

Audit of Victoria Police complaints handling systems at regional level

Summary report

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GLOSSARY

CCTV	Closed circuit television
EPSO	Ethics and Professional Standards Officer
IBAC	Independent Broad-based Anti-corruption Commission
IMP	Integrity management program
LMR	Local management resolution
MIM	Management intervention model
PDA plan	Professional development and assessment plan
PSA	Police service area
PSC	Professional Standards Command
ROCSID	Register of Complaints, Serious Incidents and Discipline
VPIMG	Victoria Police integrity management guide

1. SUMMARY OF FINDINGS

Police hold significant powers to enable them to enforce the law. One way police can be held accountable for how they exercise their powers is through an effective complaints handling system.

A fair, transparent and timely complaints process is important for ensuring the community has faith in how Victoria Police officers exercise their powers. Where complainants lack confidence in the complaints process, they are less likely to report alleged police misconduct. This increases the likelihood that such conduct will not be addressed and limits the opportunities for Victoria Police to identify practices and policies that could be improved.

To determine how effectively Victoria Police is dealing with complaints made about its officers, the Independent Broad-based Anti-corruption Commission (IBAC) conducted a project examining more than four hundred complaint files investigated at regional level during 2014/15.

The project found that Victoria Police has a well-established complaints handling system. However, there are areas in which the timeliness, accountability and accessibility of its complaint handling process could be improved. IBAC found:

- Victoria Police's current system includes 13 possible determinations (the final decision reached in respect to each allegation associated with a complaint) that can be made in relation to complaint files. Having so many different determinations can lead to confusion on the part of subject officers, investigators and complainants.
- When complaints are made about a Victoria Police officer, that officer's complaint history is generally not considered as part of the investigation. This is particularly concerning where an officer may have a history of alleged similar behaviour.
- Where complaint investigations lead to recommendations that the subject officer receive workplace guidance, this guidance is often not recorded on the officer's professional development and assessment (PDA)¹ plan. This makes it difficult for supervisors and promotion panels to monitor and assess behavioural or performance issues over time.

- The 'correspondence file' classification is overused. This results in matters that appear to be clear complaints not being recorded as 'complaints' on Victoria Police's systems and notification not being provided to IBAC.
- There is no formal policy governing local management resolution files, a category of file used for quickly addressing minor 'customer service' issues. The lack of policy increases the risk that local management resolution files will be poorly handled, or wrongly applied to matters that warrant full investigations.
- Investigation plans, investigation logs and final checklists are not being included on investigation files, making it more difficult for senior Victoria Police officers and IBAC to oversight investigation files.
- Some officers who investigate complaints have a poor understanding of the Victorian Charter of Human Rights and have difficulty applying the charter to complaint investigations.

Although the audit focussed on complaint files that were investigated in Western and Southern Metropolitan Regions, it is anticipated that the issues identified have wider application across Victoria Police.

A stronger Victoria Police complaints system will assist in providing the Victorian community with confidence that complaints against police are handled efficiently and effectively, including those devolved to the local level for investigation.

This summary report highlights the key findings of IBAC's audit of Victoria Police complaint files at regional level and the opportunities to improve how complaints are handled. A full report on the audit, containing details of the relevant policy, data analysis and case studies, is available on IBAC's website www.ibac.vic.gov.au

¹ PDA plans are individual developmental plans that identify opportunities for officers to build their capacities, and to document performance feedback between officers and their supervisors.

2. RECOMMENDATIONS

Further to the areas for improvement highlighted by the audit, IBAC made nine recommendations in relation to actions Victoria Police could take to strengthen its complaint handling processes. Victoria Police has indicated its acceptance of IBAC's recommendations. IBAC will be taking steps to monitor their implementation.

IBAC recommended that Victoria Police:

1. Develop a policy for local management resolution (C2-4) files including clear parameters for their use and communication with complainants and subject officers
2. Review the correspondence classification (C1-6) to determine if and when it should be applied
3. Implement a policy requiring Professional Standards Command (PSC) to attach a subject officer's complete complaint history to all complaint files
4. Require investigation plans, investigation logs and final checklists to be completed and attached to complaint investigation files
5. Require a Victoria Police conflict of interest declaration (form 1426) to be completed for all oversight and investigation files to ensure conflicts of interest are explicitly addressed and managed
6. Review the system of determinations to reduce and simplify determination categories
7. Publicly release aggregated information on a regular basis (such as in the Victoria Police annual report) on the number of complaints received, their classifications, determinations and recommendations to improve transparency and accountability for outcomes
8. Require all formal and informal workplace guidance be recorded on subject officers' PDA plans to clearly outline performance or conduct issues and the actions taken in response to issues
9. Provide regional, departmental and command investigators with clearer information and training on the Victorian Charter of Human Rights to assist in identifying human rights that have been engaged by a complaint.

3. CONTEXT

In 2014/15, Victoria Police investigated 2169 complaints² related to Victoria Police officers. Approximately 90 per cent of complaints received by Victoria Police are referred to its regions, departments or commands for investigation. Only the most serious complaints are handled centrally by PSC.

