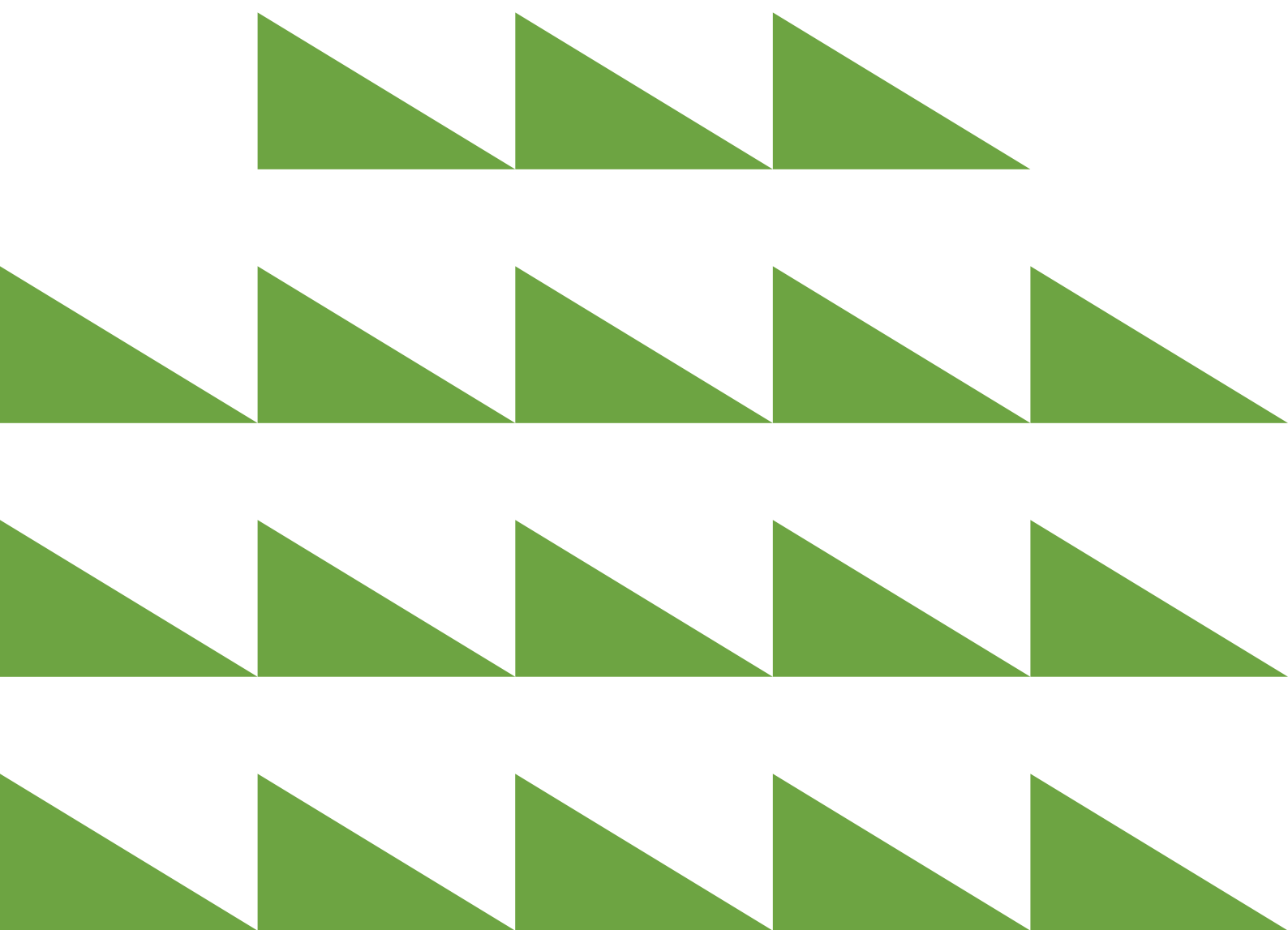


Audit of Victoria Police complaints handling systems at regional level

September 2016



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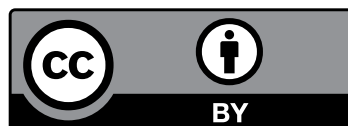
September 2016

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RECOMMENDATIONS

Following IBAC's audit of Victoria Police's regional complaints handling processes, IBAC recommends that Victoria Police:

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

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1. INTRODUCTION

Police hold significant powers to enable them to enforce the law. These powers include the ability to detain, search, arrest, use force, enter private premises and seize property. One way police can be held accountable for how they exercise these and other powers is through an effective complaints handling system.

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

Most complaints received by Victoria Police are referred to its regions, departments or commands for investigation. Only a minority of complaints – those involving allegations of the most serious misconduct or corruption – are handled centrally by Professional Standards Command (PSC).

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

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

In this context and pursuant to its legislative functions to assist the public sector to increase capacity to prevent corrupt conduct and police personnel misconduct, the Independent Broad-based Anti-corruption Commission (IBAC) conducted an audit of Victoria Police's complaints handling processes at the regional level.

The purpose of IBAC's audit was to:

- assist in building the capacity of Victoria Police to prevent corrupt conduct and police misconduct by identifying:
 - issues and potential areas of improvement around complaint handling processes
 - good practice that could be considered more broadly by Victoria Police
 - possible complaint handling policy enhancements for consideration by Victoria Police
- establish benchmarks and processes for IBAC audits.

IBAC audited Victoria Police's complaint handling in two of Victoria Police's four regions. Three hundred and fifty-four files were audited, being the complaint files closed by Southern Metro Region and Western Region during 2014/15, as well as an additional 50 local management resolution matters handled by the two regions. Six broad areas of complaint handling were examined as part of this audit, being pre-investigation processes, impartiality, timeliness, the investigative process utilised, outcomes and record keeping.

IBAC understands that it is appropriate for local police managers to deal with most complaints, particularly those that concern customer service or lower level misconduct. Such an approach should contribute to an organisational culture where managers are aware of performance and conduct issues, and take responsibility for addressing those issues. However, the audit did identify room for improvement in how complaints are managed at the local level, to provide the Victorian community with a greater degree of confidence that complaints will be handled efficiently and effectively. Based on the audit of the two regions, this report identifies opportunities for Victoria Police to improve how it handles complaints at the regional level. Victoria Police has indicated its acceptance of IBAC's recommendations. IBAC will be taking steps to monitor their implementation.

1. INTRODUCTION

IBAC's police oversight role

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

- receiving complaints and notifications about corrupt conduct and police personnel conduct
- assessing those complaints and notifications to determine which will be referred to Victoria Police for action, which will be closed with no further action, and which will be investigated by IBAC
- reviewing investigations of selected matters referred to Victoria Police to ensure those matters were handled appropriately and fairly
- conducting 'own motion' investigations about police personnel conduct or corrupt conduct
- conducting private and public examinations to assist IBAC investigations
- ensuring police officers have regard to the Charter of Human Rights
- undertaking research and other strategic initiatives to inform Victoria Police and the public on particular systemic issues and risks to help prevent misconduct and corruption.

2. VICTORIA POLICE COMPLAINT HANDLING SYSTEMS

2.1 Introduction

Victoria Police defines a complaint as ‘any statement, verbal or written, submitted from any source which, prima facie and without further investigation, could subject any member of police personnel to any legal or disciplinary action’.¹

A complaint can be comprised of multiple allegations against one or more subject officers.

The Victoria Police website encourages members of the public to contact their local police station or the station where an incident occurred, if a complaint is of a minor nature. More serious matters can be notified to Victoria Police online using a standard form. PSC also accepts complaints over the telephone. People are also advised of their right to lodge a complaint with IBAC.

The process of handling complaints is governed by legislation (primarily the *Victoria Police Act 2013*) and Victoria Police policy.

2.2 Legislation and policies governing Victoria Police complaints and investigations

Legislative provisions regarding complaints against police officers and protective service officers (PSOs) are contained in Part 9 – Complaints and Investigations of the *Victoria Police Act*.²

Pursuant to the *Victoria Police Act*, a complaint can be made by any person to:

- another police officer or PSO, or
- IBAC in writing.³

If a police officer or PSO has reason to believe that another officer is guilty of misconduct, he or she must make a complaint to an officer of more senior rank who must refer the matter to the Chief Commissioner of Police.⁴

Officers receiving a complaint – or wanting to make a complaint themselves – are required to complete form 918 (complaint/incident/issue form) and to forward it to the PSC Police Conduct Unit (PCU) for classification. The form requires details to be provided of:

- the employee submitting the form
- the complainant
- the officer/s complained against
- a summary of the complaint, as well as any details of people interviewed, examinations conducted and documents obtained.

Under the *Victoria Police Act*, Victoria Police is required to:

- give IBAC details in writing of:
 - a complaint about the misconduct of a police officer or PSO as soon as practicable after a complaint is made
 - an investigation as soon as practicable after commencing an investigation into any alleged misconduct by a police officer or PSO⁵
- notify IBAC of:
 - a proposed attempt to resolve a complaint by conciliation
 - the results of any attempts to resolve a complaint by conciliation⁶
- report to IBAC in writing on the:
 - progress of an investigation, as often as requested by IBAC
 - results and any actions taken or proposed to be taken on completion of a complaint investigation.⁷

Following receipt of a complaint investigation report from Victoria Police, IBAC may also request that the Chief Commissioner take any action that IBAC considers appropriate, in response to which the Chief Commissioner can either take the action requested or explain why that action is not being taken.⁸

1 Victoria Police integrity management guide, April 2015, p 8

2 Part 10 of the *Victoria Police Act 2013* concerns the investigation of protected disclosure complaints

3 *Victoria Police Act 2013*, s 167(1)

4 *Victoria Police Act 2013*, s 167(3) and s 168

5 *Victoria Police Act 2013*, s 169(2) & (3)

6 *Victoria Police Act 2013*, s 170(2)

7 *Victoria Police Act 2013*, s 170(1) & (3)

8 *Independent Broad-based Anti-corruption Commission Act 2011*, ss 160 & 161

2. VICTORIA POLICE COMPLAINT HANDLING SYSTEMS

The Victoria Police Act empowers the Chief Commissioner to direct any officer or PSO to answer any question or provide any relevant document for the purpose of conducting an investigation into a possible discipline breach.⁹ Section 125 outlines the circumstances in which an officer would be considered to have committed a discipline breach, including a failure to comply with an instruction of the Chief Commissioner and engaging in conduct likely to bring Victoria Police into disrepute or diminish public confidence.

The Victoria Police Act also requires written advice to be provided to a complainant, outlining the results of the investigation and the action taken or proposed to be taken. The only exception to this provision is if it would be contrary to the public interest.¹⁰

Supplementing the Victoria Police Act, internal policy governing the handling of complaints is outlined in the Victoria Police manual (VPM). The VPM is comprised of:

- policy rules which are mandatory and provide the minimum standards that employees must apply
- procedures and guidelines which are provided to support the interpretation and application of rules and responsibilities.

The VPM details, inter alia:

- classifications of complaints
- how a complaint investigation must be conducted including timelines, contact with complainants and conduct of disciplinary interviews with subject officers
- how to handle complaints concerning senior officers (that is assistant commissioners, directors and above)
- incidents which must be reported to a duty officer and PSC
- the management of protected disclosure matters
- possible outcomes of investigations, namely determinations and recommendations.

There are specific VPM policies and guidelines covering a range of issues relevant to the complaint process including the resolution of lower level matters via the management intervention model (MIM), protected disclosures, disciplinary actions, admonishments, and integrity testing.

In addition to the VPM, the Victoria Police integrity management guide is an online resource designed to assist police officers who are allocated complaint files for investigation. The guide provides detailed information on the following:

- definitions of key terms including complaint, customer service matters, misconduct, corruption and disgraceful conduct
- how to take a statement from a complainant
- initial action to be taken upon receiving a complaint
- how to identify whether a complaint involves allegations of criminal or disciplinary offences and how to handle accordingly
- the process to be followed when interviewing officers who are the subject of a complaint
- the use of directions letters pursuant to section 171(1) of the Victoria Police Act
- the definitions of determinations
- communication with complainants including template letters
- the role of the PSC Discipline Advisory Unit
- how to prepare a disciplinary brief
- procedures for disciplinary hearings including the role of the investigator.

The Conduct and Professional Standards Division of PSC also has standard operating procedures which detail procedures to be followed around the receipt, lodgement and referral of complaints.

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

⁹ Victoria Police Act 2013, s 171(1)

¹⁰ Victoria Police Act 2013, s 172(1) & (2)

2.3 How Victoria Police handles complaints

2.3.1 General

All complaints received by Victoria Police are referred to PSC for triaging. In addition, the majority of complaints relating to Victoria Police that are assessed by IBAC are referred to Victoria Police for action, as they are considered appropriate for direct action by Victoria Police.

Complaints are classified by PSC into one of eleven categories and then allocated to either an investigation team within PSC (for the most serious matters) or referred to a region, command or department.¹¹ During 2014/15, approximately 90 per cent of complaints were referred to a region, command or department for investigation. This reflects Victoria Police's view that complaints, except for the most serious matters, should be handled at the local level to encourage police managers to understand issues with their officers and to take responsibility for dealing with misconduct.

Victoria Police technically considers complaints as matters which involve allegations of disciplinary breaches or criminal offences, or a combination of both. Lower level matters, generally described as customer service issues that may involve minor breaches of rules and procedures, are referred to as 'incidents' rather than complaints and are dealt with by way of local management resolution (LMR) or MIM.¹² However, for the purposes of this report, all matters classified by PSC – including MIMs and LMRs – are described as 'complaints'.

2.3.2 Complaint classification

Complaints and incidents reported to Victoria Police are given one of eleven classifications, as shown in Figure 1 on page 12.

The classification of a complaint dictates the timeline within which it is required to be investigated (ranging from seven days for LMRs to 152 days for corruption files and workfiles). The file classification also determines to whom the file is allocated: files other than LMRs and MIMs should not be allocated to an investigator from the same work area as the subject officer or to a line manager of the subject officer.¹³

Victoria Police policy states that matters that have arisen due to a lack of knowledge of legislation or standard police procedures and which are explained to the complainant are not treated as a complaint, if the complainant is satisfied with the explanation.

PSC exercises its discretion to filter out from the classification process, matters which it considers vexatious or frivolous. PSC advises that all complaints are recorded on the Register of Complaints, Serious Incidents and Discipline (ROCSID) but some matters may only be recorded as an incident or as intelligence, rather than as a formal complaint.

2.3.3 Local management resolution

In 2004, Victoria Police introduced the management intervention model to more efficiently and effectively handle less serious conduct issues. Up until the introduction of MIM, all complaints had to be subject to a full and formal investigation, meaning that limited investigative resources were often occupied by complaints of a minor nature. MIM is described as an alternative dispute resolution process concerned with expeditiously resolving matters (within 40 days) to improve customer service, as well as focusing on developmental rather than punitive action where an officer's conduct has been identified as deficient.

Since April 2014, Victoria Police has extended its alternative dispute resolution model by trialling an approach called 'local management resolution' which aims to resolve 'incidents' within seven days of being forwarded from PSC to the relevant work area or police station.

11 As at November 2015, Victoria Police had ten commands and ten departments. Commands have an operational focus (for example, Crime Command, Family Violence Command) while departments have a broader corporate focus (for example, Legal Services Department, Public Support Services Department).

12 Victoria Police does not notify IBAC of MIMs or LMRs, or LEAP audit/fingerprint/DNA trace evidence enquiries (C1-5) files, correspondence (C1-6) files, legal process (C1-7) files or oversight (C1-8) files because it technically does not define these matters as complaints.

13 Victoria Police manual policy, Complaints and discipline, section 6.2

2. VICTORIA POLICE COMPLAINT HANDLING SYSTEMS

FIGURE 1: FILE CLASSIFICATIONS

Classification	Complaint type
C1-0	Work file <i>Allegations that require preliminary enquiries before a full investigation can be conducted</i>
C1-5	Preliminary enquiry file <i>Includes audits of LEAP access, usage of email or other data, identification of fingerprints of police officers found at crime scenes</i>
C1-6	Internal management (correspondence) <i>Matters received from complainants where further information is required before determining if reclassification is required</i>
C1-7	Receipt of civil process <i>Civil process against a police officer such as intervention orders, family violence orders, bankruptcy orders and contested infringement notices</i>
C1-8	Incident investigation/oversight <i>Files created for oversight of specific incidents. At the regional level, incidents include deaths following police contact, escape from custody, injuries to prisoner, and police collisions involving minor injuries</i>
C2-1	Minor misconduct <i>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</i>
C2-4	Local management resolution (LMRs) <i>No formal policy currently available but LMRs aim to resolve low level incidents within seven days of the matter being forwarded to the relevant work area</i>
C2-5	Management interventions model (MIMs) <i>Allegations of a minor nature regarding service delivery, performance management or professional conduct</i>
C3-2	Misconduct connected to duty <i>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</i>
C3-3	Criminality (not connected to duty) <i>Includes off duty conduct punishable by imprisonment, off duty alcohol or drug offences, criminal associations, and summons to court for any traffic matter</i>
C3-4	Corruption <i>Includes encouraging others to neglect duty or to be improperly influenced in exercising any function, fabricating or falsifying evidence, using excessive force or other improper tactics to procure confession or conviction, improperly interfering with or subverting a prosecution, concealing misconduct by other officers, and engaging in serious criminal conduct</i>

Currently there is no formal policy on the operation of LMRs, however the PSC intranet page states the following:

- PSC is trialling an improved system for managing complaints from the public
- LMR is considered an alternative to 'first instance creation' of MIM files
- LMR is addressing timeliness issues for complaints of a minor nature and providing better customer service outcomes
- it is not intended to replace MIMs entirely but to delay classifying the file until further information has been considered and an attempt to address the customer service issues has occurred
- LMR involves:
 - immediate referral of a customer service issue to the relevant area
 - seven-day turnaround of customer service issues
- no physical files are created for LMRs.

