

# ANNUAL REPORT 2017/18

## CHAPTER SEVEN: INDEPENDENT POLICE OVERSIGHT

# PROVIDING INDEPENDENT OVERSIGHT OF VICTORIA POLICE

The community places great trust in police and Victorians want to be assured there is thorough and effective, independent oversight of Victoria Police. IBAC performs a crucial role in ensuring Victoria Police officers act fairly, impartially and in accordance with the law by providing robust and independent oversight of police. Because of the significant powers exercised by police officers, including powers to detain, search and arrest, use force, enter premises and seize property, this oversight is important for community safety and wellbeing.

We note that at the time of finalising this annual report, the Parliamentary IBAC Committee inquiry into the external oversight of police corruption and misconduct in Victoria was expected to be tabled before State Parliament in September. IBAC provided detailed information and evidence to assist the Committee's inquiry and to inform its consideration of how police oversight may be enhanced. Following the tabling of the report, we will look forward to the Government's response and note that any legislative change as a result of the Committee's recommendations will ultimately be a matter for Parliament.

Independent oversight of Victoria Police is currently provided by:

- receiving complaints and notifications about police personnel conduct (including complaints received by Victoria Police which are mandatorily reported to IBAC)
- assessing those complaints and notifications to determine which will be referred to Victoria Police for action, which will be dismissed, and which will be investigated by IBAC
- reviewing investigations of selected matters that we have referred to Victoria Police to ensure those matters were handled appropriately and fairly
- conducting 'own motion' investigations into serious police misconduct
- overseeing deaths and serious injuries associated with police contact pursuant to a standing 'own motion' investigation
- conducting private or public examinations as part of our investigations into serious or systemic police misconduct
- ensuring police officers have regard to the *Charter of Human Rights and Responsibilities Act 2006*, including through our reviews of Victoria Police complaint investigations
- undertaking research and other strategic initiatives, including auditing how Victoria Police handles complaints
- informing and educating the community and Victoria Police about police misconduct, encouraging reporting and advising on ways corruption and police misconduct can be prevented.

# PROVIDING INDEPENDENT OVERSIGHT OF VICTORIA POLICE (CONT)

During 2017/18, IBAC further strengthened its police oversight function. We have increased the number of investigations of police matters, and will investigate a larger number of police matters in the future.

IBAC completed 72 reviews of complaints investigated by Victoria Police, to check that police handled the matters appropriately and investigated them thoroughly. IBAC will conduct more of these reviews, and is boosting our capacity in this area in 2018/19.

IBAC also announced it would appoint a second Deputy Commissioner, with a focus on police oversight. This will further build IBAC's capacity to ensure Victoria Police discharges its functions with integrity and in accordance with the law. The appointment process was in progress as at 30 June.

IBAC also conducted two independent audits of how Victoria Police handles complaints. Both audits recommended a number of improvements to strengthen Victoria Police practice. Victoria Police accepted all these recommendations and will report to IBAC on its implementation of these recommendations.

IBAC released a report into police perceptions of corruption and misconduct, which highlighted an opportunity for police to do more to raise awareness about misconduct and how to report it.

This chapter highlights some of the important independent police oversight work undertaken by IBAC in 2017/18.

## PARLIAMENTARY INQUIRY

In June 2017, the IBAC Committee, which provides Parliamentary oversight of IBAC, commenced an inquiry into the external oversight of police corruption and misconduct in Victoria. The terms of reference for the inquiry include:

- examine the current system for the oversight of police corruption and misconduct in Victoria, in particular the role of IBAC and the Victorian Inspectorate
- identify and assess best practice models for the oversight of police
- identify and review the main challenges to the effective oversight of complaints and disclosures about police in Victoria
- consider best practice strategies to improve the oversight and investigation of police corruption and misconduct and how they may be implemented in Victoria.