Victoria Police has been subject to criticism regarding its complaints management system and processes. Issues have included concerns with police investigating police and associated perceptions of bias, as well as concerns around the way complaints are investigated, the length of time it can take for matters to be investigated, poor communication with complainants, the number of determination categories, and the complex disciplinary process.

Victoria Police acknowledged these concerns in its December 2013 report *Equality is not the same* and committed to improving the timeliness, accountability and accessibility of its complaint handling processes.

In this context, IBAC audited a year of complaint files from two regions to assist in building the capacity of Victoria Police to prevent police misconduct and corrupt conduct by identifying potential areas of improvement in complaint handling processes at the regional level.

² This includes matters designated as 'incidents' by Victoria Police, that is, matters considered to be subject to resolution rather than investigation.

4. METHODOLOGY

All complaint files allocated to Southern Metro Region and Western Region and closed during 2014/15 fell within the scope of IBAC's audit. This represented a total of 367 files of which 354 were audited.³

Each file was audited using an instrument comprised of 155 questions covering six broad areas:

- *pre-investigation process*, including classifying and allocating complaints, identification of subject officers, and histories of relevant complaint histories
- *impartiality*, including conflicts of interest between investigators and subject officers
- *timeliness* of registration, classification, allocation and investigation
- *investigative processes utilised* whether all relevant evidence was examined
- *outcomes* including determinations and advice to complainants
- *record keeping*.

In addition to these 354 files, IBAC's audit also examined a sample of 50 local management resolution (LMR) files closed by the two regions during 2014/15.⁴ LMR files deal with minor 'customer service' type complaints using an abbreviated resolution process.

Snapshot of the two regions

Southern Metro Region has a significant metropolitan profile. It covers an area of 2884 square kilometres and has a population of 1.4 million. It is comprised of four divisions: Prahran, Moorabbin, Dandenong and Frankston. Within those four divisions, the region is divided into nine police service areas (PSAs).

Western Region has a significant rural component, coupled with sizable regional centres. It covers an area of 136,700 square kilometres with a population of 927,300. Its six divisions are Geelong, Ballarat, Horsham, Warrnambool, Bendigo and Mildura. It has 14 PSAs.

³ The files not audited included files which were identified as relating to unsworn employees and therefore out of scope, or files which were not available for reasons such as civil legal processes underway.

⁴ Since April 2014, Victoria Police has trialled local management resolution which aims to resolve 'incidents' within seven days of a complaint being forwarded from PSC to the relevant work area/police station. For the purposes of the audit, LMRs are sometimes addressed separately because of the abbreviated investigation process associated with these files.

FIGURE 1: COMPLAINT FILES BY CLASSIFICATION

Classification	Complaint type	Number of files audited by IBAC	% of total files audited by IBAC
C1-5	Preliminary enquiry file <i>Includes audits of email and database usage, investigations of fingerprints of police officers found at crime scenes</i>	56	14
C1-6	Internal management (correspondence) <i>Matters received from complainants where further information is required before determining if reclassification is required</i>	16	4
C1-7	Receipt of civil process <i>Civil process against a police officer such as intervention orders, family violence orders, bankruptcy orders and contested infringement notices</i>	18	4
C1-8	Incident investigation/oversight <i>Files created for oversight of specific incidents such as deaths following police contact, escapes from custody, injuries to prisoners, and police collisions involving minor injuries</i>	36	9
C2-1	Minor misconduct <i>Minor assaults at time of arrest, infringement notices received on duty, lower level discrimination under the Equal Opportunity Act and lower level breaches of the Charter of Human Rights Act</i>	66	16
C2-4	Local management resolution (LMRs) <i>No formal LMR policy but LMRs aim to resolve low level incidents within seven days of the matter being forwarded to the relevant work area</i>	50	12
C2-5	Management intervention model (MIMs) <i>Allegations of a minor nature regarding service delivery, performance management or professional conduct</i>	81	20
C3-2	Misconduct connected to duty <i>Serious assaults, conduct punishable by imprisonment, alcohol or drug offences on duty, improper database use, higher level discrimination under the Equal Opportunity Act, and higher level breaches of the Charter of Human Rights Act</i>	44	11
C3-3	Criminality (not connected to duty) <i>Off-duty conduct punishable by imprisonment, off-duty alcohol or drug offences, criminal associations, summons for traffic matters</i>	34	8
C3-4	Corruption <i>Encouraging others to neglect duty or to be improperly influenced, 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</i>	3	1
Total		404	100

5. FINDINGS FROM THE AUDIT

5.1 Pre-investigation

The pre-investigation stage involves the period from when a complaint is received by Victoria Police to when the allocated investigator commences investigative activities. This stage is important in shaping the way in which a complaint is investigated by Victoria Police.

