation of the data in NCOS is currently being developed under a 'Reporting Tool Project' with ACIC. The Reporting Tool Project contemplates a daily data transfer from NCOS to the SOR database, and the management of reporting to be undertaken from the SOR database. Consequently, the SOR database must continue to be maintained in a limited capacity to enable reporting requirements.

Ability to record state-specific information

NCOS is managed by ACIC, a federal authority, and is a database accessible by other national and state law enforcement agencies. Therefore, additional fields relating to Victorian legislation are not able to be added to NCOS without the agreement of other users of the database.

Section 62(2)(f) of the Act requires any information reported in respect of an RSO pursuant to Part 3 to be contained within the Register.

While NCOS has a field to record convictions, there are no specific fields for recording offences with which the RSO has been charged, as required by section 62(2)(b). Details of Class 1 or 2 offences for which the RSO has been charged³ are currently only being kept in the hard copy files.

As noted in Part 5.2, NCOS also has limited fields for recording reported child contact, but there are no specific fields for recording reported child contact as required by section 14(1)(ea). There are no specific fields in NCOS for recording reported phone numbers or the location of where the contact takes place.

² The division of Victoria Police responsible for maintaining the Register.

³ But not used to calculate reporting periods.

It is IBAC's view that where information is required to be contained within the Register, the information should be recorded in NCOS so that it can be made available to and used by those persons who need to do so.

IBAC acknowledges that at a practical and functional level, where possible, data has been entered into alternative fields in NCOS. IBAC notes that there is a risk of inaccurate reporting or reduced reporting functionality in capturing data in this way.

IBAC encourages the Registry to pursue any opportunities with the ACIC and other users to update the NCOS database with fields that reflect the requirements of Victorian legislation.

2 Conducting the inspection

This report provides the findings of the inspection conducted by IBAC in relation to the period 1 January 2015 to 31 December 2016 (the inspection period).

IBAC's inspection team consisted of four inspectors, including legal advisors. The inspection took place over an extended period of time from March to August 2017, and included:

- requests for statistical and other operational information
- review of authorisations, policies and procedures pertaining to Parts 3 and 4 of the Act
- on-site inspections of the Register.

Inspectors examined a randomised and representative sample of information contained within the Register, with a primary focus on new RSO files added to the Register during the inspection period.

Overall, IBAC inspectors spent a total of nine days at the Registry meeting and consulting with Registry staff and conducting a review of NCOS, the SOR database and hardcopy RSO files.

The following key statistics relate to information contained in the Register for the inspection period:

Number of new RSOs added to the Register during the inspection period (1 January 2015 to 31 December 2016)	1190
Total number of RSOs contained in the Register (as at 31 December 2016)	7012

3 Summary of compliance

The following three ratings are used to describe the level of statutory compliance achieved by the Chief Commissioner during the inspection period in respect of the ten categories of compliance referred to below:

- **Compliant** – fully compliant with statutory requirements, or any degree of non-compliance was relatively minor and in the nature of an occasional mistake or oversight.
- **Substantially Compliant** – generally compliant with statutory requirements, but there were material compliance problems or issues identified.
- **Not Compliant** – a failure to meet statutory requirements entirely, or a pattern of fundamental compliance problems or issues identified.

This report also considers other matters related to the Chief Commissioner's compliance with the Act, including governance, and some historical matters.

The following table summarises IBAC's assessment of the Chief Commissioner's compliance with the ten categories used by IBAC to monitor compliance.

Compliance category	Compliance rating
Part 3	
1. Persons approved to receive reports from RSOs	Compliant
2. Victoria Police monitoring of RSO compliance with reporting obligations	Substantially Compliant
3. Maintenance of the Register	Substantially Compliant
4. Victoria Police maintenance of suspension of reporting obligations	Substantially Compliant
5. Notification of reporting obligations by Victoria Police	Substantially Compliant
6. Modified reporting arrangements	Compliant
Part 4	
7. Establishment of the Register	Substantially Compliant
8. Restricting access to the Register	Compliant
9. Not releasing personal information from the Register unless legally permitted	Substantially Compliant
10. Providing RSOs with access to reportable information contained in the Register on request	Compliant

On the basis of matters referred to in this Report the Chief Commissioner is assessed as being **Substantially Compliant** with Part 3 of the Act and **Substantially Compliant** with Part 4 of the Act.

4 Recommendations

IBAC makes the following recommendations:

Recommendation 1

That the Registry review procedures and guidelines regulating the suspension of RSO reporting obligations. The procedures and guidelines should include criteria for the use of the power in section 39A of the Act and set out the circumstance for when an application pursuant to section 45A of the Act should be made.