IBAC's audit examined a sample of 50 LMR incidents referred to Southern Metro and Western Regions in 2014/15. Except where otherwise stated, the 50 LMRs have not been included in the general analysis outlined below but are reported on separately. This approach has been adopted because the audit instrument used for LMRs varied from the instrument used for the 354 other files, as some of the issues examined for the primary group of files were not directly relevant to LMRs.

2.3.4 Complaint handling

Except for LMRs which are allocated by PSC to the relevant police station or workplace via email, complaints are allocated to regions by way of a physical file. The file is sent by the Ethics and Professional Standards Officer (EPSO) to the regional superintendent who either refers it to the relevant inspector for nomination of a suitable investigator (usually a senior sergeant or sergeant) or directly to an investigator.

The nominated investigator undertakes an investigation and prepares either an issues cover sheet (for MIMs) or a more in-depth final report for other complaints. These reports should detail each allegation, the evidence evaluated in relation to those allegations, findings or determinations, and recommendations.

The issues cover sheet or final report is then referred back up the line to the inspector and superintendent for review and endorsement. The report is also reviewed by the EPSO who may identify concerns with an investigation or a report. Some sergeants and senior sergeants who participated in the focus groups for this audit indicated that they consulted with their region's EPSO prior to finalising their findings or recommendations, to maximise their chances of the investigation report being endorsed without amendment.

Once endorsed by the superintendent, the file is returned to PSC for a quality check (essentially a check that necessary action has been taken and relevant documents are on the file) and for recording of the final outcomes on ROCSID. The file is then stored in the PSC registry.

Victoria Police is intending to trial a move away from manual file handling to managing complaint files through Interpose.¹⁴ Interpose is Victoria Police's state-wide investigation case management and intelligence management system, and is used by PSC investigators to manage their complaint files. The anticipated benefits of using Interpose to manage complaint files include improved timeliness, the ability for senior officers to monitor the progress of an investigation in real time and improved security of files. PSC is also of the view that the use of Interpose will facilitate improved complaint investigations, better quality correspondence to complainants and subject officers, and compliance with the *Victims Charter Act 2006*.

EPSOs and investigators consulted as part of IBAC's audit generally supported the move to Interpose, recognising the inadequacies of the physical file system. People cited instances where physical files were lost or sat with a senior officer for extended periods of time as examples of practices that might be improved by the use of Interpose.

The adoption of Interpose for all complaint files will need to be supported by training for all users and be monitored to ensure all documentation pertinent to an investigation (including statements, evidence, reports and correspondence to complainants) is uploaded onto the electronic file. This issue is discussed further in section 4.6.1.7.

¹⁴ Interpose is a Victoria Police system used for case management of criminal investigations and for the recording of intelligence.

2. VICTORIA POLICE COMPLAINT HANDLING SYSTEMS

2.3.5 Determinations

Victoria Police has 11 possible determinations for investigation files (outlined in section 4.5.2.1) and two for LMRs and MIMs (resolved or not resolved). The final investigation report records the determination for each allegation.

The lowest level action that may be applied following a complaint investigation is workplace guidance. The formality of that guidance varies from a discussion to formal notation on the officer's PDA plan. The aim of this guidance is to address an identified deficiency in a developmental, rather than punitive, way.

Where an investigator finds an allegation substantiated and believes a discipline breach has occurred, it may be recommended an officer be charged with a breach of discipline. In these instances, a disciplinary hearing will be conducted. There are two levels of disciplinary hearings. Sanctions available for level one hearings are reprimands, good behaviour bonds, fines, an ineligibility to apply for promotions or transfers for up to two years, reduced seniority, reduced remuneration and transfers. There are two additional sanctions for level two hearings – reduction in rank and dismissal.

If a discipline breach is considered not to warrant a full hearing, an admonishment notice may be issued by a line supervisor or PSC investigator. Admonishment notices are not part of the formal discipline regime regulated by the Victoria Police Act.

Where an officer is reasonably believed to have committed a criminal offence, criminal charges will be laid. It may also be decided to proceed with disciplinary action but that will generally not occur until after the determination of the criminal matter.

The final determinations and actions for each allegation are recorded on ROCSID.

Victoria Police has stated it is planning to trial a new Discipline Intervention Program which will allow for discipline charges and hearings to be finalised without the completion of a full investigation or the preparation of a brief, provided the subject officer makes a full admission. The purpose of the program is to expedite the discipline process.

Victoria Police's disciplinary system was not examined as part of IBAC's audit.

3. METHODOLOGY

3.1 Files audited

All complaint files allocated to Southern Metro Region and Western Region that were closed during the 2014/15 financial year fell within the scope of the audit. This represented a total of 367 files of which 354 were audited. The remaining 13 files were either assessed as out of scope by IBAC (for example, because the investigation was not conducted by either region) or were unavailable at the time the audit was conducted. Hard copy files were audited, and where relevant, information stored on ROCSID was examined.

Of the 354 files, 195 files (55 per cent) were allocated to Southern Metro Region, and 159 files (45 per cent) to Western Region.

In addition, it was identified that the two regions handled a total of 200 LMRs during 2014/15. A sample of 50 LMRs was examined as part of this audit (37 related to Southern Metro Region and 13 to Western Region). Audits of the LMRs were based on ROCSID data as no hard copy files exist for LMRs.

Figure 2 outlines the proportion of each type of complaint file that was audited. Note that percentages in this report are rounded to the nearest whole percentage, meaning some table columns that record percentages may total 99 per cent while still reflecting the whole data set.

FIGURE 2: AUDIT SAMPLE BY COMPLAINT CLASSIFICATION

Classification	Complaint type	Number	% of total files audited
C1-5	Preliminary enquiry file	56	14
C1-6	Internal management (correspondence)	16	4
C1-7	Receipt of civil process	18	4
C1-8	Incident investigation/oversight	36	9
C2-1	Minor misconduct	66	16
C2-4	Local management resolution	50	12
C2-5	Management intervention model (MIMs)	81	20
C3-2	Misconduct connected to duty	44	11
C3-3	Criminality (not connected to duty)	34	8
C3-4	Corruption	3	1
Total		404	100

3.2 Audit scope

The audit instrument included 155 questions covering six broad areas, namely:

- *pre-investigation process* including the process of classifying and allocating complaints, identification of subject officers, and checks of relevant complaint histories
- *impartiality* with a focus on identification of possible conflicts of interest between investigators and subject officers
- *timeliness* of the registration, classification and allocation process, as well as the investigation
- *investigative processes utilised* including a consideration of whether all relevant evidence was examined
- *outcomes* including determinations, advice to complainants and human rights
- *record keeping.*

The audit instrument required information to be extracted from both the hard copy file (except in relation to LMRs) and ROCSID. Discrepancies between the file and ROCSID were noted where relevant.

3. METHODOLOGY

The development of the audit scope was based on the following process:

- a consideration of similar audits undertaken by other anti-corruption agencies in Australia
- an examination of issues raised in reviews of Victoria Police complaint files routinely conducted by IBAC's Assessment and Review area
- consultation with PSC and the identification of potential areas of concern for Victoria Police.

A copy of the audit instrument is included at Appendix A.

3.3 Snapshot of the two regions

Victoria Police is comprised of four geographic regions. Two regions – Southern Metro and Western – were selected to participate in this audit. Southern Metro Region has a significant metropolitan profile and was identified by IBAC as having the fewest complaint files amongst the four regions during 2013/14. Western Region has a significant rural component, coupled with sizable regional centres. It was identified as having an increasing proportion of complaints against officers in 2013/14.

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

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

3.4 Consultation with Victoria Police

3.4.1 Ethics and Professional Standards Officers (EPSOs)

EPSOs have been in place across Victoria Police since 1999 following a two-year trial. EPSOs are attached to PSC but operate in the regions, departments and commands. The purpose of EPSOs is to contribute to improving the professionalism of Victoria Police personnel by:

- monitoring complaint investigations at the regional/command level to ensure fairness, thoroughness and timeliness
- providing advice on ethical behaviour and professional standards
- liaising between PSC, regional management and officers
- assisting in the delivery of ethics and professional standards training
- taking proactive action in relation to officers with excessive complaint histories.

In November 2015, IBAC met with seven EPSOs to discuss the audit project and to get their views on the complaint handling processes generally and on a specific range of issues relevant to the audit. There was considerable discussion around the different aspects of complaint management, with sometimes diverse views expressed. Where relevant, these views are reflected in the audit findings.

3.4.2 Focus groups with police investigators

In November and December 2015, IBAC conducted focus groups with 17 sergeants and senior sergeants who had previously been allocated complaint files for investigation. These consultations were held at Prahran, Frankston, Geelong and Bendigo.

The purpose of these consultations was to discuss the officers' experiences of conducting complaint investigations, focusing on identifying what currently works well and what could work better. Following the focus groups, high level feedback was provided by IBAC to PSC to enable specific concerns (such as the lack of a template letter to complainants for LMRs) to be actioned.

The results of the focus groups have been incorporated into the audit findings.

3.4.3 Other Victoria Police consultation

Consultations were conducted with the Assistant Commissioners of Western and Southern Metropolitan regions, together with nominated superintendents from those regions. These consultations provided an opportunity for the Assistant Commissioners to outline how they believed the complaints system was working in their regions and any issues that were of particular concern.

A meeting was held with the Assistant Commissioners of PSC, Western Region and Southern Metropolitan Region in March 2016 to discuss the draft key findings of the audit. A summary of the key findings was provided to attendees at this meeting. Comment provided by PSC in response to this summary has been incorporated into this report where appropriate.

A full draft version of this report was also provided to the Assistant Commissioner of PSC to confirm its factual accuracy.



3. METHODOLOGY

3.5 Limitations

This audit's scope was limited to complaint investigations that had been completed. Therefore it does not extend to matters that were received during (or prior to) 2014/15 but not completed by July 2015.

The audit also only considered complaint files handled by Southern Metropolitan and Western Regions. Complaint files handled by PSC, the other two regions, or commands or departments were not considered in this audit.

The process of auditing complaint files was undertaken by five IBAC officers. Controls were in place to maximise consistency in the audit process, including the use of guidance notes which provided context and clarification on all areas covered in the audit, and weekly meetings of the audit team to discuss and resolve issues. However, it is acknowledged that the audit process necessarily involved the exercise of judgement on the part of each audit officer.

Distinct from this system level audit, IBAC's Assessments and Review area conducts reviews of selected individual Victoria Police complaint files to determine if they have been thoroughly and fairly investigated. This includes examining whether:

- all relevant evidence is considered and irrelevant evidence disregarded
- natural justice is afforded to the complainant and witnesses by providing an opportunity to address the substance of any allegations or concerns
- there is no actual or perceived conflict of interest or bias by the person conducting the investigation, the complainant and/or the subject officers
- the investigations is conducted in a timely manner
- the investigation process and outcome is proportionate to the issues involved.

This audit did not comprehensively review each file in the terms outlined above. However, there is some overlap as the audit considered the investigation process undertaken, including whether all relevant evidence was considered. This was but one element of a broader assessment of Victoria Police's system of handling complaints at the regional level.

The audit focused on Victoria Police's complaints handling systems, policies and procedures. Consideration of the experiences and satisfaction levels of complainants and subject officers was not within the scope of this project.

4. FINDINGS FROM THE AUDIT

The audit examined six broad areas of the complaint handling process:

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

Each of these broad areas is comprised of a range of elements which have been separately analysed based on the data collected through the audit. Victoria Police policy, information obtained through consultations with Victoria Police, and other contextual information is provided where relevant. Suggestions for improvements to complaint handling practice are highlighted.

4.1 Pre-investigation

4.1.1 Identification of allegations, subject officer and complaint classification

4.1.1.1 Policy and practice

Complaints can be received directly by PSC (specifically the PCU) through the submission of a form used by internal police complainants and people who make complaints at police stations (form 918). Complaints may also be referred by IBAC to Victoria Police for action.

Pursuant to the VPM complaints and discipline policy, where a Victoria Police employee takes a complaint, details of the complaint must be recorded. The Divisional Patrol Supervisor is to be informed and is required to obtain full details of the background to the complaint where possible.

All complaints are processed and classified by the PCU. (The classification structure is outlined at 2.3.2.) Classification is significant because it determines:

- whether the matter will be retained by PSC or referred to a region, command or department
- the timelines within which a matter should be investigated
- whether or not a matter is notified to IBAC (as Victoria Police currently does not notify IBAC of C1-5, C1-6, C1-7, C2-4 or C2-5 files)
- whether a matter is recorded on a subject officer's complaint history on ROCSID.

In addition, the classification of a complaint prime facie indicates the seriousness of a matter and summary statistics around classifications can be used to describe and analyse complaint trends.

The majority of matters are classified by a PCU sergeant. Where there is doubt about how a complaint should be classified, the sergeant consults with their senior sergeant and other more senior ranked officers.

Some matters are referred to the PSC Preliminary Investigation Team to obtain further information to assist in the classification process. This is designed to improve the accuracy of the initial classification and to minimise the need for reclassification.

Following classification, PCU creates a hard copy file, enters preliminary details onto ROCSID and forwards the file to the EPSO in the relevant region, command or department who then sends it on to the relevant senior officer for nomination of an investigator. Reclassification of files can only occur on application to the PCU manager.¹⁵

When a complaint is forwarded to a region, command or department for investigation, the specific allegations are not identified or highlighted by PCU – it is generally left to the investigator to determine. The allegations should be highlighted in an investigator's final report. The allegations outlined may then be amended upon review by an EPSO or a senior officer at the local level.

Allegations may change over the course of an investigation as additional information is uncovered.

¹⁵ Victoria Police integrity management guide, April 2015, p 59

4. FINDINGS FROM THE AUDIT

4.1.1.2 Previous reviews

Concerns about the accuracy of the Victoria Police complaint classification process have been raised in other reports.

In its August 2013 submission to Victoria Police's review of field contact reports and cross cultural training, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) stated that complaints are not always appropriately classified. VEOHRC's view was that complaints about rudeness are routinely dealt with through the MIM process, including complaints about name calling which could occur on the basis of ethnicity, disability or other protected attributes and therefore should be treated as misconduct.¹⁶

The Koori Complaints Project 2006–08 conducted by the then Victorian Department of Justice and Victoria Police also raised concerns with complaint classifications. It highlighted that complaints alleging assault were being inappropriately allocated for resolution through the MIM process rather than being treated as possible misconduct, as well as inconsistencies in complaint classification.¹⁷

The former Office of Police Integrity (OPI) also expressed concerns with the classification process. In its 2007 review of the Victoria Police discipline system, the OPI highlighted a common failure to reclassify files from 'general correspondence' to a classification that more appropriately reflected the substance of the matter.¹⁸

In its 2007 report, the OPI highlighted a concern with the maintenance of accurate complaint data by Victoria Police. The OPI report noted that this had implications for the effectiveness of the complaint and discipline system, and could also lead to unfair treatment of officers when all officers' complaint histories were not similarly recorded.¹⁹

4.1.1.3 Analysis: Characterisation of allegations

There were 25 files (seven per cent) where the auditor disagreed with the characterisation of the allegations listed on either ROCSID or the paper file. In addition, there were eight LMR files (16 per cent) where the auditor disagreed with the way in which allegations had been characterised.

Issues identified with the characterisation of the allegations included:

- Characterising a serious allegation as a minor allegation. For example a complaint alleging pushing, hitting and punching was described as 'pushing' on ROCSID
- Discrepancies in the characterisation of the allegations between ROCSID and the paper file. For example in one file, the allegation was correctly characterised as theft of property on ROCSID but was described as non-return of property on the paper file.

In some cases, it was also evident that there was a lack of clarity regarding which allegations were to be investigated. There were two files where an investigator completed an investigation, only to be told that they had examined incorrect allegations.

