

# Victoria Police handling of complaints made by Aboriginal people

## Audit report

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May 2022

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# Acknowledgement

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**IBAC acknowledges the Traditional Owners of Country throughout Victoria and pays respect to and recognises the contribution from their Elders past and present.**

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# Definitions

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Acronym/Term	Explanation
ACLO	Aboriginal Community Liaison Officer
CCTV	Closed-circuit television
CCYP	Commission for Children and Young People
Charter	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>
Complaints database	Register of Complaints, Serious Incidents and Discipline or ROCSID, a Victoria Police database
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i>
Interpose	Victoria Police investigation, intelligence and registry management system
LEAP	Law Enforcement Assistance Program, a Victoria Police database
LMR	Local management resolution
MIM	Management intervention model
PALO	Police Aboriginal Liaison Officer
PSC	Professional Standards Command, Victoria Police
RAJAC	Regional Aboriginal Justice Advisory Committee
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
VALS	Victorian Aboriginal Legal Service

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# 1 Introduction

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**Police misconduct and the investigation of complaints against police are issues that concern all Victorians. However, they have particular significance for Aboriginal<sup>1</sup> people, who come into contact with police at a much higher rate than non-Aboriginal people.**

Despite this, Aboriginal people make very few complaints about police. Aboriginal community organisations have highlighted a lack of confidence in the police complaints system, driven by concerns about inherent bias in the investigation process, lack of adequate evidence gathering, poor communication with complainants and low substantiation rates.

The system of police oversight in Victoria has in recent years been the subject of considerable discussion, criticism and recommendations for reform. Many in the community are concerned by the fact that most complaints about police are investigated by Victoria Police rather than by an independent body. The Victorian Government is currently conducting a systemic review of the system of police oversight in Victoria.

Against this backdrop, and as part of its oversight responsibilities, IBAC examined Victoria Police's handling of 41 complaints made by Aboriginal people and its oversight of 13 serious incidents involving an Aboriginal person.<sup>2</sup>

As IBAC undertook this audit within the current system of police oversight in Victoria, our recommendations do not address wider community concerns about the overall structure of the Victorian police complaints system.

Nevertheless, this audit sheds new light on Victoria Police's handling of complaints by Aboriginal people and identifies concerning patterns in current processes. This report outlines IBAC's findings and makes recommendations to improve Victoria Police processes.

Victoria Police has advised IBAC that it is already undertaking work to address issues highlighted in this report through its Discipline Transformation Project. IBAC has requested Victoria Police publish an implementation plan responding to the recommendations made in this report and specifying a time frame for implementation of each recommendation.

IBAC is committed to further engagement with Aboriginal communities and agencies on a range of issues, including improving Aboriginal people's experiences with the police complaints system. The feedback the Aboriginal community provides on the audit's findings and recommendations will shape further work to improve the police complaints system.

The findings from this audit will also help IBAC to improve the way it handles complaints made by Aboriginal people and better support Aboriginal people during the complaints process.

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<sup>1</sup> This report uses the term 'Aboriginal' to refer to Aboriginal and Torres Strait Islander people living in Victoria. The terms 'Koori' and 'Indigenous' are retained when referring to organisation names or publication titles, and in quotations.

<sup>2</sup> These included all complaint and serious incident oversight files closed by Victoria Police during the 2018 calendar year, where the complaint was made by an Aboriginal person or the serious incident involved an Aboriginal person. Additional information on the audit's scope is provided at Section 2.6 of this report.

## 1.1 Key findings

The audit identified concerning patterns in how Victoria Police handles the investigation of complaints made by Aboriginal people and serious incidents involving Aboriginal people. These are summarised below.



### Aboriginal people most frequently complained about police use of force

The 41 complaints audited by IBAC involved a total of 63 allegations of police misconduct. Almost half (46 per cent) related to the use of force or assaults by police, often during an arrest. Twenty-one per cent of allegations concerned human rights breaches, 11 per cent concerned duty failures and 10 per cent concerned improper language or harassment.

The proportion of use of force allegations in this audit reflects the 2008 findings of the Koori Complaints Project, conducted by the then Department of Justice and Victoria Police, which found that 40 per cent of allegations by Aboriginal people against police concerned assaults, mostly occurring at arrest.



### Very few complaints were substantiated

Of the 41 complaints examined by IBAC, 27 were classified by Victoria Police in a way that a determination of 'substantiated' might be found.<sup>3</sup> Of these, Victoria Police determined that only three (11 per cent) were substantiated. Two of these substantiated complaints concerned inappropriate language and the third concerned duty failure. No complaint alleging assault was found to be substantiated, despite this being the most common allegation examined in this audit.

Substantiation rates in themselves do not reflect whether findings are sound and IBAC's audit did not involve reinvestigating the complaints.

The persistence of extremely low substantiation rates is a significant deterrent to Aboriginal people making complaints about police, and can undermine efforts to build trust and confidence in the police complaints system among Aboriginal people. This substantiation rate was lower than the rate in IBAC's 2018 *Audit of complaints investigated by Professional Standards Command, Victoria Police* (19 per cent). The Koori Complaints Project identified a substantiation rate of 1.2 per cent for complaints alleging assault by police.

<sup>3</sup> The other 14 complaint files had classifications where the possible determinations were 'resolved' or 'not resolved'.





### **A substantial number of complaints and serious incidents involved children**

Forty-one per cent of the files examined by IBAC involved Aboriginal children and young people aged 17 years or younger. Many of these files involved incidents occurring during arrest. Several also raised issues about the treatment of and care provided to Aboriginal young people in custody, where:

- it was unclear whether family support, an independent person or advocate was contacted
- it appeared police interviewed the young person without family support, an independent person or an advocate being present
- welfare checks were not conducted in an appropriate or timely way.

Victoria Police's investigation of complaints related to these matters failed to identify these issues or recommend any action on the identified deficiencies.

The Commission for Children and Young People's (CCYP) *Our youth, our way* inquiry examined the over-representation of Aboriginal children and young people in Victoria's youth justice system.<sup>4</sup> The CCYP's final report, released in June 2021, raised significant concerns about police systems, practice and culture, including the mistreatment of Aboriginal children and young people during arrest, excessive detention and mistreatment during detention in police cells, and a lack of faith in the police complaints process.<sup>5</sup> The CCYP recommended that the Victorian Government commission an urgent, independent review of the experiences of Aboriginal children and young people with Victoria Police.<sup>6</sup>

In December 2021, Victoria Police issued a new policy outlining oversight requirements when Aboriginal and Torres Strait Islander children and young people are in police custody.<sup>7</sup> The policy requires officers to clearly document their custody decisions where they involve an Aboriginal child or young person and provides police supervisors with greater visibility of these decisions.

<sup>4</sup> Commission for Children and Young People 2021, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, CCYP, Melbourne.

<sup>5</sup> Ibid, p 436.

<sup>6</sup> Ibid, Recommendation 54, p 50.

<sup>7</sup> Victoria Police 2021, *Chief Commissioner's Instruction 07/21 Oversight of Aboriginal and Torres Strait Islander children in police custody*.



### Human rights were not sufficiently understood or analysed in investigations

IBAC found that Victoria Police investigators frequently failed to specify the rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) that were engaged, limited or breached in the context of the complaint allegations and serious incidents under examination.

Seventy-four per cent of audited files failed to refer to human rights or the Charter, included only a cursory reference, or provided an inadequate human rights analysis of the alleged misconduct or serious incident.

IBAC has highlighted this issue in previous complaints audits.<sup>8</sup> Victoria Police's ongoing failure to adequately address human rights indicates that officers continue to have a limited understanding of how the Charter should be applied. The findings of this audit suggest that Victoria Police has particular work to do in ensuring that its officers and investigators understand their Charter obligations with respect to engaging with Aboriginal people.



### Aboriginal status was poorly recorded

In 57 per cent of the files audited, there were inconsistencies in how Aboriginal status was recorded on the Victoria Police complaints form, in the Victoria Police complaints database or in other systems.

Inaccurate recording of Aboriginal status by policing agencies is an issue of longstanding concern. IBAC understands that Victoria Police is undertaking further work to improve how Aboriginal status is recorded across its systems.

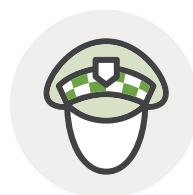
It is crucial that police officers accurately record Aboriginal status so that complaints from Aboriginal people can be identified and the engagement of dedicated resources, such as the Aboriginal Community Liaison Officer (ACLO) or Police Aboriginal Liaison Officer (PALO) networks, can be considered.



### Victoria Police failed to keep complainants updated on the progress of their complaints

In 73 per cent of files where there was a contactable complainant, there was no indication that Victoria Police had updated the complainant on the progress of the investigation.

Effective communication is a critical element of the complaint investigation process. Updating complainants on progress at key stages throughout the investigation helps build understanding of the complaints process and contributes to greater trust in outcomes. The importance of improving communication with Aboriginal complainants has been a long-term issue for Victoria Police. IBAC's audit results show that further work is required.



### Dedicated Victoria Police resources were rarely used

Victoria Police has established a number of resources to improve relationships and communication between police and Aboriginal communities. Such resources include Victoria Police's Priority Communities Division, ACLOs, and PALOs.

IBAC's audit found little evidence of investigators using these dedicated resources to assist with the complaints and serious incidents they were investigating. Only four files indicated that the investigator had contacted or worked with an ACLO, and only one file reflected work with a PALO.

The missed opportunities to seek the advice of these specialist officers, or to seek their assistance in communicating with complainants, may have contributed to the other systemic concerns identified by this audit, such as the failure to keep complainants updated on the progress of their complaints.

<sup>8</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne. IBAC 2018, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, IBAC, Melbourne.



### **A substantial proportion of files contained indications of bias or a lack of impartiality**

IBAC found that 22 per cent of files contained concerning indications of bias or a lack of impartiality on the part of subject officers. These included dismissing the complainant's concerns, implying that the complainant was not truthful, and commenting on previous irrelevant interactions with a complainant.

Forty-one per cent of files contained indicators of bias on the part of investigators, including minimising the seriousness of allegations, downplaying subject officers' conduct, making inappropriate comments about civilian witnesses, and scrutinising the complainant's background or criminal history.

Even where such language is used in internal police communications and not communicated to complainants, it can undermine the integrity of Victoria Police and its complaint handling processes. It is critical that Victoria Police treats all individuals – whether they are a suspect, victim, witness or complainant – with dignity and respect, and that investigators and decision makers act impartially.



### **Conflicts of interest were often poorly identified and managed**

Despite conflict of interest forms being attached in 84 per cent of files, IBAC found deficiencies in how Victoria Police identified and managed investigators' conflicts of interest in 42 per cent of these files. Issues included:

- investigators working at the same station or in the same police service area as the subject officers they were investigating
- conflicts being declared, but no action being taken to remove or manage the conflict
- officers not declaring a conflict, despite other material on the file suggesting a conflict existed.

IBAC disagreed with the choice of the investigator in 45 per cent of files, whether because of a conflict of interest, a relevant complaint history or for other reasons.

Aboriginal stakeholders and other groups have highlighted conflicts of interest as a significant issue that undermines confidence in the integrity of the complaints system.

IBAC has highlighted concerns with Victoria Police's management of conflicts of interest over many years through our oversight work, including previous audits, investigations and reviews. Victoria Police is currently undertaking work in relation to how conflicts of interest are addressed and IBAC has provided input to strengthen and clarify this approach.



## Key concerns from previous IBAC audits remain

IBAC's audit identified several other ongoing issues that were the subject of key findings and recommendations in IBAC's previous audits of complaint handling by Victoria Police.

### ***Under-classification of complaints***

IBAC disagreed with the initial classifications given in 11 per cent of audited files. Five files warranted a more serious classification. Under-classification of complaints was identified as an issue in IBAC's previous audits, which made recommendations aimed at clarifying Victoria Police's complex classification framework. Victoria Police is yet to implement a new classification system.

### ***Failure to consider subject officers' complaint histories***

Complaint histories of subject officers were not appropriately considered in 46 per cent of files. This includes 17 files where a subject officer's complaint history raised relevant concerns, such as a previous complaint from an Aboriginal person or a previous allegation of racial discrimination. It also includes files where the subject officer's complaint history was not attached or referred to in the file. This reflects the findings of IBAC's 2018 *Audit of complaints investigated by Professional Standards Command, Victoria Police*.

This finding is highly concerning. The failure to consider subject officers' complaint histories increases the likelihood that Victoria Police will fail to identify and address relevant patterns of allegations against particular officers, including allegations of racism or misuse of force.

### ***Failure to collect or consider relevant evidence***

IBAC found that in 54 per cent of files, the investigator failed to collect relevant evidence or did not appropriately analyse the evidence in their final report. This included 23 files where some evidence was not considered at all. The most frequent types of evidence overlooked by investigators included statements from complainants and witnesses, CCTV footage and medical records. Similar failures have been identified in IBAC's previous police audits.

### ***Inadequate determinations framework***

Victoria Police's framework for determinations is unnecessarily complex, opaque and confusing.<sup>9</sup> In this audit, IBAC found that 'no complaint (action sanctioned by law)' was the most common determination (40 per cent), followed by 'not substantiated' (20 per cent). Only three files received a determination of 'substantiated'.

IBAC disagreed with Victoria Police's determinations in 32 per cent of files. In three files where 'no complaint', 'not substantiated' and 'unable to be determined' were the respective determinations, IBAC considered that the information on the file supported a determination of 'substantiated'.

IBAC's previous audits recommended that Victoria Police review its system of determinations to reduce and simplify determination categories. Victoria Police is reviewing its system of determinations, however is yet to implement substantive change.

9 IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p xlix.

## 1.2 Recommendations

Following IBAC's audit of how Victoria Police handles complaints made by Aboriginal people, IBAC recommends that Victoria Police:

1. Urgently implements systemic reform of its approach to complaint handling to simplify the system of file classifications, determinations and recommendations to help ensure clarity for complainants, investigators and subject officers, and to ensure that complaints made by Aboriginal people receive a classification that reflects the seriousness of the alleged misconduct.
2. Develops and implements specific training for Victoria Police employees on the Charter of Human Rights and Responsibilities and its application to Aboriginal people who come into contact with police, to ensure genuine understanding of and engagement with human rights in operational policing, complaint investigations and serious incident oversights. This training should be developed in partnership with relevant Aboriginal community-controlled organisations and include the historical context and legacy of Aboriginal people's experiences with police, the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody, the recommendation of the Coroner in the inquest into the death of Tanya Day and the impact of cultural stereotypes and unconscious bias on police decision making.
3. Addresses concerns identified in this report regarding how police engage with Aboriginal children and young people in the context of arrest, interviews and management in police custody. This work should reflect the findings and recommendations in the Commission for Children and Young People's *Our Youth, Our Way* report, be undertaken in consultation with relevant Aboriginal community-controlled organisations and ensure that fundamental protections are upheld.
4. Takes action to address serious and ongoing issues with behaviours that might conceal misconduct within Victoria Police, including by reviewing and strengthening training and guidance for complaint investigators in relation to:
  - a) managing conflicts of interest
  - b) considering subject officer complaint histories
  - c) gathering evidence
  - d) complying with record keeping requirements.
5. Establishes a dedicated process for handling complaints made by Aboriginal people to enable timely and culturally appropriate complaint handling, including the creation of a specialised role to advise on classification and investigation of complaints from Aboriginal people, and to link Aboriginal complainants with available services to support them during the complaints process. This specialised role would benefit from being staffed by Aboriginal prioritised or designated positions and should be developed in partnership with relevant Aboriginal community-controlled organisations.
6. Ensures that officers investigating complaints or overseeing serious incidents involving Aboriginal people seek advice from the new specialised role (see recommendation 5) at the commencement of the investigation or oversight, and document that advice on the file.
7. Strengthens its complaint-handling processes and training to ensure that investigators keep complainants regularly updated on the progress of an investigation, and provide detailed, accurate, clear and consistent outcome information to complainants and their nominated representatives.
8. Improves the quality of supervision provided by Ethics and Professional Standards Officers, and other senior officers, to ensure that complaint investigations and serious incident oversights are thorough, fair, impartial and completed in a timely manner, and that the requirements of the Victoria Police Manual are met.

9. Ensures that patterns of complaints against police officers involving allegations of misconduct against Aboriginal people are considered in ethical health assessments undertaken on officers, and in any actions taken in response to those assessments.
10. Takes urgent action to ensure that the Aboriginal status of complainants and people involved in serious incidents is accurately and consistently recorded in the Victoria Police complaints database and other Victoria Police systems. This should include amending the complaints database to ensure that Aboriginal status is recorded as a response to the Standard Indigenous Question rather than as an observation of 'ethnic appearance', updating inconsistent records where necessary, and establishing processes for regular monitoring of data quality.

IBAC requests that by 1 August 2022, Victoria Police publishes an implementation plan identifying whether it accepts the recommendations and specifying a time frame for implementation of each recommendation.

In addition to these recommendations to Victoria Police, IBAC undertakes to prioritise the review of complaint investigations and serious incident oversights undertaken by Victoria Police where the complainant (or person involved in a serious incident) is an Aboriginal person. Where concerns are identified with Victoria Police's investigation or oversight, IBAC can recommend that further action be taken or IBAC may commence its own investigation.

IBAC is also undertaking work with Aboriginal community services and stakeholders as part of its Focus Communities Strategy. This work aims to increase awareness of IBAC, its role and jurisdiction, and identify ways to improve the accessibility of IBAC, including for Aboriginal people who wish to make a complaint about Victoria Police.

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## 2 Context, purpose and methodology

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**This section describes the context for this report, and outlines IBAC's purpose and methodology in conducting the audit.**

### 2.1 The relationship between Aboriginal people and police

The relationship between Aboriginal people and police in Australia is complex. As noted above, Aboriginal people in Victoria come into contact with police at much higher rates than non-Aboriginal people. In 2019/20:

- Aboriginal young people aged 10 to 17 years were almost six times more likely to be processed by police as alleged offenders as their non-Aboriginal peers
- Aboriginal women were nearly 11 times more likely than non-Aboriginal women to be processed by police for an alleged offence
- Aboriginal men were processed by police at around six times the rate of non-Aboriginal men.<sup>10</sup>

These high rates of contact with police are a consequence of colonisation and the historical role played by police in enforcing discriminatory laws and policies against Aboriginal people, and exercising control over Aboriginal communities in the name of 'protection'.<sup>11</sup> This included forcibly removing Aboriginal children from their families, controlling Aboriginal wages and regulating the movement of Aboriginal people.<sup>12</sup>

According to the Koori Complaints Project undertaken by Victoria Police and the Department of Justice<sup>13</sup> from 2006 to 2008, 'the Koori perspective is that police still have considerable control over their lives and this history looms large in their minds'.<sup>14</sup> Professor Chris Cunneen argues that there are continuities in the policing of Aboriginal people in Australia that have carried on from the earlier colonial period, and that contemporary police culture has inherited practices and beliefs that lead to the criminalisation of Aboriginal people.<sup>15</sup>

In contemporary society, police officers have considerable power and authority over individuals in exercising discretion and making decisions. This includes deciding whether to initiate a formal criminal justice response, whether to arrest or proceed by summons, and in the case of a child or young person, whether to charge or caution. Aboriginal people are over-represented in arrest and police custody data.<sup>16</sup>

Research indicates that Aboriginal people in Victoria believe that they are subject to 'over-policing', in the form of constant scrutiny, checks, arrests and surveillance.<sup>17</sup> Over-policing can also involve harassment through repeated house visits, phone calls and being stopped without arrest or explanation,<sup>18</sup> and the threat of unfounded charges being laid.<sup>19</sup>

High rates of arrest, police custody and other contact with police drive Aboriginal over-representation in other parts of the Victorian criminal justice system. In 2018/19, Aboriginal men were around 14 times more likely to be in prison than non-Aboriginal men, and Aboriginal women were 22 times more likely to be in prison than non-Aboriginal women in Victoria.<sup>20</sup>

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<sup>10</sup> State of Victoria 2021, *Victorian Government Aboriginal Affairs Report 2020*, Melbourne, pp 82, 84, 86.

<sup>11</sup> Cunneen, C 2020, *Conflict, politics and crime: Aboriginal communities and police*, Routledge, London and New York.

<sup>12</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 7.

<sup>13</sup> Now the Department of Justice and Community Safety.

<sup>14</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 7.

<sup>15</sup> Cunneen, C 2020, *Conflict, politics and crime: Aboriginal communities and police*, Routledge, London and New York.

<sup>16</sup> Ibid.

<sup>17</sup> Legal and Social Issues Committee, Parliament of Victoria 2022, *Inquiry into Victoria's criminal justice system Volume 1*, Melbourne, p 197; Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 19.

<sup>18</sup> Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 8.

<sup>19</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, p 153.

<sup>20</sup> State of Victoria 2021, *Victorian Government Aboriginal Affairs Report 2020*, Melbourne, pp 84–86. The rates of over-representation of Aboriginal men and women under community-based corrections supervision in Victoria are also high.



While the rate of over-representation of Aboriginal children and young people under youth justice supervision in Victoria has decreased in recent years, in 2019/20, Aboriginal children aged 10 to 17 years were still nine times more likely to be detained in youth justice custody and 10 times more likely to be subject to community-based youth justice supervision than their non-Aboriginal peers.<sup>21</sup>

2021 marked the 30<sup>th</sup> anniversary of the final report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The RCIADIC found that, while Aboriginal people were not more likely to die in custody than non-Aboriginal people, they were far more likely to be in custody than non-Aboriginal people. It observed that ‘far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent’.<sup>22</sup>

The RCIADIC made 339 recommendations, some of which are yet to be implemented in Victoria. The Victorian Government is working with the Aboriginal Justice Caucus to implement the remaining RCIADIC recommendations and address Aboriginal over-representation in custody.<sup>23</sup> However, the prevalence of deaths in custody remains a significant issue. In Victoria, 25 Aboriginal people died in police or prison custody between 1991/92 and 2019/20.<sup>24</sup>

In June 2017, 30-year-old Raymond Thomas, a Gunnai, Gunditjmara and Wiradjuri man, died of injuries sustained in a motor vehicle collision following a police pursuit in Northcote. In his finding into the death, the Coroner noted the substantial over-representation of Aboriginal people among deaths resulting from fatal pursuit-related vehicle crashes.<sup>25</sup> The Coroner referred to Mr Thomas’s earlier adverse experiences with police, which commenced when he was a child aged 10 or 11, and stated that:

*many Aboriginal people in our community bear the scars of adverse interactions with police; it can be an inter-generational legacy as well as the lived experience of individuals, in their past and in their present. The nature of previous interactions with police is likely to inform an Aboriginal person’s response to police intervention, and an appreciation of this legacy is vital to police members seeking to understand and contextualise the actions, reactions and perceptions of Aboriginal drivers intercepted by police.*<sup>26</sup>

In December 2017, 55-year-old Yorta Yorta woman Tanya Day died following a fall in custody at Castlemaine police station after being arrested for public drunkenness. The Deputy State Coroner found that Ms Day’s death was ‘clearly preventable had she not been arrested and taken into custody’.<sup>27</sup> The Deputy State Coroner also found that, in failing to adequately monitor Ms Day while she was in custody and displaying a ‘culture of complacency regarding intoxicated detainees’, police officers failed to treat Ms Day with humanity and respect for the inherent dignity of a human person, as required by the Charter.<sup>28</sup>

The Deputy State Coroner made five recommendations directed to Victoria Police. These included a recommendation to review Victoria Police’s training and education regarding the findings and recommendations of the RCIADIC ‘to ensure knowledge and appropriate compliance’.<sup>29</sup> The Coroner’s Court has published Victoria Police’s response to the recommendations and work being undertaken to implement them.<sup>30</sup>

21 Commission for Children and Young People 2021, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, CCYP, Melbourne, pp 78–80.