Recommendation 2

That the Registry review:

- a. those files where a notice has been issued pursuant to sections 52 or 54 and, where appropriate, apply to the court to request the error be corrected pursuant to section 50(5A), with notification to the RSO of the intention to make such application
- b. procedures and guidelines regulating how any errors in relation to registration are handled by the Registry. The procedures and guidelines should include processes for the making of applications pursuant to section 50(5A) of the Act where it is deemed an error needs to be corrected. The process should permit the correction of the error by the relevant judicial officer in chambers.

Recommendation 3

That the Chief Commissioner takes steps to ensure that relevant authorisations, procedures and guidelines are in place to ensure alternative reporting provisions can be effectively managed in the event they are required.

Recommendation 4

That the Registry review relevant procedures and guidelines (including processes) to ensure that all disclosures pursuant to section 63 of the Act are recorded and available for inspection by IBAC, in accordance the requirement of section 70M of the Act.

Recommendation 5

That the Registry take steps as a priority to ensure that current procedures and guidelines are followed and complete details of section 64(2) disclosures – including the purpose of such disclosures – are recorded in a manner that allows inspection by IBAC.

Recommendation 6

That the Registry review its procedures and guidelines regarding the recording of information security breaches to ensure that breaches are recorded accurately and that IBAC is notified of any breaches promptly.

5 Report on compliance with Part 3 of the Act

5.1 Compliance category 1 – Persons approved to receive reports from RSOs

Section 23(3) of the Act states that only a police officer approved for the purpose by the Chief Commissioner may receive reports from RSOs made in person, and only a police officer or other person approved for the purpose may receive reports made in another way.

Relevant Victoria Police procedures specify that only those police officers or other persons who have completed the Registered Sex Offender Management training course conducted by the Registry are approved to perform the role of compliance manager and receive reports from RSOs. Usually, the role of compliance manager is performed by investigating officers, however in regional areas uniform members may be compliance managers if they have completed the appropriate training.

In IBAC's view, these categories of approval are appropriate.

Compliance assessment: In relation to persons approved to receive reports from RSOs, the Chief Commissioner is assessed as being **Compliant**.

5.2 Compliance category 2 – Victoria Police monitoring of RSO compliance with reporting obligations

RSO must report changes to relevant personal details

Section 17 of the Act requires RSOs to report any change in their personal details within seven days of that change occurring. Reports of change of address and child contact by RSOs must be made within one day of the change or contact occurring.

In the files inspected, it was evident that changes to relevant personal details were generally being made within the required reporting timeframes. Where reporting occurred just outside of the relevant timeframes, reminders were given to RSOs. Where there was a failure to report or a delay in reporting, Victoria Police took action to consider whether the failure to report constituted a breach of the Act by the RSO.

Interstate and overseas movements of RSOs

Section 62(2) of the Act, in combination with sections 14(1)(l) and 18 to 21A⁴, require RSOs to report their intended and actual absences from Victoria within prescribed time-frames, and to provide certain details in relation to their movements. A sample of files was inspected in relation to absences and travel plans. During the inspection period 20 per cent of RSOs⁵ made such reports. Of the RSOs who made these reports, 11.6 per cent had been added to the Register during the inspection period.

A number of the files related to RSOs who travelled interstate regularly for employment.

In general terms the records inspected relating to travel were accurate, particularly in relation to files of RSOs added to the Register in the inspection period. It also appears that Registry staff conduct appropriate follow up where travel reports appear not to have been made.

⁴ s 21A of the Act came into effect on 1 June 2015, during the inspection period. Accordingly, compliance with that section of the Act was assessed only from that date.

⁵ As at 31 December 2016.

5 Report on compliance with Part 3 of the Act

A recurring issue noted by IBAC inspectors was that it was not possible to assess the method by which a report was made by an RSO — that is, whether the report was made in person, via email or telephone. The Act requires certain notifications to be made in person, however this could not be assessed based on the information contained in the records inspected. In discussion with the Registry, it was proposed that amendments be made to the receipt template for travel notifications which would allow the person filling out the receipt to indicate the method by which the report had been made. The Registry subsequently provided an amended template to IBAC inspectors which fulfils the requirement to indicate the method of reporting by RSOs.

A number of minor errors or omissions were noted for follow-up by the Registry.

Child Contact

Legislative amendments to the Act that commenced on 1 June 2015 included a new definition of child contact⁶, along with additional information to be reported by RSOs in relation to contact with children. This includes the child's age, residential address and telephone number or, where that information is not known, the location where the contact takes place⁷.

In general terms the records inspected relating to child contact were accurate and met the legislative reporting requirements.

IBAC acknowledges the limitations of the NCOS data fields in relation to recording child contact details, however an issue noted is that while this data was generally being reported and subsequently recorded on the hard copy file, the details were not consistently entered into NCOS. For the purposes of child protection and associated disclosure to DHHS, this information should also be recorded in NCOS.