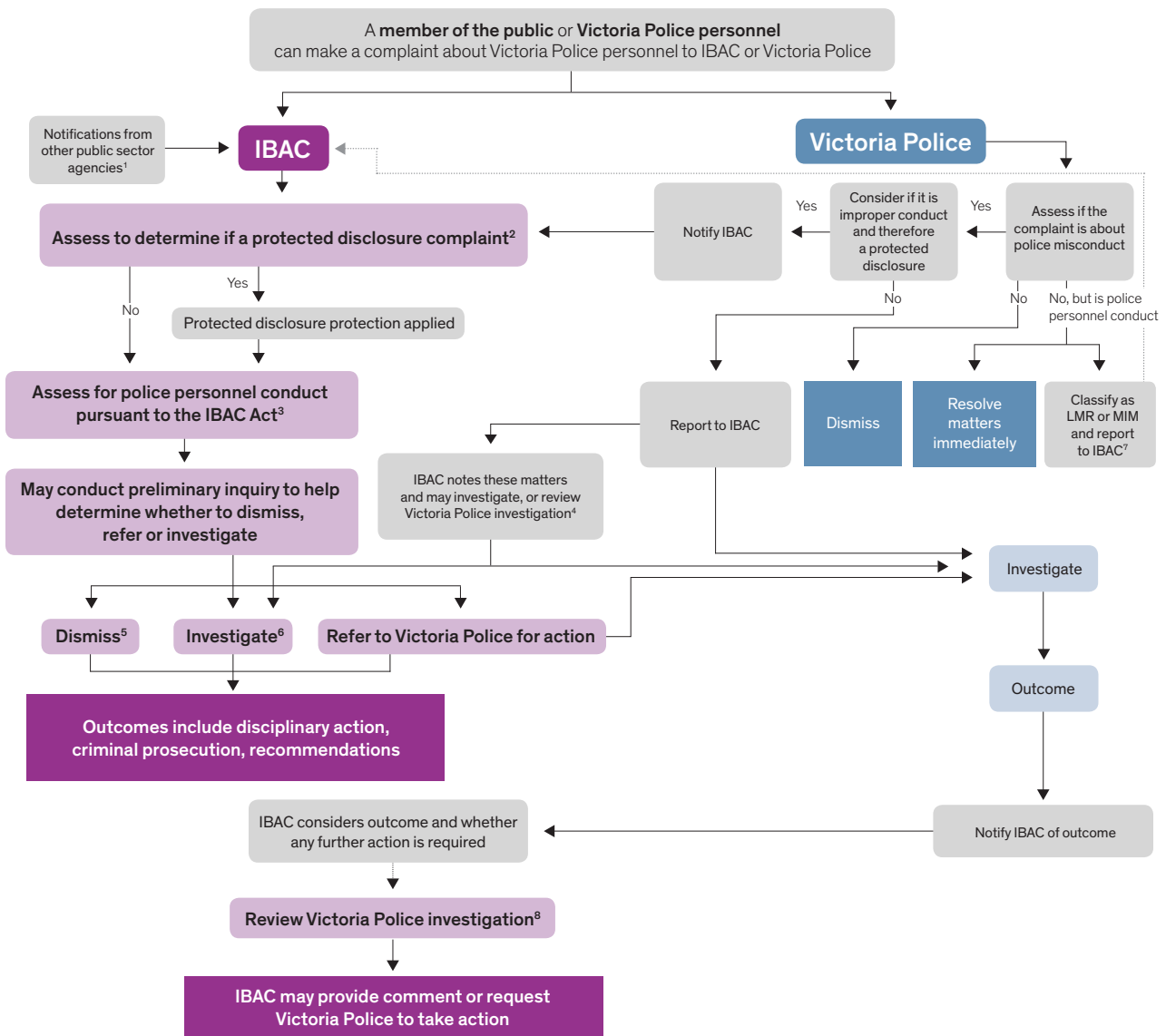
As part of this inquiry, the IBAC Commissioner appeared before the Committee in 2018.

The Committee was scheduled to report to Parliament in September 2018.

# HANDLING POLICE COMPLAINTS AND NOTIFICATIONS

IBAC receives complaints and notifications about corrupt conduct and police personnel conduct. All complaints received by Victoria Police about police misconduct are mandatorily notified to IBAC. IBAC assesses these complaints and notifications to determine which matters will be referred to Victoria Police for action, which will be dismissed, and which we will investigate.

Figure 1: Complaints handling process concerning Victoria Police



<sup>1</sup> Notifications from other public sector agencies include notifications from the Victorian Ombudsman concerning police corruption and misconduct, and from the Victorian Auditor-General's Office concerning suspected corrupt conduct.

<sup>2</sup> All complaints made by a Victoria Police officer about another Victoria Police officer are deemed to be protected disclosures.

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

<sup>4</sup> When IBAC determines not to investigate a particular report and determines that it would be appropriate for Victoria Police to continue its investigation, IBAC may monitor the progress of the investigation and otherwise will await an outcome report at the completion of action taken by Victoria Police. IBAC may determine to review Victoria Police's investigation at any time including following completion of the investigation.

<sup>5</sup> Reasons for dismissed complaints include matters that: are withdrawn; have insufficient information; are too old; have already been investigated; or are frivolous or vexatious. If the complaint is dismissed, the information can help IBAC develop a greater understanding of potential risks of police misconduct, and inform prevention and education activities.

<sup>6</sup> IBAC primarily investigates police matters that involve serious, systemic and/or sensitive allegations, and which we have the capacity and capability to best handle. IBAC must refer complaints to specified persons or bodies where it considers it would be more appropriate for that person or body to investigate. IBAC can also conduct 'own motion' investigations into serious or systemic corrupt conduct or misconduct at any time.

<sup>7</sup> Since January 2018, IBAC has been advised of local management resolution (LMR) and management intervention model (MIM) matters.

<sup>8</sup> Of the complaints referred to Victoria Police, IBAC reviews certain matters to ensure they have been investigated thoroughly and fairly.