5.1.1 Identification of allegations and subject officers, and complaint classification

When a person contacts Victoria Police to make a complaint, Victoria Police identifies one or more separate allegations stemming from that complaint. For example, a complaint arising out of an individual's arrest might include an allegation of rudeness against one officer and a separate allegation of excessive use of force by another. Based on the seriousness of the allegations, the complaint is given a particular classification.

IBAC's audit found that Victoria Police correctly identified and recorded the majority of allegations and subject officers (the officer who is the subject of the complaint). Similarly, most complaints were appropriately classified by PSC when they were received. However, the audit identified a range of issues with Victoria Police's approach to accurately identifying allegations and subject officers, and classifying complaints, which provides Victoria Police with an opportunity for improvement. In summary:

- Allegations were not always accurately characterised (for example, serious allegations in relation to inappropriate use of force were sometimes categorised as minor) or were not always accurately recorded in Victoria Police's ROCSID⁵ complaints database. This was identified in eight per cent of all files (including LMRs).
- Some files did not accurately identify the number of allegations or inappropriately rolled up multiple allegations into a smaller number (11 per cent of files).

- The wrong classification was applied in 11 per cent of all files (including LMRs). In particular, the LMR classification was inappropriately used for matters that were more serious than minor customer service issues.
- There were inaccuracies in the identification of subject officers (eight per cent of files), including subject officers being incorrectly recorded on ROCSID so that the complaint was not recorded on their ROCSID complaint history.⁶ There were also instances where an officer was recorded as a subject officer when they had no direct involvement in an incident.
- Concerns were also identified with the overuse of the C1-6 correspondence classification. This classification is intended to be used where a complaint is lacking information. In 10 of the 16 C1-6 files examined (63 per cent) the auditor disagreed with the complaint classification as clear allegations were made. An officer who is the subject of a C1-6 file will not have that matter recorded on their complaint history on ROCSID.

It is understood that the process of identifying allegations and subject officers, and classifying complaints is subjective. However, these processes must be robust as they are the foundation upon which a complaint investigation is built. Practices such as bundling up allegations and discarding allegations, overusing LMRs and inappropriately classifying complaints as 'correspondence' compromise Victoria Police's complaint handling processes.

The issues identified with inaccurate recording of some allegations and subject officers on ROCSID is of concern to IBAC, because of the reliance on ROCSID to identify trends and patterns in complaints and its use as a tool to monitor the risk profile of officers. Doubts about the veracity of data recorded on ROCSID undermine its effectiveness.

⁵ Victoria Police's complaints database is known as ROCSID (the Register of Complaints, Serious Incidents and Discipline).

⁶ These examples include where a subject officer is recorded as a 'person of interest' or 'person involved member' on ROCSID. These are ROCSID recording categories that do not tie the allegation to an officer's complaint history.

Areas for improvement

- There is currently no policy governing the use of LMRs. Victoria Police should develop and apply a clear policy on LMRs, including clarifying the parameters for their use.
- The C1-6 (correspondence) classification appears to be overused, meaning that matters that appear to include clear complaints about Victoria Police are not being recorded as 'complaints' on ROCSID and, as a result, notifications are not being provided to IBAC. Victoria Police should review the C1-6 classification to determine if and when it should be applied.
- PSC should identify allegations that form part of a complaint before the file is allocated to a region, command or department. This would assist in avoiding misunderstandings at the local level about what is to be investigated, but would still allow the investigator to identify new or different allegations if further information is uncovered.
- PSC should improve the quality assurance process to ensure the physical file and ROCSID accurately record details relating to a complaint.
- The audit identified that in some cases where an investigation exonerates an officer, that allegation is removed from the officer's complaint history on ROCSID. A better practice would ensure that ROCSID records the allegation with a determination of 'exonerated' against relevant officers.

5.1.2 Complaint history checks

Complaint histories are an important source of information on officers who are subject of a complaint; they provide important intelligence on possible patterns of behaviour. This applies to substantiated and unsubstantiated allegations. Failure to consider a subject officer's complaint history – from customer service issues through to more serious misconduct and corruption allegations – disregards critical information relevant to complaint classification, the investigation and outcomes.

IBAC's audit identified only seven per cent of files where there was a clear indication that the complaint history of one or more subject officers had been considered either at the triaging stage by PSC or during the investigation.

The current practice of PSC deciding whether or not to attach a complaint history does not appear to be sufficient, given the small proportion of files where the complaint history was identified or appeared to have been considered.

Areas for improvement

Victoria Police could improve its approach by implementing a policy requiring PSC to attach the subject officer's complaint histories to all complaint files, including for management intervention model (MIM) matters which deal with allegations of a minor nature. Such a policy may incorporate exceptions when attaching a full history may not be appropriate, such as in relation to ongoing sensitive operations.⁷

IBAC understands that attaching complaint histories to LMR matters is problematic, because such matters do not have a physical file and are intended to be resolved quickly and less formally. However, it is important that PSC carefully considers complaint histories before determining a matter is appropriate for resolution through LMR.

Further, IBAC believes that the current (informal) approach where an officer with two previous LMRs in a 12-month period is ineligible to have the third matter dealt with through LMR, is too broad. A sounder policy would stipulate a matter can only be classified as an LMR if the subject officer has not had a complaint (regardless of classification) during the past 12 months.