22 Australian Government 1991, *Royal Commission into Aboriginal Deaths in Custody: National Report*, Australian Government Publishing Service, Canberra, Volume 2, 13.2.3.

23 State of Victoria 2021, *Victorian Government Aboriginal Affairs Report 2020*, Melbourne, p 90.

24 Doherty, L and Sutherland, T 2021, *Deaths in custody in Australia 2019–20*, Statistical Report no.36, Australian Institute of Criminology, Canberra, Tables D2 and E2. This included seven deaths in police custody.

25 *Inquest into the death of Raymond Noel Lindsay Thomas* (Coroners Court of Victoria, Coroner John Olle, 20 September 2021), p 29.

26 *Ibid*, pp 29–30.

27 *Inquest into the death of Tanya Louise Day* (Coroners Court of Victoria, Deputy State Coroner Caitlin English, 9 April 2020), p 101.

28 *Ibid*, p 90.

29 *Ibid*, p 108.

30 *Victoria Police response to recommendations arising from finding into the death of Tanya Louise Day* (Coroners Court of Victoria, 17 July 2020).



While Aboriginal people have very high rates of contact with police as alleged offenders, they are also vastly over-represented among victims of crime. The 2016 Royal Commission into Family Violence estimated that Victorian Aboriginal women are 45 times more likely to experience family violence than non-Aboriginal women.<sup>31</sup> Despite this, many Aboriginal women are deterred from reporting family violence by police responses that minimise violence<sup>32</sup> and misidentify Aboriginal women as the 'primary aggressor'.<sup>33</sup>

In 2000, in response to the recommendations of the RCIADIC, the Victorian Government and the Victorian Aboriginal community entered into the Victorian Aboriginal Justice Agreement – a long-term partnership aimed at improving Aboriginal justice outcomes and family and community safety, and reducing Aboriginal over-representation in the Victorian criminal justice system.<sup>34</sup> The fourth phase of the Aboriginal Justice Agreement, *Burra Lotjpa Dunguludja* 'Senior Leaders Talking Strong', commenced in 2018.<sup>35</sup> One of its principles is to 'identify and respond to systemic racism and discrimination that persists in the justice system'.<sup>36</sup>

## 2.2 Victoria Police initiatives and policies

Since the RCIADIC, Victoria Police has developed a number of strategies to strengthen partnerships with Aboriginal communities and improve the relationship between police and Aboriginal people.

Victoria Police is committed to the *Victorian Aboriginal Affairs Framework 2018–2023* and to *Burra Lotjpa Dunguludja*.<sup>37</sup> Under the Aboriginal Justice Agreement, Victoria Police connects with Aboriginal communities through attendance at Aboriginal Justice Forums, and Regional and Local Aboriginal Justice Advisory Committee meetings. These platforms provide a way for the Aboriginal community to hold Victoria Police to account and be part of decision making. Victoria Police also has an Aboriginal Portfolio Reference Group, co-chaired by an Aboriginal Elder and a Victoria Police Assistant Commissioner, and made up of key peak bodies and advocacy groups.

Victoria Police's Aboriginal Community Liaison Officer (ACLO) and Police Aboriginal Liaison Officer (PALO) programs seek to build trust and respect between Victoria Police and the Aboriginal community by establishing positive partnerships and working together to resolve local issues.<sup>38</sup> ACLOs are Victoria Police employees (but not sworn police officers) whereas PALOs are sworn Victoria Police officers who undertake the PALO role as part of their broader operational responsibilities. There are 13 ACLOs<sup>39</sup> and around 135 PALOs across Victoria.<sup>40</sup>

In addition, Victoria Police has developed an *Aboriginal Inclusion Strategy and Action Plan 2018–2021*, which commits to increasing cultural awareness and understanding of Aboriginal people and their culture 'through various training programs'.<sup>41</sup> This includes providing Aboriginal cultural awareness training to all new recruits, and requiring all officers to complete family violence training, with a module on understanding family violence in the Aboriginal community.<sup>42</sup>

31 State of Victoria 2016, *Royal Commission into Family Violence: Report and recommendations*, Melbourne, Volume V, p 13.

32 Aboriginal Family Violence Prevention & Legal Service 2017, Submission No. 37 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 16.

33 Women's Legal Service Victoria and Monash University 2018, 'Officer she's psychotic and I need protection': Police misidentification of the 'primary aggressor' in family violence incidents in Victoria, Policy Paper 1.

34 State of Victoria 2021, 'The Victorian Aboriginal Justice Agreement', web page, Melbourne, [www.aboriginaljustice.vic.gov.au/the-agreement/the-victorian-aboriginal-justice-agreement](http://www.aboriginaljustice.vic.gov.au/the-agreement/the-victorian-aboriginal-justice-agreement).

35 State of Victoria 2018, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, Melbourne.

36 Ibid, p 28.

37 Victoria Police 2020, 'Committed to stronger relationships', web page, Melbourne, [www.police.vic.gov.au/one-death-too-many](http://www.police.vic.gov.au/one-death-too-many).

38 Victoria Police 2021, 'Aboriginal community liaison officers', web page, Melbourne, [www.police.vic.gov.au/aboriginal-community-liaison-officer-program](http://www.police.vic.gov.au/aboriginal-community-liaison-officer-program).

39 State of Victoria 2021, 'Community policing for crime prevention', web page, Melbourne, [www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-22-fewer-aboriginal-people-enter-the-1](http://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-22-fewer-aboriginal-people-enter-the-1).

40 Victoria Police 2021, 'Aboriginal community liaison officers', web page, Melbourne, [www.police.vic.gov.au/aboriginal-community-liaison-officer-program](http://www.police.vic.gov.au/aboriginal-community-liaison-officer-program).

41 Victoria Police 2018, *Aboriginal Inclusion Strategy and Action Plan 2018–2021*, Melbourne, p 11.

42 Ibid, p 14.

In the inquest into the death of Tanya Day, the Deputy State Coroner observed that, at the time of Ms Day's death in 2017, there was no single Aboriginal cultural training package in place for Victoria Police officers, and that Victoria Police was unable to monitor the effectiveness of localised training packages.<sup>43</sup> The Deputy State Coroner concluded that there was 'clearly a significant amount of work to do within Victoria Police regarding education of police officers about the RCIADIC and training regarding its recommendations'.<sup>44</sup>

Victoria Police has advised IBAC that it is committed to delivering Aboriginal cultural awareness training, and Victoria Police's evidence to the inquest into the death of Tanya Day indicated that Aboriginal cultural awareness training would be rolled out to every serving police officer.<sup>45</sup>

Victoria Police also has specific policies and guidelines that apply when Aboriginal people come into contact with police. For example, the policy addressing the safe management of people in police care or custody requires that the Victorian Aboriginal Legal Service (VALS) be notified when an Aboriginal person is taken into custody.<sup>46</sup> In October 2019 this became a requirement under the *Crimes Act 1958* (Vic).<sup>47</sup> The local Aboriginal Community Justice Panel must be notified where an Aboriginal person is being held in police cells and appears intoxicated.

Where an accused person identifies as Aboriginal, police officers must, prior to an interview, provide an opportunity for the person to engage with VALS or a support service for the provision of legal advice and/or support.<sup>48</sup>

In addition, to ensure the safety of aggrieved family members and children in Aboriginal communities, the Victoria Police code of practice for the investigation of family violence outlines the requirement for police to provide a culturally appropriate response by asking if a person or their child identifies as Aboriginal. Police must also offer parties support from an ACLO if available in the local area.<sup>49</sup>

## 2.3 Concerns about Victoria's police complaints system

Victoria's police complaints system (described in section 3) has been the subject of discussion and criticism over the past decade. Key criticisms identified by the Police Accountability Project in 2016 are that:

- the system lacks independence, as the vast majority of complaints are investigated by police officers
- police investigators lack motivation to gather all available evidence, tend to be uncritical of police accounts and to downplay or minimise unlawful conduct, view the complainant as criminal and motivated to lie, and fail to understand the Victoria Police Manual and the Charter
- police consistently fail to find that meritorious complaints are substantiated
- the community lacks trust and confidence in the system.<sup>50</sup>

In 2018, the Victorian Parliament's Independent Broad-based Anti-corruption Commission Committee (IBAC Committee) completed its inquiry into the external oversight of police corruption and misconduct in Victoria. The IBAC Committee found that the current system for handling complaints about police was 'extraordinarily complex and confusing', and concluded that a range of reforms was needed to reinforce and maintain public confidence in the system.<sup>51</sup>

43 *Inquest into the death of Tanya Louise Day* (Coroners Court of Victoria, Deputy State Coroner, 9 April 2020), p 94.

44 *Ibid*, p 93.

45 *Ibid*, p 94.

46 Victoria Police Manual, Safe management of persons in police care or custody.

47 Section 464FA of the Crimes Act states that if an Aboriginal person is taken into custody, an investigating official must notify VALS within one hour of the person being taken into custody, or as soon as practicable.

48 Victoria Police Manual, Interviews and statements. Section 464AAB of the Crimes Act requires an investigating official to ask a person who is taken into custody whether they are Aboriginal before questioning commences. Where a person identifies as Aboriginal, the investigating official must notify VALS (s 464FA).

49 Victoria Police 2019, *Code of Practice for the Investigation of Family Violence*, 3rd edn, p 18.

50 Police Accountability Project 2017, *Independent Investigation of Complaints against the Police*, Policy Briefing Paper.

51 IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, pp XXiv, XXvii.

The IBAC Committee recommended the establishment of an adequately resourced 'Police Corruption and Misconduct Division' within IBAC to enable IBAC to investigate 'police misconduct' and 'serious police misconduct'.<sup>52</sup> It also recommended that the complaints processes of both IBAC and Victoria Police take proper account of the particular needs and backgrounds of Aboriginal people and other diverse, marginalised or vulnerable complainants.<sup>53</sup>

In May 2021, in response to the recommendations of the IBAC Committee and to a key recommendation of the Royal Commission into the Management of Police Informants,<sup>54</sup> the Victorian Government committed to undertake a systemic review of Victoria's police oversight system. The purposes of the review include ensuring that:

- the exercise of police powers, decisions and actions are subject to appropriate outcome-focused monitoring
- all police misconduct complaints are assessed, classified and addressed consistently, and are managed in a way that appropriately reflects the nature and seriousness of the complaint
- a complainant-centred approach is embedded in all stages of the complaint handling process.<sup>55</sup>

The Victorian Government is undertaking public consultation for the review, with legislation to be introduced to Parliament in the current term of government.<sup>56</sup> The findings and recommendations of IBAC's audit will provide an important contribution to the review.

## 2.4 Complaints against police by Aboriginal people

From 2006 to 2008, Victoria Police and the Department of Justice undertook an investigation of Aboriginal people's experiences with police and the Victorian police complaints system between 1991 and 2006.<sup>57</sup> The investigation examined 181 allegations from 103 individuals. It found that:

- Aboriginal people in Victoria significantly under-report their negative experiences with police
- the largest number of allegations (40 per cent) related to assaults by police at arrest, followed by racist language or abuse, failure to provide medical assistance and harassment
- Aboriginal people were far more likely to complain about assaults than non-Aboriginal people
- police tended to minimise the seriousness of allegations pertaining to assault, and no assault allegation by an Aboriginal person had been classified correctly (as 'serious misconduct') since 2004
- only 1.2 per cent of complaints regarding assaults by police were found to be substantiated
- Aboriginal people derived greater satisfaction and more positive outcomes from civil litigation than from the police complaints process.<sup>58</sup>

According to VALS, these findings remained relevant in 2017.<sup>59</sup>

<sup>52</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Recommendations 2, 20 and 38

<sup>53</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Recommendation 16, p 179.

<sup>54</sup> Recommendation 61 is that the Victorian Government 'undertake a review of institutional and legislative structures for the oversight of Victoria's police's exercise of powers, to ensure that Victoria's police oversight system is consistent and coherent and contributes to improved police accountability, including through outcome-focused monitoring of police decisions and actions'. State of Victoria 2020, *Royal Commission into the Management of Police Informants: Final Report*, Vol. III, Melbourne, p 234.

<sup>55</sup> State of Victoria 2021, *Royal Commission into the Management of Police Informants: Victorian Government Response and Implementation Plan*, Melbourne, p 27.

<sup>56</sup> Ibid, p 28.

<sup>57</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne.

<sup>58</sup> Ibid.

<sup>59</sup> Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*.

In its 2021 *Our youth, our way* report, the CCYP found that Victorian Aboriginal children and young people were over-represented among allegations of police assault or mistreatment made by children and young people on admission to youth justice custody between December 2017 and June 2020. Aboriginal children and young people accounted for 19 per cent of allegations against police, but only 14 per cent of the youth justice population during that period.<sup>60</sup>

The RCIADIC recommended that all Australian jurisdictions review their processes for dealing with complaints against police, with a view to ensuring that complaints were investigated by a body 'totally independent' of police services.<sup>61</sup> This recommendation was reiterated by the Australian Law Reform Commission in its 2017 *Pathways to justice* report on the incarceration rate of Aboriginal people.<sup>62</sup>

## 2.5 Why did IBAC conduct this audit?

Aboriginal people in Victoria continue to hold significant concerns about their treatment by police, and about the integrity of the process for ensuring that police officers are held accountable for misconduct. Police misconduct against Aboriginal people continues to be substantially under-reported.<sup>63</sup>

As part of its role to provide independent oversight of Victoria Police, IBAC conducted this audit to build on existing research and shed further light on how Victoria Police handles complaints made by Aboriginal people. The findings of this audit will provide important context for and assist in the Victorian Government's systemic review of Victoria's police oversight system.

This audit is part of a continuous program of IBAC audits on Victoria Police's handling of complaints. These audits aim to build the capacity of Victoria Police to prevent corrupt conduct and police misconduct by identifying issues and potential areas of improvement around complaint handling processes. They also serve to identify good practice that could be considered more broadly by Victoria Police.

This audit will also help IBAC to improve the way it handles complaints made by Aboriginal people and better support Aboriginal people during the complaints process.

60 Commission for Children and Young People 2021, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, CCYP, Melbourne, p 435.

61 Australian Government 1991, *Royal Commission into Aboriginal Deaths in Custody: National Report*, Vol 4, 29.5.25, Australian Government Publishing Service, Canberra, Recommendation 26.

62 Australian Law Reform Commission 2017, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People*, ALRC, Canberra, Recommendation 14-2, p 17.

63 IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 152.

## 2.6 How did IBAC conduct this audit?

The scope of this audit was all complaint<sup>64</sup> and serious incident oversight<sup>65</sup> files closed by Victoria Police during the 2018 calendar year, where the complaint was made by an Aboriginal person or the serious incident involved an Aboriginal person. This represented a total of 56 files, of which 54 were audited.<sup>66</sup> This comprised 41 complaints<sup>67</sup> and 13 serious incidents.

The files audited included investigations completed by Victoria Police Professional Standards Command, as well as those allocated to Victoria Police regions, departments and commands.

IBAC formally advised the Chief Commissioner of Victoria Police of its intention to conduct the audit and engaged with senior Professional Standards Command and Priority Communities Division officers to inform our research. Professional Standards Command provided IBAC with ongoing assistance to identify and access files within the audit's scope.

To conduct the audit, IBAC examined material extracted from Victoria Police's investigation and intelligence database, Interpose. Where relevant, additional information was sourced from Victoria Police's Register of Complaints, Serious Incidents and Discipline (referred to in this report as the complaints database).

IBAC reviewed each file against an audit tool comprising 152 questions covering eight key areas:

- the complainant's profile, including age and gender, and the circumstances of the serious incident or the incident leading to the complaint
- the complainant's experience of the investigation process, including challenges in making the complaint and communication from Victoria Police regarding the investigation
- the pre-investigation process, including identifying allegations, classifying and allocating complaints, identifying subject officer and complaint histories, and managing conflicts of interest
- the investigation process, including identifying and contacting relevant parties, reviewing evidence, examining bias, and supervision and review of the investigation
- outcomes of the investigation, including determinations and recommendations
- obscuring or 'cover up' behaviours of Victoria Police
- the timeliness of the complaint handling process
- record keeping.

<sup>64</sup> In this report, 'complaint' refers to all matters classified by the Police Conduct Unit, regardless of the category or level of classification assigned. It also includes some matters recorded by Victoria Police in its complaints database as not requiring investigation. See Appendix 1 for more information.

<sup>65</sup> See Appendix 1 for an explanation of the terms 'serious incident' and 'serious incident oversight'.

<sup>66</sup> Two matters were excluded from the audit – the first because it had been referred to IBAC for investigation, and the second because it was a duplicate file.

<sup>67</sup> This includes three matters recorded by Victoria Police as an 'incident' (and thus not investigated), rather than being classified as a complaint. One matter involved alleged threats by police, the second involved an allegation of mistreatment during arrest, and the third involved an injury sustained during arrest and an alleged failure to provide medical treatment. In IBAC's view, these three matters should have been classified as complaints and investigated by Victoria Police. Accordingly, they were included in the audit.

In addition, IBAC:

- undertook background research to identify key issues to be considered as part of the audit, including reviewing Royal Commission and other reports and recommendations, and relevant Victoria Police policies and procedures
- consulted Regional Aboriginal Justice Advisory Committees (RAJACs), community stakeholders and Victorian Government stakeholders (including the Department of Justice and Community Safety, the Department of Premier and Cabinet, and the Victorian Equal Opportunity and Human Rights Commission) to seek their views on the audit's scope and research
- conducted data analysis and identified case studies
- provided a draft of the report to the Koori Justice Unit (Department of Justice and Community Safety) and Victoria Police
- shared preliminary findings with community stakeholders.

As part of the audit, IBAC planned five community engagement sessions with Aboriginal communities across Victoria; however, limits on community gatherings due to COVID-19 restrictions meant these consultations could not be held. IBAC will undertake community engagement following the report's publication.

## 2.7 Limitations of this audit

The sample drawn for this audit comprises matters closed by Victoria Police in 2018 where the complainant or the person involved in a serious incident was identified by Victoria Police as an Aboriginal person. The sample is limited by:

- the fact that many Aboriginal people choose not to make complaints about Victoria Police for the reasons outlined in sections 2.3 and 2.4
- reliance on Victoria Police correctly recording complainants' Aboriginal status (see section 4.2 for discussion of this issue) – this audit does not include complaints or serious incidents where Victoria Police did not record a person as Aboriginal
- a lack of direct consultation with Aboriginal complainants.

It should also be noted that four IBAC officers undertook the auditing process, which relied on the exercise of judgment by each individual audit officer. Measures were put in place to ensure consistency in the audit process, including the use of audit guidance notes and weekly audit team meetings to discuss and manage issues. The audit team also provided updates to a steering committee that included a representative of the Koori Justice Unit.

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## 3 Victoria's police complaints system

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**Victoria's police complaints system is complex. Depending on the circumstances, complaints about police conduct can be made to Victoria Police or IBAC. In addition, complaints alleging discrimination, sexual harassment, victimisation or vilification by police can be made to the Victorian Equal Opportunity and Human Rights Commission, which offers a free dispute resolution process to assist people to resolve such complaints.<sup>68</sup>**

Examples of police wrongdoing that may be the subject of a complaint to Victoria Police or IBAC include:

- assault or excessive use of force
- breaches of human rights
- racist behaviour
- failure or refusal to perform duties.

The roles of Victoria Police and IBAC in the police complaints system are described in more detail in sections 3.1 and 3.2.<sup>69</sup>

### 3.1 The role of Victoria Police

The Victoria Police Manual<sup>70</sup> contains procedures and guidelines for the management of police complaints, including classification, investigation and determination.<sup>71</sup> Victoria Police also has an Integrity Management Guide to assist officers handling or investigating complaints. Victoria Police does not have a specific policy for handling complaints made by Aboriginal people.

A member of the public can make a complaint about the conduct of a police officer or protective services officer to another police officer or protective services officer.<sup>72</sup> Complaints can be made via the Victoria Police website, in person at a police station or to the Police Conduct Unit within Professional Standards Command.<sup>73</sup> An Aboriginal complainant can ask to speak to a PALO at the Police Conduct Unit to assist them with their complaint. Victoria Police must notify IBAC of all complaints about police misconduct.<sup>74</sup>

The Police Conduct Unit is responsible for assessing and classifying all complaints, and determining how they should be managed by Victoria Police.<sup>75</sup>

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<sup>68</sup> Victoria Police 2021, 'Compliments and complaints', web page, Melbourne, [www.police.vic.gov.au/complimentsandcomplaints](http://www.police.vic.gov.au/complimentsandcomplaints).

<sup>69</sup> As this audit is concerned with complaints made by Aboriginal people, the report's description of the police complaints system focuses on complaints made by members of the public, rather than on complaints or disclosures by police officers or protective services officers about police misconduct.

<sup>70</sup> The Victoria Police Manual is comprised of mandatory policy rules that stipulate the minimum standards that employees must apply, and procedures and guidelines that support the interpretation and application of those rules and responsibilities.

<sup>71</sup> Victoria Police Manual, Complaint management and investigations.

<sup>72</sup> *Victoria Police Act 2013* s 167(1).

<sup>73</sup> Victoria Police 2021, 'Compliments and complaints', web page, Melbourne, [www.police.vic.gov.au/complimentsandcomplaints](http://www.police.vic.gov.au/complimentsandcomplaints).

<sup>74</sup> *Victoria Police Act* s 169(2)

<sup>75</sup> Victoria Police excludes from the classification process any complaint it deems to be vexatious or frivolous.



## Classification of complaints

The Police Conduct Unit classifies each complaint according to a framework containing 11 classifications (see Table 1). Alternatively, the Police Conduct Unit can record a complaint received from a member of the public as an 'incident'. Complaints recorded as 'incidents' are not investigated.<sup>76</sup>

**Table 1. Victoria Police Professional Standards Command file classifications**

Classification	Complaint/file type
C1-0	Work file
C1-5	Preliminary enquiry file
C1-6	Internal management (correspondence)
C1-7	Receipt of civil process
C1-8	Incident investigation/oversight
C2-1	Minor misconduct
C2-4	Local management resolution (LMR)
C2-5	Management intervention model (MIM)
C3-2	Misconduct connected to duty
C3-3	Criminality (not connected to duty)
C3-4	Corruption

The Victoria Police Manual does not include descriptions of each classification. However, according to Victoria Police:

- the 'minor misconduct' classification 'includes minor assault at time of arrest, infringement notice received on duty, lower level discrimination under the Equal Opportunity Act, and lower level breaches of the Charter of Human Rights Act'
- the 'local management resolution (LMR)' classification is for 'low level incidents'
- the 'management intervention model (MIM)' classification is for 'allegations of a minor nature regarding service delivery, performance management or professional conduct'<sup>77</sup>
- the 'misconduct connected to duty' classification 'includes serious assault, conduct punishable by imprisonment, alcohol or drug offences on duty, improper use of LEAP or other databases, higher level discrimination under the Equal Opportunity Act, and higher level breaches of the Charter of Human Rights Act'.<sup>78</sup>

The 'incident investigation/oversight' (C1-8) classification is used for Victoria Police oversight of incidents where a person has died or been seriously injured following an interaction with police. This classification differs from others in Table 1 in that it does not originate from a complaint and does not involve a complainant.<sup>79</sup> This report refers to such files as 'serious incident oversight' files.

The Victoria Police complaint classification framework and process are discussed in more detail in section 5.2 of this report.

<sup>76</sup> The 'incident' category is used for general enquiries made to Professional Standards Command or for complaints that lack sufficient detail to be investigated. As noted in section 2.6 of this report, this audit includes three 'incidents' that should have been investigated.