# HANDLING POLICE COMPLAINTS AND NOTIFICATIONS (CONT)

Table 1: Allegations about Victoria Police

	2013/14	2014/15	2015/16	2016/17	2017/18
<b>Total allegations that relate to Victoria Police received through:</b>					
Complaints made by individuals directly to IBAC	1803	1635	1697	2005	<b>2520</b>
Notifications and protected disclosure notifications from Victoria Police	833	1083	1093	1083	<b>1154</b>
Notifications from other sources (eg Victorian Ombudsman, Victorian Auditor-General's Office)	947	261	168	76	<b>35</b>

Note: A complaint or notification may include multiple allegations, all of which are individually assessed.

In 2017/18, there was a 26 per cent increase in the number of allegations concerning Victoria Police made by individuals directly to IBAC, compared to the previous year. The number of notifications and protected disclosure notifications from Victoria Police remains broadly consistent with previous years.

The number of allegations relating to Victoria Police arising from notifications from other sources has continued to decrease. This may reflect greater awareness of IBAC's police oversight role, as well as steps taken by the Victorian Ombudsman to encourage complaints about police personnel conduct or misconduct to be made directly to IBAC.

**3709**

allegations related to Victoria Police received through complaints from individuals, and notifications and protected disclosure notifications from government agencies

**26%**

increase in the number of allegations concerning Victoria Police made by individuals directly to IBAC

# HANDLING POLICE COMPLAINTS AND NOTIFICATIONS (CONT)

Table 2: Allegation outcomes (Victoria Police)<sup>9</sup>

	2013/14	2014/15	2015/16	2016/17	2017/18
Investigated	23	17	7	18	27
Referred <sup>10</sup>	1419	865	1109	924	981
Dismissed <sup>11</sup>	1422	1074	1044	1432	1827
Noted <sup>12</sup>	704	1018	792	792	864
Returned <sup>13</sup>	15	5	6	1	10

Twenty-seven Victoria Police allegations assessed during 2017/18 were investigated by IBAC. The matters investigated involved serious, systemic and/or sensitive allegations commensurate with our powers and resources. As highlighted in the above table, the number of Victoria Police allegations investigated by IBAC increased this financial year.

The largest category of outcome is 'dismissed'. IBAC may dismiss a matter for a number of reasons including if a matter is withdrawn, if there is insufficient information, if it is too old, has already been investigated, or if it is frivolous or vexatious. However, even if dismissed, the information provided can assist IBAC to develop our understanding of potential risks of police misconduct, identify trends and patterns, and inform prevention activities.

## FALSIFICATION OF PRELIMINARY BREATH TESTS

In September 2017, Victoria Police notified IBAC of a complaint it had received regarding possible falsification of preliminary breath tests (PBTs). In February 2018, Victoria Police advised of the results of initial data analysis regarding this matter. That analysis presented persuasive evidence that, over a five-year period, more than 250,000 roadside PBTs appeared to have been falsified by Victoria Police officers.

IBAC expressed concerns regarding the culture within Victoria Police that enabled this to occur and not be detected or dealt with immediately. IBAC will closely monitor Victoria Police's response to this issue, including the investigation to be overseen by former Chief Commissioner Neil Comrie, to ensure it meets our requirements and community expectations.

<sup>9</sup> This data includes, from 2016/17, allegations which were the subject of preliminary inquiries and which were subsequently investigated, referred or dismissed.

<sup>10</sup> 'Referred' is an outcome used by IBAC when IBAC determines that another public body is the most appropriate body to investigate an allegation. In relation to allegations about Victoria Police, this outcome is predominantly used to refer allegations which come to IBAC via complaints from individuals (rather than via Victoria Police notifications) to Victoria Police for investigation.

<sup>11</sup> Includes allegations withdrawn or determined that no further action be taken.

<sup>12</sup> 'Noted' is an outcome used by IBAC when we receive notifications from Victoria Police under section 169 of the *Victoria Police Act 2013*. Unless IBAC determines to investigate the notification, these matters are retained by Victoria Police for action. IBAC 'notes' their receipt and when the outcome report at the completion of action taken by Victoria Police is provided, IBAC may then determine to review Victoria Police's investigation.

<sup>13</sup> 'Returned' is an outcome used when IBAC receives a notification under section 21 or 22 of the PD Act and determines the disclosure is not a 'protected disclosure complaint'. Because the notification does not engage the IBAC Act, it does not result in an assessment under section 58 of the IBAC Act to refer, dismiss or investigate. Such matters are recorded as being 'returned' to the notifying agency (including Victoria Police).

## PROTECTING THOSE WHO REPORT

As part of our assessment of complaints and notifications, IBAC determines which matters warrant protected disclosure status. Following legislative changes in 2015/16, all complaints made by a police officer about another officer, are automatically defined as 'protected disclosures' under section 3 of the PD Act.

Since this legislative change, there has been a steady increase in the number of protected disclosure allegations, made by individuals as well as those made by Victoria Police as mandatory notifications. In 2017/18, 450 allegations were assessed as protected disclosures. As highlighted in the table below, the number of these complaints has increased since 2015/16.