¹⁶ Victorian Equal Opportunity and Human Rights Commission, Submission to Victoria Police Consultation on Field Contact Reports and Cross Cultural Training, August 2013, pp 24–25

¹⁷ ESD & DOJ, Koori Complaints Project 2006–2008 Final Report, pp 31–34

¹⁸ Office of Police Integrity, A Fair and Effective Victoria Police Discipline System, October 2007, p 43

¹⁹ Office of Police Integrity, A Fair and Effective Victoria Police Discipline System, October 2007, p 43

CASE STUDY 1

Senior Constable A made bullying allegations against Senior Constable B.

The form 918 was lodged by Senior Constable A's supervisor outlining allegations that:

- Senior Constable B had bad mouthed and isolated Senior Constable A
- Senior Constable B had covertly recorded his colleagues
- Senior Constable A had earlier reported the bullying to a sergeant who failed to act.

PSC categorised the complaint as having two fundamental parts. The first part involved the bullying allegations which PSC referred to Workplace Standards for investigation. The second part was referred to the region for investigation in relation to 'duty failure'. However, in referring the duty failure allegation to the region, PSC did not specify what particular action may have amounted to duty failure.

The regional investigator produced a final report that addressed the allegation of covert recording.

After reviewing the final report, the regional local area commander (LAC) advised the superintendent that the investigator failed to address the relevant allegation, as he had not addressed the allegation against the sergeant. That allegation was then referred to Workplace Standards.

The failure to investigate the correct allegation is understandable, due to the lack of clarity around the allegation descriptor – duty failure.

Further supporting the investigator, there is only one subject officer recorded on ROCSID – Senior Constable B. There is no allegation recorded against the sergeant.

The audit identified instances where an EPSO or regional senior officers changed the allegations after the completion of an investigation. This sometimes occurred as rolling up of allegations (discussed in 4.1.1.4) or expanding the number of allegations. In one file, an EPSO increased the allegations from one to two following an investigation although the new allegation (concerning an inadequate investigation) was not the subject of a proper complaint investigation.

This reflects the lack of clarity that can exist in relation to allegations to be investigated. An EPSO may sometimes provide guidance on the allegations, but there is currently no practice of identifying allegations before a file is allocated for investigation.

4.1.1.4 Analysis: Number of allegations

There were 35 files (10 per cent of the total audited files) where the auditor disagreed with the number of allegations listed on either ROCSID or the paper file. There were an additional eight LMR files (16 per cent of audited LMRs) where the auditor disagreed with the number of allegations listed.

Issues identified with the number of allegations included:

- Multiple allegations being rolled up into a smaller number, either at the start of an investigation or at the end
- ROCSID or the paper file failing to list clearly articulated allegations.

The practice of rolling up of allegations is of particular concern to IBAC. It results in inaccurate recording of allegations on ROCSID and contributes to the under-counting of total allegations received by Victoria Police. It also undermines the accuracy of complaint histories recorded on ROCSID, which has implications for risk assessment and management of officers.

4. FINDINGS FROM THE AUDIT

CASE STUDY 2

A man was arrested for being drunk in a public place. At the police station he was sprayed with OC foam (pepper spray), handcuffed and placed in a holding cell. Upon his release, the complainant said he had been wrongfully arrested, assaulted (OC sprayed) and not provided with dry clothing while in the holding cell.

A form 918 was submitted to PSC, clearly outlining three allegations – wrongful arrest, assault and duty failure. However, all three were bundled into the one allegation of manhandling, which is recorded on ROCSID. Each allegation should have been considered separately by the investigator.

The complainant withdrew his complaint during the investigation.

CASE STUDY 3

In a complaint arising from a vehicle interception, a complainant highlighted 11 separate allegations. Although there was significant duplication between the allegations (for example, abuse of power, excessive force and assault at the time of arrest) there were, in essence, four allegations:

- assault at the time of arrest
- unlawful search of the complainant and his car
- attempted sexual assault
- harassment by police in the months preceding the vehicle intercept.

Only one allegation (minor assault) is listed on ROCSID. In the final report, the investigator indicated he had consulted the EPSO who advised to treat the 11 complaints as one allegation. The investigator did briefly address each of the 11 complaints in the report, however, the report is primarily concerned with the complaint of assault/manhandle at the time of arrest. This is the only allegation noted in the correspondence to the complainant and subject officer, and in ROCSID.

In relation to LMRs, issues around the number of recorded allegations fell into two categories:

- Complaints having several elements, yet only one being recorded on ROCSID. For example, one LMR had three elements – failure to take complaint, failure to investigate and failure to stay in contact – but only ‘fail to assist’ was recorded on ROCSID
- No allegations being listed on ROCSID.

This may reflect a more relaxed approach to recording complaints which are classified as LMRs, which are intended to be used where a matter is a low-level customer service issue capable of resolution within seven days. However, it is important that the same rigour apply to LMRs as other complaint files in relation to accurate recording allegations and other details, to ensure officers’ complaint histories are accurately recorded and to allow analysis of complaint trends.

4.1.1.5 Analysis: Consistency in allegation numbers on ROCSID and paper file

There were 25 files (seven per cent) where the number of allegations on ROCSID did not equal the number of allegations listed on the paper file.²⁰

In 21 of the 25 files with discrepancies, there were more allegations listed on the paper file than on ROCSID.

The reasons for these discrepancies include:

- A general allegation being recorded on ROCSID but specific allegations being listed on the paper file. For example, one file had ‘firearm offence’ listed as the allegation on ROCSID whereas the paper file lists six specific firearm offences
- Matters being classified as correspondence files (C1-6) and therefore recording no allegations on ROCSID, while the paper file lists and investigates specific allegations.

The inappropriate use of the correspondence file classification is discussed below, in section 4.1.1.7.

²⁰ Note no analysis conducted for LMRs, as no paper file is created for these matters.

4.1.1.6 Analysis: Identification of subject officers

The distribution of subject officers in all files audited (including LMRs) is generally proportional to the distribution of officers across the different ranks (noting that allegations against officers of higher ranks are more likely to be dealt with by PSC rather than in the regions). In 65 per cent of files, the subject officer fell within the broad constable rank (encompassing constable, first constable, senior constable and leading senior constable).

FIGURE 3: RANK OF SUBJECT OFFICERS

Rank	Number of complaints	% of total
Inspector	1	0.3
Senior Sergeant	10	2.5
Sergeant	75	18.6
Leading Senior Constable	67	16.6
Senior Constable	116	28.7
First Constable	46	11.4
Constable	32	7.9
PSO	2	0.5
No subject officer	47	11.6
Not relevant/unable to determine	8	1.9
Total	404	100

In 28 files (eight per cent) excluding LMRs, the auditor disagreed with the identification of subject officers. The most common reason for disagreement (13 files) was that officers were listed in ROCSID as 'persons involved member' or a 'person of interest' when they should have been listed as a subject officer. Listing an officer as a 'persons involved member' or a 'person of interest' implies a tangential relationship to a complaint, rather than direct involvement and means that there is no record of the matter in an officer's complaint history, potentially undermining effective management of those officers.

CASE STUDY 4

Police attended a private residence where men were reported to be fighting. A struggle occurred between one of the men (the complainant) and a number of police (officer A, officer B and officer C). The officers stated that the man was drunk, aggressive and interfered in police attempting to question another man. Officers A and B physically restrained the complainant, causing him to be tackled to the ground. When attempting to move him, another struggle ensued (this time involving officers A, B and C) again resulting in the man being tackled to the ground.

Officer A sustained injuries including a bruised cheek and eye socket, grazes and some swelling to his head.

The man was charged with assaulting police and resisting arrest. Eight months after the incident, he lodged a complaint alleging he had been pushed, hit and punched by multiple police. He said that he lost consciousness, sustained facial injuries and concussion.

Some months after lodging his complaint, and after pleading guilty to the charges, the man withdrew his complaint.

There was significant confusion regarding the identification of the subject officers. ROCSID records no subject officers – only one 'person involved member' (officer D) who arrived at the scene of the incident after the man had been restrained by the other officers. The final report identifies one subject officer – officer A – and a further four involved members including officer B but not officer C. And final letters were sent to five officers – officers A, B and D and an additional two officers who were present at the scene but do not appear to have been involved in the physical struggle or in restraining the man. The letters state that a complaint of assault was made against those officers.

The audit identified six files where complaints are listed against multiple subject officers, when the complaint is clearly directed against one specific, identifiable officer. Even if the determination for those allegations is not substantiated, it reflects an inaccurate complaint history and could adversely impact an officer's career.

4. FINDINGS FROM THE AUDIT

CASE STUDY 5

A complaint was made by a man arrested for drug trafficking. His complaint comprised the following allegations:

1. he was assaulted by two Special Operations Group (SOG) members during his arrest
2. his car and house keys were seized by police and subsequently lost
3. Senior Constable A falsified evidence to prevent him or his partner having custody of their child.

Senior Constable A is the only subject officer identified in this matter. The final letter received by Senior Constable A officer advising of the investigation outcome referred to the third allegation only, however ROCSID records all three allegations against that officer. This is clearly incorrect. The assault allegation related to SOG members (who were not identified on the file) and there is no indication on the file that Senior Constable A was involved in the property seizure.

Senior Constable A did not have a chance to correct the record, as the letter she received referred only to the relevant allegation.

The finding for all three allegations was unable to determine.

In 18 files (five per cent), there was inconsistency between the count of subject officers recorded on ROCSID compared with the paper file. In 16 of these files, there were fewer subject officers recorded on ROCSID than were identified on the paper file.

Many of these discrepancies were due to some officers being recorded as subject officers on the paper files, but as 'persons involved member' on ROCSID. For example, in one file there were four subject officers listed on the paper file, but no subject officers listed on ROCSID as the four officers were all listed as 'persons involved member'.

There were also inconsistencies with how 'exonerated' officers are recorded. A finding of 'exonerated' means that the evidence clearly establishes that a specific officer is not involved in a complaint or is completely free from blame. In some cases it was identified that exonerated subject officers were removed from ROCSID, whereas a better practice would be to have them remain on ROCSID as subject officers, but with the outcome recorded as exonerated.

In relation to LMRs, there were 11 files (22 per cent) where the auditor identified issues with the identification of subject officers. In six of these files, there was no apparent effort to identify subject officers via rosters or other enquiries. This may reflect the low-level classification of LMRs and the focus on resolving matters without a full investigation. This is of concern to IBAC as it indicates data about the performance of individual officers is not being accurately maintained, which has implications for identifying deficiencies and patterns in staff performance.

4.1.1.7 Analysis: Complaint classification

There were 33 files (nine per cent) excluding LMRs where the auditor disagreed with the classification of a complaint. Issues identified with classification included:

- Matters classified as C1-6 correspondence files when there are clear allegations
- Matters being over-classified, making low-level complaints more onerous to investigate. For example, allegations relating to a supervisor signing off on timesheets being classified as C3-2 misconduct connected to duty, when a MIM approach would have been more appropriate
- Inaccurately using C3-2 and C3-3 classifications (that is, wrongly classifying a file as C3-2 when the principal allegation related to off duty conduct and classifying files as C3-3 when the main allegation concerned on duty conduct).

According to the Victoria Police integrity management guide, correspondence files are created when further information is required before progressing a matter. There is little further information available to explain the rationale for a C1-6 classification but it is understood that this classification should be used when an allegation is lacking in sufficient detail to warrant another classification. There is a provision for those files to be reclassified when appropriate, however it is not clear exactly when this should occur. The audit identified five files that were reclassified from a correspondence file to either a C2-5 or a C2-1 file. In at least one of those cases, the reason given for the reclassification was a subject officer and specific allegations were identified.

However, in 10 files (63 per cent of the 16 C1-6 files audited) the auditor disagreed with the complainant's C1-6 classification because auditors considered clear allegations could be identified.

If a matter is classified as a correspondence file, ROCSID does not record any subject officer or the allegations. This is misleading and undermines the accuracy of reporting on complaints, and the use of ROCSID as a means of monitoring and responding to an officer's complete complaint history.

CASE STUDY 6

IBAC received a complaint about an arrest and seizure of property. IBAC referred the matter to Victoria Police.

The allegations relevant to Victoria Police were:

- property seized by police had not been returned 12 months later
- no reason was given for the arrest
- the complainant's former partner had a relationship with Victoria Police officers, which influenced the arrest
- the complainant was denied her choice of legal representative.

The matter was classified by PSC as a correspondence file. As a result, there are no allegations or subject officers recorded on ROCSID. The reason for the C1-6 classification was not clear.

The investigator who was allocated this file handled it as a MIM. He stated this in his issues cover sheet and referred to himself as the resolution officer. He spoke to the complainant and stated in his report:

"[The complainant] has communicated her satisfaction and understanding of the PSC and MIM process and the findings relevant to her three (3) desired outcomes of the complaint."

The investigator concluded that the matter was resolved. He communicated this (referencing the MIM process) to the officer involved. It is understandable why the investigator would handle this as a MIM – the allegations largely concerned issues that could be resolved by explaining police procedures.

In relation to LMRs, auditors disagreed with the classification of the complaint in 11 LMRs (22 per cent of the LMRs audited). In all cases this was because the audit considered the complaints to be too serious to be dealt with as LMRs (noting that LMRs are intended to be used to resolve minor customer service type matters). Three examples as follows:

- One matter concerned possible racist and condescending behaviour by a police officer
- A complaint was made about an alleged failure of police to provide medication and a blanket to a person while in custody
- The complainant alleged his bike was seized by police on the grounds that it was stolen or the proceeds of crime, but he was not charged or interviewed. He claimed that he was told to go away by police when he sought the return of his bike.

All three examples could be considered lower level breaches of the *Human Rights and Responsibilities Act 2006* or the *Equal Opportunity Act 2010* and therefore, according to Victoria Police's classification system, should have been classified as minor misconduct.

4. FINDINGS FROM THE AUDIT

CASE STUDY 7

A complaint was received, comprising the following allegations:

- wrongful arrest (for being drunk)
- being handcuffed and thrown into the police divisional van
- when released in the early hours of the morning, the complainant was left on the side of the road by unknown police.

The file was originally classified as an LMR and sent to the relevant police station for resolution. A senior sergeant advised PSC that the matter was resolved.

Almost 12 months later, in response to a PSC survey of the LMR process, the complainant advised that he was angry he had not been contacted and was surprised it had taken so long for police to get back to him.

As a result, a C3-2 file was created and investigated. Given the nature of the allegations, this should have been the original classification.

4.1.1.8 Key Findings: identification of allegations and subject officers, and complaint classification

The majority of allegations and subject officers were correctly identified and recorded. Similarly, most complaints were appropriately classified.

However, IBAC's audit identified a range of issues with Victoria Police's approach to accurately identifying allegations and subject officers, and classifying complaints. In summary:

- Allegations are not always accurately characterised (for example, serious allegations categorised as minor, or discrepancies between the description of allegations on the physical file and ROCSID). This was identified in eight per cent of all files (including LMRs).
- In 11 per cent of all files (including LMRs), issues were identified with the number of allegations including multiple allegations sometimes rolled up inappropriately into a smaller number.
- In some cases, the allegations to be investigated were not clear. This resulted in the wrong allegation being investigated.

- The recording of allegations on ROCSID and/or the paper file was not always accurate, and there were also discrepancies in how allegations are recorded on ROCSID compared with the paper file.
- There were inaccuracies in the identification of subject officers, including subject officers being incorrectly recorded as a 'person of interest' or 'person involved member', and officers being incorrectly recorded as a subject officer when they had no direct involvement in an incident.
- Issues were identified with complaint classifications in 11 per cent of all files (including LMRs). In particular LMRs being used for matters that are more serious than minor customer service issues.
- Concerns were also identified with the overuse of the correspondence classification – in 10 of the 16 C1-6 files (63 per cent) the IBAC auditor disagreed with the complaint classification as clear allegations were made.

It is understood that the process of identifying allegations and subject officers, and classifying complaints is subjective. However, these processes must be robust as they are the foundation upon which a complaint investigation is built. Practices such as bundling up allegations and therefore discarding allegations for no apparent reason, overusing the LMR approach and inappropriately classifying complaints as 'correspondence' compromise Victoria Police's complaint handling processes.

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

Areas for improvement

Victoria Police could improve its approach in relation to identification of allegations and subject officers, and complaint classification by:

- Developing and applying a clear policy on LMRs, including clarifying the parameters for their use
- Reviewing the correspondence classification (C1-6) to determine if and when it should be applied
- PCU should identify allegations within a complaint before the file is allocated to an investigator. This would assist in avoiding misunderstandings at the local level about what is to be investigated, but would not prevent an investigation changing course if new or different allegations are identified
- Improving the PSC quality assurance process to ensure the paper file and ROCSID accurately record details relating to a complaint including allegations and subject officers (without precluding the ability to refine those allegations once the investigation commences)
- Ensuring ROCSID records determinations of exonerated in relation to relevant officers (rather than removing those allegations from an officer's complaint history)

IBAC will continue to monitor complaints classified as LMRs to assess whether the classification is being correctly used for minor customer service matters only.