<sup>77</sup> Victoria Police does not refer to LMRs and MIMs as 'complaints', as it considers that these matters do not reach the required level of seriousness. However, as noted above, in this report 'complaint' includes LMRs and MIMs (see Appendix 1 for more information).

<sup>78</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, p 12.

<sup>79</sup> See Appendix 1 for more information about serious incidents.



## Investigation of complaints

Most complaints are referred to regions, departments and commands for investigation. Professional Standards Command generally investigates only the most serious and complex matters.

Before commencing an investigation, the nominated investigator must identify any actual, potential or perceived conflicts of interest. The investigation process usually involves interviews of the complainant, subject police officer(s) and witnesses (see section 6 for further discussion of the investigation process).

The Victoria Police Manual requires investigators to contact complainants to discuss their complaint at the start of an investigation and to provide ongoing updates on the progress of the investigation. Written advice to complainants should contain a detailed overview of the investigation so complainants can understand the nature of the investigation and any action taken or proposed.<sup>80</sup> Aboriginal community members can also ask to speak with a PALO to discuss their complaint.

Investigations must be completed within a set timeframe depending on the file classification. For example, 'minor misconduct' and 'misconduct connected to duty' files must be completed within 90 days (see section 9.2).

Once the investigation is complete, the investigator's report must record a determination (from among 10 determination types) for every allegation in the complaint. Determinations are discussed in more detail in section 7.2. The complainant must be informed of the outcome.

Victoria Police must report to IBAC on the commencement, progress and outcomes of investigations into alleged police misconduct.<sup>81</sup>

## 3.2 The role of IBAC

IBAC is Victoria's agency responsible for preventing and exposing public sector corruption and police misconduct. IBAC's jurisdiction covers state and local government, police, parliament and the judiciary. As Victoria's anti-corruption agency, IBAC:

- receives complaints and notifications of public sector corruption and police misconduct
- investigates and exposes serious corruption and police misconduct
- informs the public sector, police and the community about risks and impacts of corruption and police misconduct, and ways they can be prevented.

### Complaints received by IBAC

IBAC assesses complaints and notifications about police misconduct carefully to determine which will be investigated by IBAC, which will be referred to Victoria Police for further action, and which will be dismissed.

Under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (IBAC Act), IBAC must refer a complaint to Victoria Police if IBAC considers that it would be more appropriate for Victoria Police to investigate the complaint.<sup>82</sup> The IBAC Act also requires IBAC to prioritise the investigation of 'serious and systemic corruption'.<sup>83</sup> IBAC has no power to investigate the outcomes of traffic or court decisions, or minor duty failures or service issues such as police officers not wearing the appropriate uniform.<sup>84</sup>

Given these legislative requirements, IBAC refers the vast majority of the police complaints it receives to Victoria Police for investigation. Nevertheless, information in all complaints provides IBAC with intelligence that it uses to identify trends and patterns in police corruption and misconduct. This informs IBAC's prevention activities and helps to identify serious and systemic issues for possible 'own motion' investigations.

<sup>80</sup> Victoria Police Manual, Complaint management and investigations, pp 7–10.

<sup>81</sup> Victoria Police Act ss 169(3), 170.

<sup>82</sup> IBAC Act s 73(1).

<sup>83</sup> IBAC Act s 15.

<sup>84</sup> For more information on the types of matters IBAC can and cannot investigate see IBAC 2020, 'What is police misconduct?', [www.ibac.vic.gov.au/reporting-corruption/what-can-you-complain-about/what-is-police-misconduct](http://www.ibac.vic.gov.au/reporting-corruption/what-can-you-complain-about/what-is-police-misconduct).

## IBAC's monitoring and oversight of Victoria Police

IBAC has a direct monitoring role in relation to the investigation of complaints about police. As outlined above, Victoria Police must notify IBAC of the details of any complaints it receives about police, and of the commencement, progress and outcome of complaints investigations. After IBAC receives a complaint investigation report from Victoria Police, IBAC may request that the Chief Commissioner take action that IBAC considers appropriate.<sup>85</sup>

IBAC also monitors complaints referred to Victoria Police, and has the power to withdraw a complaint and investigate the matter itself.<sup>86</sup>

In addition, IBAC has a broader oversight role in relation to Victoria Police. As part of this role, IBAC conducts regular reviews of investigations of selected matters referred to Victoria Police to ensure that they were handled appropriately and fairly, and that all relevant legislation, policies and procedures were followed.<sup>87</sup> If IBAC considers that a complaint has not been adequately investigated, it can direct the Chief Commissioner to take further action.

IBAC's oversight role also includes reviewing Victoria Police investigations in relation to deaths and serious injuries associated with police contact, which may involve custody deaths, police shootings or serious collisions. Victoria Police notifies IBAC of such deaths or serious injuries and IBAC decides whether to review the ensuing police investigation or undertake its own investigation.

IBAC also undertakes research and other strategic activities, including auditing how Victoria Police handles complaints. IBAC's previous audits are outlined in the following section.

## Previous IBAC audits of police complaints

IBAC has undertaken three audits of Victoria Police's complaint systems over the past five years:

- In September 2016 IBAC published an *Audit of Victoria Police complaints handling systems at regional level* (2016 regional complaints audit). That report made nine recommendations in relation to Victoria Police complaint handling processes.
- In March 2018 IBAC published an *Audit of Victoria Police's oversight of serious incidents* (2018 serious incident oversight audit). That report made eight recommendations in relation to Victoria Police's oversight and investigation of serious incidents including deaths or serious injuries that followed contact with police.
- In June 2018 IBAC published an *Audit of complaints investigated by Professional Standards Command* (2018 PSC audit). That report made five recommendations in relation to Victoria Police's handling of serious complaints about police officers involving allegations such as corruption and assault.

Victoria Police has implemented some, but not all, of the recommendations made in these reports.<sup>88</sup>

IBAC has published on its website Victoria Police's reports on how it is implementing these recommendations.

Although this audit focuses on the identity of the individuals who made a complaint or were involved in a serious incident, rather than on the area of Victoria Police undertaking the investigation, or the category of matter being investigated, IBAC's previous work is relevant and key findings and recommendations from IBAC's earlier audits are highlighted in the analysis in this report.

<sup>85</sup> IBAC Act ss 160, 161.

<sup>86</sup> IBAC Act s 79(2).

<sup>87</sup> For more information on how IBAC decides what matters to review, see IBAC 2021, 'How does IBAC decide what to review?', [www.ibac.vic.gov.au/reporting-corruption/what-happens-to-your-complaint/reviews](http://www.ibac.vic.gov.au/reporting-corruption/what-happens-to-your-complaint/reviews).

<sup>88</sup> For example, Victoria Police has not simplified its system of determinations, as recommended in IBAC's 2016 regional complaints audit (recommendation 6). Victoria Police's responses to the recommendations made in IBAC's previous audits are published on IBAC's website.

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## 4 Understanding the complaints and serious incidents

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**This section provides an overview of the complaints and serious incidents examined by IBAC as part of this audit.**

It also:

- contains information about the complainants and people involved in serious incidents
- identifies how the complaints were made
- examines the extent to which Victoria Police considered human rights in its investigations of complaints and serious incidents
- assesses whether audited files indicated Aboriginal cultural awareness or cultural competence on the part of police officers
- examines the quality and effectiveness of Victoria Police's communication with complainants, its response to requests made by complainants, and the extent to which complainants disengaged from the complaints process.

This audit examined 41 complaints and 13 serious incidents. Serious incidents do not originate as a complaint and thus do not involve a 'complainant'. Accordingly, not all of the analysis in this section applies to the serious incident oversight files.

### 4.1 Key findings

- The 41 complaints audited by IBAC involved a total of 63 allegations of police misconduct. Almost half (46 per cent) related to use of force or assault by police. Twenty-one per cent of allegations related to human rights breaches, 11 per cent related to duty failures and 10 per cent related to improper language or harassment. The most common circumstances giving rise to complaints and serious incidents were arrest (37 per cent) and being held in police custody (24 per cent).
- Forty-one per cent of complainants or people involved in a serious incident were children or young people under the age of 18 years. Forty-six per cent of complainants had previously made a complaint about Victoria Police.
- More than half of complainants (55 per cent) experienced personal factors or circumstances that added to the difficulty of making a complaint. These factors included being a child, living in out-of-home care, being detained in a youth justice centre, experiencing mental ill-health and having a history of contact with police.
- Fifty-one per cent of complaints were made on behalf of the complainant by a third party, such as a community legal centre or a youth justice centre worker.
- Seventy-four per cent of files failed to refer to human rights or the Charter, included only a cursory reference, or provided an inadequate human rights analysis of the complaint or serious incident.
- Thirty per cent of files indicated a lack of cultural competence on the part of police officers.
- In 73 per cent of files where there was a contactable complainant, there was no indication on the file that Victoria Police had updated the complainant on the progress of the investigation, as required by Victoria Police policy. Complainants appeared to have disengaged from the complaints process in 35 per cent of files.
- In more than half (57 per cent) of files, there were inconsistencies in how Aboriginal status was recorded across Victoria Police systems.

## 4.2 Identifying Aboriginal status

This audit relied on Victoria Police's recording of the Aboriginal status of the complainant or person involved in a serious incident.

Currently, when someone makes a complaint to Victoria Police, the Victoria Police complaints form (Form 918) requires the person receiving the complaint to ask the complainant whether they are of Aboriginal or Torres Strait Islander descent. This is known as the 'Standard Indigenous Question'. This information must be recorded on the complaints form.<sup>89</sup> The relevant field in the Victoria Police complaints database refers to the complainant's 'ethnic appearance' rather than their actual ethnicity or Aboriginal status.

Prior to 2019 – when Victoria Police received the complaints that are the subject of this audit – the complaints form did not refer to the Standard Indigenous Question. Rather, it included a series of tick boxes to describe the complainant's 'ethnic appearance'. These included 'Aboriginal/TS Islander' as an option.

Against this background, the audit examined how various Victoria Police documents and systems, including the Victoria Police complaints form, complaints database, custody module system and the Law Enforcement Assistance Program (LEAP), recorded the Aboriginal status of complainants and people involved in serious incidents.

In 57 per cent of files audited (31 of 54), Victoria Police did not consistently or accurately record Aboriginal status. The 'ethnic appearance' field of the complaints form or the complaints database was frequently completed as 'unknown', even where the individual's Aboriginal status was identified on other records or forms.

In one file, the complainant was recorded as 'Aboriginal' in the complaints database, but as 'Maori' on the complaints form. In another file, the complainant was recorded as 'Caucasian' on the complaints form, 'unknown' in the Victoria Police attendance in custody records, and 'Aboriginal' in the complaints database.

The inconsistent and inaccurate recording of Aboriginal status by policing bodies is a longstanding problem. It was identified by the RCIADIC in 1991,<sup>90</sup> the Koori Complaints Project in 2008<sup>91</sup> and IBAC in its 2016 regional complaints audit.<sup>92</sup> More recently, the CCYP's 2021 *Our youth, our way* report identified ongoing challenges in relation to the recording of the Aboriginal status of alleged offenders, although Victoria Police and the Crime Statistics Agency have recently taken steps to address this issue.<sup>93</sup>

One of the goals of *Burra Lotjpa Dunguludja* is to improve the collection and availability of Aboriginal justice data.<sup>94</sup> The Crimes Act was amended in 2019 to require police officers to ask a person who has been taken into custody whether they are Aboriginal.<sup>95</sup> Victoria Police has also developed resources and provided training to encourage officers to ask every victim and alleged offender the Standard Indigenous Question.<sup>96</sup>

Accurately identifying the Aboriginal status of complainants is important. It allows Professional Standards Command to consult with Victoria Police's Priority Communities Division on strategies for handling the complaint, such as involving the local ACLO or PALO. Accurate and transparent data on complaints against police made by Aboriginal people is also an important way of assessing the effectiveness of reforms (such as those under the Aboriginal Justice Agreement) and of identifying areas for improvement.<sup>97</sup>

89 The Victoria Police Manual is silent as to the requirement to ask complainants the Standard Indigenous Question.

90 Australian Government 1991, *Royal Commission into Aboriginal Deaths in Custody: National Report*, Vol 1, 9.1.3, Australian Government Publishing Service, Canberra.

91 Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 17.

92 IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, p 89.

93 Commission for Children and Young People 2021, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, CCYP, Melbourne, p 119. See also State of Victoria 2021, 'Improve Aboriginal justice data', web page, Melbourne, [www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-0](http://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-0).

94 State of Victoria 2021, 'Improve Aboriginal justice data', web page, Melbourne, [www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-0](http://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-0).

95 Crimes Act s 464AAB.

96 State of Victoria 2021, 'Improve Aboriginal justice data', web page, Melbourne, [www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-0](http://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-41-greater-accountability-for-justice-0).

97 Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, pp 23–24.

### 4.3 Profile of complainants and people involved in serious incidents

According to the Victorian Government's 2019 *Aboriginal Affairs Report*, in 2018, Victoria Police processed 2102 Aboriginal men and 939 Aboriginal women as 'unique alleged offenders', and 484 Aboriginal children and young people aged 10 to 17 years as 'unique alleged youth offenders'.<sup>98</sup> This amounts to 3525 individuals. It does not include Aboriginal people who came into contact with police in 2018 solely as alleged victims of crime or witnesses. The 41 Aboriginal complainants whose files were closed by Victoria Police in 2018 represent a very small proportion (one per cent) of this total.

IBAC examined the audited files to identify any trends or patterns in the demographics and postcodes of the complainants and people involved in serious incidents.

In 41 per cent of files (22 of 54), the complainant or person involved in a serious incident was a child (under the age of 18 years).

The files examined by IBAC involved Aboriginal people living across Victoria. Of complainants and people involved in a serious incident in the files audited:

- 48 per cent (26 of 54) lived in Melbourne
- 15 per cent (eight of 54) lived in Gippsland
- 15 per cent (eight of 54) lived in Loddon Mallee/Grampians
- nine per cent (five of 54) lived in Barwon/South West Victoria
- six per cent (three of 54) lived in Hume.<sup>99</sup>

In 46 per cent of complaints (19 of 41), the complainant had previously made a complaint about Victoria Police.

The audit sought to identify whether there were personal factors or circumstances that added to the complainant's difficulty in making a complaint and persisting with it. IBAC identified such factors in 55 per cent of complaint files (22 of 40). These included files where the complainant was a child or young person under the age of 18 years, was living in out-of-home care, was detained in a youth justice centre, had a history of contact with police, had mental health concerns, or was a victim of family violence. For some complainants, multiple factors were present.

<sup>98</sup> State of Victoria 2019, *Victorian Government Aboriginal Affairs Report 2019*, Melbourne, pp 85–88. The Crime Statistics Agency recommends caution in relation to this data, given the large proportion of unique offender records with missing/not stated/unknown Indigenous status.

<sup>99</sup> In the remaining four files, this information was not available.

## 4.4 How the complaints were made

The audit examined how complaints were made and whether the complaint was made by a third party on behalf of the complainant. Of the 41 complaints examined in this audit, most were made online (49 per cent, 20 of 41) or in person (24 per cent, 10 of 41).

Fifty-one per cent of complaints (21 of 41) were made on behalf of the complainant by a third party. Of these, 10 were made by youth justice centre workers<sup>100</sup> and four by community legal centres.

### Assistance from a support service

The audit also examined whether complainants were supported or assisted with their complaints more broadly and found that complainants received support in 50 per cent of files (20 of 40). This included support from Aboriginal legal services, RAJACs, an Aboriginal mentoring program, youth justice centre workers and Victoria Legal Aid. In one file, a residential care worker provided support to a complainant.

The following case study illustrates the important role support services can play in the making of complaints against police by young people.

#### CASE STUDY 1

A complaint file was created after an Aboriginal young person reported that he had been assaulted by police while being arrested. The complainant had multiple vulnerabilities including his age, disengagement from school and involvement in the child protection system. He had also experienced prior contact with police.

A youth project worker from an Aboriginal youth mentoring program initially assisted the complainant to discuss the incident. The matter was then referred to civil lawyers who specialised in assisting Aboriginal youth clients. The lawyers took a statement from the complainant and lodged a complaint with the Police Conduct Unit. Without this support, a complaint may not have been made.

## 4.5 The nature of the complaints and serious incidents

### The complaint allegations

The 41 complaints audited by IBAC involved a total of 63 allegations of police misconduct.<sup>101</sup>

IBAC found that:

- 46 per cent of allegations related to use of force or assault by police
- 21 per cent of allegations related to human rights breaches<sup>102</sup>
- 11 per cent of allegations related to duty failures
- 10 per cent of allegations related to improper language or harassment, however no complainant alleged that police officers used overtly racist language or engaged in overtly racist behaviour.

Examples of use of force allegations included punching a complainant in the face, using OC (oleoresin capsicum) spray when not warranted, and using force during arrest despite the fact that the complainant was not resisting.

Examples of duty failure allegations included failing to administer appropriate medical care in custody for an alleged dislocated shoulder, failing to take a report of an alleged sexual offence against a child, and dismissing safety concerns of an alleged victim of family violence.

While the audit identified no allegation of overtly racist language or behaviour by police officers, several complainants alleged that they were verbally abused. Some allegations of improper language indicated disrespectful, cruel and inhumane treatment of complainants by subject officers. For example, a complainant who had self-harmed with scissors alleged that an attending police officer commented to another police officer, 'It's unfortunate he didn't bleed out, sergeant.'

<sup>100</sup> IBAC understands that young people entering youth justice centres are asked about their experiences with police. The CCYP monitors allegations of police misconduct that are reported by children and young people through this process. The CCYP's role is to ensure that Youth Justice has followed the correct process for submitting complaints to Victoria Police. See also CCYP's report, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, CCYP, Melbourne, p 435.

<sup>101</sup> Serious incident oversight files do not include allegations, as they are not initiated in response to a complaint. They were therefore excluded from this analysis.

<sup>102</sup> In this analysis, a use of force allegation that also constituted an alleged human rights breach was counted as a use of force allegation. An allegation of duty failure that also amounted to an alleged human rights breach was counted as a human rights breach.

Another complainant alleged that, while being arrested under a safe custody warrant, a police officer told him, 'You're f\*\*ked now,' and asked in relation to the use of handcuffs 'Does that hurt? Does that hurt?'. A third complainant alleged that, when he told police that he was experiencing tooth pain, an officer responded, 'No one gives a f\*\*k about your tooth.' Some of these allegations also indicate human rights breaches.

IBAC's findings are broadly comparable with those of the Koori Complaints Project, where:

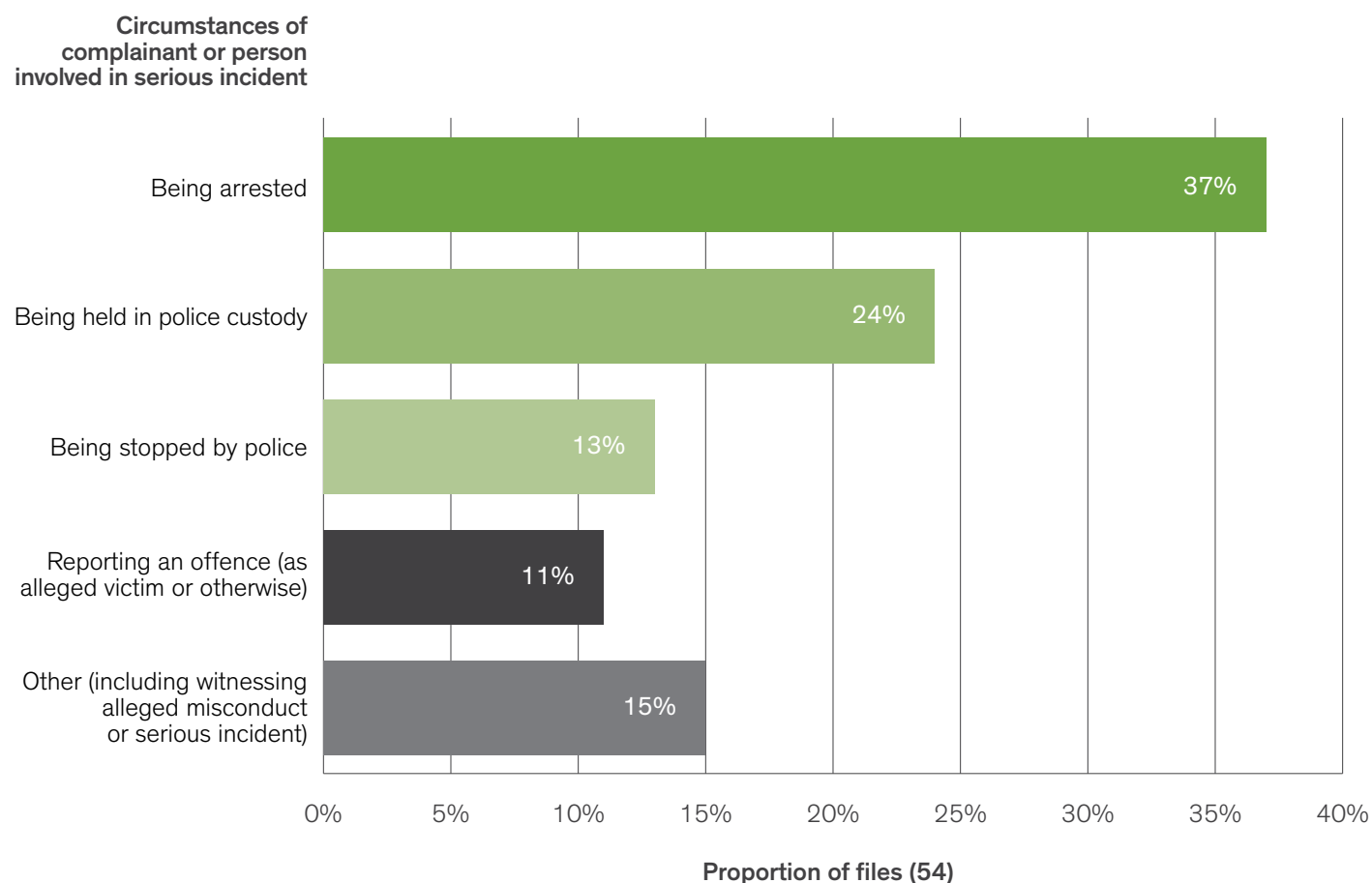
- 40 per cent of allegations related to assaults, mostly occurring at arrest
- 26 per cent of allegations related to duty failures, including failure to provide medical assistance
- 17 per cent of allegations involved racist language, other inappropriate language or improper behaviour.<sup>103</sup>

## Circumstances and location of the alleged misconduct and serious incidents

IBAC also examined all files to identify the circumstances and locations in which the serious incident or the alleged police misconduct occurred.

For the complainant or the person involved in a serious incident, the most common circumstances were being arrested (37 per cent) and being held in police custody (24 per cent) (see Figure 1). Of the files involving arrest, most involved arrest in public (55 per cent), followed by arrest at a private residence (35 per cent).

**Figure 1. Circumstances of serious incident or alleged misconduct leading to complaint**



<sup>103</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 19. The Koori Complaints Project found that Aboriginal people make allegations of assault by police substantially more than non-Aboriginal people.



In terms of location, IBAC found that:

- in 43 per cent of audited files (23 of 54) the alleged police misconduct or the serious incident occurred in a public place
- police stations were the location in 26 per cent of files (14 of 54), which correlated with the complainant being held in police custody in 22 per cent of files
- private residences were the location in 19 per cent of files (10 of 54), which largely correlated with circumstances in which the complainant or person involved in a serious incident was arrested at a private residence.

### Evidence of concerning police behaviour

IBAC examined files for indications of bias, racism or discrimination on the part of police officers at the time of the serious incident or alleged misconduct. IBAC found that 22 per cent of files (12 of 54) contained concerning indications of bias or a lack of impartiality on the part of subject officers. Examples included:

- making comments about a previous interaction with the complainant, which were not relevant to his arrest
- using inappropriate language or making inappropriate comments towards the complainant, such as telling the complainant to say, 'Sorry, sir' (see also examples provided above)
- misidentifying the complainant and proceeding to arrest him, before realising the error and releasing him
- dismissing the complainant's concerns and implying that the complainant was not truthful.