Under the PD Act, only specific agencies including IBAC and Victoria Police can investigate complaints that have protected disclosure status. IBAC determines which agency is best placed to investigate the particular complaint and refers the matter to that agency for investigation. IBAC primarily investigates police matters that involve serious, systemic and/or sensitive allegations, and which we have the capacity and capability to best handle.

Most complaints/notifications were referred to Victoria Police because it was assessed as the more appropriate body to handle the particular matters.

**Table 3: Allegations assessed as protected disclosures due to the allegations coming from a police officer and relating to another police officer (as per section 5 of the PD Act)**

	2013/14 <sup>14</sup>	2014/15	2015/16	2016/17	2017/18
Complaints made by individuals directly to IBAC <sup>15</sup>	n/a	n/a	121	172	<b>206</b>
Notifications from Victoria Police	n/a	n/a	231	202	<b>244</b>
<b>Protected disclosure outcomes:</b>					
Dismissed <sup>16</sup>	n/a	n/a	27	109	<b>155</b>
Referred	n/a	n/a	325 (included 7 noted)	265	<b>291</b>
Investigated	n/a	n/a	0	0	<b>4</b>

<sup>14</sup> Data from 2013/14 and 2014/15 not provided due to legislative changes.

<sup>15</sup> A complaint may include multiple allegations, all of which are individually assessed.

<sup>16</sup> This may include matters that: are withdrawn; have insufficient information; are too old; have already been investigated; or are determined to be frivolous or vexatious. If a complaint is dismissed, the information may be used to help IBAC develop a greater understanding of potential risks of police misconduct, determine trends or patterns, and inform prevention and education activities.

# INVESTIGATIONS OF ALLEGATIONS CONCERNING VICTORIA POLICE

In 2017/18, IBAC had 27 active investigations into police misconduct.

During the financial year, IBAC strengthened our operational capacity by establishing a fourth multi-disciplinary investigation team. This new team enables IBAC to conduct more investigations into police matters.

Below (and on the next page) are examples of IBAC investigations into police misconduct during 2017/18.

## CONCERNS ABOUT EXCESSIVE USE OF FORCE

A number of IBAC investigations concerned allegations of excessive use of force by police officers, including in relation to vulnerable people. Where relevant, investigations (and reviews) also consider whether police have had sufficient regard to rights under the *Charter of Human Rights and Responsibilities Act 2006* (Charter of Human Rights).

Two investigations into allegations of excessive use of force have resulted in criminal proceedings which are ongoing as at 30 June 2018:

### Operation Mersey

IBAC investigated allegations of assault against two Victoria Police senior constables related to an incident in Frankston in February 2016. In December 2017, IBAC charged the two officers with assault, intentionally causing injury and recklessly causing injury.

### Operation Poros

IBAC investigated allegations of assault in the cells at Moe Police Station in September 2017. In February 2018, IBAC charged a senior constable with two counts of unlawful assault.

## MISUSE OF INFORMATION

Other recurring issues investigated by IBAC include inappropriate access to and unauthorised use of information by police, as well as improper associations by Victoria Police officers. Two such investigations finalised by IBAC in 2017/18 were:

### Operation Light

IBAC investigated allegations that a detective leading senior constable, Officer A, had an improper association with a person of interest to a Victoria Police drug trafficking investigation. That person of interest was also later charged with firearms offences. Operation Light investigated the association of another detective leading senior constable (Officer B) with the person of interest. In February 2018, Officer A was charged with seven counts of improperly taking advantage of a regulated person's position, one count of unauthorised disclosure of police information and two counts of possessing a prohibited weapon. Officer B was referred to Victoria Police for possible disciplinary action.

### Operation Genoa

IBAC investigated allegations that a leading senior constable maintained inappropriate relationships with people associated with an adult entertainment venue, including the club's manager. The officer resigned while under investigation. In May 2018, the officer was charged with four counts of unauthorised access, use or disclosure of police information.

Both of these investigations were before the courts as at 30 June 2018.

27

active investigations and preliminary inquiries into alleged misconduct or corrupt conduct by police officers



# INVESTIGATIONS OF ALLEGATIONS CONCERNING VICTORIA POLICE (CONT)

## **Operation Cygnet: use of drugs of dependence and misuse of information**

In January 2017, IBAC commenced an 'own motion' investigation<sup>17</sup> into allegations that a detective leading senior constable had used and trafficked drugs of dependence, and had unlawfully accessed and disclosed Victoria Police information. IBAC found the officer had used drugs of dependence and had unlawfully accessed and used Victoria Police information, but did not substantiate allegations that he had trafficked drugs or disclosed Victoria Police information. The officer resigned while under investigation.

IBAC's investigation identified the officer used secure Victoria Police databases to determine if associates from whom he was buying drugs were the subject of police attention. The officer worked in highly sensitive environments and was subject to drug testing; however, before the investigation, he had been subject only to urine tests which did not return positive results. It is likely the officer's drug use would have been detected through a hair strand drug test because hair testing is more likely to provide indications of long-term use.