PSC should also consider a subject officer's complaint history, to identify officers who may have multiple complaints (either of a serious or minor, customer service nature) over recent years, which would indicate that the LMR process is not suitable for that officer.

⁷ Concerns regarding confidentiality may be addressed by the move away from physical files towards Interpose, an electronic case management system, to manage complaint files.

5. FINDINGS FROM THE AUDIT

5.1.3 Investigation plans

IBAC's audit did not locate any investigation plans on the files examined. It is acknowledged that some investigators prepare investigation plans but given the absence of the plans from files, it is not possible to determine how consistently this occurs.⁸ It was also not possible to assess whether an investigation plan had been approved by a relevant manager, and updated as an investigation progresses, as required by Victoria Police policy.

It is good investigative practice to develop a plan for serious or complex complaints, to ensure an investigation addresses all relevant elements of a complaint, and to justify actions taken or not taken. An investigation plan is a means of ensuring transparency in the conduct of an investigation, and – if properly documented and followed – would assist those who review investigations (both within Victoria Police and IBAC) to better understand an investigator's decisions.

Areas for improvement

Victoria Police should require investigation plans be completed for all complaint files that involve allegations of criminality and for other complex matters (for instance, complaints that involve multiple allegations or multiple subject officers). Plans should be proportional to the seriousness and complexity of the investigation and completed investigation plans must be placed on the complaint file. A template plan should be attached, either physically or electronically, to the file when it is allocated to a region, department or command.

Victoria Police should take steps to promote and monitor development of investigation plans, including explaining the requirement in its integrity management program, which is designed to equip officers with the skills to conduct complaint investigations.

It is acknowledged that Victoria Police is considering expanding the use of Interpose⁹ to the management of complaint files. Interpose has the capacity to log all avenues of inquiry pursued by an investigator (such as contact made with subject officers, complainants and witnesses). This is useful as a means of reviewing actions taken, but does not replace the advantages of an investigation plan developed at the start of an investigation and amended as the matter proceeds.

⁸ The preparation of investigation plans is good investigative practice and is mandatory when a complaint involves allegations of criminality as stipulated in the Victoria Police integrity management guide (VPIMG).

⁹ Interpose is an electronic case management system that is already used to support some investigations undertaken by Victoria Police.

5.2 Impartiality

Ensuring that complaint investigations are conducted impartially is fundamental to the integrity of the complaints process. Regardless of how impartial an investigator might be, real or perceived conflicts of interest can undermine the effectiveness of an investigation or taint the outcome in the eyes of the complainant.¹⁰ This can lead to further complaints related to the conduct of the investigation. It can also diminish confidence in the complaint system and the ability of police to effectively investigate complaints against their own employees.

IBAC's audit identified 59 files (17 per cent of audited files excluding LMRs) where the choice of investigator was not appropriate. The issues that made the choice of investigator inappropriate were:

- the investigator was not of a higher rank than all of the subject officers
- the investigator and the subject officer worked at the same station
- the investigator had a complaint history relevant to the investigation.¹¹

Victoria Police has taken steps to address impartiality issues. These include emphasising the importance of impartiality in relevant policies and attaching reminders to complaint files that investigators should not work at the same station as subject officers. A specific form (form 1426) has also been developed to identify and manage conflicts of interest in relation to oversight files and investigations. However compliance with these initiatives is not uniform and, in particular, the audit identified that form 1426 was rarely completed.¹²

PSC has advised it now requires investigators to complete a one-page conflict of interest declaration form for all complaint and oversight files, and PSC monitors compliance around completion of that form. This additional requirement postdates many of the files audited and so compliance was not examined as part of this audit.

Areas for improvement

Victoria Police could improve the impartiality of investigations by:

- Requiring the 1426 forms to be completed for all complaint and oversight files (excluding MIMs and LMRs) to identify potential conflicts of interest. Greater compliance may be encouraged by PSC including a hard-copy printout of the form on the file when it is sent to the regions, departments or commands for investigation
- Amending the Victoria Police manual policy rules relating to complaints and discipline to require investigators to be of a more senior rank than all of the subject officers
- Confirming that Victoria Police policy requires that investigators come from a different station to the subject officer, for complaints investigated in the regions
- Amending Victoria Police policy and the integrity management guide to ensure consistent advice as to whether an investigator who conducted a previous investigation regarding a subject employee should be precluded from conducting a further investigation into that employee
- PSC scrutinising the choice of investigator to ensure the investigator is appropriately senior to the subject officer, does not work at the same station as the subject officer and does not have a complaint history that could create a perception of a conflict of interest.

¹⁰ The New South Wales Police Integrity Commission's Project Dresden identified that complainants are less likely to trust the outcome of an investigation where there is a perception of bias.

¹¹ The only other impartiality issue identified in the audit was a single file where the investigator had previous contact with the (deceased) subject of an oversight file.