IBAC inspectors observed that the field limitations of NCOS also meant that where the reported data was entered into NCOS, it was either recorded against a parent/guardian in the 'associations' section, or against the fields relating to the child. It would be preferable for this information to be entered into NCOS in a consistent manner.

A number of minor errors or omissions were noted for follow-up by the Registry.

Compliance assessment: In relation to Victoria Police monitoring of RSO compliance with reporting obligations, the Chief Commissioner is assessed as being **Substantially Compliant**.

⁶ s 4A of the Act

⁷ s 4(1)(a) of the Act

5.3 Compliance category 3 – Maintenance of the Register

Section 25 – Receipt of information to be acknowledged

Section 25 of the Act requires that the police officer or other person receiving a report under Part 3, must acknowledge the making of the report in writing. The acknowledgement must be given to the person making the report and must include:

- the name and signature of the police officer or other person who received the report
- the date and time when, and the place where, the report was received; and
- a copy of the information that was reported.

A sample of section 25 receipts were inspected and in general, the information was accurate and met legislative requirements. Reported information was also accurately updated in NCOS, and compliance managers followed up and verified information where necessary, particularly address changes.

A small number of minor errors or omissions were noted for follow-up by the Registry.

An issue noted, as also reported in part 5.2 above, was that it was not possible for IBAC inspectors to assess the method by which a report was made by an RSO. Where the Act requires specific reports to be made in person⁹, it was not possible, in most cases, to establish if this was the method by which a report was made.

Regulations 15(a) and (b) of the *Sex Offenders Registration Regulations 2014* (the Regulations) state that where reports are made in relation to employment⁹ or car details¹⁰ that certain additional verification documentation should be presented by the RSO.

The provision of this information by RSOs appears to be inconsistent. IBAC inspectors were unable to identify any follow-up by compliance managers for this information where it was not provided. If it was presented (rather than provided) to the compliance managers and a copy was not made, IBAC inspectors were unable to confirm this based on the detail held on file.

The Registry has subsequently amended the section 25 receipt template to include the method by which a report is made and included details as to whether relevant information has been presented.

IBAC inspectors were satisfied that the requirement of section 25(3) of the Act to retain a copy of the receipt of information is being met.

Compliance assessment: In relation to the Maintenance of the Register, the Chief Commissioner is assessed as being **Substantially Compliant**.

⁹ s 23 of the Act

¹⁰ s 14(1)(b) of the Act

¹¹ s 14(1)(b) of the Act

5.4 Compliance category 4 – Victoria Police maintenance of RSO suspension from reporting obligations

In certain circumstances, an RSO's reporting obligations can be suspended. There are three sections of the Act that allow for suspension for varying periods of time and for several reasons:

- Section 39 allows an RSO who is obliged to report for the remainder of his or her life to apply to the Supreme Court of Victoria for suspension of those reporting obligations if certain criteria have been met.
- Section 39A allows the Chief Commissioner to apply to the Supreme Court for an order suspending the reporting obligations of an RSO.
- Section 45A allows the Chief Commissioner to suspend an RSO's reporting obligations for up to 12 months provided the Chief Commissioner (or delegate) is satisfied that the RSO does not pose a risk to the sexual safety of one or more persons or of the community.¹¹

Section 39 – Supreme Court may suspend certain registrable offenders' reporting obligations

As applications made pursuant to section 39 are court matters that must be brought by RSOs, many aspects of Victoria Police's responses will attract legal professional privilege. IBAC therefore does not propose to comment on Victoria Police's handling of applications made pursuant to section 39 of the Act.

Section 39A – Chief Commissioner may apply for suspension from reporting obligations

Section 45A – Chief Commissioner of Police may suspend reporting obligations for a period not exceeding 12 months in certain circumstances¹²

To date Victoria Police have not made an application to the Supreme Court to permanently suspend an RSO's reporting obligations under section 39A of the Act. However, IBAC noted instances where a delegate of the Chief Commissioner intended to suspend an RSO's reporting obligations for multiple 12-month periods pursuant to s 45A. IBAC inspected a number of files where each RSO was suffering from serious health conditions that appeared unlikely to improve. In both cases the RSO could no longer care for themselves.

In these types of circumstances – involving an RSO with permanent impediments to complying with their reporting obligations – it might be expected that an application would be made pursuant to section 39A for the RSO's reporting obligations to be permanently suspended. However, the Registry appears to have favoured 12-month suspensions that are 'renewed' each year.

An RSO whose health has declined to the point where they can no longer care for themselves is unlikely to have the means to make their own application suspending their reporting obligations pursuant to section 39, or may not meet the criteria set out in section 39. In IBAC's view, RSOs whose reporting obligations are being suspended year-to-year do not have much certainty as to their ongoing obligations. The continued monitoring of RSOs who are physically incapable of being a risk to the community may also be an inefficient use of Victoria Police resources.