Following Operations Apsley, Yarowitch and Hotham, which investigated allegations that police officers were involved in the use, possession and trafficking of illicit drugs, in December 2016 IBAC recommended that Victoria Police develop a more robust framework to prevent and detect illicit drug use by police, including reviewing the adequacy of the testing regime. IBAC requested that the issues identified in Operation Cygnet be considered in that response. Victoria Police was due to provide a final report on this work to IBAC by 30 June 2018, however it has advised that work has been delayed due to consideration of an internal audit on management of internal illicit drug use.

## **Operation Oxley: perjury**

In 2016, IBAC commenced an 'own motion' investigation into allegations that a senior constable (Senior Constable A) had attained the security clearance needed for a position, by providing false information. IBAC's investigation substantiated this allegation and found that the senior constable had asked two colleagues (a senior sergeant and a senior constable) to corroborate false information in referee reports. Senior Constable A had also provided a false statutory declaration in support of the security clearance application.

In October 2017, Senior Constable A pleaded guilty to perjury and was fined \$8000 without conviction. As a result of this conduct, he received an admonishment notice from Victoria Police. According to Victoria Police policy, admonishment notices are intended to be used for minor breaches of discipline. They are an alternative to the formal discipline process. As the misconduct was dishonest, had resulted in criminal offending and was inconsistent with Victoria Police values, IBAC raised concerns about this outcome with Victoria Police.

IBAC made recommendations to Victoria Police as a result of this investigation, including that Victoria Police seek advice from the Australian Government Security Vetting Agency regarding best practice in ensuring adherence to security clearance processes, including checking the veracity of information provided by applicants and referees. As at 30 June 2018, IBAC was waiting for a response from Victoria Police.

## **Operation Turon: Conduct of a former Assistant Commissioner**

IBAC is investigating allegations regarding the conduct of a former Assistant Commissioner for Professional Standards Command (PSC). PSC is the central area within Victoria Police responsible for the organisation's ethical health and integrity. The allegations concern the posting of inappropriate material using pseudonyms while Assistant Commissioner PSC.

IBAC is examining the extent to which the alleged actions may have affected Victoria Police investigations and outcomes where racism or other forms of discrimination or human rights law may have been relevant. This has involved checking more than 200 complaint files handled by Victoria Police, to consider whether the decision-making in the investigation and any associated disciplinary action was robust and defensible. As a result of this process, certain matters will be subject to a full review by IBAC to assess whether the complaint investigation was thorough and to identify possible systemic changes in practices.

<sup>17</sup> IBAC may decide to investigate corrupt conduct or police misconduct on our 'own motion', in addition to investigating matters as a result of complaints from individuals and notifications from public sector bodies. IBAC can start an 'own motion' investigation at any time, in relation to any matter that falls within our jurisdiction.

# IBAC REVIEWS OF VICTORIA POLICE COMPLAINT INVESTIGATIONS

When IBAC refers complaints and notifications to Victoria Police to investigate, we select certain matters to review following the police investigation. IBAC reviews serve to identify if an investigation has been conducted appropriately and fairly by Victoria Police, and to identify opportunities for police to improve their systems and practices. IBAC may also decide to review a matter after reviewing the outcome of a Victoria Police investigation.

IBAC selects matters for review because the matter is considered to be in the public interest (for example, because the allegations are serious or have generated significant public concern) or because it concerns issues identified by IBAC as being of strategic interest or risk. Matters of strategic interest include allegations of excessive use of force, treatment of vulnerable persons and information misuse.

**Table 4: IBAC reviews of police investigations**

	2013/14	2014/15	2015/16	2016/17	2017/18
The number of reviews IBAC conducted of Victoria Police investigations	79	114	96	73	<b>72</b>
Number of files returned as deficient <sup>18</sup>	n/a <sup>19</sup>	19	35	20	<b>48</b>

In 2017/18, IBAC conducted 72 reviews of Victoria Police investigations. In the previous year, IBAC conducted 73 reviews.

Of the 72 reviews conducted in 2017/18, IBAC identified deficiencies in the way Victoria Police handled 48 files and returned these matters back to Victoria Police for further action. This was a 140 per cent increase on the number of files returned as deficient in 2016/17. A key reason for IBAC returning files was because Victoria Police investigators had failed to complete conflict of interest forms. Conflicts of interest has been an area of strategic focus for IBAC.

In addition to these 72 reviews, IBAC has scrutinised the outcomes of 36 Victoria Police complaint files and examined more than 200 Victoria Police complaint files as part of Operation Turon.

IBAC is committed to boosting our capacity to increase the number of reviews conducted, to ensure complaints handled by Victoria Police are investigated thoroughly and appropriately.

Below are examples of Victoria Police complaint investigations reviewed by IBAC in 2017/18.

## Inadequate investigation of information misuse

In February 2017, IBAC received a notification from Victoria Police alleging that a sergeant photographed a confidential Victoria Police document with his mobile phone and sent it to a member of the public.