4.1.2 Complaint history checks

4.1.2.1 Policy and practice

ROCSID is Victoria Police's electronic case management system for complaints. ROCSID records a summary of each complaint received against the subject officer, a brief descriptor of the allegations that comprise that complaint, the determination and action taken. Access to ROCSID is generally limited to PSC employees (including EPSOs) and divisional superintendents, with other officers granted access on an as needs basis.

There is currently no formal Victoria Police policy that outlines when subject officers' complaint histories should be considered in the context of complaint investigations. However, PSC advises that the PCU (the unit responsible for complaint classification) has the discretion to check a subject officer's complaint history. Theoretically, this should occur for all LMRs as there is an informal policy that if an officer has two LMR matters in a 12-month period, any further minor, customer service type complaint should be classified as a MIM.

Complaint histories may be used when an officer is subject to a disciplinary hearing. The integrity management guide states that evidence of similar behaviour in the past may be included in a discipline brief.²¹ Further, the officer's complaint history is provided to the hearing officer to assist in determining an appropriate sanction.

Focus groups conducted for this audit indicated that there are informal processes for accessing information about subject officers, mainly through word of mouth and prior personal knowledge. One focus group participant said that he had previously worked for a divisional superintendent who maintained a spreadsheet of complaint files, which was a means of identifying problematic officers. That approach may have been of some assistance to supervisors, but would clearly fail to identify relevant complaints dealt with outside the division.

21 Victoria Police integrity management guide, April 2015, p 47

4. FINDINGS FROM THE AUDIT

4.1.2.2 Previous reviews

Victoria Police's Ethical Health Process Review (2012) found that knowledge of complaint histories of subject officers would help to identify 'at risk' members which could support early intervention. The review recommended that allegation histories of subject officers and their work units be considered when deciding whether a file should be investigated by the then Ethical Standards Department (ESD) or referred to a region, command or department.²² According to the 2014 response to this review, this recommendation was implemented. It stated that although there was still some discussion about the form of the intelligence advice, a one-page report on complaint histories was being placed on the complaint file to provide managers and investigators with background information on subject officers.

The Koori Complaints Project 2006–08 stated that there was no indication that checks were done of officers' complaint histories prior to classification by ESD. It highlighted this as a concern as if a complaint history is not examined at the time of classification, the chances of it being revealed later are low due to limited ROCSID access. The project advocated shifting complaint history checks from the end of the complaints process to the beginning, to promote a more proactive rather than reactive focus.²³

Reviews undertaken in other jurisdictions have also highlighted the need to check the complaint histories of subject officers. In its audits of complaints handled by NSW Police, the Police Integrity Commission (PIC) found that there was a general failure to check officers' complaint histories in the pre-investigation stage of complaint handling and that the narrow focus on instances of alleged misconduct in isolation had the potential to overlook trends or patterns of misconduct or corruption.²⁴

NSW Police now requires a subject officer's complaint history to be examined at the triage stage of the complaint process and considered during a resolution or evidence based investigation.

That agency's guidelines for complaint handling state:

Complaint histories may reveal patterns of behaviour, circumstances surrounding current or previous complaints, complaints of similar conduct (sustained or not sustained), investigative methods used during previous complaints and assist in determining the most appropriate manner in which to manage a current complaint or subject officer.²⁵

4.1.2.3 Analysis: Consideration of complaint histories

Only 16 files (five per cent²⁶) contained subject officers' complaint histories and one file included some of the officers' histories.²⁷ Most of these files (nine) concerned complaints with the more serious classifications – either C3-2 (misconduct on duty) or C3-3 (misconduct off duty).

In addition to these files, there were eight files (two per cent) where information on the file indicated that complaint histories were considered in some way, even though the histories were not attached to the file.

CASE STUDY 8

A complaint was made by a member of the public that a senior constable was driving under the influence of alcohol. The matter was allocated to the region, for a targeted investigation (specifically, a targeted preliminary breath test on the subject officer).

The file contained the officer's complaint history which listed seven complaint files over approximately nine years of service. Five allegations were substantiated. None of the allegations (substantiated and unsubstantiated) related to drink driving, however they did include improper conduct and duty failure.

Following a review of the investigator's final report, the EPSO asked that further work be done on this file in light of the subject officer's complaint history. This was appropriate and a good use of the complaint history, although it did not change the determination of not substantiated.

22 Victoria Police Ethical Health Process Review, 2012, p 8

23 Ethical Standards Department and Department of Justice, *Koori Complaints Project 2006–2008 Final Report*, pp 31–32

24 NSW Police Integrity Commission, *Special Report to Parliament: Project Dresden*, April 2000, p 20.

25 NSW Police Force complaint handling guidelines, February 2016, p 25

26 The percentages for this section have been calculated based on n=345 (in nine files, the auditor identified that a complaint history was not relevant)

27 The regional breakdown was four files for Southern Metro Region (two per cent of its files) and 12 for Western Region (eight per cent).

It is possible that complaint histories were checked by PSC during the complaint triaging process but were not attached to the files because the history was deemed irrelevant. As there was no formal record of this occurring, it was not possible to detect if or how often this occurred.

There were 46 files (13 per cent) where subject officers' complaint histories appeared not to have been considered, yet IBAC auditors assessed that complaint histories were relevant.²⁸ In these cases, the complaint histories were assessed as relevant either because of a significant total number of complaints over the course of an officer's career, or because a similar allegation had been made against the officer in the recent past.

Examples of these files include the following:

- The subject officer was the recipient of a similar allegation four months prior to the current allegation
- One subject officer had a significant and recent complaint history relating to aggressive behaviour which was relevant to the current file
- One subject officer had previous complaints relating to how he responded to subjects of intervention orders, which was relevant to the current file
- The subject officer had a significant complaint history relating to information release which was relevant to the current file
- The subject officer had 20 allegations against him over 12 years of service, mostly in relation to assault which was the basis of the current complaint
- The primary subject officer of a complaint concerning improper behaviour had previous allegations related to aggressive conduct.

The audit of LMR files did not identify any files where a subject officer had two LMRs in the previous 12 months. However, the auditors did identify 10 LMR matters (10 per cent) where the subject officer had a complaint history that should have raised questions about the appropriateness of the matter being classified as an LMR. For example:

- An officer was the subject of two complaints (one C2-1 and one C2-4) in the twelve months prior to the LMR (and had a further 10 complaint matters over the course of his career).
- An officer had seven complaint files over a seven year period, and following this LMR received a further two complaints, one which was classified as C2-1 and the other C2-4.

4.1.2.4 Key Findings: Consideration of complaint histories

The audit identified only seven per cent of files where there was a clear indication that the complaint history of one or more subject officers had been considered either at the triaging stage or during the investigation. In light of Victoria Police's 2014 response to the Ethical Health Process Review, it was expected that a summary of complaint histories would be located on a larger number of files.

Consultations with EPSOs and Victoria Police officers who have investigated complaint files revealed divergent views around the use of complaint histories. The first view was that an awareness of a subject officer's complaint history at the start of an investigation could prejudice an investigator and therefore be contrary to natural justice. The alternate view was that it is standard police practice to check the criminal record of a member of the public under investigation, and that it is appropriate to apply a similar standard to complaint investigations.

²⁸ This assessment was made following a review of the subject officer's complaint history as recorded on ROCSID or the IBAC CMS.

4. FINDINGS FROM THE AUDIT

The view was also expressed that investigators should have access to all relevant information to conduct a thorough investigation and to identify appropriate recommendations. One focus group participant said he had not previously considered the value of complaint histories but now understood they could assist in the investigation (such as by demonstrating patterns of behaviour), in developing appropriate recommendations and in welfare management. Despite the divergent views, there was a consensus that a clear and consistent policy on this issue was necessary.

PSC has advised that it is appropriate for investigators to be informed about the relevant complaint history and agrees that there is a need for a clear, and justifiable policy on the use of complaint histories in investigations. However, it is cautious about using current reporting processes, citing concerns about human rights, privacy and procedural fairness.

Complaint histories are an important source of information on officers who are the subject of a complaint. Previous complaints provide important intelligence on possible patterns of behaviour, even where a previous complaint may have been unable to be substantiated. Failure to consider a subject officer's complaint history – for customer service issues through to more serious misconduct and corruption allegations – is disregarding critical information relevant to complaint classification, the investigation and outcomes.

The current practice of PSC deciding whether or not to attach a complaint history does not appear to be sufficient, given the small proportion of files where the complaint history was identified or appeared to have been considered. Further, where complaint histories were identified on files, they were sometimes attached only after the file had gone to the region or where a matter was proceeding to a disciplinary hearing.

The failure to consider complaint histories demonstrates a tendency to treat individual complaints in isolation, ignoring possible patterns in an officer's behaviour and the opportunity for developmental or disciplinary action to address that conduct.

Areas for improvement

Victoria Police could improve its approach by implementing a policy requiring PSC to attach subject officers' complaint history to all complaint files, including MIMs. Such a policy may acknowledge limited occasions when attaching a full history may not be appropriate, such as in relation to ongoing sensitive operations. More general concerns regarding confidentiality may be addressed by the adoption of Interpose to manage complaint files.

IBAC understands that attaching complaint histories to LMR matters may be problematic, given the streamlined process of handling those matters. However it is important that PSC carefully considers complaint histories before determining a matter is appropriate for resolution via LMR.

Further, IBAC believes that the current (informal) policy that an officer with two previous LMRs in a 12-month period is ineligible to have the third matter dealt with through LMR, is too broad. A sounder policy would stipulate that a matter can only be classified as an LMR if the subject officer has not had a complaint (regardless of classification) over the last 12 months. PSC should also consider a subject officer's complaint history to identify officers who may have multiple complaints (either of a serious or minor, customer service nature) over a certain period of time, which would indicate that the LMR process is not suitable for that officer.

4.1.3 Investigation plans

4.1.3.1 Policy and practice

There is no formal policy on the use of investigation plans for complaint files. The integrity management guide states that a detailed investigation plan should be prepared for matters involving allegations of criminality, submitted to the investigator's manager for approval and updated regularly.²⁹ Earlier versions of that guide stated that the investigation plan was to be developed using the template located on the PSC intranet site.³⁰

According to the integrity management guide, the investigation plan enables relevant managers and any other officer who may be assigned the matter, to establish the exact status of the investigation at any time and to identify future actions that need to be taken.

Consultation with Victoria Police officers who have investigated complaint files indicated that formal investigation plans are not routinely prepared and would only be used for serious misconduct matters and, even then, not consistently. Generally, the investigators said that either they did not consider the preparation of plans necessary because of their training and experience in conducting investigations, or they prepared informal lists outlining the necessary investigative tasks. Such documentation was not considered directly relevant to the complaint file (because it was not relevant to the determination of the complaint) and therefore was not placed on the file.

4.1.3.2 Previous reviews

In 2010, ESD conducted a function audit of a selection of complaint files that involved possible criminality. The audit was limited to 17 C3-2 (misconduct on duty) and C3-3 (misconduct off duty) files.

This function audit identified that no file contained an investigation log or plan prepared by the regional or departmental investigator.³¹ As a result, the function audit found it was not possible to determine why certain avenues of investigation had or had not been pursued. It was also identified that it was not possible to identify the source of exhibits on the file or to prove continuity.

4.1.3.3 Investigation plans

None of the 354 files audited by IBAC contained an investigation plan. However, in five files, the following was identified:

- Two files (a MIM file and a C3-2 misconduct on duty file) contained the investigator's log outlining actions undertaken.
- A C3-3 complaint file (concerning allegations of theft) contained briefing notes that outlined work undertaken to date and further investigative activities that were planned.
- Two C3-3 files (misconduct off duty) contained disciplinary interviews plans.

While it is acknowledged that investigation plans would not be developed as a matter of course for less serious files (including MIMs, C1-6 and C1-7 files), investigation plans should – at a minimum – be developed for serious complaint files. And as discussed in 4.1.3.4, consideration should also be given to developing plans for complaints which do not involve allegations of criminal conduct but which are complex.

²⁹ Victoria Police integrity management guide, April 2015, p 23

³⁰ It is noted that the template investigation plan is no longer available on the Victoria Police intranet.

³¹ PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, pp 6–7

4. FINDINGS FROM THE AUDIT

CASE STUDY 9

A complaint was received from a man whose home was burgled. He alleged:

- property (alcohol) recovered by police from the burglar's residence was then stolen by police
- when returning other property to the complainant, police told him to take property which did not belong to him
- when he tried to return the property that was not his at a police station, the officer refused to accept it.

Given the serious nature of the allegations, an investigation plan should have been developed. No plan was on the file. There was no other documentation on the file that explained why certain action was or was not taken.

In general, the investigation lacked transparency. For example, it does not appear that CCTV footage of the police station was reviewed to check the complainant's claim that when he tried return property, the officer he spoke to refused to accept that property. Also, there is no evidence that rosters, running sheets, diary entries, exhibits lists or other available records were examined to clarify matters raised in the complaint.

The determination of this complaint was unfounded (in relation to the theft allegation) and lesser deficiency (in relation to the failure to accept return of property).

The PIC audits of NSW Police examined the use of investigation plans. In its 2000 report, PIC recommended that investigation plans be mandatory for all Category 1 complaint files (being the most serious complaints against police, such as soliciting or accepting bribes, and perverting the course of justice). This was accepted by NSW Police subject to the caveat that plans would not be required where a complaint could be investigated and actioned immediately. The PIC's follow up audit published in 2003 identified that only 39 per cent of relevant complaint files contained an investigation plan. The PIC also noted that in some instances where a plan was prepared, the investigation did not follow the plan, subsequently missing an important step in the investigation process.

4.1.3.4 Key Findings: Investigation plans

The audit was unable to locate any investigation plans on the files examined. It is accepted that some investigators may be preparing investigation plans but not including them on the file. Given the absence of the plans from the file, it is not possible to determine how consistently this is occurring and in relation to which file classifications. It was also not possible to assess whether an investigation plan had been submitted and approved by a relevant manager, and updated as an investigation progressed (as stipulated in the integrity management guide).

In light of the feedback provided in the focus groups, IBAC believes that a large number of investigators are not completing investigations plans, either because they are not aware of the requirement (specifically in relation to allegations involving criminality) or because they do not consider them necessary.

EPSOs have advised that officers who are allocated complaints for investigation regularly contact them for advice around how to approach an investigation. This indicates that some form of template plan would be a useful tool to assist investigators in structuring their investigation.

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

Areas for improvement

Victoria Police should strengthen its complaint handling practices by requiring investigation plans to be completed for all complaint files that involve allegations of criminality and for other matters that are complex (for instance, involving multiple allegations or multiple subject officers). Plans should be proportional to the seriousness and complexity of the investigation.

A template investigation plan should be attached, either physically or electronically, to the file when it is allocated to a region, command or department.

Completed investigation plans must be placed on the complaint file, to improve transparency and accountability.

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

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

4. FINDINGS FROM THE AUDIT

4.2 Impartiality

4.2.1 Policy and practice

Victoria Police policy promotes impartial complaint investigations. The policy encourages investigators to be aware of impartiality issues and provides guidelines around how to respond to conflicts of interest. Other than where files are classified as an LMR or a MIM, investigators 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.³²

LMRs and MIMs files are considered suitable to be investigated by subject officers' supervisors. It is appropriate line managers handle minor complaints that concern the professional conduct of their staff.

PSC's guide to assist with investigation files³³ states that the allocated investigator must be senior in rank to the subject officer. However this requirement is not specified elsewhere in Victoria Police policy. Ensuring investigators are of a more senior rank to subject officers avoids actual or perceived conflicts of interest and practical issues associated with investigators questioning or recommending sanctions against their peers or more senior officers.

The issue of investigators being assigned complaints about more senior officers was highlighted in the PIC 2000 audit of NSW Police's complaint management practices. The PIC audit identified that more than 11 per cent of investigations were undertaken by officers junior to the subject officers.³⁴ PIC concluded that 'partiality, or its appearance, might be removed or reduced if the practice of junior officers investigating complaints against more senior officers was to cease.'

There is some inconsistency in Victoria Police's guidelines regarding whether an investigator who has previously investigated a subject officer should be appointed to subsequent investigations into that officer. The VPM complaints and discipline policy states that an investigator will not be automatically precluded from conducting subsequent investigations into an officer, but that the investigator must disclose all other investigations to the EPSO to allow an assessment of the investigator's suitability, and to ensure any necessary mitigation strategies are put in place.³⁵ However, the integrity management guide states that generally 'investigators should not conduct investigations into an officer's behaviour if they have previously conducted investigations into that same officer.'³⁶

It is incumbent on investigators to disclose associations that are potentially inappropriate or that may involve a conflict of interest prior to any investigation commencing. When conducting oversight or investigation files, there is a requirement for the investigator to complete a formal conflict of interest questionnaire (form 1426). This form identifies actual, potential or perceived conflicts of interest between the investigator and the subject officers, and requires the approval of the investigator's supervisor as well as the development of a conflict management plan if appropriate.