¹¹ In coming to the required state of satisfaction, the Chief Commissioner (or delegate) must take the matters listed in s 45A(3) into account.

¹² The Act was amended on 1 March 2018 to provide Victoria Police with the power to suspend obligations for a period of up to five years.

IBAC inspectors also observed two instances where the Registry appeared to be intending to suspend an RSO's obligations for a further 12 months, however did not have the renewed suspension finalised before the original suspension expired. In both cases the Register was not updated and the RSOs continued to be listed as suspended despite their obligations resuming. In these two cases, the RSOs may have been unknowingly in breach of their reactivated reporting obligations despite lacking capacity to comply.

In IBAC's view the aforementioned issues are largely created by the seeming reliance on the suspension power in section 45A of the Act, a power which was intended to be only a temporary measure.

IBAC notes that the Act has recently been amended to provide Victoria Police with the power to suspend obligations for a period of up to five years. This development may provide more certainty to RSOs in circumstances similar to those described above. However, IBAC considers that if a situation arises where there is a prospect that an RSO will be suspended for multiple periods in the future that the Chief Commissioner consider whether an application under section 39A of the Act would be more appropriate in the circumstances.

Recommendation 1

That the Registry review procedures and guidelines regulating the suspension of RSO reporting obligations. The procedures and guidelines should include criteria for the use of the power in section 39A and set out the circumstance for when an application pursuant to section 45A of the Act should be made.

Compliance assessment: In relation to Victoria Police maintenance of RSO suspension from reporting obligations, the Chief Commissioner is assessed as being **Substantially Compliant**.

5.5 Compliance category 5 – Notification of reporting obligations by Victoria Police

Section 50 – Notice to be given to an RSO

Section 50 of the Act sets out the notification requirements by the Court to an RSO of their reporting obligations.

Sub-section 50(1) of the Act states that an RSO is to be given written notice of his or her reporting obligations, and the consequences that may arise if he or she fails to comply with those obligations.

Regulation 19 of the Regulations states that any notice given under section 50(1) of the Act is not required to specify the RSO's reporting period.

Sub-section 50(3) of the Act states that a notice under section 50 must be given by the person or body specified in the Regulations.

Sub-section 50(5) of the Act states that:

Despite anything in this Division, a court that—

- a. Makes any order or imposes any sentence that has the effect of making a person an RSO for the purposes of this Act; or
- b. Imposes any sentence on a person in relation to a registrable offence –

Must ensure that the person is, at the time the order is made or the sentence imposed, given a written notice specifying the reporting period that applies to him or her consequent on the order or sentence.

Sub-section 50(5A) of the Act goes on to clarify that the court may issue a further notice to correct an error in a notice given to a person under section 50.

Section 52 – Notice to be given when a reporting period changes

Where the period for which an RSO must report changes, the Chief Commissioner is obliged to provide written notice to the RSO as soon as practicable after the change, pursuant to section 52 of the Act.

Section 54 – Notices may be given by the Chief Commissioner

Section 54 of the Act states that the Chief Commissioner may, at any time, cause written notice to be given to an RSO of his or her reporting obligations, and the consequences that may arise if he or she fails to comply with those obligations.

Utilisation of sections 52 and 54 to correct errors in reporting period

IBAC inspectors were informed that occasionally the Registry will detect errors in the reporting period specified in the written notice provided by the relevant court to an RSO. In the cases reviewed by IBAC inspectors where this occurred, it appeared that it was often the result of prior registrable offences or 'corresponding registrable offences' committed in another jurisdiction not being brought to the attention of the court at the time of sentence.

In these instances, the Chief Commissioner appears to have determined that an RSO's reporting period has 'changed' and has sent a written notice to the RSO informing them of the revised reporting period. In these circumstances the court was not notified that the purported error was corrected.

While the Registry is to be commended for reviewing reporting obligations and identifying errors, IBAC is concerned that the court is not being notified of such errors and that the Registry is unilaterally altering the reporting period.

IBAC understands that reporting periods are prescribed by the Act, and are not subject to judicial discretion. However, it is IBAC's view that the Act intends that the court – and not Victoria Police – provide notice of an RSO's reporting period.

Sub-section 50(5) expressly states that the court must provide the written notice specifying the reporting period consequent to the order or sentence. Notice given to an RSO under section 50(1) does not require that a reporting period be specified.

Regulation 21 of Schedule 2 of the Regulations specifies that it is the relevant court sentencing an RSO that is required to provide notice of reporting obligations.

Sub-section 50(5A) also provides an express mechanism for correcting an error in a notice provided by the court to an RSO.¹³

In light of the above, where an error in the length of a reporting period is detected, IBAC considers that the appropriate course of action is to request the relevant court correct the error pursuant to section 50(5A) of the Act.