Less than 12 months earlier, the sergeant had been disciplined for a separate matter involving inappropriate access to the Victoria Police database, LEAP.

IBAC referred the matter to Victoria Police to investigate. The Victoria Police investigator determined that the allegation was 'not substantiated'.

When IBAC reviewed the matter, we found that the investigation was inadequate because it placed too much weight on some evidence, selective weight on other evidence and too little weight on other parts of the evidence.

In response, Victoria Police reassessed the evidence, and subsequently changed the determination from 'not substantiated' to 'substantiated'. The sergeant was provided with workplace guidance to address the risk presented by his complaint history, especially regarding information management.

IBAC has raised further concerns about this matter, including that the officer was provided with workplace guidance rather than being subject to disciplinary action. In light of the seriousness of the conduct and his previous complaint history, IBAC thought disciplinary action should have been considered by Victoria Police.

**72**

reviews completed of matters investigated by Victoria Police

<sup>18</sup> The main reason why files are returned as deficient is because insufficient detail is provided.

<sup>19</sup> No data is available for 2013/14 because there were significant changes to how information was recorded with the establishment of IBAC.

# IBAC REVIEWS OF VICTORIA POLICE COMPLAINT INVESTIGATIONS (CONT)

## Harassment investigation found to be grossly inadequate

In 2013, IBAC received a complaint from a senior sergeant alleging workplace bullying and sexual harassment. IBAC determined the matter was a protected disclosure complaint and referred it to Victoria Police to investigate. The investigation was then reviewed by IBAC in 2015.

IBAC found the Victoria Police investigation was grossly inadequate. Concerns raised included:

- the allegations had been considered individually rather than as a course of conduct of alleged bullying
- the identity of the complainant had been disclosed to the subject of the complaint, despite the complainant having protected disclosure status
- the investigation took too much time
- a failure to consider Victoria Police bullying and sexual harassment policies, and to seek expert assistance on these issues within the organisation
- a failure to interview all relevant witnesses
- reliance on unsupported, subjective opinions
- inappropriate liaison with officers considered by the complainant to be subject officers
- a failure to consider/investigate the conduct of officers nominated by the complainant.

In response, in 2016 Victoria Police engaged a consultant as an independent third party who conducted further investigations and confirmed IBAC's concerns. The full investigation file was provided to IBAC to review in August 2017. IBAC found that the independent review was comprehensive and systematic. Two allegations were substantiated and the main officer who was the subject of the complaint was admonished. Organisational learnings were also identified by police to improve the way in which allegations of sexual harassment and workplace bullying are investigated. Recommendations have been or are being actioned by Victoria Police.

## REVIEWS OF COMPLAINT INVESTIGATION OUTCOMES

As well as reviewing how Victoria Police conducted complaint investigations, during 2017/18 IBAC scrutinised outcomes of a broad range of complaint files. This work was prompted by concerns with the way in which Victoria Police determines outcomes of complaints and how the disciplinary regime is applied.

Based on an examination of 36 complaint files, IBAC raised concerns with Victoria Police about the need to improve its practices in this area. Our concerns included the use of low-level sanctions (such as admonishment or workplace guidance) instead of initiating disciplinary or criminal proceedings for serious misconduct.

For example, one matter examined by IBAC and raised with Victoria Police was a police investigation which substantiated allegations that a senior constable made false entries on Victoria Police's case management system as well as in their diary that they had collected CCTV footage from a service station which had been the subject of an armed robbery. The officer also falsified a disk claiming it was the CCTV footage collected, and prepared a false witness statement attesting that the officer had collected the CCTV footage. The senior constable lied to their supervisors and PSC investigators, including in a disciplinary interview (conducted under section 171 of the *Victoria Police Act 2013* (Victoria Police Act)). The officer did make full admissions after a break in the interview.

The Assistant Commissioner PSC determined that the officer should receive an admonishment, although the substantiated allegations did not represent a minor breach of discipline. IBAC did not consider this an appropriate disciplinary outcome.

IBAC is continuing to examine issues concerning outcomes of complaint investigations by Victoria Police and is raising systemic concerns and concerns relating to specific cases.

# AUDITS OF COMPLAINTS HANDLED BY VICTORIA POLICE

As part of our police oversight work, IBAC conducts audits designed to help improve the police complaints system.

## Audit of Victoria Police's oversight of serious incidents

IBAC conducted an audit of how Victoria Police oversees incidents involving its officers that result in death or serious injury, or the risk of death or serious injury, to members of the public. The audit examined how Victoria Police handled 142 oversight files closed during 2015/16.

Issues identified by the IBAC audit included:

- poor management of conflicts of interest
- a pattern of deficiencies in oversight of incidents involving the Special Operations Group, including in relation to conflicts of interest
- more than half of the audited files failed to consider relevant evidence, including statements from independent witnesses
- significant delays in the timeliness of oversight, with more than one-third taking longer than the permitted 90 days to complete
- almost one-third of files showed signs of inadequate supervision.