4.2.2 Previous reviews and Victoria Police activities

A function audit undertaken by Victoria Police in 2010 identified the following impartiality issues with misconduct on duty (C3-2) and misconduct off duty (C3-3) files:

- in more than 40 per cent of the audited files (seven files out of a total of 17) the allocated investigator was a line manager of the suspect officer
- in 47 per cent of files, the investigator was from the same workplace as the subject officer
- there was little reference on the files to decision making regarding the allocation of investigators or the potential for conflicts of interest.³⁷

32 Victoria Police manual policy, Complaints and discipline, section 6.2

33 PSC guide to assist with investigation files, v122014

34 NSW Police Integrity Commission, Special Report to Parliament, Project Dresden, 2000, p 28

35 Victoria Police manual policy, Complaints and discipline, section 6.2

36 Victoria Police integrity management guide, April 2015, p 57

37 PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, p 12

In 2013 PSC identified that the allocation of complaint investigations to supervisors of subject officers continued to be an issue. PSC issued a reminder that the appointment of direct line supervisors as complaint investigators should be restricted to cases where the complaint is of a minor nature (such as C2-4 or C2-5 files) and the supervisor had no involvement in the original incident.

4.2.3 Analysis: Rank of the investigator

IBAC's audit identified that investigations are generally conducted by appropriate officers. The majority (87 per cent) of investigations (excluding LMRs) were conducted by senior sergeants and sergeants, with just over one per cent of investigations being conducted by leading senior constables or senior constables.

FIGURE 4: RANKS OF INVESTIGATORS OF COMPLAINT FILES

Rank	Number of complaints investigated	Per cent of total files
Superintendent	3	0.8
Inspector	40	11.3
Senior Sergeant	170	48.0
Sergeant	137	38.7
Leading Senior Constable	2	0.6
Senior Constable	2	0.6
Total	354	100

However there were 19 files (excluding LMRs) identified where the investigator was not of a more senior rank to one or more of the subject officers, including one file³⁸ where the investigator was of a junior rank to a subject officer.

³⁸ In that file the assigned investigator was a senior constable and the subject officers were a sergeant, a senior constable and a first constable.

4.2.4 Analysis: Conflicts based on working at the same station

There were 28 files classified as C2-1, C3-2, C3-3 or C3-4 files that were investigated by officers senior to the subject officer but located at the same station as at least one subject officer. These 28 investigations represent 19 per cent of those file classifications. This is despite reminders from PSC that investigators of these file types should not be drawn from the same workplace as the subject officers.

In addition to the 28 files identified above, there were 91 other files (classified as C1-5, C1-6, C1-7, C1-8 and C2-5 files) where the investigator worked at the same station as at least one of the subject officers. This represents 44 per cent of those file classifications. Because these files often address less serious issues, it can be appropriate for supervisors working at the same station to conduct these investigations as it can allow for more active management of lower level performance or behavioural issues.

CASE STUDY 10

A complaint alleged two subject officers had assaulted a minor while the minor was being restrained, handcuffed and escorted to a police vehicle.

The file was originally allocated for investigation to a senior sergeant at the station where both subject officers worked. The investigating officer identified that he had a conflict of interest with the subject officers and actively sought advice from the EPSO, who agreed that the senior sergeant would not be an appropriate investigator. The file was appropriately reallocated to another officer to investigate.

Consultations with Victoria Police officers identified that investigators recognise the conflicts inherent in supervisors investigating subject officers. These included a potential conflict between a supervisor's role in providing welfare support to officers with the investigator's role in possibly recommending disciplinary action or criminal charges. Focus group participants suggested that if supervisors recommend criminal charges against a subject officer, it erodes trust in a work area. Their preference was for PSC to be responsible for files when criminal charges are likely.

4. FINDINGS FROM THE AUDIT

Victoria Police has taken steps to address conflicts of interest caused by investigators and subject officers working at the same station. Southern Metropolitan Region indicated that two divisions had arranged to investigate each other's complaint files in the interests of improving independence. Such initiatives are in addition to advice issued by PSC that, other than for LMR and MIM files, supervisors of subject officers should not be appointed as investigators of complaints.

4.2.5 Analysis: Investigator's complaint history

The audit sought to identify whether the complaint histories of investigating officers gave rise to potential or perceived conflicts of interest. IBAC auditors identified 26 files (seven per cent) excluding LMRs where the investigating officer had a complaint history that could impact on their impartiality when investigating a complaint.³⁹ Officers' complaint histories were considered relevant if they had a recent complaint that was similar in nature to that which they were being asked to investigate or if there was a concerning pattern of behaviour (such as a high number of complaints or regular complaints of a similar nature) evident in their complaint history.

CASE STUDY 11

This file concerned allegations that a sergeant intervened in a family violence investigation to assist a relative of his and, in doing so, potentially perverted the course of justice.

IBAC auditors identified that the appointment of the investigator was inappropriate because approximately three years previously, the investigator had been the subject of a similar allegation of perverting the course of justice by using his position as a police officer to influence a family incident.

In addition, the investigator was the subject of a separate previous allegation that he had used his position for personal advantage. Although the allegations against the investigator were unfounded, their similarity to the complaint they were investigating could create a perceived conflict of interest.

³⁹ The audit used officers' complaint histories as recorded on IBAC's CMS as a reference. Although these histories are not as exhaustive as the complaint histories recorded on ROCSID, they were seen to be indicative of major or recent complaints that could give rise to a conflict of interest.

4.2.6 Analysis: Conflicts of interest identified by Victoria Police

There were nine files (three per cent of audited files excluding LMRs) where a conflict of interest had been identified by Victoria Police. These conflicts were identified by:

- the investigator in five cases
- the EPSO in two cases
- 'other' in two cases.

In eight of these cases, these conflicts were resolved by assigning the files to a different investigator. In the ninth case, no action was taken. None of these conflicts were identified or documented through the completion of a form 1426.

Form 1426s were attached to only six audited files, all of which were C1-8 oversight files. Despite PSC's file cover sheet stipulating that a form 1426 must be completed 'at the commencement of any investigation or oversight file', they were attached to only 16 per cent of C1-8 files and none of other file classifications.

Focus groups conducted for the audit identified that some officers did not feel comfortable declaring a conflict of interest or did not believe declarations would be actioned. Participants identified numerous examples where they had identified conflicts of interest but had been directed to continue with the investigation without a management strategy in place:

- An officer in Southern Metropolitan Region said he verbally declared a conflict of interest in relation to a particular file because he had previously supervised the subject officer and considered that they had a close relationship. Despite identifying the conflict, he was told to keep the file. The officer described his subsequent investigation as one of the most stressful experiences of his career because of the difficulties in managing the conflict of interest
- A sergeant in Western Region was assigned a complaint file in which another sergeant in the region was the subject officer. Although the investigator raised the conflict of interest regarding rank with his superiors, he was told to complete the investigation.

FIGURE 5: FILES WHERE THE INVESTIGATOR WAS ASSESSED TO BE INAPPROPRIATE

Classification	Number of files with investigators assessed to be inappropriate	% of total files within this classification
C1-5	3	5
C1-6	5	31
C1-7	4	22
C1-8	5	14
C2-1	17	26
C2-5	10	12
C3-2	9	20
C3-3	5	15
C3-4	1	33
Total	59	17

4.2.7 Key findings

IBAC’s audit identified 59 files where the choice of investigator was not considered appropriate.

The impartiality issues that made the choice of investigator inappropriate were:

- the investigator not being of a higher rank than all of the subject officers
- the investigator and subject officer working at the same station⁴⁰
- the investigator having a complaint history relevant to the investigation.⁴¹

Regardless how impartial or professional an investigator might be, these issues can create real or perceived conflicts of interest. Such perceptions can undermine the effectiveness of an investigation or taint the outcome in the eyes of the complainant.⁴² This can lead to further complaints (either to Victoria Police or IBAC) related to the conduct of the investigation.

It also can diminish confidence in the complaint system and the ability of police to effectively investigate complaints against their own.

Victoria Police has taken active steps to address impartiality issues by:

- emphasising the importance of impartiality in relevant policies
- attaching reminders to complaint files that investigators should not work at the same station as subject officers
- developing form 1426 to identify and manage any conflicts of interest.

However compliance with these initiatives is not standard and, in particular, the audit identified that form 1426 is rarely completed. Ensuring conflict of issues are explicitly addressed and documented has been recognised interstate as a significant way of increasing public confidence in the complaint handling process. In NSW for example, the Complaint Allocation Risk Appraisal (CARA) process helps identify and manage conflicts of interest and must be completed for all complaint investigations.⁴³

40 The choice of investigator in LMR and MIM files was not classed as ‘inappropriate’ where the investigator and subject officer worked at the same station because for such file types, it was recognised that a supervisor is the most appropriate investigator.

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

42 The NSW Police Integrity Commission’s Project Dresden identified that complainants are less likely to trust the outcome of an investigation where there is a perception of bias.

43 New South Wales Police Force, Complaint Handling Guidelines 2016, Section 4.1.1

4. FINDINGS FROM THE AUDIT

PSC also advised that it now requires investigators to complete a one-page conflict of interest declaration form for all complaint and oversight files, and that EPSOs are responsible for monitoring compliance around completion of that form.

Areas of improvement

Victoria Police could improve the management of impartiality issues in complaint investigations by:

- Requiring form 1426 to be completed for all oversight and investigation files (excluding MIMs and LMRs) to identify potential conflicts of interest. Greater compliance could be encouraged by PSC including a hard copy printout of the form on the file when it is sent to the regions, departments or comamands for investigation
- Amending the VPM policy rules relating to complaints and discipline to require investigators to be of a more senior rank than all of the subject officers
- Ensuring VPM policy rules are upheld by confirming that investigators come from different stations to the subject officers. Responsibility for ensuring compliance with this rule could be allocated to the EPSO or LAC
- Amending the VPM policy rules and the integrity management guide to ensure consistent advice as to whether an investigator who conducted a previous investigation into a subject employee should be precluded from conducting a further investigation into that employee
- EPSOs scrutinising the choice of investigators to ensure they are appropriately senior to the subject officers, do not work at the same station as the subject officers and do not have a complaint history that could create a perception of a conflict of interest.

4.3 Timeliness

4.3.1 Policy and practice

The VPM guidelines on complaint management and investigations specify timeframes within which complaint files must be investigated. According to the guidelines, these timeframes are calculated as the period between the date the complaint or incident was lodged and the date the investigation is completed and any required action is approved by PSC.⁴⁴

FIGURE 6: TIMEFRAMES FOR COMPLETION OF COMPLAINT FILES

Classification	Complaint type	Days
C1-0	Workfile	152
C1-5	Preliminary enquiry file	28
C1-6	Internal management (correspondence)	90
C1-7	Receipt of civil process	90
C1-8	Incident investigation/oversight	90
C2-1	Minor misconduct	90
C2-4	Local management resolution	7
C2-5	Management intervention (MIMs)	40
C3-2	Misconduct connected to duty	90
C3-3	Criminality (not connected to duty)	90
C3-4	Corruption	152

Timeframes can be suspended if a delay is caused by an external factor. According to the policy guidelines, an investigation should not be paused because an officer, witness or investigator is on leave or engaged in other activities. Managers should consider reallocating an investigation if the investigator is unable to attend to the investigation.⁴⁵

⁴⁴ Victoria Police manual guidelines (VPMG), Complaint management and investigations, section 6.6 Timeframes

⁴⁵ Victoria Police manual guidelines, Complaint management and investigations, section 6.7 Deferral of an investigation

Investigators can apply for extensions. The request for the extension and the approval must be attached to the file.⁴⁶ These requests must be made before the due completion date and are to be approved by:

- LACs for a first extension of up to 30 days
- Department Heads for subsequent extensions.⁴⁷

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

- subject officer is on leave or rest days
- investigator or resolution officer is on leave or rest days
- complainant failed to make or return contact with the investigator or resolution officer
- complainant is refusing to co-operate.⁴⁸

4.3.2 Previous reviews

Despite clear policy guidelines, previous reviews of Victoria Police's complaint handling practices have identified shortcomings around timeliness:

- A function audit undertaken by Victoria Police in 2010 identified the following avoidable delays associated with the investigation of C3-2 (misconduct on duty) and C3-3 (misconduct off duty) files:
 - the allocated investigator was on leave
 - -conflicts of interest were not identified when files were being allocated; they were only identified when the physical file was handed to the (conflicted) investigator
 - there were unnecessary and complicated file movements up and down the chain of command
 - files were moved via mail or DX when hand delivery was feasible.
- The function audit contrasted these inefficiencies with the (more efficient) processes that applied when police investigated crimes where the suspect was not a police officer.⁴⁹

- The 2013 Victoria Police *Equality is not the same* report highlighted how protracted resolution timelines and limited communication about process and outcomes led to significant dissatisfaction felt by complainants.⁵⁰
- In 2013, VEOHRC identified that connecting complaints to disciplinary proceedings can lead to long delays, during which the complainant is left waiting for a response.⁵¹
- The 2012 Victoria Police Ethical Health Process Review noted that regions and departments were not meeting the timeframes set for finalisation and resolution of MIM files. The review noted that delays diminish community confidence and may convey the message that Victoria Police does not treat complaints seriously or with due respect.⁵²
- The OPI 2008 *Improving Victorian policing services through effective complaint handling* report identified four key reasons for slow management of MIM files:
 - the investigation or complaint was more complex than originally thought
 - further information was needed to progress the file
 - relevant staff were not available due to leave or duty requirements
 - slow movement of physical files.⁵³

Victoria Police has sought to address issues of timeliness, particularly in relation to MIM files, through the introduction of the LMR process, intended for minor customer service-type matters. No physical paper file is created for these matters and they should be able to be resolved by the subject officer's supervisor within seven days of the matter being emailed to the relevant work area.

46 Victoria Police manual guidelines, Complaint management and investigations, section 6.6 Timeframes

47 Victoria Police manual guidelines, Complaint management and investigations, section 6.6 Timeframes

48 Victoria Police manual guidelines, Complaint management and investigations, section 6.6 Timeframes

49 PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, p 4

50 Victoria Police, *Equality is not the same*, December 2013, p 37

51 Victorian Equal Opportunity and Human Rights Commission, Submission to Victoria Police Consultation on Field Contact Reports and Cross Cultural Training, August 2013

52 Victoria Police, *Ethical Health Process Review*, 2012, p 9. The review recommended that EPSO units be established to provide assistance and guidance to local investigators with investigations and completion of files. Note the Post Implementation Review Final Report (June 2014) stated that this recommendation was not implemented and instead referred to the ongoing EPSO engagement strategy that intended to change EPSOs' focus to providing support on complaint investigations, rather than administration.

53 Office of Police Integrity, *Improving Victorian policing services through effective complaint handling*, 2008, p 20

4. FINDINGS FROM THE AUDIT

4.3.3 Analysis: Time taken to register, classify and allocate files excluding LMRs

The audit identified that the majority of files (70 per cent of files excluding LMRs) were classified by PSC within seven days of being received by Victoria Police. Although the majority of files are classified quickly, there were a significant proportion of files (11 per cent) that took more than a month to classify. The reasons for these delays were mostly unclear, although some were due to files being reclassified.⁵⁴

FIGURE 7: TIME TAKEN FROM RECEIPT OF COMPLAINTS TO CLASSIFICATION (EXCLUDING LMRS)

Days taken from receipt to classification	Number of files
Same day	100
1 to 7	148
8 to 14	48
15 to 30	19
31+	39

The majority of audited files (76 per cent excluding LMRs) were allocated within a week of being classified.

FIGURE 8: TIME TAKEN FROM CLASSIFICATION TO ALLOCATION OF FILES (EXCLUDING LMRS)

Days taken from classification to allocation	Number of files
Same day	35
1 to 7	234
8 to 14	58
15 to 30	16
31+	11

In general, PSC's processes around classifying and allocating files appeared to be efficient and did not contribute in a substantial way to any significant timeliness issues associated with complaint files. Of the files audited (excluding LMRs), there were 13 files (four per cent) where auditors identified delays in classification and allocation had negative consequences. These consequences included:

- six files where there were further complaints lodged because of the delays in processing the original complaint
- four files where perishable evidence was lost because of delays
- three files where there was a loss of relevant CCTV footage because of delays.

4.3.4 Analysis: Classification and allocation of LMRs

The audit did not identify any systemic delays in the classification or allocation of LMRs. Of the 50 LMRs that were audited, 42 (84 per cent) were classified within a day of receipt by PSC.⁵⁵ Approximately more than (26 files or 52 per cent) were allocated within one day of being classified, with most (41 files or 82 per cent) allocated within ten days of classification.

Although the majority of LMRs were classified and allocated promptly, there were five files that took more than two weeks to allocate. The reasons for these delays were unknown in three cases, but auditors assessed that the delays in the other two cases were due to clarification being sought from the complainant and slow internal file movements. In one case, these delays led to further complaints being lodged.