¹² Form 1426 must be completed for all C1-8 (incident investigation and oversight) files. However of the 36 C1-8 files audited, only six included completed 1426s form.

5. FINDINGS FROM THE AUDIT

5.3 Timeliness

Timely investigation of files is critical to maintain confidence in Victoria Police's complaint management. Although timeliness is not the only measure of how well complaints are handled, it is critical for complainants and subject officers. Expedient management of complaints – together with clear communication in the event of any delays – is important for a number of reasons, including the welfare of complainants and subject officers, the potential for delays to adversely affect the availability of evidence, and to reduce the prospect of further complaints or appeals.

IBAC's audit identified significant issues related to the timeliness with which complaint files are managed, including:

- Significant delays associated with the investigations of most categories of complaint files, with almost one third (32 per cent) of files being overdue¹³
- The delays associated with complaint investigations are not minor, with 80 per cent of overdue files being more than a week overdue and 68 per cent of overdue files being more than two weeks overdue. Sixteen files (five per cent) were more than 100 days overdue
- Although there were some delays associated with the classification process undertaken by PSC, the majority of delays appeared to accrue while the files were in the regions
- There was mixed compliance with the guidelines relating to file extensions. The audit identified extension requests or approvals were often missing from files and extensions were sought (and granted) for reasons not permitted by policy guidelines.

Areas for improvement

Victoria Police could improve the timeliness of complaint investigations by:

- Only marking a file complete once final letters have been sent to complainants and subject officers.¹⁴ This would more accurately reflect that complaint files can undergo significant changes after the final report is submitted, such as amendments to the determinations or recommendations by supervisors or PSC. Amending the process by which files are marked 'complete' may mean time limits associated with investigations need to be reviewed
- Improving the way reminders are structured for pending complaint investigations to ensure the investigator, supervisor, and PSC are notified when complaints are nearing their due date and when they become overdue
- Amending the 'File status report/extension request' form¹⁵ to include a section that specifies the length of the extension requested or granted
- Improving compliance around extensions by ensuring the 'File status report/extension request' form is always completed and attached to the file and by increasing awareness of the reasons for which an extension can be sought.

13 Significant delays were not identified in relation to C1-5 (preliminary enquiry) files and C1-7 (receipt of civil process files).

14 Under the current process files are marked as complete on 'the date the investigation is completed and any required action is approved by PSC'. In practice, files are generally marked as complete on the date the investigator submits their final report for approval.

15 The Victoria Police form used by investigators when requesting an extension to the time permitted to complete a complaint investigation.

5.4 Investigative processes utilised

The investigative stage examined by the audit looked at the period from when an investigator commences investigative activities to when they submit their final report for review (the substance of that final report including determinations and recommendations are examined separately in the 'Outcomes' section).

5.4.1 Contact with relevant parties

Effective communication between investigators and complainants is essential to ensure the substance of a complaint is addressed, the material relied on by the investigator is accurate and to maintain complainants' trust in the investigative process.

IBAC's audit identified some issues around contact between investigating officers and relevant parties including:

- 16 per cent of complainants and 34 per cent of all witnesses did not appear to have been contacted by investigating officers, based on the information attached to the file.¹⁶ There were no significant differences in the levels of contact with police witnesses compared to civilian witnesses. In most of these cases there was no indication on the file as to why contact had not been made.
- Contrary to the requirements of the Victoria Police integrity management guide (VPIMG)¹⁷, most complainants were not updated on the progress of investigations or provided with explanations for any delays.

Areas for improvement

Victoria Police could improve contact with relevant parties during an investigation by:

- Ensuring investigators are aware of requirements around communication with relevant parties. This could be achieved through formal training or by developing a customer service charter that is explicit about how communication with complainants should occur
- Requiring investigators to maintain an investigation log that includes a record of contact with relevant parties to an investigation
- PSC and supervisors being more active in identifying where contact has not been made with relevant parties to a complaint, and requesting remedial action be taken.

5.4.2 Evidence used and reviewed

Collecting, assessing and recording appropriate evidence underpins the thoroughness of complaint investigations. Neglecting relevant evidence undermines investigators' assessments of complaints and potentially, the determinations reached in relation to allegations. The poor documentation of evidence limits the ability of supervising officers to effectively review investigation files and an investigator's conclusions.

IBAC's audit identified that relevant evidence was not considered in 60 of the audited files (17 per cent).¹⁸ The most frequent types of evidence not considered were CCTV footage (not considered in 17 files where it would have been relevant), police running sheets (14 files) and medical records (10 files).

¹⁶ These percentages are based on all files audited but exclude LMRs which have more informal requirements around documenting contact with relevant parties.

¹⁷ The Victoria Police integrity management guide (VPIMG) provides a comprehensive overview of the discipline investigation process aimed at assisting officers who are required to conduct investigations into allegations of criminality, unethical behaviour and misconduct involving Victoria Police personnel.

¹⁸ These figures exclude LMRs which have more informal requirements around the collection and documentation of evidence related to a complaint.