IBAC made eight recommendations to Victoria Police to strengthen the oversight of serious incidents. All of the recommendations were accepted by Victoria Police.

IBAC is monitoring Victoria Police's implementation of the audit's recommendations. IBAC has requested Victoria Police provide an interim report on its implementation of the audit's recommendations by September 2018 and a final report by March 2019.

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

During the year, IBAC also audited a sample of files investigated by PSC. The audit examined the adequacy of police handling of complaints involving more serious allegations of misconduct or corruption. The complaint investigations that IBAC audited included serious allegations of improper criminal associations, drug use or possession, sexual offences, handling stolen goods, threats to kill, interference in investigations and misuse of information.

A total of 59 files closed during 2015/16 were examined. The audit identified several areas for improvement in how PSC investigates complaints:

- poor management of conflicts of interest
- concern with the use of the 'work file' classification, including its use when a matter involved allegations of criminal conduct or corruption

- failure to consistently consult with the Office of Public Prosecutions despite establishing a reasonable belief that a reportable offence had been committed
- inadequate recommended actions
- failure to recommend broader organisational improvements.

IBAC made five recommendations to Victoria Police to improve the way in which PSC investigates complaints. All recommendations were accepted by Victoria Police.

IBAC is monitoring Victoria Police's implementation of the audit's recommendations. IBAC has requested Victoria Police to provide an interim progress report by December 2018 and a final report by June 2019.

*'For Victorians to have confidence in our police, we need to know that when a serious complaint is made about police, it will be investigated thoroughly and without bias. More broadly, it is important that Victoria Police applies learnings from complaints, and takes action to address systemic and cultural issues to prevent police misconduct.'*

The Honourable Robert Redlich QC  
IBAC Commissioner

Both audits found there continues to be issues with Victoria Police officers' understanding and application of the Charter of Human Rights in relation to complaints. The audit of oversight files found that almost one-third of oversight files examined did not address human rights, despite human rights being a key oversight principle. The audit of PSC complaints also found that about one-third of files did not adequately address human rights issues (see next page).

## SHOOTING AT INFLATION NIGHTCLUB

**In July 2017, two members of the public were shot by Victoria Police officers at the Inflation nightclub, sustaining serious injuries. This incident is being investigated by Victoria Police, with oversight by PSC. IBAC is also actively overseeing the incident and may make findings in relation to Victoria Police's response to and handling of this incident.**

## ENSURING POLICE OFFICERS HAVE REGARD TO THE CHARTER OF HUMAN RIGHTS

Under the IBAC Act, IBAC has an important obligation to ensure Victoria Police officers have regard to the Charter of Human Rights. Victoria Police complaints and notifications received by IBAC are assessed to identify if the allegation may involve a potential breach of a Charter right. The identification of potential human rights breaches is an important factor to be considered when determining whether an allegation will be investigated by IBAC, or reviewed if referred to Victoria Police for investigation.

IBAC also provides feedback to Victoria Police on human rights identified in the course of IBAC's audits of how Victoria Police handles complaints. As noted above, human rights have been considered in investigations of excessive use of force, and in relation to the investigation into allegations regarding the conduct of a former Assistant Commissioner PSC.

In November 2016, IBAC reported on Operation Ross, an investigation into the alleged excessive use of force against several people at the Ballarat Police Station. IBAC recommended that Victoria Police review and enhance its human rights training to improve officers' understanding of and compliance with the Charter of Human Rights. IBAC also recommended that Victoria Police ensure officers understand and comply with policies on searches, highlighting the need for officers to uphold the human rights of the person being searched.

In April 2018, Victoria Police provided a progress report on its implementation of the Operation Ross recommendations. Victoria Police has developed a human rights e-learning module and facilitator-led training, and incorporated human rights into other programs including foundation and promotion training. IBAC has requested further information on Victoria Police's work in this area.

## CONCERNS ABOUT POORLY MANAGED CONFLICTS OF INTEREST

The poor management of conflicts of interest in relation to how Victoria Police investigates complaints against its officers is a persistent concern identified by IBAC. Through reviews of Victoria Police investigations and IBAC audits of how Victoria Police handles complaints, IBAC has identified that actual, perceived or potential conflicts of interest are not consistently identified and managed. This has the potential to significantly erode community confidence in the impartiality of complaint investigations.

To improve impartiality, particularly in relation to complaint investigations concerning officers in regional Victoria, IBAC has proposed to Victoria Police that a complaint investigator should not be from the same division as the subject officer unless the manager allocating the file is satisfied that the investigator comes from a location that is so geographically independent that it will alleviate any concerns about the investigator's impartiality. The manager should also be satisfied there are no previous professional or private associations between the investigator and the subject officer. To date, Victoria Police has advised it does not consider this is necessary, relying on other means of improving its management of conflicts of interest in complaint investigations.