The following case study illustrates one of these files.

### CASE STUDY 2

An Aboriginal woman reported an assault against her young son to police following an altercation during a football game with a parent of one of the opposing team's players. The complainant alleged that the attending officers were rude and dismissive towards her when she reported the incident, and failed to keep her informed of the status of the investigation and of her rights following the incident. Police notes from the incident state that the 'family have priors for making victim compensation applications' and that the 'complainant's son is very aggressive to police'.



## 4.6 Human rights

### Policy and practice

The Victoria Police Manual guideline on complaint management and investigations is silent as to the investigator's responsibility to undertake a human rights assessment as part of a complaint investigation. However, Victoria Police has developed a human rights 'ready reckoner' to assist investigators by outlining the key questions they must consider in relation to human rights. The ready reckoner also provides a list of rights as outlined in the Charter and a brief explanation of each.

In the final report, investigators should identify which human rights were engaged, which rights were protected and which were limited. Where rights were limited, the investigator should explain whether the limitations were reasonable and demonstrably justifiable in the circumstances. The investigator should then make a determination about whether any human rights were breached. If any breaches are identified, recommendations for appropriate action must be made.<sup>104</sup>

The Victoria Police Human Rights Practitioner Guide draws attention to two examples relevant to Victoria Police's involvement with Aboriginal people. Firstly, in relation to the right of recognition and equality before the law, the Guide notes that police must make choices based on intelligence rather than stereotypes and racial profiling. Police should consider the needs of, and potential impact of decisions on, different groups, including Aboriginal people. Secondly, the guide notes the requirement to notify Aboriginal services when an Aboriginal person is in custody as an element of the distinct cultural rights held by Aboriginal people.<sup>105</sup>

Under the IBAC Act, one of IBAC's functions is to ensure that police officers and protective services officers have regard to the human rights set out in the Charter.<sup>106</sup>

### Consideration of human rights

IBAC found that the Charter rights most commonly engaged by the complaints and serious incidents were:

- the right to protection from torture and cruel, inhuman or degrading treatment (section 10)
- the right to freedom of movement (section 12)
- the right to protection of families and children (section 17)
- the right to liberty and security of the person (section 21)
- the right to humane treatment when deprived of liberty (section 22)
- the rights of children in the criminal process (section 23).

However, IBAC found that Victoria Police investigators frequently failed to specify the Charter rights that were engaged, limited or breached in relation to the complaints and serious incidents. Charter rights were not adequately understood or addressed. Where the investigator's report referred to the Charter, the analysis was often inadequate or incomplete.

Sixteen per cent of relevant files (8 of 50) failed to refer to human rights or the Charter at all, or included only a cursory reference.<sup>107</sup> For example, in a serious incident oversight file involving a person injured in police custody, the investigator failed to refer to the Charter or to consider human rights in any way. In a complaint file involving an allegation of assault during an arrest, the investigator did not address any specific Charter rights, but instead only discussed peripheral issues, such as police lawfully accessing the premises to arrest the complainant.

<sup>104</sup> Victoria Police 2022, *Integrity Management Guide*, p 11.

<sup>105</sup> Victoria Police 2015, *Human Rights Practitioner Guide*, pp 2, 6.

<sup>106</sup> IBAC Act, s 15(3)(b)(iii).

<sup>107</sup> The analysis in this section excludes the three 'incidents' and one file taken over by IBAC.

Fifty-eight per cent of relevant files (29 of 50) provided incomplete reference to the Charter, or an inadequate human rights analysis of the complaint or serious incident. For example, in a complaint file involving an allegation of assault during an arrest, the investigator made a general comment that the complainant's rights were protected and respected, but failed to identify any specific rights or outline any reasoning to reach this conclusion. In a serious incident oversight file involving an escape from custody, the investigator did not consider human rights until prompted to do so by a supervisor, but then failed to identify any specific Charter rights in the final report.

Several files demonstrated a lack of understanding of the Charter and the scope of key Charter rights on the part of investigators and supervisors. In one file involving an allegation of assault during an arrest, the investigator's final report stated that 'no human rights issues were identified during the course of this investigation'. However, the right to protection from torture and cruel, inhuman or degrading treatment, the right to liberty and security of the person, and the right to humane treatment when deprived of liberty had clearly been engaged.

Several files identified one or more relevant Charter rights, but neglected to identify others. The right to protection from torture and cruel, inhuman or degrading treatment was not identified in a number of files where it should have been.

Where relevant Charter rights were identified by investigators, no investigator concluded that the rights of a complainant or person involved in a serious incident had been breached.

IBAC's 2016 regional complaints audit and 2018 PSC audit both identified a failure to adequately address human rights issues in 34 per cent of files.<sup>108</sup>

## 4.7 Cultural awareness, competence and safety

### Policy and practice

In considering Victoria Police's handling of complaints and serious incidents involving Aboriginal people, it is important to examine the degree of cultural awareness, cultural competence and cultural safety demonstrated in its complaint handling processes. These concepts have been defined as follows:

- 'Cultural awareness' is understanding cultural difference and diversity, and an awareness that cultural differences may necessitate a different approach to people of that other culture.
- 'Cultural competence' is a set of congruent behaviours, attitudes and policies that come together in a system, agency or among professionals that enable them to work effectively in cross-cultural situations.
- 'Cultural safety' is providing an environment that is welcoming and respectful of another person's culture.<sup>109</sup>

As outlined in section 2.2, the absence of a single Aboriginal cultural awareness training package within Victoria Police in 2017 was noted by the Deputy State Coroner in her findings into the death of Tanya Day. Victoria Police has committed to delivering Aboriginal cultural awareness training for all new recruits.

Victoria Police's *Aboriginal Inclusion Strategy and Action Plan 2018–2021* refers to 'building cultural competence' of staff and creating a 'culturally safe workplace' for Aboriginal employees. However, the notions of Aboriginal cultural competence and cultural safety do not appear to have been explicitly applied to Victoria Police's complaint handling mechanisms.

<sup>108</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, p 80; IBAC 2018, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, IBAC, Melbourne p 57.

<sup>109</sup> State of Victoria and Victorian Aboriginal Child Care Agency 2008, *Aboriginal Cultural Competence Framework*, Melbourne, p 56.

As noted earlier, Victoria Police's ACLO and PALO programs seek to build trust and respect between Victoria Police and the Aboriginal community. There are approximately 135 PALOs spread over 50 police stations throughout Victoria. PALOs are sworn members of Victoria Police who perform operational duties as well as their PALO role, which includes working both independently and with ACLOs to resolve issues concerning Aboriginal people in their local area. There are 13 ACLOs, whose role is to 'develop and support the implementation of various initiatives within their local communities to assist in building solid relationships between Victoria Police and Aboriginal people'.<sup>110</sup>

ACLOs and PALOs do not have a formal role in the complaints process. There is no requirement for investigators to inform an ACLO or PALO of a complaint received from an Aboriginal person, or to seek their advice on how to handle such a complaint. ACLOs and PALOs are, however, available to be consulted by investigators, and they can lead engagement with Aboriginal complainants.

The Koori Complaints Project recommended a number of procedural reforms to create a 'Koori-friendly complaints system'. These included creating a permanent Aboriginal complaints officer or unit in Victoria Police to facilitate complaints from Aboriginal people, participate in the classification process, and link complainants with resources in the community.<sup>111</sup>

In its 2017 submission to the IBAC Committee, the then Aboriginal Family Violence Prevention & Legal Service (now Djirra) observed that Victoria Police officers lack cultural competence when engaging with Aboriginal people and communities, which diminishes trust in the complaints process.<sup>112</sup>

### **Lack of cultural competence or awareness**

The audit examined files for indications of a lack of cultural competence or awareness by police officers, both in relation to the serious incident or the alleged misconduct leading to a complaint, and subsequent investigations.

IBAC found that 30 per cent of files (16 of 54) included indicators of a lack of cultural competence by police officers including, in some cases, a failure to comply with legislative obligations or Victoria Police policy. Some may also have constituted a failure to comply with the Charter.

For example:

- When responding to a family violence incident, it was unclear if attending officers asked a complainant whether she was Aboriginal. They also failed to offer support from an ACLO as required under the Victoria Police code of practice for the investigation of family violence.
- Arresting officers stated that a complainant was drug and/or alcohol affected, but this was not recorded on the attendance summary and relevant policies for contacting the Aboriginal Community Justice Panel were not followed.

The following case studies highlight further examples of a lack of cultural competence or awareness by Victoria Police officers, although case study 4 also indicates the potential benefits of using dedicated Victoria Police resources.

### **CASE STUDY 3**

An Aboriginal teenager with multiple vulnerabilities reported that he had been assaulted by police while being arrested. The complainant's Aboriginal status was recorded as 'unknown' on the attendance summary, but as 'Aboriginal' in the complaints database. It is unclear how the complainant's Aboriginal status was established. VALS should have been notified, but was not. The complainant was reported as drug affected while in custody, however no consideration was given to notifying the local Aboriginal Community Justice Panel, as required by Victoria Police policy.

In addition, Victoria Police policy states that if a child or young person is a suspect, an independent person from the Youth Referral and Independent Person Program is required to attend the interview. The attendance summary notes that there was no independent person present to support the complainant in custody.

<sup>110</sup> Victoria Police 2021, 'Aboriginal community liaison officers', web page, Melbourne, [www.police.vic.gov.au/aboriginal-community-liaison-officer-program](http://www.police.vic.gov.au/aboriginal-community-liaison-officer-program).

<sup>111</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 2.

<sup>112</sup> Aboriginal Family Violence Prevention & Legal Service 2017, Submission No. 37 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 18.

### CASE STUDY 4

An Aboriginal woman complained that police officers were rude and dismissive of her when she tried to report that her son had been assaulted at a football game by another parent. The complainant specifically requested that someone 'who deals in youth abuse Indigenous issues' contact her to discuss the matter. There is no evidence that this occurred. The matter was subsequently reassigned to a PALO after the complainant filed a new complaint regarding the conduct of the original investigation. The complaint was progressed more quickly once the PALO became involved.

The audit identified a substantial under-utilisation of Victoria Police resources dedicated to supporting relationships with Aboriginal communities. Only four files indicated that the investigator had contacted or worked with an ACLO. In one of these files, the investigator also liaised with the complainant's Koori Youth Justice worker throughout the investigation. Only one file was assigned to a PALO for investigation (see case study 4).

Aboriginal cultural awareness training for subject officers was recommended in only one file. This would appear to indicate that there is considerable room for improvement in the identification by senior officers of cultural awareness training needs among subject officers.

## 4.8 Communication with complainants

### Policy and practice

Communication with complainants on the progress and outcomes of an investigation is an essential and required part of the complaint handling process.

Victoria Police regards any person who makes a complaint about police as a 'victim' under the *Victims' Charter Act 2006* (Vic), despite the fact that this legislation applies only to victims of crime and criminal investigations.<sup>113</sup> According to the Victoria Police Manual, this means that all complainants must be:

- given clear, timely and consistent information about their rights and entitlements
- treated with courtesy, respect and dignity
- informed of the progress of the investigation, any key stages in the investigation, and the results and action taken or proposed to be taken at the completion of the investigation.<sup>114</sup>

In addition, the *Victoria Police Act 2013* requires that complainants be advised in writing of the results of the complaint investigation and of the action taken or proposed to be taken.<sup>115</sup>

For a complainant who could, in fact, be regarded as a victim of crime under the Victims' Charter Act, investigators must provide clear, timely and consistent information about their rights and entitlements under that Act, and inform them of the progress of the criminal investigation.<sup>116</sup>

Written advice to complainants should contain a detailed overview of the investigation so that complainants can understand the nature of the investigation. Investigators should consider the complainant's literacy or English skills in any written advice.<sup>117</sup>

<sup>113</sup> Section 3 of the Victims' Charter Act defines a 'victim' as a person who has suffered injury (including grief, distress or trauma) as a direct result of a criminal offence, whether or not a person has been accused or convicted of that offence.

<sup>114</sup> The Victims' Charter Act refers to 'an investigation into a criminal offence' in relation to which a person is a 'victim'. IBAC assumes that, in applying the requirements of this Act to all complainants, the references in the Victoria Police Manual to 'the investigation' mean the complaint investigation rather than a related criminal investigation.

<sup>115</sup> Victoria Police Act s 172(1).

<sup>116</sup> Victims' Charter Act s 8.

<sup>117</sup> Victoria Police Manual, Complaint management and investigations, pp 21–22.

Professional Standards Command has developed a template for outcome letters to complainants. Investigators should outline:

- the allegations made by the complainant
- the evidence collected and how conclusions were reached
- the determination made in relation to each allegation
- the appropriateness of the subject officer's actions
- contact details for further enquiries.

Investigators are required to contact the complainant if an investigation is not completed within the specified timeframe, to provide a brief explanation as to the reason for the delay and, if possible, an anticipated completion date.<sup>118</sup>

Poor communication with complainants by Victoria Police is an issue of longstanding concern. The 2013 *Equality is not the same* report found that limited communication about the investigative process and outcomes contributed to significant dissatisfaction and minimal confidence in the complaints process among complainants.<sup>119</sup> Respondents indicated that the information provided by Victoria Police catered to those with strong English skills and that they were not provided with assistance in the form of interpreter services or advocate information.

In its submission to the IBAC Committee's inquiry into the external oversight of police corruption and misconduct, Victoria Police acknowledged its poor communication with complainants and referred to its commitment to engage with, support and inform complainants throughout the complaints process as part of a 'victim-centred' practice for handling complaints.<sup>120</sup> The IBAC Committee found that significant improvements were needed with regard to Victoria Police's communication with complainants.<sup>121</sup>

VALS has also called for better communication with complainants throughout the investigation process, including giving complainants updates during the investigation, allowing them to comment on any adverse material before a complaint is dismissed, and providing detailed and consistent outcome information.<sup>122</sup>

## Updates and outcome advice to complainants

There were 37 files in the audit where Victoria Police was required to update a complainant on the progress of the investigation.<sup>123</sup> Of these files, 27 per cent (10 of 37) indicated that the investigator had contacted the complainant during the investigation, either directly or via their legal representative.

In the remaining 27 files there was no indication that the complainant had been updated on the investigation. However, it is possible that the investigator did contact the complainant in these files, and recorded contact with the complainant in their diary or daybook rather than on the file.

Nevertheless, these findings are similar to those of IBAC's previous audits. The 2016 regional complaints audit found that most complainants were not updated on the progress of the investigation or provided with an explanation for any delays. IBAC's 2018 PSC audit found that only 38 per cent of files in which a contactable complainant was identified indicated that complainants had been updated during the investigation.<sup>124</sup>

In this audit, a final outcome letter to the complainant was attached to the file in 92 per cent of relevant files (33 of 36).<sup>125</sup> IBAC found that in most of these files (64 per cent, 21 of 33), the letter clearly explained the results of the investigations and what, if any, actions would be taken.

<sup>118</sup> Ibid, p 46.

<sup>119</sup> Victoria Police 2013, *Equality is not the same... Victoria Police response to community consultation and reviews on field contact policy and data collection and cross cultural training*, Victoria Police, Melbourne, p 37.

<sup>120</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 176.

<sup>121</sup> Ibid, p xliv.

<sup>122</sup> Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, pp 4–5.

<sup>123</sup> This excludes the 13 serious incident oversight files, as such files do not involve a complainant. It also excludes the three matters recorded as 'incidents', as these did not involve an investigation, and an additional serious incident that was reclassified.

<sup>124</sup> IBAC 2018, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, IBAC, Melbourne, p 58.

<sup>125</sup> This excludes the 13 serious incident oversight files, the three matters recorded as 'incidents', an additional serious incident oversight file that was reclassified, and a file taken over by IBAC.

In the 12 files that contained final letters to complainants that did not clearly explain the results of the investigation, issues included:<sup>126</sup>

- misleading or inappropriate comments
- a lack of explanation about how the determination or the result was reached
- problems outlining the allegations and/or determinations
- errors, including incorrect definitions, names and dates
- use of police language rather than plain English.

Final letters were more likely to be sent in the current audit compared to the 2018 PSC audit, which found that a final outcome letter was sent in 46 per cent of files. However, the 2018 PSC audit did not identify any concerns regarding these outcome letters, all of which were considered to adequately explain the results of the investigation and action taken.<sup>127</sup>

IBAC's 2016 regional complaints audit found that the final letter was not attached in 13 per cent of files in cases where the complainant was identifiable. Where final letters were sent to complainants advising on the outcomes of an investigation, the audit identified deficiencies including insufficient detail, inconsistencies between information in the letter and other information in the file, and delays in sending out letters after an investigation was complete.

The following case studies provide contrasting examples of Victoria Police practice in relation to communication with complainants. The first illustrates positive practice both during and at the conclusion of the investigation, while the second illustrates inadequate communication with a complainant.

### CASE STUDY 5

A 'minor misconduct' file was created after an Aboriginal young person reported to staff at a youth justice centre that he had been assaulted by police while being arrested. The complainant had multiple vulnerabilities, including his age and residential care status. The investigator demonstrated good practice by contacting the complainant at the start of the investigation to take a statement, which he did in the presence of the complainant's residential care worker. During the investigation, the investigator phoned the complainant after his medical records had been received, to request an appointment to discuss the investigation and provide an update. The investigator met the complainant and his residential care worker at a police station and informed them about the evidence he had collected. The investigator sent a final outcome letter to the complainant at the end of the investigation. The letter clearly outlined the allegations, the determinations and how they had been reached, and what actions would be taken.

### CASE STUDY 6

A 'minor misconduct' file was created after an Aboriginal teenager complained that he had been assaulted and verbally abused by police officers while being arrested. The investigation was thorough and considered all relevant evidence, including CCTV footage and witness statements.

However, the outcome letter to the complainant was poor. It failed to outline each separate allegation (assault and inappropriate language), and each relevant determination. The letter instead made a general statement that the determination in relation to the complaint was 'not proceeded with' and that no action was to be taken, on the basis that the complainant did not want to supply information – despite the fact that the investigator had collected other evidence. The letter also did not refer to the fact that the allegation of inappropriate language had been substantiated and had resulted in a recommendation of 'workplace guidance'.

<sup>126</sup> Some files contained multiple issues.

<sup>127</sup> IBAC 2018, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, IBAC, Melbourne, p 58.



## Contacting community members or advocates

IBAC identified 51 per cent of files (19 of 37) involving a contactable community member or advocate. This included the complainant's legal representative, support worker, parents or other family members, and in one file, the local RAJAC chair.

IBAC found that Victoria Police contacted the community members or advocates at least once in 53 per cent of these files (10 of 19). There was no indication that Victoria Police contacted community members or advocates in 42 per cent of these files (8 of 19). In the remaining file it was unclear whether Victoria Police had contacted the community member or advocate.

The following case studies illustrate Victoria Police practice in relation to updating a community member or advocate on the progress of a complaint investigation. The first highlights positive practice, and the second provides an example of poor practice.

### CASE STUDY 7

A 12-year-old Aboriginal child living in out-of-home care reported to his Koori Youth Justice worker that he had been assaulted by police on two separate occasions when being taken into police custody. The worker reported the complaint to the region's RAJAC, which then contacted Victoria Police. The investigator did a thorough job meeting and speaking with key stakeholders and collecting additional information. When it became apparent that civilian witnesses supported the subject officer's version of events, the investigator contacted the RAJAC and the complainant's Koori Youth Justice worker to advise them accordingly. The investigator also advised them that he would not seek a statement from the complainant, as it could expose him to a charge of making a false statement.

### CASE STUDY 8

An Aboriginal young person reported to a youth justice worker that he had been assaulted by police while being arrested. The young person had multiple vulnerabilities, including a history of self-harm, issues with mental health and previous contact with police. There was no record of the complainant being updated on the progress of the investigation. The file indicates that the complainant was viewed as 'being difficult and not co-operative'. There was also no record in the file of the young person's parents or guardians being contacted about the complaint. There was no record in the file of the youth justice worker who submitted the complaint.

## 4.9 Requests by complainants

The audit examined complaint files to identify whether complainants made any requests as to how their complaint should be handled and, if so, how Victoria Police responded to the request. There are many reasons why someone might not make a request regarding their complaint, including limited knowledge of, or faith in, the complaints system.

Complainants made at least one request regarding their complaint in 23 per cent of relevant files (nine of 40).<sup>128</sup> In all of these, the complainant indicated the outcome or actions they sought in making the complaint. Most frequently, complainants sought an apology from the subject officer, or they wanted the subject officer to be spoken to and held accountable for their actions.

Several complainants also made requests regarding the handling of the complaint investigation. For example, one complainant asked for an 'independent' investigation, while another requested that the investigator be from a different police station to the subject officer. Another complainant asked to speak to a person who specialises in 'youth abuse Indigenous issues' (see case study 4).

While some files indicated that Victoria Police acknowledged the complainant's request, in most cases there was no indication that Victoria Police sought to accommodate the request.

## 4.10 Complainant disengagement

Some complainants disengage from the complaints process after making a complaint. An example is where the complainant does not wish to make a statement. In such situations, the investigator should continue to collect all other available evidence and proceed with the investigation to the best of their ability. A complainant's disengagement from the process does not necessarily amount to withdrawal of the complaint or denial of the allegations.

The audit found indications that the complainant had disengaged from the complaints process in 35 per cent of relevant files (13 of 37). Indications of disengagement included the complainant being reluctant to make a statement to police, and not responding to the investigator's attempt to make contact with them.

The involvement of a support service did not always prevent the complainant from disengaging from the complaints process. Of the files where there were indications that the complainant had disengaged, nine included reference to support from a third party in relation to the complaint.

### Assistance from Victoria Police

As described in section 4.3, IBAC identified 22 files where the complainant's personal circumstances created additional challenges in making a complaint and persisting with it. The investigator took steps to assist the complainant in a way that considered the complainant's needs in only one of these files (illustrated in the following case study). In a further two files, each involving a complainant detained in a youth justice centre, the investigator travelled to the youth justice centre to take a statement from the complainant.

### CASE STUDY 9

An Aboriginal man made several allegations regarding his arrest and time in police custody. He had reported mental health issues and low literacy levels. The investigator visited the man at his home to understand his complaint and discuss the investigation. The investigator also returned to the complainant's home at the end of investigation to explain the outcome to him.

<sup>128</sup> This excludes the 13 serious incident oversight files, as these do not involve a complainant, and an additional serious incident oversight file that was reclassified.



In the remaining files, the investigator offered little or no assistance to the complainant. The following case study highlights a failure by Victoria Police to assist a vulnerable young complainant in relation to his complaint.

### **CASE STUDY 10**

A youth justice centre worker submitted a complaint on behalf of an Aboriginal teenager who reported that he had been assaulted while being arrested. The complainant had a criminal record and was known to one of the police witnesses. The investigator spoke to the complainant without a support person present. The complainant informed the investigator that he did not want to make a statement in relation to the matter, as he did 'not write statements'. It is unclear whether the complainant had low literacy skills. There was no indication from the file that the investigator made any attempt to explain to the complainant that he did not have to write a statement, or that any assistance was offered to him.