5. FINDINGS FROM THE AUDIT

Areas for improvement

Victoria Police could address deficiencies in the examination of relevant evidence by increasing awareness of the VPIMG and the advice it provides around relevant types of evidence. Investigators should also be reminded, either through the integrity management program (IMP)²⁰ or by their supervisors, to attach all evidence (including CCTV footage) to the file.

Victoria Police could consider supplementing the IMP with training provided in the regions by EPSOs or other relevant officers. This training could include refresher courses on different aspects of complaint investigations, as well as basic training for those waiting for a place on the IMP. It is acknowledged that some EPSOs currently provide refresher training at the regional level, but it is suggested that this be a formal part of EPSOs' role. Priority should be given to substantive issues such as the need for investigators to consider all relevant evidence.

5.4.3 Reviews and supervision of investigations

IBAC's audit found the process for reviewing files is normally followed, with supervisors and EPSOs routinely approving files prior to them being concluded. However, although the process for approving files is being followed, the quality control provided by this process was not always evident. Many of the investigative issues identified by the audit – such as the 17 per cent of files where relevant evidence was not considered – should have been addressed through the review process. Where significant issues are not addressed during the review process it can undermine the determinations reached in those files.

Areas for improvement

The review process could be improved by senior officers and EPSOs being more active in their supervision of investigations, particularly given the limited experience of some investigators in handling complaint investigations.

EPSOs should have responsibility for ensuring files meet an appropriate standard. To this end, EPSOs should have the capacity to critically examine investigation files and recommend steps to remedy issues they identify in poor investigations.

5.5 Outcomes

5.5.1 Conciliation

Section 170(2) of the *Victoria Police Act 2013* states the Chief Commissioner may attempt to resolve a complaint by conciliation. However, before commencing conciliation, Victoria Police must notify IBAC that conciliation is proposed, as well as any subsequent outcome.

Only a very small proportion of files (five) gave any indication that conciliation may have been considered. In these five files, there was insufficient information to determine if the conciliation actually took place and any outcome. IBAC was not notified of any attempted conciliations in relation to these (or any other) files.

IBAC's audit results suggest that conciliations are under-utilised as a means of resolving suitable complaints at the regional level.

Areas for improvement

Victoria Police may choose to consider promoting conciliation, noting that this would require the development of appropriate principles and guidelines including:

- The identification of matters that may be appropriate for conciliations (most likely to be those files addressing lower level issues such as those covered by the LMR and MIM classifications)
- The need for an impartial mediator with appropriate skills
- The need for all parties to agree to participate in a conciliation process.

5.5.2 Determinations

A complaint investigation must result in a determination against each allegation. Victoria Police currently has 13 categories of determinations including substantiated, not substantiated and unable to determine. MIMs and LMRs have an additional two determinations – resolved and not resolved.

The following trends were identified in relation to determinations:

- Only nine per cent of files audited had at least one allegation with a determination of substantiated, a lower rate than other comparable jurisdictions that publish substantiation rates.
- The most common determination was 'no complaint' (sanctioned by law).¹⁹ The high incidence of this determination partly reflects its high application to C1 type files²⁰ which often focus on examining compliance with Victoria Police policies.
- Files around misconduct while off duty had the highest rate of substantiation – 33 per cent of determinations for those files were recorded as substantiated.
- In 14 per cent of files, IBAC assessed that the determinations reached were inappropriate. These included cases where a matter appeared to be substantiated based on the evidence included on the file yet a substantiated determination was not reached, and where 'not substantiated' was used when 'unable to determine' would have been more appropriate.
- There was infrequent use of five determination categories – exonerated, no complaint (denied by victim), lesser deficiency, not proceeded with, and withdrawn. These determinations comprised a total of nine per cent²¹ of determinations.

IBAC's audit identified two key issues related to determinations. Firstly, determination categories should be streamlined so they are easily understood by subject officers, investigators and complainants. Secondly, all parties to a complaint must have confidence that a determination is correct: a determination must be based on the information gathered during an investigation (and included on the investigation file) otherwise confidence in the complaints system is undermined.

¹⁹ This determination should be applied where a complaint by a person is subsequently found to refer to an action that is sanctioned by law. For example, where a complaint is made that an officer entered a property without authorisation but the investigation finds the officer had a valid warrant that was executed appropriately.

²⁰ C1 files include oversight files, audits of Victoria Police database usage and legal process matters.

²¹ This percentage excludes LMRs and MIMs as these file types use a simplified system of determinations – resolved or not resolved.

5. FINDINGS FROM THE AUDIT

Areas for improvement

Victoria Police could review its system of determinations to reduce and simplify determination categories. The current system of 13 determinations is unnecessarily complicated for complainants and subject officers, who do not always understand the nuanced distinction between categories. As has been suggested by a previous internal Victoria Police review, it would be preferable to reduce determinations along the lines of 'case to answer', 'no case to answer' and 'unable to determine'.