This proposed course would also ensure that the court is made aware of any error and has the opportunity to correct any written record of the court's decision as the error is likely to be replicated there.

Further examples provided by the Registry

IBAC acknowledges that the collection of accurate information for the purposes of determining an RSO's reporting period on a fresh conviction in Victoria can present challenges. This is especially so if the matter involves historical offending, corresponding registrable offences committed in interstate or overseas jurisdictions, or incomplete, damaged or destroyed records.

After reviewing a draft of this report, the Registry provided to IBAC several examples where a purported error in the reporting period stipulated by the court was identified, together with examples of the purported difficulties in having the error corrected. In these examples Victoria Police relied on sections 52 and/or 54 of the Act to send a new notice of reporting obligations to the offender specifying a different reporting period to the one ordered by the court. However in at least one case it was arguably not only an error by the court but a decision of law with which Victoria Police did not agree, which led the Registry to make a different determination as to the reporting period.

In some cases no application could be made to the court because the matter took place before section 50(5A) commenced operation on 1 February 2017. Once an application to the relevant court could be made pursuant to section 50(5A) to correct any errors in an RSO's reporting period, IBAC considers that to be the correct approach when an error is detected.

¹³ s 50(5A) was inserted into the Act in 2016, and commenced operation on 1 February 2017

Recommendation 2

That the Registry review:

- a. those files where a notice has been issued pursuant to sections 52 or 54 and, where appropriate, apply to the court to request the error be corrected pursuant to section 50(5A), with notification to the RSO of the intention to make such application;
- b. procedures and guidelines regulating how any errors in relation to registration are handled by the Registry. The procedures and guidelines should include processes for the making of applications pursuant to section 50(5A) of the Act where it is deemed an error needs to be corrected. The process should permit the correction of the error by the relevant judicial officer in chambers.

Compliance assessment: In relation to the notification of reporting obligations by Victoria Police, the Chief Commissioner is assessed as being **Substantially Compliant**.

5.6 Compliance category 6 – Modified reporting arrangements

Reporting by remote offenders

Section 31 of the Act sets out alternate reporting provisions that apply if an RSO resides more than the prescribed¹⁴ distance from the nearest police station.

The Registry advised that this section did not apply to any RSOs during the inspection period.

IBAC was not provided with any policies and procedures that applied to the management of reporting by remote offenders and was therefore unable to evaluate if alternative reporting provisions would be effectively managed in the event they should be required.

Recommendation 3

That the Chief Commissioner takes steps to ensure that relevant authorisations, procedures and guidelines are in place to ensure alternative reporting provisions can be effectively managed in the event they are required.

Compliance assessment: In relation to modified reporting arrangements, the Chief Commissioner is assessed as being **Compliant**.

¹⁴ For the purposes of s 31(1) of the Act, the prescribed distance is 100 kilometres (r 15 of the Regulations).

6 Report on compliance with Part 4 of the Act

6.1 Compliance category 7 – Maintenance of the Register

During IBAC's inspection of the Register, hardcopy files and NCOS entries were reviewed for any deficiencies in material information required by section 62(2) of the Act to be recorded. IBAC found the Register substantially contained the information required to be kept.

Errors of a material nature were observed in a small number of files inspected. Errors were assessed to be of a material nature where a detail relevant to the Register was incorrectly recorded and that incorrect recording related to information that the Act requires be recorded on the Register. Typographical or other errors that did not render the information unusable for the purposes of the Act, or did not relate to information that is required to be recorded, were not regarded as errors but noted for follow up by Registry staff.

The inconsistencies and omissions of a material nature in the electronic Register included:

- incorrect and/or non-current personal details relevant to registrable offenders, including:
 - addresses
 - telecommunications services
 - email and internet account names
 - passport details employment
 - vehicles
 - additional aliases/ other names not listed
 - offence details
 - child contact.

IBAC notes the Registry's ongoing commitment to improvement in data accuracy and encourages efforts by the Registry to ensure data is accurate.

Internet Service Provider (ISP) information

Section 14(1)(dc) of Part 3 of the Act requires that if an RSO has an ISP, the name and business address of that ISP be reported by the RSO. Section 62(2)(f) of the Act requires any information reported in respect of an RSO pursuant to Part 3 is to be contained within the Register.

While IBAC acknowledges that the ISP business address details have little to no operational benefit, the Act requires that they be recorded. IBAC has observed in previous inspections that ISP business addresses are not being requested or collected as part of the initial or annual reports made by RSOs.

IBAC notes that amendments to the Act, which came into force on 1 March 2018, no longer require the business address of an ISP to be reported. IBAC is satisfied that this matter doesn't require any further action for this inspection period.