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# 5 Pre-investigation processes

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**This section examines Victoria Police processes of receiving and classifying complaints, and allocating them for investigation. This includes identifying subject officers, checking relevant complaint histories and managing conflicts of interest.**

## 5.1 Key findings

- There were discrepancies in the number or characterisation of allegations in 29 per cent of complaint files.
- IBAC disagreed with the initial classifications given in 11 per cent of files. Five files warranted a more serious classification.
- IBAC disagreed with the subject officers identified in 19 per cent of files, including eight files that failed to list all relevant officers involved in the complaint.
- Complaint histories of subject officers were not appropriately considered in almost half (46 per cent) of files, including 17 files where a subject officer had been the subject of a previous complaint from an Aboriginal person or of a previous allegation of racial discrimination, or had an otherwise relevant complaint history.
- IBAC disagreed with the choice of the investigator in 45 per cent of files, whether because the investigator knew or had worked with the subject officer, or had a relevant complaint history, or for other reasons.
- Despite conflict of interest forms being attached to most files (84 per cent), there were deficiencies in how Victoria Police identified and managed conflicts of interest in 42 per cent of files where forms were attached.

## 5.2 Classification

### Policy and practice

As outlined in section 3.2, when Victoria Police receives a complaint, the Police Conduct Unit assesses the complaint and assigns it a classification from Victoria Police's classification framework (see Table 1). The complaint is also recorded in the complaints database.<sup>129</sup>

While classification requires a preliminary assessment of the allegations in a complaint, when the Police Conduct Unit forwards a complaint to a region, command or department for investigation (as occurs in most cases), it does not identify or highlight specific allegations. Allegations are generally left to the allocated investigator to identify and determine, as they may change over the course of an investigation as additional information is uncovered. Nevertheless, identification of allegations is examined here as it is relevant to classification.

Professional Standards Command may reclassify a complaint where an investigation reveals a different allegation, or the allegation has been changed by the complainant in a way that alters the nature or seriousness of the complaint.<sup>130</sup>

Classification is important because it reflects the seriousness of a complaint and specifies the range of determinations that are available. It also determines the time frames within which a matter must be investigated, and whether a matter is recorded on a subject officer's complaint history. Classifying complaints accurately ensures they are treated with the seriousness they deserve.<sup>131</sup>

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<sup>129</sup> Victoria Police Manual, Complaint management and investigations, p 5.

<sup>130</sup> Victoria Police 2014, *Conduct and Professional Standards Division Standard Operating Procedures*, p 20.

<sup>131</sup> Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 16.

As noted in section 3.1, the task of classification is not straightforward and requires subjective judgments such as whether an alleged assault is ‘minor’ or ‘serious’, an alleged breach of human rights is ‘lower level’ or ‘higher level’, or an incident is ‘low level’ or involves ‘allegations of a minor nature regarding service delivery’.

In its inquiry report, the IBAC Committee observed that Victoria’s complaint classifications lacked precision and overlapped in confusing ways, and concluded that the classification system was ‘unduly complex’.<sup>132</sup> It recommended that Victoria Police consolidate, simplify and clarify the categories of complaint files it uses when classifying complaints.<sup>133</sup> Victoria Police has not yet implemented this recommendation.

Under-classification of complaints by Victoria Police has been a longstanding concern. The Koori Complaints Project found that no complaint by an Aboriginal person alleging assault – the most common category of allegation by Aboriginal people – had been correctly classified since 2004. Instead, such complaints received a classification that did not recognise the seriousness of the allegations involved. The project noted a ‘reluctance within police to name these complaints as assaults’ and a tendency to ‘employ a range of euphemisms all of which mitigate the seriousness of the allegation’. These included ‘rough handling’, ‘crash tackling’ and ‘overzealousness’.<sup>134</sup> The project recommended that all allegations of assault be classified as ‘serious misconduct’.

In IBAC’s 2016 regional complaints audit, IBAC disagreed with the classification of a complaint in nine per cent of files (excluding LMRs), and in 22 per cent of LMRs audited. In all LMR files, this was because IBAC considered the matter too serious to be dealt with as an LMR.<sup>135</sup> IBAC’s 2016 regional complaints audit and its 2018 PSC audit both made recommendations aimed at clarifying Victoria Police’s system of classification.

## Identification and characterisation of allegations

The allegations made in the complaints examined in this audit are described in section 4.5. IBAC identified discrepancies in the number or characterisation of allegations in 29 per cent of complaint files (12 of 41). This included four files that understated the number of allegations made by the complainant.

Poor identification and characterisation of allegations undermines the quality of the investigation and can lead to unsatisfactory outcomes for complainants who can feel like their complaint has not been understood or addressed. Given that allegations are noted on police officers’ complaint histories, deficiencies in the identification of allegations can affect the accuracy of those histories and obscure problematic complaint patterns.

IBAC’s previous audits have also highlighted concerns with how Victoria Police identifies and characterises complaint allegations. IBAC’s 2018 PSC audit found problems with the identification or characterisation of allegations in 51 per cent of files examined.<sup>136</sup>

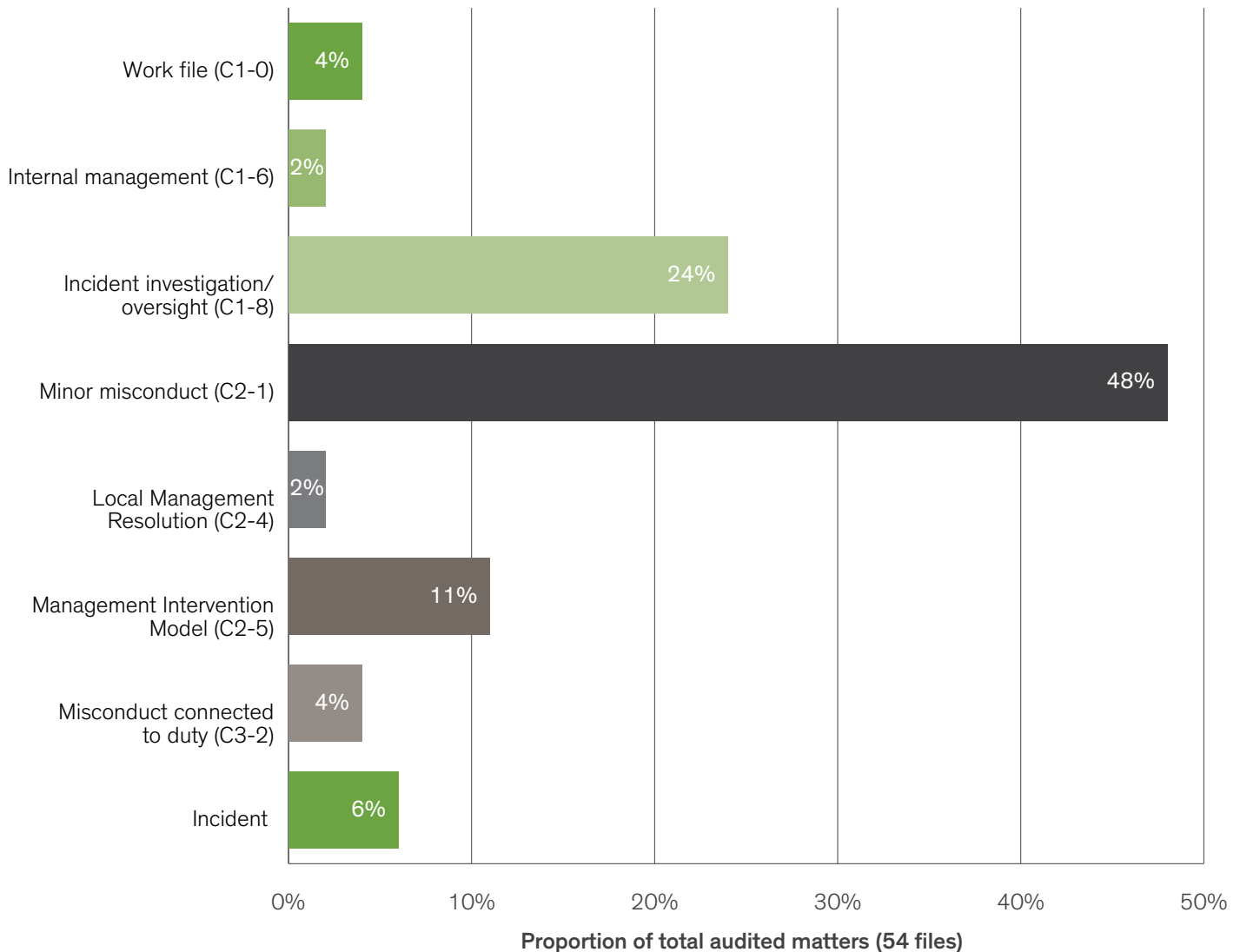
<sup>132</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p xli.

<sup>133</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Recommendation 4, p 203.

<sup>134</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 34.

<sup>135</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, pp 24–25.

<sup>136</sup> IBAC’s 2016 regional complaints audit also found that Victoria Police’s identification and characterisation of allegations could be improved.

**Figure 2. Classification of audited files**

### Classification of complaints and serious incidents

Figure 2 outlines the count of audited files by classification. It shows that:

- 48 per cent of files (26 of 54) were classified as 'minor misconduct' (many involving assault allegations)
- 11 per cent of files (six of 54) were classified as MIM files
- four per cent of files (two of 54) were classified as 'misconduct connected to duty'.

Figure 2 also shows that 24 per cent of audited files (13 of 54) were 'incident investigation/oversight' files, in relation to the oversight of serious incidents. These do not originate from a complaint. In addition, three files included in the audit were recorded in the complaints database as 'incidents'. This is not a complaint classification. Victoria Police does not investigate matters recorded as 'incidents'.

IBAC identified concerns with the initial classifications given in 11 per cent of files (six of 54). Five matters warranted a more serious classification according to the current classification framework. The following case studies illustrate the under-classification of complaints.

### CASE STUDY 11

A complainant alleged that Victoria Police had seriously injured his shoulder when he was arrested and then denied him appropriate medical treatment while in custody. The complainant alleged that while he was in custody, Victoria Police received medical advice that his shoulder injury may be serious and require surgery. Despite the apparent seriousness of the injury and the complainant's requests for further medical attention, the complainant was only given paracetamol and ibuprofen.

Upon receiving the complaint, Professional Standards Command inappropriately recorded the matter as an 'incident'. As a result, it was not investigated. The file was not allocated to an investigator, no evidence was collected, no statements were taken, the complainant was not contacted other than being sent an outcome letter, and no final report with determinations or recommendations was written.

In IBAC's view, this complaint alleged breaches of the Charter. According to Victoria Police's classification system, this file should have been classified at least as a 'minor misconduct' file.

### CASE STUDY 12

An Aboriginal man made a complaint regarding his treatment by Victoria Police while he was in custody at a police station in regional Victoria. The complainant alleged that he was not provided with appropriate medical assistance, was denied access to legal assistance, and was not given clean clothes<sup>137</sup> after the clothes he was wearing became soiled.

Victoria Police classified the complaint as a MIM file, which is a category that relates to minor breaches of service and behaviour standards. Such files are allocated to officers in the area where the incident took place. Investigators have 40 days to complete their investigation, and there are only two available determinations at the completion of the file – 'resolved' or 'not resolved'.

IBAC disagreed with this classification because the allegations raised potential breaches of the Charter. The complaint should have been classified at least as a 'minor misconduct' file. Had this occurred, the complaint would have been handled by an investigator outside the local region, the investigator would have had longer to complete the investigation, and there would have been a greater range of determinations that could have been reached.

### Reclassification

Only one of the files audited by IBAC was reclassified. That file was reclassified from an 'incident investigation/oversight' file to a MIM file after the oversight process identified that one of the officers involved in the incident should receive 'workplace guidance'. IBAC disagreed with the reclassification as it demonstrated an inconsistent approach to the reclassification of oversight files when workplace guidance is recommended (another oversight file examined in the audit had recommended workplace guidance but was not reclassified).

<sup>137</sup> Victoria Police stations have disposable jumpsuits that can be provided when a person's clothing must be removed.

## 5.3 Identification of subject officers and complaint histories

### Policy and practice

Accurately identifying the officers who are the subject of a complaint or who were involved in a serious incident (referred to as 'the subject officers') is critical to ensuring that the matter is effectively investigated and all relevant evidence – including statements, records and any body worn camera footage from the officers involved – is collected.

It is also necessary to ensure that officers' complaint histories are accurate and that any complaint patterns involving particular officers can be identified. This can inform an investigator's assessment of whether current allegations are part of a pattern of behaviour, and help to identify opportunities for early intervention with an officer.

While it might not always be possible to identify the relevant police officers, investigators should take reasonable steps to pursue all available lines of inquiry to identify subject officers. Failure to list all subject officers involved can result in allegations not being investigated appropriately.

The Koori Complaints Project highlighted concerns around the failure of Victoria Police to examine officers' complaint histories at the time of classification. The project advocated shifting complaint history checks to the beginning of the complaints process, to promote a more proactive rather than reactive focus.<sup>138</sup>

As a result of recommendations made by IBAC in its 2016 audit of regional complaints<sup>139</sup> and Operation Ross,<sup>140</sup> there is now a requirement for the complaint histories of all 'members involved' to be attached to complaint files forwarded to investigators.

### Identification of subject officers

IBAC disagreed with the subject officers identified in 19 per cent of files (10 of 54). This included eight files that failed to list all relevant officers involved in the complaint, and one file that identified incorrect officers.

The following case study provides an example of a matter in which greater efforts should have been made to identify the relevant subject officers.

#### CASE STUDY 13

A member of the public made a complaint after witnessing the arrest of an Aboriginal young person by police officers at a shopping centre. The complainant alleged that the arresting officer used inappropriate force against the young person and that the officer then laughed about the incident with a colleague. The complainant stated that ambulance and shopping centre security staff were present at the scene. The Police Conduct Unit recorded the complaint as an 'incident' and did not conduct an investigation.

In IBAC's view, there were opportunities for the Police Conduct Unit to undertake further checks to identify the officers involved in this complaint. Victoria Police could have contacted the complainant for further information, checked with the shopping centre for details of the incident, and examined rosters to see who was on shift at the shopping centre at the time of the incident.

<sup>138</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, pp 31–32.

<sup>139</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, p 30.

<sup>140</sup> IBAC 2016, *Operation Ross: An investigation into police conduct in the Ballarat Police Service Area*, IBAC, Melbourne, Recommendation 1a, p 9.

## Complaint histories of subject officers

Complaint histories of subject officers were not appropriately considered in 46 per cent of files (25 of 54). This includes 17 files where a subject officer's complaint history raised relevant concerns, including a previous complaint from an Aboriginal person or a previous allegation of racial discrimination. It also includes files where the subject officer's complaint history was not attached or referred to in the file.

This finding is concerning. The failure to consider subject officers' complaint histories increases the likelihood that Victoria Police will fail to identify and address relevant patterns of allegations against particular officers, including allegations of racism or misuse of force. This highlights the importance of accurately identifying complaint histories and considering how these should inform developmental or disciplinary action.

### CASE STUDY 14

A complaint file was created after an Aboriginal young person reported to staff at a youth justice centre that he had been inappropriately sprayed in the face with OC foam while being arrested. The subject officer's complaint history was not attached to the file. IBAC's review of the subject officer's complaint history indicated that he had been the subject of a number of relevant complaint allegations, including misuse of force involving OC spray and racial discrimination. While none of the previous allegations had been substantiated, the officer's complaint history should nevertheless have been considered at the commencement of the investigation.

## 5.4 Choice of investigator and conflicts of interest

### Policy and practice

Victoria Police policy promotes impartial complaint investigations, by encouraging investigators to be aware of impartiality issues and providing guidelines on how to respond to conflicts of interest. Other than for LMR or MIM files, an investigator must not:

- be from the same work area as the subject officer
- be a line manager of the subject officer
- have an existing association with the subject officer such as a friendship, relationship or former common workplace.<sup>141</sup>

For any matter more serious than an LMR or a MIM, the investigator should come from a different division, although IBAC notes that there are greater challenges in creating geographical separation in more remote parts of the state. IBAC's 2016 regional complaints audit identified issues with serious complaint files that were investigated by an officer who was located at the same station as at least one subject officer, despite reminders from Professional Standards Command that investigators should not be drawn from the same place as the subject officers.<sup>142</sup>

Research undertaken by VALS in 2016 indicated that most complaints were investigated by a police officer from the police station or region where the alleged misconduct occurred.<sup>143</sup> In 2017, the then Aboriginal Family Violence Prevention & Legal Service observed that the investigation of complaints by police at the local level serves as a particular disincentive for complainants in regional areas where the local police station only has a small number of serving officers.<sup>144</sup>

<sup>141</sup> Victoria Police Manual, Complaints and discipline, p 9.

<sup>142</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, p 39.

<sup>143</sup> Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 10.

<sup>144</sup> Aboriginal Family Violence Prevention & Legal Service 2017, Submission No. 37 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 18.

Nominated investigators must complete a conflict of interest form that is designed to identify actual, potential or perceived conflicts of interest between the investigator and the subject officer(s). This form requires the approval of the investigator's supervisor, who should develop a conflict of interest management plan if required.

If a complainant, witness or subject officer raises a genuine concern regarding an investigator's conflict of interest, the matter should be reallocated. Failure to identify and manage conflicts of interest seriously undermines investigations and erodes public confidence in the complaints system.

### Choice of investigator

IBAC found that investigations were largely conducted by officers of the appropriate rank. Most investigations (89 per cent) were conducted by senior sergeants and sergeants, with seven per cent of investigations being conducted an inspector.

However, IBAC considered the choice of the investigator to be inappropriate in 45 per cent of files examined (23 of 51). Reasons for disagreeing with the choice of investigator were that the investigator:

- knew the subject officer
- currently worked with or supervised the subject officer, or had previously done so
- worked at the same police station, in the same police service area or in the same division as the subject officer
- was also under investigation
- had a relevant complaint history (discussed in the following section)
- held the same rank as the subject officer.

The following case study illustrates an inappropriate choice of investigator and a failure to respond to a conflict of interest.

### CASE STUDY 15

A complaint file was created after an Aboriginal young person reported to staff at a youth justice centre that he had been assaulted by police while being arrested.

The investigator in this case appeared to know one of the subject officers involved in the matter, however failed to declare a conflict of interest. Conversation notes prepared by the investigator indicate that the subject officer said, 'I am happy that it is you following it up'. The conflict of interest form was approved by a supervisor one month after being signed by the investigator.

Investigators are required to complete a conflict of interest form and obtain signed approval from a supervisor prior to commencing an investigation. The choice of investigator for this complaint file was not appropriate given the prior association with the officer involved. The investigator should have been excluded from the investigation.

### Complaint histories of investigators

Failure to appropriately consider the complaint histories of investigators prior to allocating investigations can seriously diminish confidence in the complaints system. Investigators should be of exceptional character and not have a history of complaints that would raise concerns about their impartiality or ability to investigate a complaint.

IBAC examined files to identify whether the complaint histories of investigating officers gave rise to any concerns that could impact on their impartiality in investigating a complaint. Complaint histories were considered relevant if the investigator had any previous complaint from an Aboriginal person, any previous allegation of racial discrimination or a pattern of complaints.<sup>145</sup>

<sup>145</sup> A pattern of complaints was defined as two or more complaints in the same year (whether about the same or different issues), or two or more complaints about a similar issue (whether in the same or different years).



IBAC identified five files where the investigating officer had a complaint history that could affect their impartiality when investigating a complaint. These files involved:

- a senior sergeant with a previous complaint alleging racist behaviour towards an Aboriginal person
- two senior sergeants with a pattern of complaints alleging assault
- a senior sergeant with a pattern of complaints alleging a failure to investigate matters appropriately
- a senior sergeant with a pattern of complaints alleging improper behaviour.

The following case study illustrates one of these files.

### CASE STUDY 16

A 'misconduct connected to duty' file was created after it was alleged that a police officer failed to take seriously a report of an alleged sexual offence concerning a young Aboriginal child.

The investigator's complaint history gave rise to concerns because the investigator had a previous complaint relating to allegations of racial discrimination against an Aboriginal person. The investigator was also from the same police service area as the subject officer and had previously supervised the officer involved. Although a conflict of interest was declared, it was not managed appropriately.

In this case it was not appropriate for the investigator to be from the same work area as the subject officer, or to be the subject officer's current or previous line manager. This was a substantive conflict and the investigator should have been excluded from the file.

The subject officer in this case was found to be negligent in the discharge of his duties and received an admonishment for his actions.

### Conflict of interest forms

Conflict of interest forms were attached to 84 per cent of files (43 of 51) where they were required.<sup>146</sup>

This is a significant improvement from IBAC's 2016 regional complaints audit, where forms were attached to only two per cent of files. It is also an improvement on the findings of IBAC's 2018 serious incident oversight audit, where 68 per cent of oversight files included a conflict of interest form.

Despite Victoria Police attaching conflict of interest forms to a substantial proportion of files, IBAC had concerns with how conflicts of interest were identified and managed in 42 per cent of these files (18 of 43). In most cases, Victoria Police failed to respond, or responded inadequately, to an identified conflict. As noted above, IBAC found that the choice of investigator was inappropriate in 45 per cent of files, primarily due to investigators' current or previous working relationships with subject officers.

<sup>146</sup> Conflict of interest forms were not required in relation to the three matters recorded as 'incidents'.

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# 6 Investigation

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**This section examines the processes involved in Victoria Police’s investigation of complaints made by Aboriginal people, and its oversight of serious incidents involving an Aboriginal person. For ease, in this report these processes are referred to collectively as ‘investigation’, and the person who undertakes the investigation is referred to as the ‘investigator’.**

This section discusses:

- the investigator’s contact with relevant parties
- the effectiveness of evidence gathering
- bias in the investigation
- supervision and review of the investigation.

As noted in section 3.1, most complaints are allocated to police officers in Victoria Police’s regions or departments for investigation. Professional Standards Command investigates only the most serious matters.<sup>147</sup>

## 6.1 Key findings

- Of the matters examined in this audit, 89 per cent were referred to a region, command or department for investigation, and six per cent were investigated by Professional Standards Command. The remaining matters were recorded in the complaints database as ‘incidents’ and not investigated.
- In 27 per cent of files there was no indication of the investigator having made contact with the complainant at the start of the investigation.
- More than half (54 per cent) of files did not appear to have appropriately considered evidence relevant to the investigation, such as statements, CCTV footage or medical records. This included 23 files where key evidence was missing from the file.
- There were indicators of bias in the investigative process in 41 per cent of files, including investigators minimising allegations, downplaying subject officers’ conduct, making inappropriate comments about civilian witnesses, and scrutinising the complainant’s background or criminal history.
- There were deficiencies in Victoria Police’s supervision of investigations in two thirds (68 per cent) of files, including several files where supervisors failed to identify or address the investigator’s failure to gather key evidence.

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<sup>147</sup> Victoria Police Manual, Complaint management and investigations, p 4.

## 6.2 Contact with relevant parties

### Policy and practice

Effective communication with relevant parties, including the provision of timely and appropriate information, is a critical element of the complaint investigation process. Making contact with complainants in the early stages of an investigation helps to build trust with the complainant and provides an opportunity to acknowledge receipt of the complaint, explain the process and clarify any details or concerns. As outlined in section 4.8, the Victoria Police complaint management and investigations guidelines require investigators to inform complainants of the progress and any key stages in an investigation, including the results and the action taken or proposed to be taken at the completion of the investigation.<sup>148</sup>

If an investigation is not completed within the specified time frames, the investigator must give the complainant a progress report of the investigation, along with an explanation of reasons for the delay and an anticipated completion date.

Subject officers should also be advised of the outcome and action taken in relation to an investigation, unless the disclosure may jeopardise the investigation.<sup>149</sup>

### Contact with complainants

IBAC examined files to determine whether investigators:

- made initial contact with the complainant to clarify the complaint and obtain a statement if appropriate
- provided an appropriately detailed account of the outcome of the investigation to the complainant.

Section 4.8 of the report assesses the extent to which Victoria Police provided updates to complainants on the progress of the investigation, and advised complainants of the outcomes of their complaints.