In relation to the low substantiation rates found by this audit, investigators should be reminded that, when undertaking a discipline investigation, a complaint does not need to be proven beyond reasonable doubt (as is the case in criminal investigations) but can be upheld on the balance of probabilities.²² This issue could be addressed through the suggested review of determinations, as it presents an opportunity to recast the number and definitions of determination categories.

It is also suggested that officers responsible for reviewing complaint files²³ be reminded of their responsibility to identify cases where an incorrect determination has been made, or where further investigative work is required to better inform the determination. Better quality control could also ensure that the determination listed on ROCSID matches the determination noted on the physical file. This is particularly important to ensure ROCSID probity checks undertaken on officers for promotions and awards accurately reflect officers' complaint histories.

5.5.3 Report recommendations

Victoria Police guidelines state an investigator should recommend what, if any, action is required to address issues identified during an investigation. Recommended actions include:

- no action
- management intervention including the provision of education, advice and guidance to positively address an employee's performance²⁴
- admonishment
- discipline charges
- criminal charges
- action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures.²⁵

The most common recommendation made in relation to the subject officer as a result of a complaint investigation was 'no action' – this comprised 82 per cent of all recommendations in the files that IBAC audited. Although this undoubtedly reflects the small number of files with substantiated allegations, it is disappointing that more opportunities are not identified for developmental action, such as informal guidance, arising out of complaints.

Where some form of action was recommended in response to a complaint, it usually took the form of management intervention (73 per cent of actions). Management intervention was also the most common recommendation for files with at least one substantiated allegation (38 per cent of recommendations for those files).

IBAC auditors assessed that in 10 per cent of complaint files, the recommendation was inappropriate. This included instances where 'workplace guidance' was recommended but information on the file indicated a more serious recommendation was warranted.

22 Note that this standard does not apply to the criminal component of more serious complaint investigations.

23 This includes commanding officers at the regional, departmental and command levels as well as EPSOs.

24 Note that in practice, the audit identified that that recommendations concerning management intervention were frequently described as workplace guidance.

25 Victoria Police manual guidelines, Complaint management and investigations, section 12.3

The number of recommended discipline and criminal charges was very small – less than two per cent of all recommendations. Admonishment notices, a punitive action but not part of the formal disciplinary process, also represented only two per cent of all recommendations.

Areas for improvement

To improve the use of recommendations in relation to complaints, Victoria Police should:

- Publicly release aggregated information on a regular basis on the number of complaints received, their classifications, determinations and recommendation to improve transparency of the complaints process and accountability for the number of substantiated complaints
- Reiterate through training that complaints are a valuable mechanism for identifying and addressing issues with an officer's performance and conduct and that even where an allegation may not be substantiated, there will often still be the potential for constructive developmental action and broader organisational learnings
- Review the use of admonishment notices to determine if there is any benefit in them being retained and if there is, to promote their use as a potential complaint outcome
- Require all workplace guidance to be recorded on the subject officer's PDA plans to clearly outline the issue with performance of conduct and the action taken to address that issue
- Improve quality assurance processes to ensure recommendations are accurately recorded on ROCSID, including the provision of workplace guidance.

5.5.4 Investigations that identified deficiencies with policy and procedure

Complaints are a unique opportunity to address shortcomings in established policy, procedures and practices. In 19 audited files (five per cent), the Victoria Police investigator identified a deficiency in policy or practice, whether that be Victoria Police-wide or station-specific. However, it was not always clear from the information included on the file whether the identified deficiencies and suggestions for improvement had been further considered or implemented.

Areas for improvement

It is suggested that complaint files include information on what action has been taken in response to deficiencies identified by an investigator. It is understood that in some cases, it will be not be considered appropriate for action to be taken. Where this is the case, it should be documented on the file.

Victoria Police policy currently only refers to deficiencies identified in the processing of MIM files. It is suggested that Victoria Police make explicit in policy the need for investigators to consider whether policies need to be addressed as a result of a complaint. Further, the potential of complaints to improve service delivery and overall performance should be promoted in training.

Victoria Police may also consider ways to better capture the policy recommendations flowing from complaint investigations to ensure they are considered appropriately and, where relevant, developed and implemented.

5. FINDINGS FROM THE AUDIT

5.5.5 Human rights

Victoria Police has taken positive steps to encourage investigators to address human rights by including a section on human rights in the template for final investigation reports. Despite this, IBAC's audit identified a general lack of understanding of the rights enshrined in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

In 34 per cent of files audited human rights were not appropriately addressed. This included investigators failing to identify that a complaint raised human rights issues, identifying human rights not relevant to the complaint, or addressing rights not covered by the Charter.

Areas for improvement

It is suggested that Victoria Police's commitment to providing tailored human rights training for PSC investigators be extended to investigators at the regional, departmental and command level. In addition, clearer information should be provided to investigators to help them identify relevant human rights that may have been engaged and limited. This information should include the rights contained in the Charter.

EPSOs should also receive training in how to consider human rights issues within the context of complaint investigations, to enable them to provide informed advice to investigators and to more rigorously review this aspect of complaint files.