RSOs known by alternate names

Part 3 of the Act – section 14(1)(b) – requires that if an RSO has been known by another name, the period during which he or she was known by that other name be recorded. Section 62(2)(f) requires any information reported in respect of the RSO under Part 3 is to be contained within the Register.

Given the intent of the Act as set out in Part 1, it is considered critical that processes are in place to capture relevant information to prevent RSOs operating under names unknown to the Registry.

The Registry continue to coordinate with the Registrar of Births, Deaths and Marriages (BDM) to ensure that the Registry is notified where an RSO has previously changed their name. A project between the Registry and BDM to enhance this coordination is ongoing. This exchange of information ensures that names RSOs have previously been known by are detected if such information is not reported by the RSO. IBAC is also satisfied that policies and procedures are in place to ensure that required information is appropriately captured from BDM and placed on the Register.

Of the files inspected by IBAC inspectors, aliases were, in most cases, accurately recorded and where a previously unreported alias appeared to be in use by an RSO, that Victoria Police followed the matter up with the RSO.

Compliance assessment: In relation to the obligation to establish a Register under section 62(2) of the Act, the Chief Commissioner is assessed as being **Substantially Compliant**.

6.2 Compliance category 8 – Restricting access to the Register

Section 63(1)(a) of the Act provides that the Chief Commissioner is to ensure the Register (or any part of it) is only accessed by a person or a class of persons who is authorised to do so by the Chief Commissioner.

6.2.1 Authorisations

Authority to access the Register

In connection with their inspection, IBAC inspectors were provided with:

- copies of authorisations executed by the Chief Commissioner authorising classes of persons to have access to the Register
- a list of all persons with access to the Register during the inspection period.

IBAC inspectors reviewed the above material and are satisfied that appropriate authorisations are in place to restrict access to the Register.

6.2.2 Authority to access information about protected witnesses

Section 65 of the Act requires the Chief Commissioner to ensure that any personal information contained in the Register about a person who is also a participant in a Victorian witness protection program (or is otherwise the subject of an order under Division 9 of Part 3 of the Act) cannot be accessed other than by a person authorised by the member of the police force or officer of an 'approved authority' responsible for the day to day operation of the witness protection program.

IBAC inspectors reviewed a procedure developed by Victoria Police in relation to the management of RSOs who are also participants in the Victorian witness protection program. IBAC is satisfied that the procedure adequately covers the management of RSOs in the Victorian witness protection program and that the delegations and authorisations in place permit the Victoria Police Witness Protection Unit to handle the information from the Register.

6.2.3 Location and physical access

The Registry is located at Victoria Police premises that provides an appropriate level of security.

IBAC is satisfied the Registry is located in a secure environment and that appropriate controls are in place to restrict access to the Register.

Compliance assessment: In relation to the obligation to restrict access to the Register under sections 63(1)(a) and 65 of the Act, the Chief Commissioner is assessed as being **Compliant**.

6.3 Compliance category 9 – Disclosure of personal information from the Register

Section 63(1)(b) of the Act obligates the Chief Commissioner to ensure that personal information contained in the Register is only disclosed in accordance with the Act. Section 64(1) of the Act makes it an offence for a person authorised to have access to the Register to disclose personal information in the Register to any person.

Despite these provisions, the Act permits the making of:

- notifications of certain information contained in the Register (refer to part 6.3.1)
- disclosures of certain information contained in the Register (refer to part 6.3.2).

A sample of relevant files in each category was reviewed.

6.3.1 Notifications

The Act permits the Chief Commissioner to notify the following bodies or persons of certain information contained in the Register:

- The Registrar of Births, Deaths and Marriages of the name (including alias or prior name), date of birth and residential address(es) of any RSO in the Register.¹⁵
- The Secretary to the Department of Justice and Regulation, formerly the Department of Justice (DOJR Secretary) of the name (including alias or prior name), date of birth and residential address(es) of any RSO as stated in the Register for the purpose of administering the *Working with Children Act 2005* (WWC Act).¹⁶
- The Firearms Appeals Committee (FAC) of part or all of the information relating to an RSO that is in the Register for the purpose of administering the *Firearms Act 1996*.¹⁷

¹⁵ s 63(1A).

¹⁶ s 63(1B).

¹⁷ s 63(1C).

Notifications made during the inspection period

In response to IBAC's initial request for information, Victoria Police advised that all new RSOs are the subject of notifications to the BDM Registrar and DOJR Secretary. Accordingly there were 1190 notifications to the BDM Registrar and the DOJR Secretary under sections 63(1A) and (1B) of the Act during the inspection period.

Notification to these persons at the earliest opportunity is necessary to ensure that the registration process is effective and the protective purposes of the Act and other relevant legislation are met.

Victoria Police initially advised there were no disclosures pursuant to section 63(1C) during the inspection period. However, during the course of the inspection the Registry self-identified an unauthorised disclosure relating to two FAC applications made by an RSO. IBAC inspectors were therefore unable to assess that disclosures made under section 63(1C) were made in accordance with the requirements of the Act.