The prompt classification and allocation of LMR files is particularly important given the short timeframe permitted for their completion. If PSC does not receive a response or resolution from the investigating area within seven days, consideration is given through the complaints assessment process to reclassifying the complaint as a MIM.⁵⁶

⁵⁴ For reclassified files, the 'classification date' used by auditors was the date on which the file was reclassified, not the original classification date.

⁵⁵ Date received by PSC being based upon the date the complaint was entered into ROCSID.

⁵⁶ Victoria Police, Conduct and Professional Standards Division standard operating procedures, September 2014, September 2014, p 11

4.3.5 Analysis: Time taken to complete investigations and resolutions

As outlined in section 4.3.1, the Victoria Police policy specifies set timeframes within which complaint files must be investigated:

- 7-day limit – LMRs (C2-4)
- 28-day limit – preliminary enquiry file (C1-5)
- 40-day limit – MIMs (C2-5)
- 152-day limit – corruption file (C3-4)
- 90-day limit – all other files (C1-6, C1-7, C1-8, C2-1, C3-2 and C3-3).

The analysis below examines the timeliness of investigations, looking at the proportion of files that were completed within time limits and identifying files that were up to a week and more than a week overdue.

4.3.5.1 Seven-day limit (LMRs)

Only 11 LMRs (22 per cent) were completed within the seven-day time limit. Of the 39 LMRs (78 per cent) that were overdue, 27 (54 per cent) were more than a week overdue and two files were more than 100 days overdue. Delays were most common where the investigator could not contact the complainant (six files) and where movement of the file was slow (five files), though in many cases it was unclear why the delay occurred.

FIGURE 9: TIME TAKEN TO COMPLETE LMRs (C2-4) – 7-DAY TIMEFRAME

Days taken to complete	Number of files
Within timeframe	11
Up to one week overdue	12
More than one week overdue	27

4.3.5.2 28-day limit (preliminary work files)

Preliminary work files were generally completed within the 28-day limit. Of the 56 C1-5 files audited, 52 (93 per cent) were completed within this timeframe. The four files (seven per cent) that exceeded this limit ranged from five days to 49 days overdue.

FIGURE 10: TIME TAKEN TO COMPLETE PRELIMINARY WORK FILES (C1-5) – 28-DAY TIMEFRAME

Days taken to complete	Number of files
Within timeframe	52
Up to one week overdue	1
More than one week overdue	3

4.3.5.3 40-day limit (MIMs)

There were 81 MIM files audited, with 55 (68 per cent) of these being completed within the 40-day limit. There were 26 files (32 per cent) that exceeded the prescribed timeframe, with 25 of these being more than a week overdue. Of particular concern was four MIM files that took more than 300 days to complete.

FIGURE 11: TIME TAKEN TO COMPLETE MIMs (C2-5 FILES) – 40-DAY TIMEFRAME

Days taken to complete	Number of files
Within timeframe	55
Up to one week overdue	1
More than one week overdue	25

4. FINDINGS FROM THE AUDIT

FIGURE 12: TIME TAKEN TO COMPLETE C1-6, C1-7, C1-8, C2-1, C3-2 AND C3-3 FILES – 90-DAY TIMEFRAME

Classification	Days to complete			Total overdue files	Total files	% overdue
	Within timeframe	Up to one week overdue	More than one week overdue			
C1-6	10	3	3	6	16	38
C1-7	18	0	0	0	18	0
C1-8	28	0	8	8	36	22
C2-1	44	3	19	22	66	33
C3-2	35	3	6	9	44	20
C3-3	21	2	11	13	34	38
Total	156	11	47	58	214	27

4.3.5.4 90-day limit (C1-6, C1-7, C1-8, C2-1, C3-2 and C3-3 files)

The following file classifications are required to be completed within 90 days:

- internal management – correspondence (C1-6)
- receipt of civil process (C1-7)
- incident investigation/oversight (C1-8)
- minor misconduct (C2-1)
- misconduct on duty (C3-2)
- misconduct off duty (C3-3).

There were 214 files audited that fell within one of these classifications. Of these, 156 files (73 per cent) were completed within the 90-day limit. Another 11 files (five per cent) were up to a week overdue and the remaining 47 files (22 per cent) were more than a week overdue.

4.3.5.5 152-day limit (corruption files)

There were three files classified as corruption, with a time limit of 152-days. Of these, two files (67 per cent) were completed within the 152-day limit. The overdue file took 237 days to complete.

FIGURE 13: TIME TAKEN TO COMPLETE CORRUPTION FILES (C3-4) – 152-DAY TIMEFRAME

Days taken to complete	Number of files
Within timeframe	2
Up to one week overdue	0
More than one week overdue	1

FIGURE 14: TIME TAKEN TO COMPLETE ALL FILES (INCLUDING LMRS)⁵⁸

Classification	Time taken to complete			Total overdue files	Total files	% overdue
	By due date	Up to one week overdue	More than one week overdue			
C1-5	52	1	3	4	56	7
C1-6	10	3	3	6	16	38
C1-7	18	0	0	0	18	0
C1-8	28	0	8	8	36	22
C2-1	44	3	19	22	66	33
C2-4	11	12	27	39	50	78
C2-5	55	1	25	26	81	32
C3-2	35	3	6	9	44	20
C3-3	21	2	11	13	34	38
C3-4	2	0	1	1	3	33
Total	276	25	103	128	404	32

4.3.5.6 Summary of time taken to complete files (including LMRs)

With the exception of C1-5 and C1-7 files, there were significant delays associated with the investigations of complaint files. Significantly, the majority (80 per cent) of these overdue files were more than one week overdue and 68 per cent of overdue files were more than two weeks overdue.

The most common reasons for the delays in completing files within set timeframes were:

- unable to contact complainant
- leave taken by investigator
- leave taken by subject officer
- slow internal file movement process
- pending legal processes or hearings
- matter more complex than originally thought
- delays in receiving necessary evidence.

However, in a significant number of cases, it was unclear why the delays had occurred. This made it difficult for IBAC auditors to assess whether delays were reasonable or unavoidable.

CASE STUDY 12

A complaint was received alleging assault, property damage and duty failure against officers who arrested the complainant.

The file was created, classified and allocated by PSC in November 2014, with the due date for completion set for 8 February 2015.

According to ROCSID and the documents on file, the investigation was not completed until 6 April 2015 – approximately two months after the due date. There is no explanation on the file for this delay – no supporting documentation that might indicate a reason for the delay, no evidence of an extension being sought or granted, and no evidence of PSC following up on the outstanding file.

⁵⁷ Calculations of overdue files in this table take into account any file extensions that may have been granted.

4. FINDINGS FROM THE AUDIT

FIGURE 15: EXTENSIONS GRANTED BY CLASSIFICATION

Classification	Total files	Files where an extension was granted	% of files where an extension was granted	Files granted extension that were still overdue	% of files granted extension that were still overdue
C1-5	56	0	0	0	NA
C1-6	16	5	31	3	60
C1-7	18	0	0	0	NA
C1-8	36	4	11	2	50
C2-1	66	15	23	8	53
C2-5	81	14	17	6	43
C3-2	44	7	16	3	43
C3-3	34	8	24	8	100
C3-4	3	1	33	1	100
Total	354	54	15	31	57

Participants in focus groups conducted for the audit highlighted the difficulties in managing complaint files in addition to other work. Participants also noted the delays associated with moving the hard copy file through multiple approval stages – particularly a physical file which may move back and forth between the investigator, their line manager and the EPSO. Some officers believed that using Interpose for managing complaint investigations would reduce the time currently spent transferring files, while also improving file oversight throughout the investigation process so that any issues could be identified by line management or the EPSO prior to submission of the final report. PSC also believes Interpose will improve the timeliness of investigations.

4.3.6 Analysis: Extensions

Under the Victoria Police complaint management and investigations guidelines, an investigator can request an extension if required. For most file classifications, a first extension of up to 30 days can be approved by a LAC, while a subsequent extension can be approved by a departmental head (an assistant commissioner).⁵⁸ The guidelines state that extension requests and approvals must be documented and attached to the file.⁵⁹ PSC’s standard operating procedures state that extension requests, approvals and rejections must be recorded on ROCSID.⁶⁰

The audit identified 55 files (excluding LMRs) where extensions were sought, with extensions granted in 54 of these cases. The current arrangements around extensions did not appear to be effective in avoiding overdue files. In 57 per cent of cases where an extension was granted, files were still not completed within the extended timeframes.

58 For C2-5s, the Victoria Police management guide management intervention model notes that a 21-day extension may be granted in exceptional circumstances through the LPSC in consultation with the Department Head, adding that a progress report is required after 14 days if an extension is granted. See VPMG, management intervention model, section 10.

59 Victoria Police manual guidelines, Complaint management and investigations, section 6.6 Timeframes

60 Victoria Police, Conduct and Professional Standards Division standard operating procedures, September 2014, p 22

Of the 55 cases where extensions were sought, there were 23 files (42 per cent) where the extension request or approval was not attached to the file. As well as being contrary to PSC procedure, this lack of documentation made it difficult for auditors to assess whether extensions were justified, whether they had been approved by the appropriate officer and the length of extension that was granted.

There were eight files identified where auditors assessed that extensions were not reasonable on the basis that extensions were granted because the investigator was on leave (contrary to VPM guidelines), extensions were granted for period in excess of the initial 30-day maximum, and extensions were granted for reasons not supported by the information on the file. For example:

- An investigator justified an extension request on the basis that the complainant had been difficult to get in touch with, however there was evidence of contact (including a full statement) on the file
- An extension was sought because there were a 'large number of documents to review' yet the documents could have been reviewed in approximately an hour.

The audit also identified that Victoria Police's file status report/extension request form does not include a section that specifies the length of the extension requested or granted. While some requests included this information in the text of the request, others did not. In some cases this information was included on ROCSID, but this was not consistently the case. Having a dedicated field on the form would make it clearer for the approving officer and assist with subsequent oversight of the file.

4.3.7 Analysis: Determining when a file is complete

The Victoria Police complaint management and investigations guidelines state that the timeframe allowed for the investigation of a complaint file commences on the date the complaint was lodged and concludes on the date the investigation is marked as completed on ROCSID and any required action is approved by PSC.⁶¹

Consultations with PSC identified that the date a file is marked as 'completed' on ROCSID may be as early as the date on which the investigator submits the final report to their line manager for approval.

Consequently a file may be marked as 'complete' prior to it being approved by the investigator's line manager, LAC and superintendent, and prior to it being reviewed by the EPSO. The audit identified that at each of these stages, significant changes may be made to the investigator's determinations and recommended actions. Having a 'completed' date that predates these stages does not accurately reflect the time taken to investigate a file and can result in files being marked as 'complete' well before the relevant parties are notified.

CASE STUDY 13

A complaint was received making a number of allegations against police. The complainant was known to experience mental health issues, and had regular contact with police.

This file was originally classified as an LMR in July 2014 and could have been quickly resolved because the complainant was happy with a phone call when they were eventually contacted. However, for reasons not clear from the file, the LMR was not actioned by the allocated investigator in the region. Despite not being completed within the permitted seven-day timeframe, the LMR was not reclassified by PSC as a MIM until October 2014 (a three-month delay).⁶²

Once reclassified as a MIM, ROCSID records that the investigation was completed on 13 November 2014, the date on which the investigator's final report was submitted. However, letters to the complainant and subject officer were not sent until December 2014 and the EPSO did not sign off on the file until January 2015.

Recording the file as completed in November 2014 did not accurately reflect that there were important steps still to be taken and created an impression that the investigation was completed more quickly than it was.

61 Victoria Police manual guidelines, Complaint management and investigations, section 6.6 Timeframes

62 Where an LMR is not completed within the seven-day permitted timeframe, it is reclassified as a MIM file.

4. FINDINGS FROM THE AUDIT

4.3.8 Key findings

There were significant issues identified in relation to the timeliness with which complaint files were managed. These issues include:

- Significant delays associated with the investigations of complaint files (other than with C1-5 and C1-7 files) with almost one third of files being overdue.
- The delays associated with complaint investigations are not minor, with 80 per cent of overdue files being more than a week overdue and 68 per cent of overdue files being more than two weeks overdue. Sixteen files excluding LMRs (five per cent) were more than 100 days overdue.
- Although there were some delays associated with the classification of files by PSC, the majority of delays appeared to occur while the files were in the regions.
- There was mixed compliance with guidelines around file extensions, with extension requests or approvals missing from files and extensions sometimes sought (and granted) for reasons not permitted by policy guidelines.

Contributing to issues around timeliness is the fact that Victoria Police's file status report/extension request form does not contain a section that specifies the length of the extension requested or granted. This makes it difficult for the approving officer and overseeing officers to determine the appropriateness of an extension and to determine the due date if an extension is granted.

Ensuring files are investigated in a timely manner is critical to maintain confidence in Victoria Police's management of complaints. Although timeliness is not the only measure of how well complaints are handled, it is one that is important to the public and to subject officers.⁶³

Expedient management of complaints – together with clear communication with complainants in the event of any delays – is important for the following reasons:

- delays in investigations can adversely affect the availability of relevant evidence
- a timely investigation reduces the prospect of subsequent complaints or appeals related to the timeliness of the investigation
- it is important from an employee welfare perspective that the amount of time subject officers spend with a complaint pending against them is minimised.

Areas for improvement

Victoria Police could take the following action to improve the timeliness of complaint investigations:

- Amend current processes so that files are only marked complete once the final letters have been sent to the complainants and subject officers. This would more accurately reflect that complaint files can undergo significant changes after the final report is submitted, such as amendments to the determination resulting from input from supervisors or EPSOs. Amending the process by which files are marked 'complete' may mean that time limits associated with complaint file investigations need to be reviewed
- Improve the way reminders are structured for pending complaint investigations to ensure the investigator, supervisor, EPSO and PSC are notified when a complaint is nearing its due date and when it is overdue
- Amend the file status report/extension request form to include a section that specifies the length of the extension requested and granted
- Improve compliance around extensions by ensuring the file status report/extension request form is always completed and attached to the file, and by increasing awareness around those reasons for which an extension can be sought.

⁶³ This point has also been highlighted by the Commonwealth Ombudsman's audit of complaints against Australian Federal Police officers – see Commonwealth Ombudsman, *Complaint Management by Government Agencies Report* (2014).

4.4 Investigative processes utilised

4.4.1 Contact with relevant parties

4.4.1.1 Policy and practice

The Victoria Police complaint management and investigations guidelines and the *Victims' Charter Act 2006* require that complainants and members of the public who are directly involved in an incident are informed 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.⁶⁴ The integrity management guide notes that if an investigation is not completed within the specified timeframes, the investigator must ensure the complainant is provided with a progress report of the investigation along with an explanation of reasons for the delay and an anticipated completion date.⁶⁵ The VPM guidelines also specify that subject officers may be informed of an investigation's progress, unless the disclosure may jeopardise the investigation.⁶⁶

The integrity management guide states that while the circumstances of the investigation will influence the order of interviews, as a general rule interviews should be conducted in the following order:

- complainant
- other civilian witnesses
- police witnesses
- review of circumstantial and scientific evidence
- subject officers (if multiple officers are the subject of a complaint, it is preferable to interview all officers simultaneously).⁶⁷

The guide also states that an interview plan should be developed, particularly for discipline interviews.⁶⁸

64 Victoria Police manual guidelines, Complaint management and investigations, section 6.1 Advice to complainants, pp 7-8. See also the *Victims' Charter Act 2006* s 8 which applies when the complaint relates to a criminal offence.

65 Victoria Police integrity management guide, April 2015, p 44

66 Generally, employees should not be informed about the progress of an investigation classified as C1-0 or C3-4. Statutory obligations to inform employees about key stages of an investigation still apply. See Victoria Police manual guidelines, Complaint management and investigations, section 6.2 Advice to investigated sworn employees

67 Victoria Police integrity management guide, April 2015, p 24

68 Victoria Police integrity management guide, April 2015, p 26

4.4.1.2 Previous reviews

Previous projects undertaken by Victoria Police have identified issues with levels of contact between investigating officers and relevant parties. Victoria Police's 2013 report *Equality is not the same* highlighted community concerns that there was inadequate communication and feedback on the progress of complaint investigations. In response, Victoria Police indicated that it was committed to reviewing its communication and feedback mechanisms and processes.

In 2014 Victoria Police reported that it had:

- reviewed and reformed complaints processes, focusing specifically on community awareness and understanding of the process as well as feedback mechanisms
- examined the accessibility of information and feedback from the complaints process
- examined national and international best standards
- developed a complaints process map to be available on the web (plus guides to be translated into eight languages)⁶⁹
- updated its website with details of IBAC and VEOHRC to more clearly communicate different avenues for making complaints.⁷⁰

The following Victoria Police reports have also highlighted communication issues associated with complaint investigations:

In 2010, Victoria Police undertook a function audit of misconduct on duty (C3-2) and misconduct off duty (C3-3) files. This audit identified shortcomings around contact between investigators and victims including the provision of information as required under the *Victims' Charter Act*.⁷¹

The Victoria Police Blue Paper (*A Vision for Victoria Police 2025*) acknowledged that better communication with complainants is one way to enhance public trust in Victoria Police and the way in which it handles complaints.⁷²

69 Searches by IBAC's audit team were unable to locate Victoria Police's complaints process map on the Victoria Police website.