5.5.6 Advice to complainants

Communication with complainants is critical. Complainants' satisfaction with the way in which their complaint is handled will be influenced by how police communicate with them, including how an investigation outcome is explained. Section 172 of the Victoria Police Act requires Victoria Police to advise the complainant in writing of the results of a complaint investigation and the action taken, unless it would be contrary to the public interest.²⁶

Based on IBAC's audit findings, there does not appear to be consistent practice around communication with complainants. The audit identified 10 per cent of relevant files²⁷ where there was no indication that final letters had been sent to complainants and no reason given for that not occurring. For LMRs, the majority of matters – 56 per cent – did not appear to result in a final letter to complainants. This may reflect confusion about the requirement to send a final letter to the complainant at the end of the LMR process.²⁸

Thirty-six files were identified where the final letter did not comply with the Victoria Police Act or policy, generally because the letter did not clearly explain the result of the investigation, the outcome or the action taken. It was not uncommon for final letters to provide inadequate information on a complaint investigation, for inconsistent or inaccurate information to be provided, or for there to be delays in the advice provided to complainants.

26 Furthermore, the VPIMG states that the final letter to a complainant should clearly describe the allegations, summarise the evidence for each allegation, the determination reached, how that conclusion was reached, and any action taken.

27 Excluding files where there was a public interest reason not to inform the complainant of the outcome of the matter in writing.

28 Such confusion further highlights the need for a clear policy in relation to LMRs.

Areas for improvement

Victoria Police could improve how it communicates the outcome of an investigation to complainants by:

- Developing a policy governing LMRs that includes guidelines around communication with complainants in those matters. A verbal discussion with the complainant about the action taken in response to their complaint and the proposed response could be sufficient, provided the content of that discussion is documented and recorded in ROCSID. For some LMRs, it may be preferable to provide an email or letter to document the final outcome
- Ensuring that final letters to complainants are informative, accurate and timely. In particular, the determinations outlined in final letters should be clearly explained (such as by clarifying that 'not substantiated' means the evidence was weighted in favour of the account given by the employee)
- Identifying where responsibility for improving the quality of letters to complainants rests, and taking steps to ensure that responsibility is understood and actioned
- Regularly sampling complainants (with a focus on LMRs) to assess their level of satisfaction with communication during the complaint handling process, including the final advice of the outcome of their complaint.

5.5.7 Advice to subject officers

It is important that all subject officers are advised formally of the outcome of a complaint investigation in a timely and accurate way.

The audit found there were a significant proportion (16 per cent) of relevant files that did not contain final letters to subject officers. Further, eight per cent of the letters that were attached were deficient because they were either inconsistent with letters sent to complainants, did not address all allegations investigated, referred to the incorrect determination or did not state what action would be taken. In relation to LMRs, there was no evidence that letters were sent to subject officers.

Areas for improvement

Victoria Police could improve its practice in relation to final letters to subject officers by:

- Making it clear that completion of final letters is not dependent on actions (such as workplace guidance) being taken against the subject officer. It is sufficient for the final letter to state that specific action will be taken
- Improving quality assurance of letters to ensure they are clear and consistent with the information communicated to the complainant and recorded on ROCSID
- In relation to LMR matters, ensuring subject officers are advised in writing (email is sufficient) of the outcome of the investigation and that correspondence is saved on ROCSID.

5. FINDINGS FROM THE AUDIT

5.6 Record keeping and other issues

The audit identified that almost one third (29 per cent) of audited files (plus 38 per cent of LMRs) did not contain all of the relevant documentation. This raises questions as to whether all relevant material was considered by investigators when arriving at their determinations and recommendations. A failure to include all relevant material on the file also limits the capacity of senior Victoria Police officers and IBAC to effectively review the files.

IBAC understands Victoria Police is to conduct a trial of the Interpose case management system as a means of electronically managing complaint files (replacing the current system of physical files). IBAC supports the adoption of an electronic file management system but notes the challenges associated with the introduction of such a system including providing training to investigators, establishing appropriate security and confidentiality safeguards, and ensuring all relevant material is uploaded to the system.

Areas for improvement

Victoria Police could improve record keeping associated with complaint files by:

- Including a checklist of steps and evidence to consider as part of the file template sent to investigators
- Continuing the transition from a paper-based complaint file management system to an electronic system.

6. CONCLUSION

A strong complaints system is essential for preventing police misconduct and corrupt conduct. Across all areas examined by the audit, IBAC identified good practices but also found areas for improvement. These findings have informed this report's recommendations and suggestions for improvement to Victoria Police. Although the audit focussed on complaint files that were investigated in Western and Southern Metropolitan Regions, it is anticipated that the issues identified have wider application across Victoria Police.

IBAC acknowledges that Victoria Police has initiated changes to improve complaint handling and investigations and has advised it is committed to implementing the recommendations made by IBAC's audit. IBAC looks forward to continuing to work with Victoria Police to improve how complaints against police are managed.

More information on the audit, including the full audit report and other information relating to IBAC's police oversight activities, is available on IBAC's website.