The Registry have advised that they are reviewing processes where such notifications are made to the FAC to ensure proper future recording.

Recommendation 4

That the Registry review relevant procedures and guidelines (including processes) to ensure that all disclosures pursuant to section 63 of the Act are recorded and available for inspection by IBAC, in accordance the requirement of section 70M of the Act.

6.3.2 Disclosures

In addition to notifications, the Act permits disclosures of personal information from the Register to certain bodies and for certain purposes. Specifically, the Chief Commissioner or a person authorised to have access to the Register may disclose personal information from the Register to a government department, public statutory authority or court where either:

- it is for the purpose of law enforcement, or judicial functions or activities [section 64(2)(a)]; or
- the disclosure is required by or under any Act or law [section 64(2)(b)]; or
- the Chief Commissioner or a person authorised to have access to the Register believes on reasonable grounds that disclosure is necessary to enable the proper administration of the Act [section 64(2)(c)].

The Registry identified 8680 disclosures made under section 64(2) of the Act during the inspection period.

Purpose of disclosures

Personal information may be disclosed from the Register for one or more of the four purposes referred to in subparagraphs (a) to (d)¹⁸ of section 64(2) of the Act.

The Victoria Police Manual (VPM) requires Registry staff to record under which subparagraph of section 64(2) the disclosure is being made. In the case of subparagraph (c), this would also require recording the reasonable grounds for why the disclosure was necessary.

¹⁸ The amendment to the Act to include s 64(2)(g) commenced on 1 February 2017 and accordingly did not form part of IBAC's inspection.

In IBAC's initial request for information, the Registry was asked to specify to whom the notification or disclosure was made, the details notified or disclosed, and the reason for the notification or disclosure in each case. IBAC inspectors noted the Registry keep records of all information disclosed from the Register in accordance with the requirements of the VPM. However, in most cases IBAC inspectors were unable to extract a record of the explicit purpose for disclosure as referred to in subparagraphs (a) or (b) of section 64(2) of the Act. It is not always clear whether that disclosure has been made to a government agency, or elsewhere.

It was also not possible for IBAC inspectors to identify which, if any, disclosures were made pursuant to section 64(2)(c). If disclosures were made pursuant to this section during the inspection period, the reasons why the Chief Commissioner, or his delegate, considered the disclosure was necessary to enable the proper administration of the Act was not recorded. This meant IBAC inspectors were unable to assess compliance with the Act with respect to these disclosures.

The recording of reasons for disclosures is crucial to ensuring that the requirements of the Act are being met and that unlawful disclosures are detected. This is highlighted by the imposition of criminal penalties for disclosures that are not made in accordance with the legislation. IBAC considers that changes in procedures to ensure that details of section 64(2) disclosures are properly recorded should be pursued as a matter of priority.

IBAC notes the Victoria Police Manual – Guidelines – Registered sex offender management requires that the purpose of any disclosures must be recorded by RSO compliance managers.

Recommendation 5

That the Registry take steps as a priority to ensure that current procedures and guidelines are followed and complete details of section 64(2) disclosures – including the purpose of such disclosures – are recorded in a manner that allows inspection by IBAC.

Disclosures to the Department of Health and Human Services

The Registry makes automatic disclosures of personal information of RSOs to the Department of Health and Human Services (DHHS) (formerly the Department of Human Services). Registry personnel continue to adhere to the policy contained in the VPM of making automatic disclosures to DHHS in every case where an RSO resides with or has unsupervised contact with a child.

Other recipients of disclosures

The Act does not define the terms 'government department', 'public statutory authority' or 'court' for the purpose of section 64(2) of the Act. The Registry has previously advised IBAC inspectors that it interprets these terms broadly to include Commonwealth government departments, public statutory authorities and the courts.

During the inspection period disclosures were made pursuant to section 64(2) of the Act to various Commonwealth and Victorian departments.

IBAC considers that clarification of the scope of the provision will assist in the application of this section.

6.3.3 Information security breaches

The Registry advised IBAC of five unauthorised disclosures¹⁹ of personal information in the Register for the inspection period. Upon identification, all the disclosures had been the subject of internal reviews by the Information Management Standards and Security Division within Victoria Police, which then recommended remedial actions. IBAC is satisfied with the reviews and internal actions taken in relation to the unauthorised disclosures.

IBAC inspectors did not observe any further information security breaches during the inspection.

Relevant Victoria Police manuals, policies, procedures and guidelines include a requirement that Victoria Police notify IBAC of any matter relevant to the Chief Commissioner's compliance with Part 4 of the Act as soon as practicable after it is identified.

¹⁹ This includes the two FAC disclosures discussed in Part 7.3.1.