70 Victoria Police, *Equality is not the same – year one report*, 2014, p 11

71 PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, p 14

72 Victoria Police, *A Vision for Victoria Police 2025*

4. FINDINGS FROM THE AUDIT

The Koori Complaints Project 2006–08 identified a lack of statements from independent witnesses on files investigating alleged assaults on Aboriginal people by police.⁷³

Communication issues related to complaint investigations have been identified in other Australian jurisdictions. For example, the NSW Ombudsman has highlighted the failure of some NSW Police complaint investigators to interview officers and other witnesses (among other issues).⁷⁴

4.4.1.3 Analysis: Contact with complainant

IBAC's audit found that of the 234 identifiable complainants in files (excluding LMRs), there were 38 (16 per cent) who did not appear to have been contacted by investigators, based on the documents on file.⁷⁵

- there were 22 complainants who were members of the public who did not appear to have been contacted
- there were 16 police complainants who did not appear to have been contacted.⁷⁶

The most identifiable reasons for not contacting complainants in these cases were:

- contact was not considered necessary
- the complainant declined or refused to participate
- the complainant could not be located.

Where complainants were updated on the progress of investigations, these updates generally occurred via:

- telephone discussions (78 files)
- written correspondence including email (42 files)
- meetings (35 files).

CASE STUDY 14

A complaint was made by a 14 year old alleging harassment against three unidentified officers.

An investigation was conducted by an acting sergeant from an outer suburban station (despite the young person making it known that he did not wish to speak to police from that station). The investigator checked CCTV footage (which was not included on the file) and police logs to identify any police who had come into contact with the complainant. Those checks did not identify any evidence of contact between the complainant and the officers.

The final investigation report stated the complainant was not spoken to as part of the investigation. This was queried by the divisional superintendent. In response, the investigator stated that the EPSO had advised it was not necessary. The EPSO subsequently told the superintendent that his advice had been taken out of context and the complainant, as a general rule, should always be contacted. However the file was not returned for further work.

The complainant should have had an opportunity to speak to the investigator and respond to the lack of evidence found by police. Further, the investigator did not attempt to contact an associate of the complainant who was present at the time of the incident who may have been able to provide further information.

IBAC's audit also identified instances of good contact with complainants including where investigators exhibited persistence and creativity to reach complainants who were not easily contactable.

73 Ethical Standards Division and Department of Justice, *Koori Complaints Project 2006–2008 Final Report*, p39

74 NSW Ombudsman, Special Report to Parliament, *Improving the management of complaints – Assessing police performance in complaint management*, August 2002, p 17

75 Note that these figures may include files where the investigator did contact the complainant, but failed to record this contact on the file.

76 Note that these figures exclude the 10 anonymous complainants where no contact was possible.

CASE STUDY 15

This file investigated allegations of harassment, excessive force and assault made by the complainant against a number of officers.

The complainant was homeless and left a contact address care of a community service organisation (CSO). The investigator made multiple attempts over six weeks to contact the complainant including:

- calling the telephone number listed by the complainant on his complaint
- calling telephone numbers listed against the complainant on Victoria Police's Law Enforcement Assistant Program (LEAP) database
- writing to the complainant care of the CSO
- writing to the complainant at two recent addresses listed on LEAP
- attending the complainant's most recent LEAP address
- contacting IBAC to try and get additional details for the complainant
- reviewing Victoria Police's attendance module to identify when the complainant had been in custody.

Although the investigator was unsuccessful in contacting the complainant, the effort in attempting to make contact demonstrated commitment and perseverance.

4.4.1.4 Analysis: Contact with complainant in LMRs

Contact with complainants was higher in relation to LMR files – of the 50 LMR files audited, there were six complainants (12 per cent) who did not appear to have been contacted by investigators. As with the other file classifications, the main reasons for not contacting complainants in LMR files were:

- the complainant could not be located
- contact was not considered necessary.

In a majority of LMR files (36 files or 72 per cent), the available information made it clear that the complainant had been contacted to discuss the complainant's desired outcome. It was unclear in eight LMR files (16 per cent) whether the complainant had been consulted about their preferred outcome.

There were 28 LMR files (56 per cent) where the complainant was satisfied with the outcome of the matter and 11 LMR files (22 per cent) where the complainant was *not* satisfied. In the remaining 11 LMRs files (22 per cent) it was unclear whether the complainant was or was not satisfied with the outcome of the matter.

4.4.1.5 Analysis: Contact with civilian witnesses

There were 159 files (excluding LMRs) where civilian witnesses to the complaint were identified by the auditors. Of these, there were 78 files (49 per cent) where all of the civilian witnesses were contacted by investigators, 25 files (16 per cent) where some of the civilian witnesses were contacted and 56 files (35 per cent) where no civilian witnesses were contacted (despite there being relevant civilian witnesses identified).

In most cases where a civilian witness was not contacted, it was not clear why this contact had not occurred. In a small number of cases reasons were provided, with the most common reasons being the witness declined contact (five files) and the witness could not be located (four files).

The information provided by civilian witnesses was most commonly provided by a statement included on the hard copy file.

FIGURE 16: INFORMATION PROVIDED BY CIVILIAN WITNESSES

Form of information provided	Number of civilian witnesses ⁷⁸
Statement	127
Formal interview	10
File note	7
Other	50

⁷⁷ Note that some files included more than one civilian witness.

4. FINDINGS FROM THE AUDIT

4.4.1.6 Analysis: Contact with police witnesses

There were 149 files (excluding LMRs) where police witnesses were identified by the auditors. Of these, there were 99 files (66 per cent) where all police witnesses were contacted, 21 files (14 per cent) where some police witnesses were contacted and 29 files (19 per cent) where no police witnesses were contacted by investigators (despite there being relevant police witnesses identified).

In most of these cases, it was not clear why contact was not made. For the few cases where the reason for a lack of contact was recorded on the file, the most common justification was that the police witness had already provided a statement in the course of their duty.

Where police were contacted, they most commonly provided information via a statement.

FIGURE 17: INFORMATION PROVIDED BY POLICE WITNESSES

Form of information provided	Number of police witnesses ⁷⁹
Statement	216
Formal interview	7
File note	10
Response to a directions letter	3
Adopting the statement of other police	0
Other	64

4.4.1.7 Analysis: Contact with subject officers

The audit established that subject officers were generally contacted by investigators as part of the complaint investigation. There were 24 files (six per cent of all files including LMRs) where there was nothing to indicate that all subject officers had been contacted. Only a small percentage of these files recorded a reason for not contacting the subject officer, with the most common being that the subject officer was on leave or had already been questioned by another officer such as their direct supervisor.

In a further 44 files (11 per cent of all files including LMRs), it was not clear whether contact had been made.

Subject officers most commonly provided information by making a formal statement.

FIGURE 18: INFORMATION PROVIDED BY SUBJECT OFFICERS

Form of information provided	Number of subject officers
Statement	225
Response to a directions letter	12
Criminal interview	24
Disciplinary interview	23

4.4.1.8 Analysis: Comparison of levels of contact

A comparison between the levels of contact between investigators and parties to a complaint identified some discrepancies in levels of contact with civilian complainants compared with police complainants, but otherwise there were generally consistent levels of contact and of statement-taking. These comparisons exclude LMR files.

There was a higher rate of contact between investigators and civilian complaints (89 per cent of civilian complainants were contacted) compared with contact with police complainants (58 per cent of police complainants were contacted). This discrepancy may stem from the following factors:

- Contact between the investigator and a civilian may be more likely to be documented on the file than contact between the investigator and another Victoria Police officer
- Initial complaints that come from Victoria Police officers are more likely to be detailed and to provide the information required by an investigator
- There were complainants who, although electing to remain anonymous (and therefore unable to be contacted), identified as police officers. These complainants inflate the number of police complainants who were not contacted.

⁷⁹ Note that some police witnesses provided evidence in multiple ways such as through a formal interview and a statement.

FIGURE 19: CONTACT BETWEEN INVESTIGATORS AND PARTIES TO A COMPLAINT

Level of contact with a party to a complaint		Count of individuals	Percentage of total individuals
Civilian complainants	Identified	196	n/a
	Contacted	174	89
	Statements taken	80	41
Police complainants	Identified	38	n/a
	Contacted	22	58
	Statements taken	16	42
Civilian witnesses	Identified	315	n/a
	Contacted	194	62
	Statements taken	127	40
Police witnesses	Identified	422	n/a
	Contacted	293	69
	Statements taken	216	51
Subject officers	Identified	506	n/a
	Contacted	Not collected ⁸⁰	n/a
	Statements taken	225	44

There were comparable levels of contact between investigators and civilian witnesses (62 per cent contacted) and police witnesses (69 per cent contacted).

Statements were generally taken at a comparable rate (40 to 50 per cent) across complainants, witnesses and subject officers.

4.4.1.9 Key findings: Contact with relevant parties

The audit identified some shortcomings in relation to contact between investigating officers and relevant parties including:

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

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

⁷⁹ Although the number of subject officers contacted was not collected, the audit did examine whether all subject officers were contacted. As noted in Section 4.4.1.7, the audit identified 24 files (six per cent of all files including LMRs) where it appeared as if all subject officers had not been contacted.

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Areas for improvement

Victoria Police could take the following steps to improve investigators' communication and contact with parties relevant to a complaint:

- Ensuring investigators are aware of requirements around communication with relevant parties. This could be done through the IMP or by developing a customer service charter⁸¹ that is explicit about what a complainant can expect in relation to communication with investigators and Victoria Police
- Requiring investigators to maintain an investigation log. Such a log could include a record of contact with relevant parties as well as details of other investigative steps undertaken (such as requesting evidentiary material)
- EPSOs to be more active in identifying where contact has not been made with relevant parties to a complaint, and requesting appropriate action to be taken.

4.4.2 Directions letters

4.4.2.1 Policy and practice

Under section 171 of the Victoria Police Act, the Chief Commissioner can direct a Victoria Police officer to furnish any relevant information, produce any relevant document or answer any relevant question for the purpose of conducting an investigation into a discipline offence.⁸⁰ The Victoria Police complaint management and investigations guidelines state that a directions letter can be used 'as an alternative to formal interview under section 171(1) of the Victoria Police Act and to expedite the investigation of discipline offences in certain circumstances' noting that 'the power to direct sworn employees to answer questions should be used by way of a directions letter'.⁸¹

The integrity management guide also states that directions letters 'may be used as an alternative to obtaining statements or conducting formal recorded interviews'.⁸² According to the guide, directions letters should contain the details of the alleged breach or misconduct, any questions to be answered in writing by the sworn officer, a direction to the officer to give information or produce documents if required, and a direction that the officer provides a written response within 14 days. According to the VPM guidelines, directions letters can be delivered, mailed or emailed. The Chief Commissioner has delegated the power to authorise directions letters to commissioned officers, senior sergeants, detectives at PSC, and all substantive sergeants who have completed PSC's IMP.

80 See also s 86Q of the former *Police Regulation Act 1958*

81 Victoria Police manual guidelines, Complaint management and investigations, section 7.8

82 Victoria Police integrity management guide, April 2015, p 41

The integrity management guide states that directions letters can only be used with respect to discipline matters where:

- the breach is of a minor nature
- the breach arises from a lack of procedural supervision
- the breach arises from a matter which is peripheral to the complaint being investigated
- it is clear from the evidence already obtained that a breach of discipline has been committed.⁸³

In NSW, the use of 'directive memoranda' which are broadly equivalent to Victoria Police's directions letters has repeatedly raised two key issues of concern:

- collusion between witnesses and subject officers in circumstances where there is an opportunity to discuss the incident prior to providing a response to an investigator
- compromise of investigations in circumstances where a criminal offence is disclosed in the course of responding to a directive memoranda (because the subject officer is compelled to answer and the response cannot, therefore, be used in criminal proceedings).⁸⁴

4.4.2.2 Analysis: Directions letters

There was very limited use of directions letters in the complaints that fell within the audit's scope. The audit identified only four files excluding LMRs (one per cent) where subject officers were required to respond to directions letters. There were no significant issues identified in relation to the use of directions letters in these cases (such as collusion or the disclosure of criminal conduct). However, auditors did note that in two of the four cases, the directions letter was not included on the file.

4.4.2.3 Key findings: Directions letters

The audit identified very little use of directions letters; it is unclear why they are so rarely used.

4.4.3 Evidence used and reviewed

4.4.3.1 Policy and practice

The integrity management guide suggests initial actions to be considered when a complaint is received. This includes considering the following types of evidence:

- scene examination
- door knocks to identify witnesses
- CCTV footage
- digital evidence capture interviews
- documents related to the complaint
- photographs of injuries, physical locations or vehicles at the time of the complaint.⁸⁵

4.4.3.2 Previous reviews

A function audit undertaken by Victoria Police in 2010 identified the following issues with evidence collection in respect to misconduct on duty (C3-2) and misconduct off duty (C3-3) files:

- failure to consider, collect and examine CCTV footage
- failure to identify obvious sources of evidence such as police documents
- attaching police documentation to the file but not analysing its contents
- not considering or obtaining medical evidence
- not considering neighbourhood canvassing
- efforts to locate and obtain statements from non-police witnesses were poor
- obvious, easily locatable or nominated witnesses were not contacted
- not taking photographs
- not obtaining photographs taken by other officers
- not attending the crime scene
- obtaining an account from the suspect prior to completing enquiries
- ceasing enquiries the moment a complaint is withdrawn.⁸⁶

83 Victoria Police integrity management guide, April 2015, p 41–42

84 NSW Police Integrity Commission, Special Report to Parliament, Project Dresden, 2000, p 24

85 Victoria Police integrity management guide, April 2015, p 15

86 PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, p 7

4. FINDINGS FROM THE AUDIT

4.4.3.3 Analysis: Evidence used in an investigation

IBAC's auditors identified 60 files (17 per cent of total files excluding LMRs) where relevant evidence appeared not to have been considered.⁸⁷ The most frequent types of evidence not considered were CCTV footage (not considered in 17 files where it was relevant), running sheets (14 files) and medical records (10 files).

CASE STUDY 16

This file investigated an allegation that a Victoria Police officer had called a witness in a family dispute matter and asked her to change her statement. The subject officer was a relative of one of the parties in the family dispute.

The investigator assessed that because the complainant was unable to provide an exact date for when the incident occurred, there was not enough evidence to warrant contacting other parties. Consequently the investigator did not put the allegation to the subject officer, nor did he contact a named independent witness to the incident. Contacting these relevant parties could have helped establish a date when the incident occurred which may have been verifiable through telecommunication checks.

The determination in this matter was unable to determine.

CASE STUDY 17

This file concerned allegations that following a burglary of the complainant's home:

- Some of the complainant's property recovered by police from the burglar's residence was then stolen by police
- Victoria Police returned property to the complainant which did not belong to him, despite the complainant's insistence that property was not his and when the complainant tried to return that property at a police station, the officer refused to accept it.

The investigation appeared superficial and lacking in transparency. The material included on the file did not appear to justify the determination of unfounded (in relation to the theft allegation) and lesser deficiency (in relation to the failure to accept return of property):

- There were no notes or statements on the file that outlined discussions with the subject officers and witnesses as part of the investigation. Conversations were noted in the final report but no evidence was sought to verify or negate any of the claims made.
- It does not appear that CCTV footage of the station was reviewed to check the complainant's claim. Such footage may have corroborated or refuted the allegation that when the complainant attended the station to return property, the officer refused to accept that property, with the exception of a phone.
- It does not appear that rosters, running sheets, diary entries, exhibits lists or other available records were examined, to clarify matters raised in the allegations.
- The final report was short (three pages) and lacked detail.

Given the serious nature of the allegations, the file should have documented a more formal investigation methodology. Further, the final report should have been more systematic in how it addressed the complaint, the evidence and the reasoning used to arrive at the determinations.

⁸⁷ These assessments were based on documents attached to the file including copies of evidence and references to evidence in notes or reports. It is possible that some investigations included checks of relevant types of evidence, but failed to include these checks on the file.

4.4.3.4 Key findings: Evidence used

The audit identified 17 per cent of files (excluding LMRs) where relevant evidence did not appear to have been considered. The categories of evidence most frequently not considered were CCTV footage, running sheets and medical records.

Neglecting relevant evidence undermines the capacity of investigators to make accurate assessments of complaints and to arrive at appropriate determinations. It also limits the ability of supervising officers to effectively review investigation files and those files' conclusions.