IBAC found that investigators made some form of contact with complainants at the commencement and conclusion of the investigation in 73 per cent of relevant files (27 of 37).<sup>150</sup>

In 27 per cent of relevant files (10 of 37) there was no indication of the investigator having made contact with the complainant at the start of the investigation.<sup>151</sup> In eight of these files, no or inappropriate reasons were given to explain why the complainant had not been contacted. In most of these cases the complainant was not contacted because they had already made a statement to police.

#### CASE STUDY 17

An Aboriginal man reported to police that he had been inappropriately sprayed with OC foam while being arrested for alleged offences at his home. The complainant provided a statement to a custody sergeant at a police station, who submitted the complaint to the Police Conduct Unit. The investigator did not contact the complainant at the start of the investigation. The only form of contact between the investigator and the complainant was an outcome letter at the conclusion of the investigation. This contravened Victoria Police guidelines.

IBAC's 2016 regional complaints audit also found that, in some cases, investigators did not make contact with identifiable complainants because the contact was not considered necessary.<sup>152</sup>

<sup>148</sup> Ibid, p 7.

<sup>149</sup> Victoria Police Manual, Complaint management and investigations, p 22.

<sup>150</sup> This excludes the 13 serious incident oversight files, the three matters recorded as 'incidents', and an additional serious incident oversight file that was reclassified.

<sup>151</sup> As noted earlier, the investigator may have recorded contact with a complainant in their diary or daybook, rather than on the file.

<sup>152</sup> IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*, IBAC, Melbourne, p 48.

## Contact with subject officers

Subject officers were formally identified in 89 per cent of files (48 of 54). Subject officers were contacted in 79 per cent of these files (38 of 48). In nine files there was no indication that the subject officers were contacted. One file was taken over by IBAC for investigation after the subject officers were identified, but before they could be contacted by the police investigator.

In two files where subject officers were not contacted, statements from the subject officers had already been provided to other officers. In another file, the subject officer had been suspended in relation to a separate investigation.

## Contact with other relevant parties

The audit considered whether investigators contacted all other relevant parties, such as civilian and police witnesses. IBAC found that investigators did not make contact with other relevant parties in 30 per cent of files (16 of 54). In most of these cases no or inappropriate reasons were given to explain why the relevant parties were not contacted.

In one matter, the file clearly identified that civilian witnesses were present at the alleged assault of a young person during his arrest. The file does not contain any notes to indicate why the witnesses were not contacted by the investigator. In their statements the arresting officers inappropriately described the witnesses as 'hostile, violent, and abusive'.

In another matter, the file clearly identified that a support worker from an Aboriginal organisation had accompanied the complainant, an Aboriginal woman, to the police station to report a criminal offence. The report was mishandled by the subject officer and this led to a complaint of duty failure. There was no evidence on the file to explain why the support worker who witnessed the alleged duty failure was not contacted.

## 6.3 Gathering evidence

### Policy and practice

Complaint investigators have a duty to pursue all available lines of inquiry and consider all relevant material.<sup>153</sup>

This includes consideration of:

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

IBAC's 2018 PSC audit highlighted deficiencies in evidence gathering in complaint investigations. That audit found that the types of evidence most frequently overlooked by investigators were LEAP checks, email or internet audits, CCTV footage, drug and alcohol tests, and use of force forms.<sup>154</sup> In 2008, the Koori Complaints Project identified a lack of statements from independent witnesses on files investigating alleged assaults on Aboriginal people by police.<sup>155</sup>

Neglecting relevant evidence undermines the capacity of investigators to assess complaints accurately and make appropriate determinations. It also limits the ability of supervising officers to effectively review investigation files.

<sup>153</sup> Victoria Police 2022, *Integrity File Management Guide*.

<sup>154</sup> IBAC 2018, *Audit of complaints investigated by Professional Standards Command*, Victoria Police, IBAC, Melbourne, pp 33–35.

<sup>155</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne p 40.

## Consideration of relevant evidence

IBAC sought to establish whether investigators considered all relevant evidence as part of the investigation process.<sup>156</sup> The audit found that 54 per cent of relevant files (27 of 50) did not appear to have appropriately considered all evidence relevant to the investigation. This included 23 files where some evidence was not considered at all.

The most frequent types of evidence that were relevant but overlooked by investigators were witness statements, police statements, subject officer statements, CCTV footage, complainant statements and medical records.

The following case studies illustrate failures by investigators to gather relevant evidence in the investigation of complaints.

### CASE STUDY 18

A Koori Youth Justice worker lodged a complaint with the Police Conduct Unit after an Aboriginal young person reported that he had been assaulted by police. The complainant was unable to identify the subject officers involved. The investigator failed to:

- formally take a written statement, despite speaking to the complainant
- obtain a statement from an arresting officer to verify the identity of the subject officers involved
- obtain statements from civilian witnesses who were present at the time of the arrest
- obtain a statement from the complainant's mother, who was present with the complainant in custody, to verify the nature of the allegations
- review CCTV footage of the station to check the complainant's claim (as initially proposed by the investigator).

The file was closed with a determination of 'no complaint', despite the fact that other avenues to establish the identity of the subject officers could have been pursued.

### CASE STUDY 19

An Aboriginal young person reported that he had been assaulted by police while being arrested in a public place. The complainant allegedly sustained injuries to his face during the arrest. The matter was referred to lawyers, who took a statement from the complainant and formally lodged the matter with the Police Conduct Unit. The investigator:

- spoke to one of the subject officers and one of the people involved in the incident, but failed to take a formal statement from the complainant
- did not consider contacting the youth worker who supported the complainant the day after the incident and observed the extent of his injuries
- was unable to take a statement from one of the subject officers involved due to the officer being suspended for another matter at that time.

The investigator appeared to rely on evidence collected by the lawyers to verify the complainant's version of events, rather than pursuing police lines of inquiry.

<sup>156</sup> This analysis excludes the three 'incidents', as they were not investigated, and one file taken over by IBAC.

## 6.4 Bias

### Policy and practice

Bias, whether actual or perceived, undermines the integrity of an investigation and erodes trust in the police complaints process.

The Police Accountability Project has highlighted that evidence collection in internal police investigations can be subject to the biases, motivations and interests of the investigator.<sup>157</sup> Its 2017 briefing paper *Independent investigation of complaints against the police* identified several indicators of bias, including investigators:

- not collecting evidence from all witnesses
- not gathering CCTV or other evidence in a timely manner
- viewing the complainant as criminal and motivated to lie
- downplaying or minimising unlawful police conduct
- picking holes in a complainant's story, but not the police version of events
- intimidating or urging complainants to drop their complaint
- failing to interview police, and instead just accepting a statement or notes from officers
- failing to understand and follow organisational policies and processes.

The Koori Complaints Project referred to Aboriginal community members' concerns that the integrity of investigations was compromised by the use of local police as investigators.<sup>158</sup> Research undertaken by VALS on the handling of police complaints made by Aboriginal people concluded that perceptions of inherent bias in the investigative process were supported by consistently low substantiation rates, and the fact that the vast majority of complaints were investigated in the geographical area in which the alleged misconduct occurred.<sup>159</sup>

### Bias in the investigative process

IBAC examined files for evidence of bias in the investigative process that could undermine the integrity of the investigation. The audit identified potential indicators of bias in 41 per cent of audited files (22 of 54). These included investigators:

- minimising allegations
- downplaying the subject officers' conduct
- making inappropriate comments about civilian witnesses
- scrutinising the complainant's background or criminal history.

In one file, the supervisor made references to the complainant's family associates being of 'dubious integrity', alluded to the allegations being 'trivial' and suggested that charges against the subject officer were 'not in the public interest' because of 'frustrations' with the complainant.

In another file, the background and criminal history of the complainant appeared to be heavily scrutinised. The complainant was described as a 'recidivist offender' from a 'dysfunctional family', with a 'troubled upbringing'.

In a third file, the brief of evidence minimised the conduct of the subject officer, despite the actions of this officer being clearly visible on CCTV footage. The file also unduly emphasised that the complainant did not wish to make a complaint or statement.

<sup>157</sup> Police Accountability Project 2017, *Independent Investigation of Complaints against the Police*, Policy Briefing Paper, pp 13–14.

<sup>158</sup> Victoria Police and Department of Justice 2008, *Koori Complaints Project 2006–2008: Final Report*, Melbourne, p 39.

<sup>159</sup> Victorian Aboriginal Legal Service 2017, Submission No. 46 to IBAC Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 9.

## CASE STUDY 20

An Aboriginal woman reported that she had been assaulted by police while being arrested at her home, after police arrived at the residence looking for someone else and she attempted to restrict their access to the property. The subject officer used inappropriate language regarding the complainant in his formal statement, describing her as 'a dangerous female who is feared', and as someone who 'does agg burs [aggravated burglaries]', 'beats up blokes' and 'is a full lunatic'.

The investigator highlighted inconsistencies in the complainant's version of events, but did not appear to apply the same level of scrutiny to the accounts of the subject officer and police witness. The investigator also demonstrated bias in referring to the complainant's 'class of person'.

## 6.5 Supervision and review of investigation

### Policy and practice

The Victoria Police Manual states that complaints or serious incidents investigated by regions or departments must be supervised by the investigator's senior manager. The supervisor must ensure compliance with all relevant time lines. In addition, all investigation files must be returned to the Assistant Commissioner Professional Standards Command for review.<sup>160</sup>

In practice, investigations undertaken by the regions are reviewed by the local area commander, the divisional superintendent and the Ethics and Professional Standards Officer, with the Professional Development Committee providing general oversight, rather than reviewing each individual file.

All files include a complaint file checklist, which contains a list of tick boxes in relation to the allegations, persons involved, human rights, welfare considerations, determinations, actions and record keeping requirements. This checklist is completed by the manager of the Police Conduct Unit on closure of the file.

### Supervision and review by Victoria Police

IBAC found that in 46 per cent of relevant files (23 of 50), a supervisor identified the need for further work.<sup>161</sup>

For example, in one matter, the Ethics and Professional Standards Officer returned the file to the investigator to consider human rights issues and review the determination, and requested that the investigator's recommendation be reflected in the subject officer's professional development and assessment plan.

In another matter, the file was returned to the investigator for further work on two occasions. The investigator was asked to clarify which subject officers a use of force allegation pertained to, and to explain why criminal charges had not been pursued.

<sup>160</sup> Victoria Police Manual, Complaint management and investigations, p 4.

<sup>161</sup> This analysis excludes the three 'incidents', as they were not investigated, and one file taken over by IBAC.

IBAC had concerns about the effectiveness of the supervision of the investigation in 68 per cent of relevant files (34 of 50). These concerns included supervisors failing to identify issues that should have been addressed by the investigator, such as failing to critically examine the incident, effectively document the evidence, complete an investigation report, address oversight principles, consider human rights, submit a conflict of interest form or identify opportunities for improvement.

### IBAC review

As part of IBAC's oversight function, it reviews selected complaint investigations undertaken by Victoria Police. IBAC selects matters for review based on consideration of whether the investigation involves an issue that IBAC has identified as a specific area of focus or risk, such as the use of force by police.

As part of a review, IBAC assesses whether:

- the Victoria Police investigation was adequately resourced and the investigator had the appropriate skills and expertise
- all relevant evidence was considered and irrelevant evidence disregarded
- there was any actual or perceived conflict of interest or bias exhibited by the investigator
- the investigation was conducted in a timely manner
- the investigation appropriately considered organisational issues.

The findings of IBAC's reviews help to promote systemic change in Victoria Police's practices.

Six of the audited files were the subject of IBAC review. Three of these were reviewed as part of IBAC's Operation Turon.<sup>162</sup>

IBAC's reviews of the remaining three files identified concerns with Victoria Police's investigations, including a failure to address all aspects of a complaint, not considering subject officers' complaint histories, under-classification, oversight failures, delayed investigation, issues with conflict of interest declarations, and inconsistent references to an individual's Aboriginal status. Following the reviews, IBAC wrote to Victoria Police to highlight these issues and request actions to address the failings.

The suggested actions included addressing the failings with the investigating officer and recommending that Victoria Police apologise to a complainant over the way their complaint was managed. In that case, Victoria Police determined not to apologise to the complainant.

<sup>162</sup> Operation Turon was an investigation into alleged misconduct by former Assistant Commissioner Professional Standards Command, Brett Guerin. This included an examination of 189 complaint files in which Assistant Commissioner Guerin had an active role in the decision-making process, or that were otherwise at risk of bias. IBAC's review of complaint files did not identify evidence that Assistant Commissioner Guerin's decisions were affected by bias. However, his behaviour risked damaging the integrity of, and confidence in, Victoria Police investigations. IBAC 2021, *Operation Turon: An investigation into alleged misconduct by a former Victoria Police Assistant Commissioner*, IBAC, Melbourne, pp 6–7.



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# 7 Outcomes of investigations

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**This section examines the determinations reached in relation to the complaints and serious incidents, the actions recommended by investigators to address issues of concern arising from investigations, and the extent to which opportunities for organisational improvements were identified by Victoria Police.**

## 7.1 Key findings

- Only three files received a determination of 'substantiated'. This represented a substantiation rate of 11 per cent (based on 27 files where 'substantiated' was a possible determination). No complaint alleging use of force or assault by police was substantiated.
- Overall, 'no complaint (action sanctioned by law)' was the most common determination (40 per cent), followed by 'not substantiated' (20 per cent).
- IBAC disagreed with Victoria Police's determinations in 32 per cent of files. The most common determination on which IBAC disagreed was 'no complaint (action sanctioned by law)'.
- There were inconsistencies in the recording of determinations in 26 per cent of files, meaning that the determination in the final report was different to the determination in outcome letters to the complainant or the subject officer, or in the complaints database.
- By far the most frequent recommendation following an investigation was 'no action' (90 per cent of files). 'Workplace guidance' was recommended in four files and an 'admonishment' was recommended in one file. IBAC disagreed with the recommendations in 36 per cent of files.
- Criminal charges were recommended by the investigator in one file, involving an allegation that a subject officer had punched the complainant in the face. However, following internal review, and in the absence of consultation with the Office of Public Prosecutions, criminal charges were ultimately not authorised. The complaint received a determination of 'not substantiated' and 'no action' was recommended.
- Victoria Police identified broader organisational lessons or opportunities for improvement in only 16 per cent of files. These included opportunities to improve investigator training and to strengthen training and policies related to the management of people in custody.

**Table 2. Determinations listed in Victoria Police Manual**

Determination	Description
Substantiated	Allegation found to be true
Lesser deficiency	Means a matter uncovered during an investigation not forming part of the complaint laid requiring remedial action, such as failure to complete an official document
Not substantiated	Means the weight of available evidence does not support the account of events as described by the complainant, but is weighted in favour of the account given by the member of police personnel
Unable to determine	Means that the available evidence does not permit the investigating officer to establish whether the complaint is true or not
Not proceeded with	Means that the complaint is recorded as a file initially but is not proceeded with, due to the unwillingness of the complainant to supply information and [sic] is unwilling to withdraw the complaint or there is some other reason for being unable to take the complaint further
Withdrawn	Means that a complainant, having made a formal complaint, then makes a written request that the complaint investigation cease
No complaint	Means a query or complaint by a person that is subsequently found to be an action sanctioned by law, or a complaint lodged by a third party which is denied by the alleged victim who has no complaint to make
Unfounded	Means the available evidence clearly establishes that there are no grounds for the complaint whatsoever
Exonerated	Means that the evidence clearly establishes that a particular member of police personnel is not involved in a complaint, or is completely free from blame
False report	Where there is sufficient evidence to charge the complainant with making a false report to police

## 7.2 Determinations

### Policy and practice

According to Victoria Police policy on complaint management and investigations, investigation reports must address each allegation subject to investigation by using a set of determinations set out in the Victoria Police Manual (see Table 2).<sup>163</sup> A determination must be reached in respect of each allegation.

Victoria Police's framework for determinations is unnecessarily complicated. The categories are unclear and overlapping. From a complainant's point of view, there is only one determination to indicate that their complaint was substantiated, compared with nine possible determinations indicating that the complaint was not substantiated. Some labels and descriptions make little sense from a complainant's perspective.

For example, 'no complaint' can be taken to indicate that the complainant did not make a complaint, when this may not be the case. Similarly, 'not proceeded with' could be interpreted as indicating that the complainant decided not to proceed with their complaint, when this may also not be the case. Alternatively, it could be interpreted as Victoria Police having decided not to proceed with investigation of the complaint due to the complainant's unwillingness to cooperate. This ignores the responsibility of an investigator to consider all relevant sources of evidence other than a complainant's statement.

Added to this complexity is the fact that a determination of 'substantiated' can only flow from four classification categories – 'minor misconduct', 'misconduct connected to duty', 'criminality (not connected to duty)' and 'corruption'. There is also a separate system of determinations for LMR and MIM files, which can only be found to be 'resolved' or 'not resolved'.

<sup>163</sup> Victoria Police Manual, Complaint management and investigations, p 19.

In addition, most serious incident oversight files receive a determination of 'no complaint (action sanctioned by law)' because they have not been generated from a complaint. IBAC has previously recommended that Victoria Police revise how determinations are applied to serious incident oversight files so that they better describe the outcomes of the oversight process.<sup>164</sup>

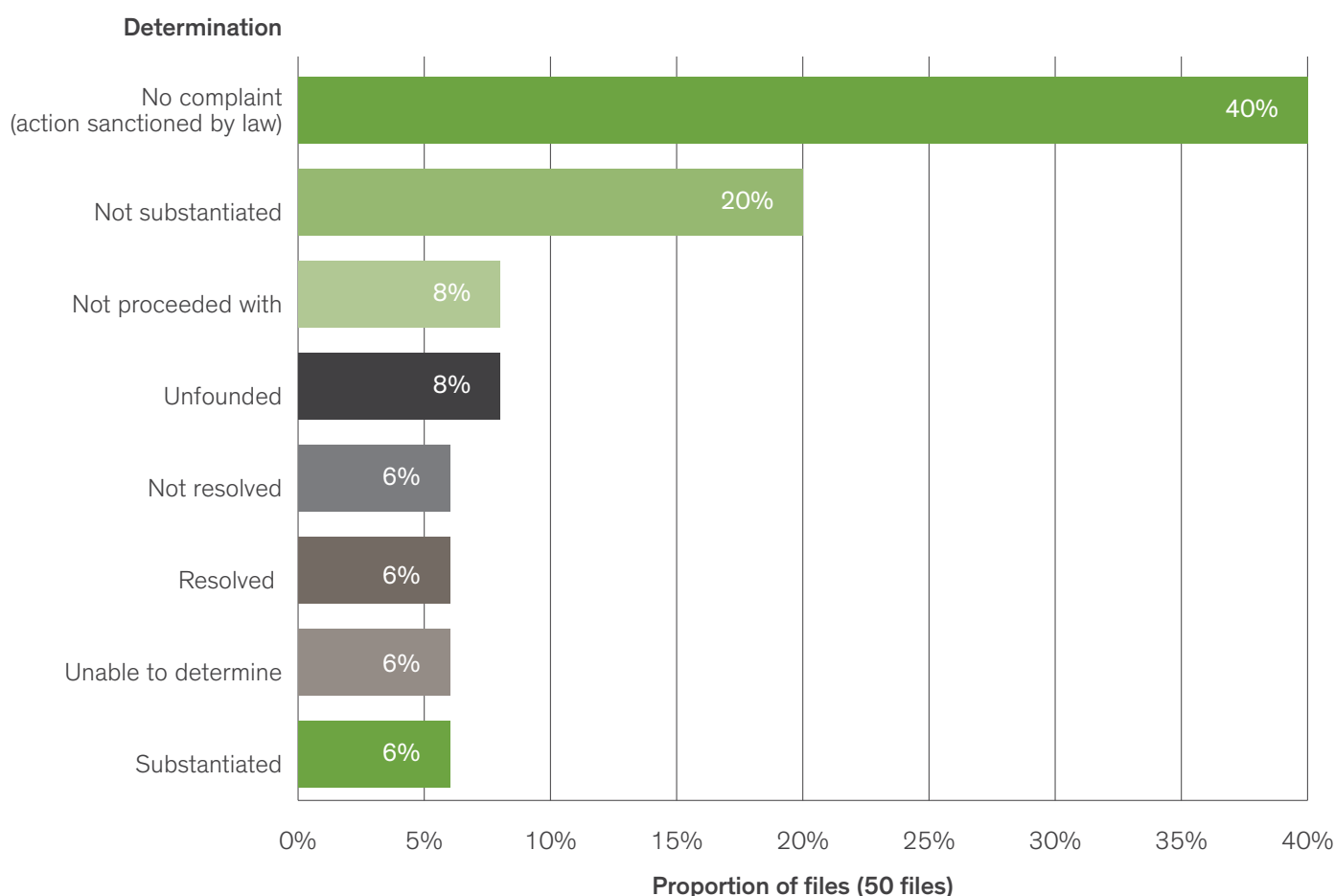
IBAC's 2016 regional complaints audit recommended that Victoria Police review its system of determinations to reduce and simplify determination categories to 'case to answer', 'no case to answer' and 'unable to determine'. This would be substantially clearer for complainants, subject officers and investigators. Victoria Police accepted this recommendation but has not yet implemented it. In 2018 the IBAC Committee reiterated IBAC's recommendation.<sup>165</sup>

The findings of IBAC's 2018 PSC audit also supported the need to simplify determinations. In that audit, IBAC disagreed with the determination in 17 per cent of files and identified a further 15 files which had a determination that was not valid under the Victoria Police Manual.

### Determinations in audited files

In examining determinations, IBAC identified the most serious determination reached in each file, rather than the determination for each allegation. Determinations in audited complaint files are summarised in Figure 3. This analysis excludes the three matters recorded in the complaints database as 'incidents' and one file taken over by IBAC.

**Figure 3. Determinations by file**



<sup>164</sup> IBAC 2018, *Audit of Victoria Police's oversight of serious incidents*, IBAC, Melbourne, p 7.

<sup>165</sup> Recommendation 63, IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 309.

'No complaint (action sanctioned by law)' was the most common determination (40 per cent). This is largely due to the fact that the 13 serious incident oversight files each received this determination. As previously mentioned, this is consistent with Victoria Police practice, but does not accurately reflect the outcomes of the oversight process.

The next most frequent determinations were 'not substantiated' (20 per cent), 'not proceeded with' (8 per cent) and 'unfounded' (8 per cent).

Only three files received a determination of 'substantiated'. One was a 'misconduct connected to duty' file regarding failure to take action and two were 'minor misconduct' files regarding inappropriate language.

As noted, a determination of 'substantiated' can only flow from four classification categories. This audit identified 27 files in these categories. This produced a substantiation rate of 11 per cent (three of 27 files). This substantiation rate was lower than in IBAC's 2018 PSC audit (19 per cent).<sup>166</sup> The Koori Complaints Project found that only 1.2 per cent of 'assault by police' complaints – the most serious and frequent complaint category – were found to be 'substantiated'. This is a higher rate than in this audit, where no complaint alleging assault by police received a determination of 'substantiated'.

IBAC disagreed with Victoria Police's determination in 32 per cent of files (16 of 50). In three files where 'no complaint', 'not substantiated' and 'unable to be determined' were the respective determinations, IBAC considered that there appeared to have been sufficient evidence to substantiate the complaint. However, IBAC's audit did not involve reinvestigating the complaint or gathering new evidence.

The most common determination on which IBAC disagreed with Victoria Police was 'no complaint (action sanctioned by law)'. Aside from IBAC's general concern that this determination is not appropriate for serious incident oversight files, the use of 'no complaint' in one serious incident oversight file failed to highlight potential misconduct by a subject officer. In addition, IBAC disagreed with the 'no complaint' determination in some complaint files on the basis that it was inappropriately applied where 'unable to determine' or 'not substantiated' were more appropriate determinations.