IBAC had not previously been notified of the aforementioned disclosures in accordance with the above. Following discussions during the inspection, internal Victoria Police practices have been amended, and IBAC is now being notified of matters as soon as practicable after they are identified.

IBAC acknowledges the continued willingness of the Registry to provide requested information. IBAC will continue to monitor the reviews and internal actions taken by Victoria Police as they are provided to IBAC.

Recommendation 6

That the Registry review its procedures and guidelines regarding the recording of information security breaches to ensure that breaches are recorded accurately and that IBAC is notified of any breaches promptly.

6.3.4 Chief Commissioner's guidelines on accessing and disclosing personal information in the Register

Section 63(2) of the Act requires the Chief Commissioner to develop guidelines in relation to accessing and disclosing personal information in the Register.

The current VPM procedures and guidelines and VPM policy rules in respect of RSOs have been drafted to provide guidance to Victoria Police about accessing and disclosing personal information from the Register.

Specific comment and recommendations concerning the content and form of the procedures and guidelines and policy rules has been made in other parts of this report.

6.3.5 Section 64A disclosures – de-identified information

Section 64A came into effect on 1 June 2015, to allow the Chief Commissioner, if the Chief Commissioner considers it appropriate to do so, to disclose de-identified information in the Register in respect of one or more RSOs to any person. This has been utilised during the inspection period for research purposes.

IBAC was provided with a list of all RSOs whose de-identified information had been disclosed. IBAC inspectors were informed that the data, when provided externally contains no identifying information and during the Inspection Period was only provided to one external consultant.

The Registry advised that policy documents regarding the process of de-identified disclosure of information will be updated. A record indicating that a de-identified disclosure has been made will be placed on the relevant RSO's files.

IBAC inspectors are satisfied with the management and process of making disclosures under section 64A.

Compliance assessment: In relation to the obligation to restrict access to the Register under sections 63, 64 and 65 of the Act, the Chief Commissioner is assessed as being **Substantially Compliant**.

6.4 Compliance category 10 – Responding to requests by RSOs

Section 66 of the Act deals with RSOs' rights in relation to the Register. Under section 66(1) of the Act the Chief Commissioner must, on request, provide an RSO with a copy of all reportable information held on the Register in relation to that RSO. Section 66(3) of the Act provides that an RSO may request that any incorrect reportable information be amended which, pursuant to section 66(4), must be done provided that the Chief Commissioner is satisfied that the information is incorrect.

Registry staff have previously advised IBAC that a record of any documents disclosed under section 66 is retained on the hard copy file, and that any information sourced from the Registry would only be despatched by hand delivery.

IBAC inspectors are satisfied that the Registry have appropriate policies and procedures in place in relation to section 66 requests. It is noted that the above process for requests to be despatched by hand is not included in the current Standard Operating Procedures (SOPs) and that the Registry have advised that the Registry SOPs will be updated to include this requirement.

IBAC inspectors were advised there was one section 66 request during the inspection period. While the hard copy file was unable to be viewed as it had been archived, IBAC inspectors were satisfied based on the electronic information reviewed that the request was responded to as soon as practicable, and transmitted appropriately.

Compliance assessment: In relation to the obligation to respond to requests by RSOs under section 66 of the Act, the Chief Commissioner is assessed as being **Compliant**.

7 Other matters

7.1 Governance

IBAC inspectors were briefed on the governance arrangements in place and IBAC is satisfied that there is an effective framework for managing governance and operational issues within Victoria Police.

7.2 Resourcing

IBAC inspectors were also briefed on the resourcing for the Registry. Victoria Police continue to prioritise the work of the Registry in acquitting legislative responsibilities under the Act by continually assessing workload demands created by the scheme. Victoria Police informs IBAC that as part of an expansion to the Offender Management Division, Victoria Police have recently committed additional resources for the management of high risk RSOs in the community. Additional capacity has also been provided for within the Registry itself to meet the management of responsibilities arising from the ongoing tracking and monitoring of RSOs. IBAC is satisfied with the level and management of resources within the Registry.

8 Conclusions

The open discussions between IBAC and staff at the Sex Offenders' Registry, as well as the Registry's willingness to engage constructively with IBAC's oversight function, demonstrate Victoria Police's continued commitment to meeting its statutory obligations and ensuring best practice in relation to the requirements of Parts 3 and 4 of the Act. IBAC is aware that the Registry have commenced work in relation to a number of the recommendations set out in this report.

Registry staff were courteous and cooperative and provided considerable assistance to IBAC in undertaking this inspection. I take this opportunity to thank the Registry for their assistance, particularly in facilitating access to the Registry and its records and providing ongoing assistance in the form of answering questions and providing further information about the Registry's operation.



The Honourable Robert Redlich QC
Commissioner

Dated: 19 June 2018