IBAC will continue to monitor how conflicts of interest are identified and managed in complaint investigations conducted by Victoria Police, and to raise concerns with Victoria Police.

## CONCERNS ABOUT THE CLASSIFICATION OF LOW-LEVEL COMPLAINTS (LMR AND MIM MATTERS)

Complaints received by Victoria Police are triaged centrally by PSC and assigned a classification which determines how each matter is handled. The lowest-level complaint classifications are local management resolution (LMR) and management intervention model matters (MIM). Only minor complaint and conduct matters (eg customer service complaints) should be classified as LMR or MIM because the focus is on developmental, rather than punitive, action for the officer subject to the complaint.

Victoria Police has not considered LMR or MIM matters to be misconduct complaints as defined in the Victoria Police Act and therefore has not formally notified these matters to IBAC. However, following a request from IBAC, Victoria Police agreed to advise IBAC of LMR and MIM. This arrangement has been in place since January 2018.

For three months from January 2018, IBAC monitored the content of each LMR and MIM to determine if any of these matters constituted 'misconduct' and therefore should have been reported to IBAC under the Victoria Police Act. We found eight per cent of LMR and MIM matters were considered to have involved allegations of potential misconduct and therefore, in IBAC's view, were wrongly classified by Victoria Police. These matters should have been notified to IBAC to enable an independent assessment to determine what, if any, action would be taken.

Some matters were considered to constitute possible misconduct because the allegation concerned potential breaches of the Charter of Human Rights or the *Equal Opportunity Act 2010*.

IBAC supports legislative change to strengthen the notification requirements of the Victoria Police Act, to formalise the arrangements for Victoria Police to notify IBAC of LMRs and MIMs. This would strengthen transparency and enable more rigorous oversight by improving the level of reporting by Victoria Police.

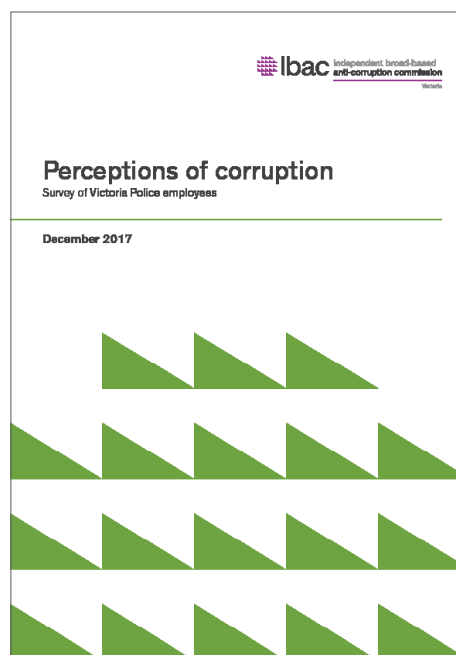
## HOW VICTORIA POLICE EMPLOYEES VIEW CORRUPTION

In December 2017, IBAC reported on Victoria Police employees' perceptions of corruption. This research showed that Victoria Police employees demonstrated a strong personal commitment to the values of integrity and honesty.

However, the research also highlighted a large proportion of respondents were concerned they would experience personal repercussions if they reported misconduct or corruption and one-fifth of respondents did not agree that they would report corruption even if they observed it.

This suggests Victoria Police can do more to raise awareness among its employees about how to identify, report and prevent corruption, and the protections available under the PD Act, as well as ensuring Victoria Police officers understand their obligation under the Victoria Police Act to report misconduct and corruption.

Figure 2: Research report – *Perceptions of corruption: Survey of Victoria Police employees*



# MONITORING VICTORIA POLICE COMPLIANCE WITH VARIOUS ACTS

As part of our police oversight role, IBAC monitors Victoria's Police's compliance with various Acts, including:

## *Sex Offenders Registration Act 2004*

IBAC monitors Victoria Police Sex Offender Registry compliance with parts three and four of the *Sex Offenders Registration Act 2004*. IBAC inspection reports are now provided to the Minister for Police for tabling in each House of Parliament.

## *Witness Protection Act 1991*

IBAC monitors Victoria Police compliance with the recordkeeping requirements in the *Witness Protection Act 1991*. IBAC inspection reports are provided to the Minister for Police.

## *Drugs, Poisons and Controlled Substances Act 1981*

IBAC inspects Victoria Police certificates of health and safety destruction or disposal of specified material found on public land or private land (where permission has been given). IBAC inspection reports are provided to the Minister for Police.<sup>20</sup>

## *Firearms Act 1996*

Legislation commencing on 9 May 2018 created three IBAC oversight functions in relation to the firearms prohibition order scheme: a quarterly case review, a standing monitoring power and biennial ministerial reporting. IBAC ministerial reports are tabled in each House of Parliament. During this commencement phase, IBAC was not required to review any firearm prohibition orders.

<sup>20</sup> Due to necessary legal restrictions, the content of inspection reports related to the *Witness Protection Act 1991* and the *Drugs, Poisons and Controlled Substances Act 1981* cannot be detailed.