IBAC disagreed with determinations in five files where the complaint was not investigated appropriately and more evidence could have been obtained.

The audit identified two files where Victoria Police did not properly investigate a complaint because the complainant did not wish to cooperate (but did not wish to withdraw the complaint), and a determination of 'not proceeded with' was reached. This approach may result in allegations of police misconduct not being appropriately investigated. Although a complainant may not want to cooperate (for example, by not making a statement), there may still be a basis for the complaint, which could be investigated through other avenues of inquiry. Some complainants – such as vulnerable or young complainants – may have valid reasons for not wishing to assist police investigators.

In another file, a thorough investigation was undertaken but a determination of 'not proceeded with' was reached because the complainant was unable to be contacted for a statement. This determination fails to reflect the fact that the investigation was undertaken.

<sup>166</sup> IBAC 2018, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, IBAC, Melbourne, p 37.

### CASE STUDY 21

A 'minor misconduct' file was created after an Aboriginal young person reported to staff at a youth justice centre that he had been assaulted by police when he was arrested. Victoria Police stated in the outcome letter to VALS that the complainant had been undecided in formalising the complaint because a time to take the complainant's statement could not be arranged between VALS and the investigator, and 'as such no formal complaint was taken' and 'no investigation was carried out'.

Although the complainant reported that the incident occurred during his arrest, the arresting officer and other officers present were not identified as subject officers by the investigator. These officers were not contacted by the investigator and their complaint histories were not assessed. The investigator did not attempt to ascertain whether any CCTV footage was available. The investigator also did not attempt to contact the third party who submitted the complaint to find out whether they, or any other staff, had observed the complainant having any injuries. The Ethics and Professional Standards Officer finalised the determination as 'not proceeded with'.

### CASE STUDY 22

A 'minor misconduct' file was created after an Aboriginal man made a complaint to police that he had been assaulted while in custody. The evidence collected by the investigator included conflicting statements from the complainant and the subject officer. Medical reports were obtained, but were inconclusive. The incident took place in an interview room where there was no CCTV. The determination reached by the investigator was 'no complaint (action sanctioned by law)' on the basis that the use of force by police in this case was in line with law and policy. In IBAC's view, the inconclusive evidence does not support this determination.

IBAC identified inconsistencies in the recording of determinations between the file, outcome letters and the complaints database in 26 per cent of files (13 of 50). This might occur where a supervisor has changed an investigator's determination. It may also indicate obscuring behaviours (see section 8 of this report). The following case study illustrates one of these files.

### CASE STUDY 23

A 'minor misconduct' file was created after an Aboriginal teenager alleged that two police officers hit his head into a police van and verbally abused him. One officer admitted to using inappropriate language towards the complainant and this allegation was substantiated. This determination was consistently recorded in the final report, outcome letters and the complaints database.

In relation to the second subject officer, the investigator reached a determination of 'unfounded' in the final report for the allegations of excessive use of force and inappropriate language. However, the Ethics and Professional Standards Officer changed the determination for the excessive use of force allegation to 'not proceeded with', and removed the allegation of inappropriate language. In the outcome letters and the complaints database, the determination for the use of force allegation for the second subject officer was 'not proceeded with', and the allegation of inappropriate language was not referred to.

All allegations made by complainants should be accurately recorded against subject officers. The inappropriate language allegation against the second subject officer was not substantiated in this case. This should have been reflected with the appropriate corresponding determination, rather than the allegation being removed.

## 7.3 Recommendations in investigation reports

### Policy and practice

Complaints provide an important opportunity for Victoria Police to identify and respond to problems. The Victoria Police complaint management and investigations guidelines state that the investigator should recommend what, if any, action is required to address issues identified during an investigation. Recommended actions include:

- admonishment
- discipline charges
- criminal charges
- management intervention (often described as 'workplace guidance'), such as the provision of education, advice and guidance to address an employee's performance issue
- action to manage underperformance
- action on any identified deficiencies in Victoria Police premises, equipment, policies, practices or procedures.<sup>167</sup>

An investigator can also recommend 'no action'.

Currently, if a complaint includes allegations that amount to a criminal offence, criminal proceedings must be pursued ahead of disciplinary proceedings. If Victoria Police reasonably believes that a police officer has committed a reportable offence, it must not charge the officer with a breach of discipline until it has consulted with the Director of Public Prosecutions.<sup>168</sup>

In 2018, the IBAC Committee's *Inquiry into the external oversight of police corruption and misconduct in Victoria* recommended an amendment to the Victoria Police Act to authorise Victoria Police to commence disciplinary actions against a police officer or protective services officer, including possible dismissal of that officer, where the conduct in question is subject to criminal charges. Victoria Police and the Victorian Equal Opportunity and Human Rights Commission support this recommendation. Victoria Police has stated that the current legislative arrangement, which prevents concurrent criminal and disciplinary proceedings, has been an 'impediment to the timely removal of unsuitable employees'.<sup>169</sup>

The Legal and Discipline Advisory Unit assists investigators with the discipline process and consulting the Office of Public Prosecutions. Investigators should consult with the Legal and Discipline Advisory Unit where investigations recommend discipline actions to establish the requirements in proving the alleged breach.

IBAC's 2018 PSC audit found that in 56 per cent of files, 'no action' was recommended, while in a further 24 per cent of files, the matter was 'filed for intelligence'. In both the 2018 PSC audit and the 2016 regional complaints audit, where an action was recommended, 'workplace guidance' (management intervention) was most commonly recommended.

<sup>167</sup> Victoria Police Manual, Complaint management and investigations, p 20.

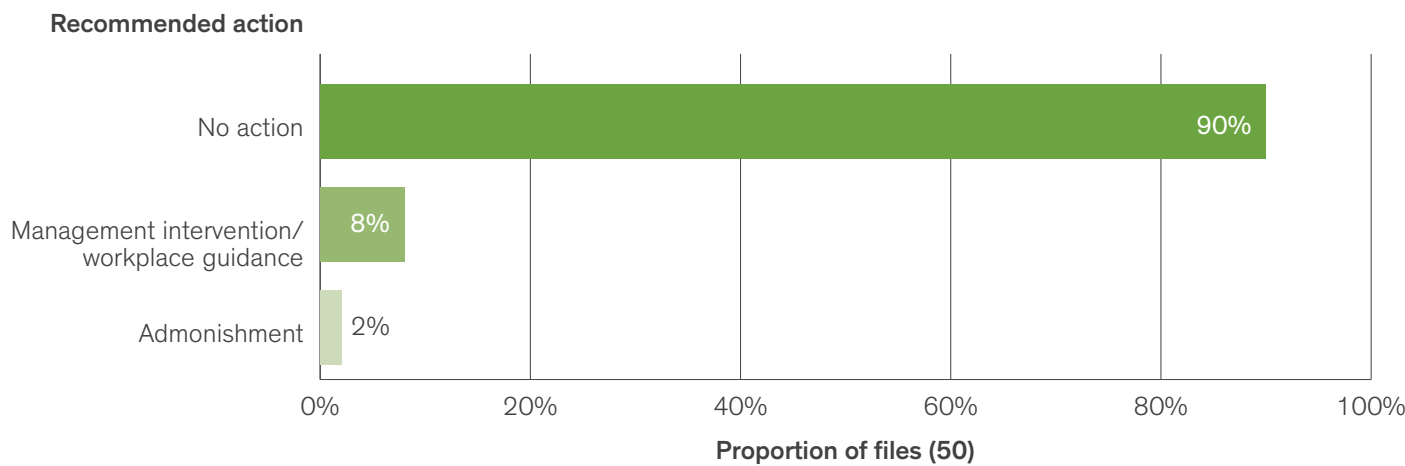
<sup>168</sup> Victoria Police Act s 127(2).

<sup>169</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 309.

Recommended actions in audited files

Recommended actions in the audited files are summarised in Figure 4.<sup>170</sup> The most common recommendation was ‘no action’, which was recommended in 90 per cent of files (45 of 50), followed by ‘workplace guidance’ (‘management intervention’), which was recommended in eight per cent of files (four of 50). An admonishment was recommended in one file.

Figure 4. Recommended action by file



Of the three files that received a determination of ‘substantiated’, one recommended an admonishment for the subject officer’s failure to take seriously a report of an alleged sexual offence against a young Aboriginal child. The other two files contained recommendations for ‘workplace guidance’ in relation to inappropriate language.

‘Workplace guidance’ is a management intervention that aims to constructively address a subject officer’s performance issue. It may involve a discussion with a supervisor, further training or mentoring. It is a developmental, rather than a disciplinary, action. ‘Workplace guidance’ was recommended in two files where the complaints were not found to be substantiated. One file was a serious incident oversight file that received a determination of ‘no complaint (action sanctioned by law)’, and the other was a MIM file that received a determination of ‘not resolved’.

An admonishment was issued in only one file in the audit. As noted above, this was a ‘misconduct connected to duty’ file where the officer failed to take action in response to a report that a sexual offence had been committed against a child (see case study 25). Admonishment is an intervention that may be used when an officer commits a breach of discipline, whether on or off duty. Admonishment notices are a non-statutory mechanism that supports the discipline process.

IBAC disagreed with the recommended action in 36 per cent of files (18 of 50). In 12 files, IBAC took the view that some action was warranted where ‘no action’ was recommended. This included one file where subject officers were not identified, but could have been.

In one file (discussed in the following section) criminal charges were recommended by the investigator, but the recommendation was downgraded to ‘no action’ by the Assistant Commissioner Professional Standards Command.

170 The analysis in this section and Figure 4 excludes the three ‘incidents’ and one file that was taken over by IBAC.

The following case study illustrates a situation in which action should have been recommended, but was not.

### CASE STUDY 24

A MIM file was created after an Aboriginal woman made a complaint alleging duty failure by a first constable at a family violence incident. The complainant stated that she had been assaulted in her home by her ex-partner. When police arrived they first spoke to the ex-partner. Police recorded him as the affected family member and the complainant as the respondent. The complainant's ex-partner told police that the complainant used illicit drugs and owed a lot of money due to gambling.

In her statement, the subject officer stated that the complainant was not forthcoming with police, did not need police assistance, did not display any injuries and was not in fear. In contrast, the complainant described herself as feeling intimidated and unsupported by police, and not being uncooperative.

When the complainant contacted the police station to follow up on her statement, an officer from the Family Violence Unit questioned her about her gambling activities, because 'Magistrates regularly request back stories where they suspect alternative reasons for the intervention order'.

In an affidavit, the subject officer explained to the court that police had not applied for an intervention order on the complainant's behalf because police did not consider the complainant to be at risk. The court granted the complainant a 12-month intervention order.

A brief of evidence was prepared against the complainant's ex-partner for sending a text message in which he threatened to physically assault the complainant. A sergeant reviewing the brief commented that, although the ex-partner admitted to sending the message, the complainant did not bring it up until 'she makes what appears to be false allegations of being punched'. The brief was not authorised.

The file received a determination of 'not resolved' and 'no action' was recommended. The complainant received a short outcome letter stating that the subject officer's actions were in accordance with law and police practice. The letter did not explain how Victoria Police reached this conclusion.

IBAC considers that the complainant was misidentified as the respondent in a family violence incident and that the Victoria Police code of practice for the investigation of family violence was not followed. Aboriginal organisations have drawn attention to the inadequacy of this kind of police response to allegations of family violence by Aboriginal women. In IBAC's view, Victoria Police should have taken action in relation to the officer's failings.



The following case study illustrates a file in which an admonishment alone was insufficient.

### CASE STUDY 25

A 'misconduct connected to duty' file was created in response to an allegation that a police officer failed to take seriously a report of an alleged sexual offence against an Aboriginal child. After attending the police station, the complainant and victim presented at a hospital, where staff contacted police. The allegation was identified as 'failure to take action'. The allegation was found to be substantiated and the recommendation was an admonishment.

IBAC supports the admonishment recommendation, but is concerned that there was no indication from the file that the subject officer would receive any specific training or supervision in addition to the admonishment. Given the seriousness of the matter, IBAC also disagrees with the investigator's comments that the admonishment should not be noted in the subject officer's professional development and assessment plan.

In 14 per cent of files (7 of 50) there were differences in the recommended action recorded on the file compared with the outcome letter and/or the complaints database. In five files, the investigator recommended some form of action but the outcome letters and/or the complaints database listed 'no action'. It is not clear whether this was due to administrative error, or because the recommendation was changed by a supervisor (or both).

In a further file, a recommendation of 'no action' was recorded in the investigator's final report, but a recommendation of 'workplace guidance' was recorded in the outcome letters and the complaints database. In the final file, the letter to the complainant recorded a recommendation of 'workplace guidance' but the letter to the subject officer recommended 'no action'.

### CASE STUDY 26

A 'minor misconduct' file was created after a young Aboriginal man was seen by police on an unregistered motorbike. The man was known to police, who questioned him about the unregistered motorbike and his lack of helmet. Police determined that the man had outstanding warrants. Stating that they were worried about the man riding off, the police punctured one of the motorbike's tyres and disabled the spark plug. They arrested the man.

Another police officer learned of the method used to disable the motorbike and submitted a complaint of property damage on the man's behalf. The investigator recommended 'workplace guidance' regarding less intrusive means of disabling a vehicle. The investigator's supervisors agreed. However, in a memorandum from the Ethics and Professional Standards Officer outlining the wording for the subject officers' outcome letters, the recommendation was changed to 'no action'. 'No action' was the outcome recorded in the complaints database and in the subject officers' complaint histories.

### Disciplinary or criminal proceedings

One file was initially recommended for criminal charges. The complainant alleged that the subject officer had punched him twice in the face while speaking to him after he was seen riding an unregistered motorbike. The investigator, an experienced senior sergeant, collected relevant evidence and interviewed the subject officer. The investigator and the regional inspector believed there were sufficient grounds to recommend criminal charges against the subject officer.

However, the Ethics and Professional Standards Officer stated that it was unlikely that a conviction could be obtained and suggested that disciplinary action was more appropriate. The matter was then forwarded to the Discipline Advisory Unit. The Discipline Advisory Unit is now known as the Legal and Discipline Advisory Unit, which recommended that criminal charges not be authorised and that no disciplinary action be initiated. The matter concluded after being reviewed by the Assistant Commissioner Professional Standards Command, who did not authorise criminal charges or disciplinary action.

The complaint received a determination of ‘not substantiated’ and ‘no action’ was recommended. The Office of Public Prosecutions was not consulted, and a memorandum by the Assistant Commissioner Professional Standards Command incorrectly outlined reasons as to why there was no need to consult with that office.

Given the seriousness of the allegations and the prima facie case built by the investigator, IBAC’s view is that Victoria Police should have followed the process for proceeding with criminal charges and consulted the Office of Public Prosecutions. Victoria Police should also have taken action in relation to the subject officer.

## 7.4 Organisational learnings

Complaint and serious incident oversight investigations provide opportunities for individual professional development among officers, but can also address wider policy, procedural and organisational issues within Victoria Police.

Victoria Police investigators identified broader organisational lessons or opportunities for improvement in only 16 per cent of files (eight of 50 files). These included opportunities to:

- improve investigator training
- strengthen training and policies related to the management of people in custody
- clarify standard operating procedures around the use of equipment
- strengthen other policies, processes and training.

There were no files where the investigator suggested possible improvements in relation to human rights.

The following case study illustrates positive practice by Victoria Police in following up identified organisational issues.

### CASE STUDY 27

A serious incident oversight file was created after a 22-year-old Aboriginal man escaped from police custody while being transferred from a hospital to a police van. The man was handcuffed and being held by the arm by a police officer, but escaped from the officer’s hold, ran from the hospital and could not be caught. The police officers who were transferring the individual into the van had been warned that he was a flight risk when they took custody of him.

The oversight file identified that, although the subject officers had acted in a manner consistent with Victoria Police policies in relation to handcuffing, there were systemic improvements that could be made to stop similar incidents in future. These suggestions built on ideas recorded in a thorough incident debrief report that was also included on the file. The oversight file allocated responsibility for actioning the suggestions to a specific officer at the relevant station.

The following case highlights a file where the investigator and supervisors failed to identify breaches of policy.

## CASE STUDY 28

A 'minor misconduct' file was created after an Aboriginal teenager made a complaint that he had been assaulted while being arrested. He also alleged that, in a separate incident in the same month, he had been arrested, but had not been interviewed or allowed to make any phone call, and that no one knew where he was.

The investigator failed to identify various breaches of the Victoria Police Manual guideline on safe management of persons in police care or custody. These breaches included leaving the complainant in an interview room for four hours after his second arrest. The guideline specifies that interview rooms are not detention facilities, and that a person must not be left in an interview room unsupervised. The custody supervisor stated that he confirmed with an arresting officer that he was conducting regular checks on the complainant. This meant that there were times when the complainant was left in the interview room unsupervised. In their statements, the custody supervisor and arresting officers stated that they decided not to interview the complainant because of fears for their own safety. The arresting officers also stated that the complainant was intoxicated and a minor. Leaving the complainant in an interview room under these circumstances breaches several sections of the guideline.<sup>171</sup>

The investigator failed to identify that, on both occasions when the complainant was arrested, the arresting officers noted in their statements that the complainant was affected by drugs and/or alcohol. Both attendance summaries for these arrests record the complainant as not being affected by alcohol or drugs at the time of the alleged offence.

This is concerning, as there are specific policies that must be followed if an Aboriginal person is intoxicated while in custody, including notifying the Aboriginal Community Justice Panel. This concern is compounded because the complainant was interviewed after the first arrest, which would not have been appropriate if he had been intoxicated. The investigator should have investigated this discrepancy to ensure that proper policy was followed.

IBAC is concerned by the breaches of policy by the custody supervisor and arresting officers, which risked the welfare of the complainant, themselves and others. IBAC is also concerned that the investigator and supervisors failed to identify these breaches. Failure to identify policy breaches means they cannot be addressed through workplace guidance or further training. This in turn allows systemic problems to go unaddressed, thereby risking the safety of police and the public.

In IBAC's 2018 PSC audit, 27 per cent of audited files identified areas for possible improvement to Victoria Police policy and procedures. However, Victoria Police did not formally recommend 'action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures', as advised in the Victoria Police complaint management and investigations guidelines. IBAC recommended that Victoria Police ensure that policy and procedural improvements identified by investigators be formally recorded as a recommended action, and implement measures to share those learnings across the organisation.

<sup>171</sup> Victoria Police Manual, Safe management of persons in police care or custody, pp 3, 12, 19, 21.

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## 8 Obscuring behaviours

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**This section examines whether police officers engaged in behaviours that sought to cover up or conceal misconduct by a police officer, including any failure to rigorously investigate complaints or serious incidents.**

### 8.1 Key finding

- IBAC identified indications of obscuring behaviours in 31 per cent of files. These included the under-classification of complaints, failures to undertake rigorous investigations, and a failure to authorise criminal charges or disciplinary proceedings against a subject officer despite the existence of relevant evidence.

### 8.2 Policy and practice

Obscuring behaviours occur when individuals directly involved in misconduct, or witnesses to it, conceal or fail to accurately disclose the misconduct. This includes police officers charging victims of misconduct with offences to justify or conceal the behaviour.

Obscuring behaviours also occur where investigators fail to adequately investigate a complaint or consider all relevant evidence, or reach conclusions or make recommendations that are not supported by the evidence. Managers or supervisors may also engage in obscuring behaviours when they fail to report or rigorously inquire into alleged misconduct, or actively conceal it.

Obscuring behaviours seriously undermine police integrity and decrease community trust and confidence in Victoria Police and its complaint handling systems. They also contribute to under-reporting of police misconduct.

IBAC is working with Victoria Police to deliver education and provide information about obscuring behaviours, and ethics and integrity more broadly, to all Victoria Police employees, from new recruits to senior officers.

## 8.3 Indications of obscuring behaviours

Obscuring behaviours can be, by their nature, difficult to detect. The audit examined files for indications of obscuring behaviours in investigations or in relation to the alleged misconduct or serious incident.

IBAC identified clear indications of obscuring behaviours amounting to serious failings that were likely to have affected the outcome of the investigation in 31 per cent of files (17 of 54). These included:

- under-classification of complaints
- failure to rigorously investigate complaints
- failure to complete a use of force form (when force was used) or failure to accurately report the force that was used
- the provision of inappropriate and inaccurate updates to the subject officer by the Police Conduct Unit
- failure to authorise criminal charges against the subject officer despite relevant evidence.

Failure to rigorously investigate included actions such as not taking steps to identify subject officers even though it was possible to do so, and not collecting all available evidence such as CCTV footage or witness statements (see also section 6.3).

The following case studies highlight serious obscuring behaviours by subject officers and investigators.

### CASE STUDY 29

A serious incident oversight file was created after an Aboriginal man who was taken into custody sustained head injuries. According to the statements of all three officers involved, the man had resisted arrest. One of the officers involved (officer 1) stated that he punched the man twice in the face, and that, as a result of these punches, the man stopped resisting.

The statements of the other two officers involved (officers 2 and 3) indicated that officer 1 struck the man with an open hand. These accounts are inconsistent with the account of officer 1 and appear to minimise his actions.

Officer 1 stated that, later in the police cells, he punched the man in the ribs to gain compliance.

The serious incident oversight file failed to examine officer 1's use of force against the man. The oversight file should have considered whether:

- the actions of officer 1 were consistent with Victoria Police policies and training
- the actions of officer 1 amounted to misconduct
- the actions of officer 1 contributed to the man's injuries, for which he was later hospitalised
- the actions of officers 2 and 3 were a deliberate attempt to cover up the misconduct of officer 1.

The failure of the oversight file to examine these questions, together with the statements of officers 2 and 3, may represent an attempt to cover up misconduct by officer 1 and prevent it being properly investigated. None of these issues was identified by divisional supervisors or officers from Professional Standards Command who reviewed and approved the file.

### CASE STUDY 30

An Aboriginal young person alleged that he had been assaulted by police while being arrested. The complaint noted that the complainant did not know the names of the officers involved. The Police Conduct Unit was unable to identify the arresting officers at the time it received the complaint, and instead inappropriately listed the police informant for the charges against the complainant as the subject officer.

The investigator quickly established that the police informant was not on duty when the complainant was arrested and determined that she should be exonerated. The investigator identified the arresting officers and took statements from them. The complainant did not make a statement in relation to the complaint. However, in the final report, the investigator indicated that the complainant reported being assaulted by the police informant. This statement clearly ignored the details of the complaint, which stated, 'young person does not know names of officers'. This also implies that there was more than one subject officer.

The superintendent supervising the investigation commented, 'Statements have been taken from the arresting members and there is no evidence to suggest any impropriety on their behalf'. This is not a critical examination of the evidence, and indicates an over-reliance on police accounts.

The arresting officers' complaint histories were not considered by the investigator. One officer had a relevant complaint history – two other individuals had recently alleged that he had assaulted them while they were being arrested. This speaks to a pattern of behaviour that should have attracted scrutiny from the investigator.

The investigator also did not seek statements from the civilian witnesses who were present during the arrest. The arresting officers described these witnesses as 'hostile, violent and abusive' in their statements. Regardless, the investigator should have contacted these witnesses to collect all available evidence and not solely relied on the police version of events.

The investigator noted in the file that he was trying to obtain CCTV footage from the complainant's time in custody, but the file does not indicate whether the investigator received or viewed such footage, or what it showed. The investigator stated that the custody module records the complainant as being aggressive and abusive, but neglected to include the custody module paperwork in the file.

The actions of the investigator represent a clear failure to rigorously and impartially investigate the complaint.

# 9 Timeliness

Completing complaint investigations in a timely manner is a key element of a fair and responsive complaint handling system for both complainants and subject officers.<sup>172</sup> Failure to respond to a complaint in a timely manner limits Victoria Police’s ability to appropriately address or remedy the complaint, and may result in evidence being lost.

## 9.1 Key findings

- There were delays in classification, allocation or reclassification in 26 per cent of files. Thirty per cent of files were not completed on time, including those that were overdue after receiving an extension. Four files were more than 100 days overdue and one file was 412 days overdue.
- Most files were classified on the day they were lodged or the next day. More than half of the audited files (54 per cent) were allocated to an investigator within five days of being classified. One file was reclassified 223 days after being allocated.
- IBAC identified two files where decisions to await the outcome of charges against the complainant inappropriately and unnecessarily delayed the investigation.
- Extensions were sought and granted in 33 per cent of files. Most extensions were for a period of up to 30 days. Several files were already overdue when the extension was sought.

## 9.2 Policy and practice

As outlined in section 3, all complaints received by Victoria Police are referred to the Police Conduct Unit for processing. There are no specific policies outlining time frames for registering, classifying or allocating complaints. However, time frames within which investigations must be completed are calculated from the date the complaint is lodged with Professional Standards Command to the date the investigation is finalised. IBAC’s previous audits have found that complaint and serious incident oversight files are generally registered, classified and allocated in a timely manner.

Victoria Police policy on complaint management and investigations specifies time frames within which complaint files and serious incident oversight files must be completed (see Table 3).

**Table 3. Victoria Police time frames for completion of selected file types**

Classification	File type	Days
C1-0	Work file	152
C1-6	Internal management (correspondence)	90
C1-8	Incident investigation/ oversight*	90
C2-1	Minor misconduct	90
C2-4	Local management resolution	7
C2-5	Management intervention model	40
C3-2	Misconduct connected to duty	90

\* Referred to in this report as serious incident oversight files.

<sup>172</sup> In its *inquiry into the external oversight of police corruption and misconduct in Victoria*, the IBAC Committee observed that the timely completion of complaint investigations is one of the key best practice principles for an effective complaints system. IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 268.

Investigators may apply for extensions in certain circumstances. Extensions must be requested before the due completion date, and extension requests must be approved and attached to the file<sup>173</sup> and recorded in the complaints database.<sup>174</sup> Extension requests are to be approved by:

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

Time frames can be suspended if a delay is caused by an external factor. If an investigator is unable to investigate the complaint, then managers should consider reallocating the file to another investigator.<sup>175</sup>

Extensions should *not* be granted if:

- the subject officer is on leave or rest days
- the investigator is on leave or rest days
- the complainant failed to make or return contact with the investigator
- the complainant is refusing to cooperate.<sup>176</sup>

Protracted resolution times and delays in investigations can generate dissatisfaction among complainants and may convey that their complaint is not being taken seriously.<sup>177</sup>

IBAC's 2016 regional complaints audit found that there were significant delays associated with the investigations of most categories of complaint file, with almost one third of files being overdue. In its 2018 inquiry report, the IBAC Committee referred to evidence received from a range of stakeholders indicating that police complaints are not processed in a timely manner.<sup>178</sup> Victoria Police acknowledged this concern.

## 9.3 Registration, classification and allocation

IBAC found that 49 per cent of relevant complaint files (18 of 37) were lodged within five days of the alleged misconduct, and 38 per cent (14 of 37) were lodged more than 20 days after the alleged misconduct.<sup>179</sup>

Most relevant complaint files (86 per cent, 32 of 37) were classified on the day they were lodged or the next day. Four more files were classified within four days of being lodged, and in one file IBAC was unable to determine when the complaint was classified.

More than half of relevant files (57 per cent, 29 of 51) were allocated to an investigator within five days of being classified.<sup>180</sup> More than three-quarters of files (76 per cent, 39 of 51) were allocated within 10 days of classification. Six files took more than 20 days to allocate. In five of these files it was unclear why allocation to an investigator took between 21 and 64 days. The sixth of these files indicated that allocation had been delayed because the matter was being looked at by the Priority Communities Division first. IBAC was unable to determine when one file was allocated.

One file – a serious incident oversight file – was reclassified as a MIM file because the need for 'workplace guidance' was identified. The file was reclassified 223 days after being allocated, however it was unclear why reclassification took this long.

IBAC identified delays in classification, allocation or reclassification in 26 per cent of relevant files (13 of 50). In 69 per cent of these files (nine of 13), the reason for delay was unclear.

<sup>173</sup> Victoria Police Manual, Complaint management and investigations, p 9.

<sup>174</sup> Victoria Police 2014, *Conduct and Professional Standards Division Standard Operating Procedures*, p 22.

<sup>175</sup> Victoria Police Manual, Complaint management and investigations, p 9.

<sup>176</sup> Ibid.

<sup>177</sup> Victoria Police 2012, *Ethical Health Process Review*, p 9; Victoria Police 2013, *Equality is not the same... Victoria Police response to community consultation and reviews on field contact policy and data collection and cross cultural training*, p 37.

<sup>178</sup> IBAC Committee, Parliament of Victoria 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 144.

<sup>179</sup> This excludes the 13 serious incident oversight files, the three matters recorded as 'incidents' and an additional serious incident oversight file that was reclassified.

<sup>180</sup> This excludes the three matters recorded as 'incidents'.

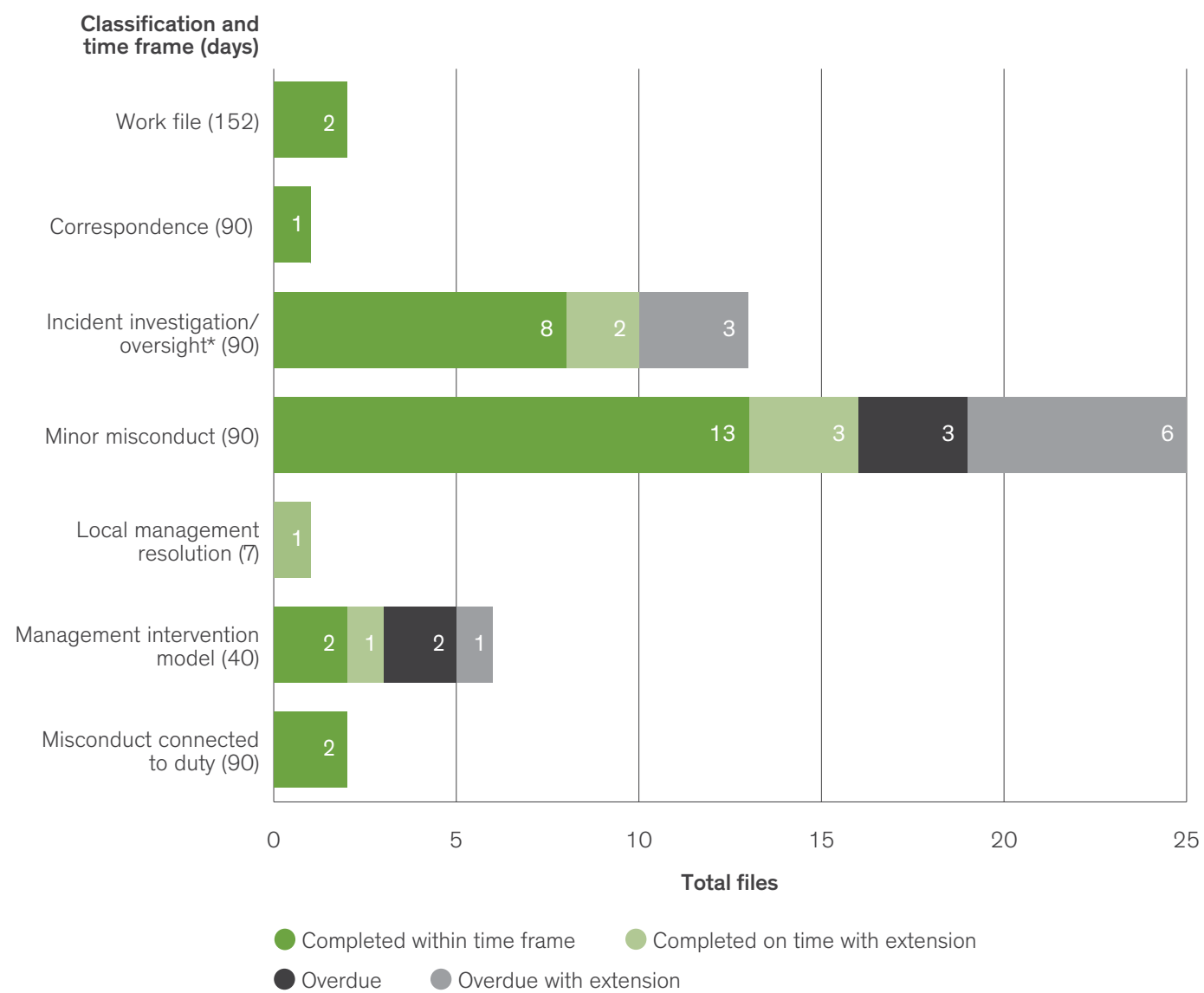


9.4 Investigations and extensions

IBAC found that, overall, 70 per cent of relevant files (35 of 50) were completed on time (see Figure 5).<sup>181</sup> Thirty per cent of files (15 of 50) were overdue, including those that were overdue after receiving an extension. Most of these files (93 per cent, 14 of 15) were more than a week overdue. Nine files were more than 30 days overdue. Four files were more than 100 days overdue, one of which was 412 days overdue with no extensions sought.

- In many cases there was no indication on the file as to why the file was overdue, but in some cases delays were caused by:
- investigators going on leave
  - investigators appearing to take no action to progress a file until the file was close to its due date (and/or until they were prompted by a supervisor or Professional Standards Command)
  - complaint files not being finalised while criminal processes involving the complainant were ongoing.

Figure 5. Time taken to complete files by classification



\*Referred to in this report as serious incident oversight files.

181 This excludes the three matters recorded as 'incidents' and one file taken over by IBAC.

Fifty-two per cent of 'minor misconduct' files (13 of 25) were completed within the required 90-day time frame. An additional three 'minor misconduct' files were completed on time with an extension. Thirty-six per cent of 'minor misconduct' files (nine of 25) were overdue. Six of these had received an extension.

Sixty-two per cent of serious incident oversight files (eight of 13) were completed within the required 90-day time frame. An additional two files were completed on time with an extension. Three of the 13 files were overdue with an extension.

One-third of MIM files (two of six) were completed within the required 40-day time frame. One additional file was completed on time with an extension. Half of the MIM files were overdue, including one that received an extension.

The two 'misconduct connected to duty' files, two work files and one correspondence file were all completed within the requisite time frame. The single LMR file was completed on time with an extension.

The following case study illustrates a complaint investigation involving significant delays.

### CASE STUDY 31

A 'minor misconduct' file was created when an Aboriginal man alleged that he had been assaulted when a police officer pushed him out of an office in May 2017. The complaint was lodged soon after and the file was promptly allocated to an investigator. Although the investigator was aware of the file being allocated to him in May, he went on long service leave and did not receive the file until his return to work in August 2017.

The investigator proceeded quickly with the investigation after his return to work by reviewing CCTV footage and obtaining witness statements. Fortunately, the Ethics and Professional Standards Officer had ensured the CCTV footage was secured at the time of the complaint. The investigator applied for an extension until the end of September 2017, but did not complete the final report and outcome letters until January 2018, as he wanted to include the outcome of charges against the complainant. With the extension, the file was still 103 days overdue.

IBAC considers that the investigator should not have accepted the file knowing that he was going on long service leave. The file should have been reallocated. Further, it was unnecessary to wait for the outcome of charges against the complainant to close the file, as the charges had no bearing on the determination of the complaint investigation.

The following case study is an example of a file that was significantly overdue, but was nevertheless marked as completed by the due date, with an extension. This highlights both a timeliness issue and a record keeping issue.

### CASE STUDY 32

A MIM file was created after an Aboriginal man made several allegations regarding his arrest and time in police custody. An investigator was allocated in December 2017. The investigator submitted his final report in January 2018, within the specified time frame for this file classification. The file was returned to the investigator by the relevant local inspector to make further enquiries and to await the outcome of charges against the complainant.

On 8 March 2018, a different supervisor determined that the charges against the complainant were not relevant. The investigator then submitted an amended report on 11 March 2018. The file was recorded as being completed on 8 March 2018, which was on time, as an extension had been granted.

However, in April 2018, the Ethics and Professional Standards Officer reviewed the file, and again returned it to the investigator to await the outcome of charges before preparing letters to the subject officer and complainant. The charges were finalised in court in July 2018. In August 2018, the investigator noted that the charges did not affect the outcome of the complaint investigation and the file could be finalised.

Between November 2018 and April 2019, there were numerous notes made by the Ethics and Professional Standards Officer and Professional Standards Command about finalising the file. Notes from the investigator indicate that the outcome letters had been sent by April 2019. The file was eventually closed by Victoria Police in May 2019.

IBAC considers the delay of over a year to finalise this file to be excessive and unreasonable. The matter took so long to resolve that the complainant contacted IBAC in November 2018 requesting that Victoria Police's investigation be reviewed. IBAC received the file for review in May 2019 after it was closed and has since communicated its findings to Victoria Police and the complainant.

Extensions were sought and granted in 33 per cent of relevant files (17 of 51). Most (82 per cent, 14 of 17) were for a period of up to 30 days. Two files received extensions of between 31 and 60 days, and one file received an extension of more than 60 days.

Of the files where extensions were granted, IBAC identified concerns in 76 per cent (13 of 17). These concerns included:

- extensions being sought and granted when the file was already overdue
- files failing to meet their extended due dates
- extensions not being properly documented or recorded in Victoria Police systems
- extensions being sought because the investigator was on planned leave.

IBAC identified three files that were significantly overdue (between 11 and 67 days), where extensions should have been sought but were not.

The following case studies highlight problems with the timely completion of complaint investigations and the seeking of extensions. IBAC is concerned that supervisors in these cases failed to identify or adequately address the delays. Processes to monitor and respond to overdue files broke down in each case.

### CASE STUDY 33

A 'minor misconduct' file was created after an Aboriginal young person reported that he had been assaulted by police while being arrested in a public place following a police search. An extension of 30 days was granted by a superintendent as the need for further investigation was identified. The request for and approval of the extension were not attached to the file. The file was not completed by the extended due date and was ultimately 56 days overdue. There was no evidence on the file of any further extensions being requested or approved.

### CASE STUDY 34

A 'minor misconduct' file was created after an Aboriginal woman made a complaint in August 2017 alleging assault when police arrived at a residence looking for someone else and she attempted to restrict police from accessing the property. The file was allocated promptly and was due to be completed by November 2017. However, the final report was not completed until February 2018 and was not finalised until May 2018. The investigation and final report were cited as needing further work. One 20-day extension was granted, however the request and approval were not attached to the file. Even with the extension, the file was 165 days overdue. No other extensions were sought. Although some additional work was required, it was unclear why the file took such an extensive time to complete.

### CASE STUDY 35

A 'minor misconduct' file was created after an Aboriginal young person's case worker lodged a complaint alleging that a police custody officer<sup>182</sup> swore at the young person and used excessive force against him while he was in police custody. The file was due in February 2018 but was not completed until April 2018, making it 67 days overdue. However, there was no evidence of any extensions being sought or granted.

The Ethics and Professional Standards Officer commented in Interpose that the file was overdue at the beginning of April. However, the timeliness of the investigation was not adequately monitored or addressed in the supervision of the file.

IBAC was concerned that although the file was significantly delayed and the investigator noted difficulty in contacting witnesses, there was no recorded attempt to seek an extension. Supervisors failed to identify and address this issue.

<sup>182</sup> Police custody officers are responsible for overseeing the management of people in the custody of Victoria Police. They are employees of Victoria Police but are not police officers. The IBAC Act gives IBAC the power to receive complaints about, and investigate the conduct, of police custody officers as 'police personnel' (see section 5).

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# 10 Record keeping

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**Accurate record keeping in complaint files is essential for accountability and transparency. Accurate records are also necessary for data analysis, in order to track trends and patterns that may provide opportunities to improve practices and procedures.**

Poor record keeping can give the impression that complaints are not being investigated thoroughly. It can also reflect a failure to collect evidence, and inadequate review and supervision of files. The absence of crucial documents, such as a witness statement, also hinders the auditing process. It is difficult to determine whether appropriate policy was followed when information is missing from files. This not only obscures poor investigations, but can also reflect negatively on good investigations that were not appropriately documented.

## 10.1 Key finding

- Issues with record keeping were identified in 53 per cent of files. These included failure to attach complaint histories, statements, use of force forms, conflict of interest forms and attendance and custody documentation.

## 10.2 Policy and practice

Victoria Police's complaint investigation files or serious incident oversight files can include a hard copy file or an electronic file stored on Victoria Police's Interpose database. The following documents must be included on the file:

- final report
- interim report(s)
- complainant statement or letter
- medical report
- witness statements.

Photographs and digital evidence should also be included, as well as any other relevant documents such as use of force forms, attendance module reports or LEAP reports.

During consultation on the audit in November 2019, Victoria Police advised IBAC that in some cases, a failure to upload copies of relevant documents to Interpose may create the impression that certain actions (for example, contacting VALS) have not been undertaken, when in fact such an action did occur. However, failure to adhere to record keeping guidelines can cast doubt on whether subject officers and investigators followed appropriate policies and procedures, and the ability to verify that they did so is lost.

In its 2018 PSC audit, IBAC suggested that investigators be provided with clear guidance on record keeping requirements to ensure consistency in how Interpose is used, including document naming conventions.<sup>183</sup>

## 10.3 Record keeping in audited files

Issues with record keeping were identified in 53 per cent of relevant files (27 of 51).<sup>184</sup> The most significant record keeping issues identified were that:

- complaint histories were not attached or referenced
- statements were not attached or signed, or the investigator did not attach notes after talking to the complainant
- use of force forms were not attached
- attendance and custody documentation was not attached
- conflict of interest forms were not attached
- CCTV footage was not accessible or saved to Interpose
- inaccurate details were included or incorrect documents were attached.

There were no files where an investigation plan was attached. Three files made reference (in the notes section of Interpose) to investigation plans being prepared, but these plans were not attached to the file. While attaching an investigation plan is not a requirement for complex investigations, it is good practice to do so.

In IBAC's 2018 PSC audit, issues with record keeping were identified in all 59 files under examination. The current audit demonstrated a much higher prevalence in the use of conflict of interest forms compared with the PSC audit.

All files in this audit were reviewed by a supervisor – a senior Victoria Police officer, generally at an inspector or superintendent rank. In almost all cases, supervisors did not identify or address the absence of relevant information.

The following case studies highlight files where investigators failed to include key material in files, in breach of Victoria Police guidelines. Supervisors who reviewed these files failed to identify or address the apparent deficiencies in record keeping.

<sup>183</sup> IBAC 2018, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, IBAC, Melbourne, p 64.

<sup>184</sup> This excludes the three matters recorded as 'incidents'.

### CASE STUDY 36

A serious incident oversight file was created following a police pursuit of a suspected stolen vehicle.

The investigator did not:

- prepare or attach an investigation plan
- review or attach the subject officers' complaint histories
- take or attach statements from subject officers, and police and civilian witnesses
- attach a final report.

### CASE STUDY 37

A 'minor misconduct' file was created after an Aboriginal teenager reported to a youth justice centre worker that he had been assaulted while being arrested.

The subject officer had been the subject of seven previous complaints. The investigator did not:

- attach an investigation plan
- review or attach the subject officer's complaint history
- take or attach a statement from a witness.

The investigator also failed to retrieve available CCTV footage. Instead, the investigator commented on the file that CCTV footage was not available because more than 30 days had passed between the making of the complaint and the allocation of the file to the investigator. In fact, only eight days had passed between the incident and the allocation of the file to the investigator.

In addition, the investigator failed to review the final report and outcome letter to the complainant. Both contained incorrect dates and names, and made a misleading statement about whether the complainant reported his injuries at the time that he was in custody.

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# 11 Conclusion

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**IBAC's audit examined how Victoria Police handles complaints made by Aboriginal people and the oversight of serious incidents involving Aboriginal people. Ensuring such complaints and serious incidents are investigated thoroughly and fairly is one way to help build Aboriginal people's confidence and trust in Victoria Police.**

Across the areas examined in this audit, IBAC identified many areas for improvement and these have informed this report's key findings and recommendations. Some of these issues, particularly human rights, conflicts of interest and determinations, have been previously highlighted in IBAC's 2016 and 2018 audits.

The findings of this audit highlight concerns about how Victoria Police interacts with Aboriginal people, and in particular, Aboriginal children and young people. The findings also indicate that Victoria Police has considerable work to do to ensure that it investigates complaints and serious incidents involving Aboriginal people thoroughly and impartially. This work includes ensuring that:

- Aboriginal status is recorded accurately and consistently
- complaints receive a classification that reflects the seriousness of the alleged misconduct
- investigations consider all relevant evidence
- complainants are updated regularly on the progress of the investigation.



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# Appendix 1 – Terminology

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**The terminology of Victoria’s police complaints system is complex and confusing. Victoria Police defines and uses some words, such as ‘complaint’ and ‘investigation’, more narrowly than their ordinary meanings. In this report, IBAC has attempted to balance accuracy with clarity and accessibility. Key terms used in this report are explained below.**

complaint	<p>In this report, a ‘complaint’ is a written or verbal statement from a member of the public alleging police wrongdoing, which is given to Victoria Police, and assessed and classified by its Police Conduct Unit. It covers all classification categories used by the Police Conduct Unit from the least to the most serious, other than the ‘incident investigation/oversight’ (C1-8) classification (see ‘serious incident’). It also includes selected matters that Victoria Police records on its complaints database as ‘incidents’ without taking any further action.</p> <p>This is a significantly broader definition of ‘complaint’ than that used by Victoria Police, which limits the use of this term to serious allegations that could subject a police officer to legal or disciplinary action.</p>
complainant	<p>A person who makes a complaint, or on whose behalf another person makes a complaint. A person involved in a serious incident is not a complainant.</p>
investigation/ investigator	<p>In this report, ‘investigation’ refers to oversight by Victoria Police of a serious incident (see ‘serious incident’) or action taken by Victoria Police in response to a complaint (as defined in this report). This includes responding to complaints by processes known as ‘local management resolution’ and ‘management intervention’.</p> <p>In contrast, for Victoria Police, an ‘investigation’ occurs only for matters involving more serious allegations of police wrongdoing, and thus does not flow from all complaint classification categories. In addition, Victoria Police refers to those responsible for serious incident oversight files as ‘oversighters’, whereas this report refers to them as ‘investigators’.</p>
serious incident	<p>A serious incident is a death or serious injury resulting from contact between police and the public; the death of, or a serious injury to, a person in police custody; an attempted suicide by a person in police custody; an incident involving the discharge of a firearm by police; an escape from custody; and any serious vehicle collision involving police.</p> <p>When a serious incident occurs, Victoria Police Professional Standards Command opens an ‘incident investigation/oversight’ (C1-8) file to examine the incident, determine whether policies, procedures and guidelines were adhered to, and identify any action necessary to prevent similar incidents in the future. In this report, these files are referred to as ‘serious incident oversight’ files.</p> <p>While Victoria Police distinguishes between ‘oversight’ and ‘investigation’ of serious incidents, this report refers to the oversight of serious incidents as ‘investigation’, and the officer who conducts the oversight as the ‘investigator’. Although ‘incident investigation/oversight’ is a complaint classification used by the Police Conduct Unit, a serious incident is not a complaint and does not involve a complainant.</p>





**Independent Broad-based  
Anti-corruption Commission**

Level 1, North Tower  
459 Collins Street  
Melbourne VIC 3000

GPO Box 24234  
Melbourne VIC 3001

Phone: 1300 735 135  
Email: [info@ibac.vic.gov.au](mailto:info@ibac.vic.gov.au)

[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)