Areas for improvement

Deficiencies in the examination of all relevant evidence in an investigation could be addressed by increasing awareness of the integrity management guide and the advice it provides around relevant types of evidence. Investigators should also be reminded, either through the IMP or by their supervisors, to attach all evidence (including CCTV footage) to the file.

With the shortening of the IMP to a two-day program, it may be necessary to supplement this course with training provided in the regions by EPSOs (or other relevant officers). This training could include refresher courses on different aspects of complaint investigation, as well as basic training for those waiting for a place on the IMP.

It is acknowledged that some EPSOs are currently providing refresher training at the regional level, but it is suggested that this be a formal part of EPSOs' role and that priority be given to substantive issues such as the need for an investigator to consider all relevant evidence.

4.4.4 Reviews and supervision of investigations

4.4.4.1 Policy and practice on reviews and supervision of investigations

The Victoria Police complaint management and investigations guidelines state that investigations conducted at region or department level should be reviewed by the Professional Development Committee.⁸⁸ In addition, the guidelines state that all investigation files should be returned to the Assistant Commissioner, PSC for review.⁸⁹ In practice, investigation files conducted by the regions are reviewed by the LAC, the divisional superintendent and the EPSO, with the Professional Development Committee providing general oversight of complaint trends and issues, rather than reviewing each individual file.

The 2014 EPSO Engagement Strategy states that one function of EPSOs is to undertake quality assurance of files, although it stated that the administrative burden associated with handling low risk files reduced the ability of EPSOs to engage in more strategic activities.⁹⁰

4.4.4.2 Previous reviews

A 2010 Victoria Police function audit of misconduct on duty (C3-2) and misconduct off duty (C3-3) files found that some managers signed off a file without any explanation of the criteria they used to assess the file.⁹¹

88 Victoria Police manual guidelines, Complaint management and investigations, section 13.2. Note that investigations conducted by PSC are to be reviewed by the Tasking and Coordination Group.

89 Victoria Police manual guidelines, Complaint management and investigations, section 3.1

90 Victoria Police Professional Standards Command, Enhanced EPSO engagement strategy, 17 March 2014

91 PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, p 5

4. FINDINGS FROM THE AUDIT

This finding is consistent with the OPI's 2008 assessment of Victoria Police complaint handling processes in relation to MIMs. The OPI found that files were returned to ESD for review upon completion, however there was little evidence that ESD 'value added' to the resolution process or challenged any of the outcomes made by regional or departmental officers.⁹² The OPI's report also noted that police investigating complaints had stated that the Professional Development Committee had very limited involvement with the resolution of complaints and provided minimal or no feedback to investigating officers.⁹³

4.4.4.3 Analysis: Reviews and supervision of investigations

The audit found that files were generally reviewed consistently (by the LAC, the divisional superintendent and the EPSO) and in accordance with the VPM. There were three files identified that were not reviewed by the divisional superintendent, but these were all C1-5 or C2-5 files and had been reviewed by both the LAC and the EPSO.

The audit identified 16 files where the EPSO did not agree with the divisional superintendent's sign-off. In all of these files, the EPSOs made recommendations for further work which were actioned by the investigating officers. But while the review process worked effectively in these cases, the audit identified that there could be more active supervision of investigations, particularly given the limited experience of some investigators in handling complaint investigations. More active supervision and more critical reviews of files are essential in ensuring a high and consistent standard of complaint investigations.

CASE STUDY 18

The complainant alleged that whilst in police custody, he was assaulted by a fellow inmate and intimidated into sharing his medication with other prisoners. The complaint concerned the actions of the police.

The file demonstrated how proactive supervision by reviewing officers is necessary in some complaint files to ensure a proper investigation. The supervising inspector highlighted numerous shortcomings in the initial investigation including:

- a failure to investigate all of the allegations in the original complaint
- inconsistencies in the conclusions drawn by the investigating officer
- poor investigative practices.

In addition to making recommendations to address these deficiencies, the inspector noted these issues on the investigator's PDA and recommended that the investigator attend the IMP. The investigator subsequently attended this training.

There were 10 files within the audit's scope that had been reviewed by IBAC separately to the audit process. In four of these files, IBAC identified issues with Victoria Police's investigation and in all of these instances, these issues were subsequently addressed.

4.4.4.4 Key findings: Reviews and supervision

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

⁹² Office of Police Integrity, Improving Victorian policing services through effective complaint handling, 2008, p 19

⁹³ Office of Police Integrity, Improving Victorian policing services through effective complaint handling, 2008, p 24

Areas for improvement

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

Final responsibility for ensuring files meet a minimum standard should sit with EPSOs. To this end, EPSOs should critically examine investigation files and recommend steps to remedy issues they identify in poor investigations.

Ideally, the EPSO role in relation to complaints should focus on:

- supporting and providing advice to investigators during complaint investigations
- ensuring investigations meet a minimum standard that is consistent across Victoria Police
- developing the skills of complaint investigators.

The audit identified that EPSOs' performance of the quality assurance role was variable. Several files contained basic errors (such as the misidentification of subject officers) that were not corrected in the review process.

IBAC acknowledges that EPSOs have been mired at times in administrative and procedural work, limiting their capacity to play a more strategic role or to focus on quality assurance. PSC should consider the duties undertaken by EPSOs to ensure that officers performing these roles have the capacity to critically examine investigation files and recommend steps to remedy issues identified.

4.5 Outcomes

4.5.1 Conciliation

4.5.1.1 Policy and practice

Section 170(2) of the Victoria Police Act states that the Chief Commissioner may attempt to resolve a complaint by conciliation but before commencing conciliation, must notify IBAC of any such attempt and the subsequent outcome.

IBAC has not been notified of any attempted conciliations by Victoria Police.

VPM guidelines states that MIMs are an 'alternative dispute resolution process based on a holistic approach that can be applied to the resolution of complaints, incidents and issues'. It lists possible resolution techniques as including conciliation and mediation.⁹⁴ However, given the absence of any conciliation notifications to IBAC, it does not appear that MIMs are commonly the subject of formal conciliations. In MIMs and now LMRs, there would normally be some form of discussion with the complainant in an attempt to resolve the issue but not conciliation in the sense that both parties must explicitly and voluntarily agree to participate in the process, with an impartial mediator nominated to facilitate discussions between the parties to address the issues.

4.5.1.2 Previous reviews

In its 2008 review of the MIM process, the OPI expressed its support for a move away from a punitive discipline system towards a more developmental approach, and noted that to be an effective alternative dispute resolution process, it was important that police managers developed conciliation and mediation skills.⁹⁵

94 Victoria Police manual guidelines, Management intervention model, pp 1 & 8

95 Office of Police Integrity, Improving Victorian policing services through effective complaint handling, 2008, p 12

4. FINDINGS FROM THE AUDIT

4.5.1.3 Analysis: Conciliation

The audit identified only a very small number of files (five) where conciliation was raised. Two of these files were MIMs. The other file classifications were correspondence, minor misconduct and misconduct on duty files. Due to insufficient information on the files, it is not clear whether conciliation was only mooted in the initial correspondence to the complainant but not attempted, or if some form of mediation was attempted. None of these five files included a notification to IBAC indicating that conciliation was being attempted.

4.5.1.4 Key findings: Conciliation

Only a very small proportion of files (five files or one per cent) gave any indication that conciliation may have been attempted and there was a general lack of information to clarify how the conciliation took place and the outcome.

As highlighted in Victoria Police's MIM policy, conciliation is a constructive means of resolving disputes. It provides an opportunity for all parties to express their concerns and perspectives, improve their understanding of the other parties' points of view and ideally, reach a mutually acceptable resolution. Successful conciliation can prevent the escalation of complaints. However, it should be noted that conciliation will not be suitable in many cases, such as in cases involving a significant power imbalance between the parties or where issues of criminal behaviour or sexual harassment have been raised.

The audit results suggest that conciliation is under-utilised as a means of resolving suitable complaints at the regional level.

Areas for improvement

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

- the identification of matters that may be appropriate for conciliations (most likely to be LMRs and MIMs)
- the need for an impartial mediator with appropriate skills
- the need for all parties to agree to participate in a conciliation process.

4.5.2 Determinations

4.5.2.1 Policy and practice

The VPM complaint management and investigations procedures and guidelines state that the investigation report is to address each allegation subject to investigation by one of eleven determinations, namely:

- substantiated – complaint found to be true
- not substantiated – the weight of available evidence does not support the account of events as described by the complainant, but is weighted in favour of the account given by the employee
- unable to determine – the available evidence does not permit the investigator to establish whether the complaint is true or not
- not proceeded with – the complaint is not proceeded with, due to the unwillingness of the complainant to supply information but is unwilling to withdraw the complaint, or there is some other reason for being unable to take the complaint further
- withdrawn – a complainant having made a formal complaint, of their own volition makes a request that the complaint investigation cease
- no complaint (sanctioned by law) – a query or complaint by a person that is subsequently found to be an action sanctioned by law
- no complaint (denied by alleged victim) – a complaint lodged by a third party which is denied by the alleged victim who has no complaint to make⁹⁶
- unfounded – the available evidence clearly establishes that there are no grounds for the complaint whatsoever
- exonerated – the evidence clearly establishes that a particular employee is not involved in a complaint or is completely free from blame
- lesser deficiency – a matter uncovered during an investigation not forming part of the complaint laid (such as a failure to complete an official document), requiring remedial action
- false report – there is sufficient evidence to charge the complainant with making a false report to police.⁹⁷

⁹⁶ This determination is, in practice, usually broken down into two determinations – no complaint (sanctioned by law) and no complaint (denied by victim).

⁹⁷ Victoria Police manual guidelines, Complaint management and investigations, section 12.2

In addition, the MIM policy requires the outcome of the matter to be recorded as either ‘resolved’ or ‘not resolved’.⁹⁸ The same approach is applied to LMRs, although this is not currently formalised in any policy.

4.5.2.2 Previous reviews

Victoria Police’s 2012 Ethical Health Process Review stated that the 13 possible determinations caused confusion and anxiety amongst officers who were the subject of investigations. Those officers tended to unduly focus on what they believed to be an unfair disciplinary process rather than to learn from their mistakes. The review recommended that the system of determinations be simplified to two possible findings – ‘case to answer’ and ‘no case to answer’.⁹⁹ This recommendation was not implemented.¹⁰⁰

The issue of determinations was canvassed during focus groups convened for the audit. The focus group participants confirmed there was a lack of clear understanding of the differences between the various types of determinations – not only by subject officers but sometimes by investigators. Participants said that sometimes, when a determination is amended following review, it is not always clear why the change has been made as the difference between determinations can be so subtle. Participants were supportive of a streamlined approach to determinations.

PSC accepts that there are issues with how determinations are applied and understood, and has indicated that the current system needs to be reviewed to ensure consistency and fairness, and to reduce the potential for ambiguity.

⁹⁸ Special Report to Parliament, Project Dresden, Management intervention model, section 8.4

⁹⁹ Victoria Police Ethical Health Process Review, 2012, p 12

¹⁰⁰ Note that a 2014 internal report on the review recommended that the Victoria Police Risk Management Division further examine this issue, however no changes to the system have been made. See Victoria Police Ethical Health Review Process – Post Implementation Review Final Report, 20 June 2014, p 7.

4. FINDINGS FROM THE AUDIT

4.5.2.3 Analysis: Overall determination rates

The table below outlines the total count of determinations against allegations.

FIGURE 20: OVERALL DETERMINATION RATES BY FREQUENCY

Determination	Count*
No complaint (sanctioned by law)	149
Not substantiated	50
Unfounded	39
Substantiated	32
Unable to determine	20
Withdrawn	9
Not proceeded with	7
No complaint (denied by alleged victim)	7
Lesser deficiency	3
Exonerated	2
MIMs and LMRs:	
Resolved	99
Not resolved	34

* Note that more than one determination can be associated with a single file.

The audit identified that only 32 files (nine per cent) of the sample audited from these two regions had at least one allegation with a determination of 'substantiated'.

This is lower than substantiation rates in other jurisdictions (noting that there was limited data available for other jurisdictions and that it was often dated). The United Kingdom Independent Police Complaints Commission reported that in 2014/15, 14 per cent of allegations investigated in relation to police forces in England and Wales were upheld.¹⁰¹

In other jurisdictions:

- The New South Wales Police Force reported that in 2014/15, there were 4887 complaints made against police officers. These contained 8578 separate issues or allegations, 17 per cent of which were sustained¹⁰²
- The Tasmanian Integrity Commission reported that 23 per cent of allegations finalised in 2014 against Tasmania Police had a finding of 'sustained'.¹⁰³

Thirty-six of the complaints audited were considered to be internally generated, that is, the complainant was a Victoria Police employee. Of those complaints, 28 per cent included at least one allegation which was substantiated. The higher proportion of substantiation in relation to internally generated complaints is consistent with other jurisdictions.¹⁰⁴ This may reflect that police are more likely to lodge a formal complaint when they are confident that there is sufficient evidence of wrongdoing. It may also indicate that investigators are likely to give greater weight to an internal complainant than to a member of the public.

The table below groups allegation determinations into three categories – case to answer, no case to answer and unable to determine. In this analysis, 89 per cent of complaints (excluding LMRs and MIMs) had at least one allegation where the determination was no case to answer or was not able to be determined.

¹⁰¹ United Kingdom Independent Police Complaints Commission, Police complaints: statistics for England and Wales 2014/15, p 5

¹⁰² New South Wales Police Force Annual Report 2014/15 at page 94. These statistics are based on data extracted from c@ts.i at 3 July 2015 and include complaints from both NSW Police Force staff and members of the community.

¹⁰³ Integrity Commission Tasmania, An audit of Tasmania Police complaints finalised in 2014, November 2015.

¹⁰⁴ See for example the Integrity Commission Tasmania, An audit of Tasmania Police complaints finalised in 2014, November 2015, pp 18–19

FIGURE 21: OVERALL DETERMINATION RATES BY CATEGORY

Category	Determination	Count
Case to answer	Substantiated	32
	Lesser deficiency	3
	Total	35
No case to answer	No complaint (sanctioned by law)	149
	No complaint (denied by alleged victim)	7
	Unfounded	39
	Withdrawn	9
	Exonerated	2
	Total	205
	Unable to determine	Unable to determine
Not substantiated		50
Not proceeded with		7
Total		77

*Note that a single complaint could have multiple determinations if different determinations were made for separate allegations

Overall, the audit identified that the most common determination was ‘no complaint (sanctioned by law)’ – a total of 149 determinations or 33 per cent. This determination means the actions subject to the complaint are found to be effectively lawful.

Not unexpectedly, this determination was applied most commonly (in 82 per cent of the instances in which the determination was used) in C1 files – namely, C1-5, C1-6, C1-7 and C1-8 files. In only 18 per cent of the time, it was applied to C2 and C3 misconduct files.

FIGURE 22: BREAKDOWN OF ‘NO COMPLAINT (SANCTIONED BY LAW)’ DETERMINATION BY COMPLAINT CLASSIFICATION

No complaint (sanctioned by law) for C1 files	Count	%
C1-5 (LEAP audit enquiry, fingerprint enquiry, DNA trace evidence)	56	38
C1-6 (Correspondence)	15	10
C1-7 (Legal process)	15	10
C1-8 (Oversight)	36	24
Total for C1 files	122	82
No complaint (sanctioned by law) for C2 and C3 files	Count	%
C2-1 (Minor misconduct)	19	13
C2-5 (MIM)	1	1
C3-2 (Misconduct on duty)	5	3
C3-3 (Misconduct off duty)	2	1
C3-4 (Corruption)	0	0
Total for C2 and C3 files	27	18
Total for C1, C2 and C3 files	149	100

The audit identified instances when the no complaint determination was used inappropriately. This is discussed further in section 4.5.2.6.

4.5.2.4 Analysis: Allegation determinations by classification

In relation to both MIMs and LMRs, approximately three quarters of complaints were recorded as resolved.

4. FINDINGS FROM THE AUDIT

FIGURE 23: DETERMINATIONS OF LMRS AND MIMS

Determinations of MIMs (C2-5 files)	Count	%
Resolved	62	75
Not resolved	21	25
Total	83	100
Determinations of LMRs (C2-4 files)	Count	%
Resolved	37	74
Not resolved	13	26
Total	50	100

The most common determination for minor misconduct (C2-1), misconduct on duty (C3-2), misconduct off duty (C3-3) and corruption files (C3-4) was not substantiated (26 per cent) followed by unfounded (21 per cent).

Interestingly, misconduct off duty files had the highest rate of substantiation of any complaint classification, with 33 per cent of determinations recorded as substantiated. The next highest rate of substantiation – 14 per cent – was identified for misconduct on duty files. The relatively high rates of substantiation for misconduct off duty files may indicate that investigators are more comfortable with substantiating allegations that relate to officers' conduct off duty, rather than conduct that involves a judgement of an officer's conduct on the job.

4.5.2.5 Analysis: Discrepancies in determinations

There were 53 files where discrepancies were identified between the determinations listed on ROCSID and in the paper file.

Discrepancies were most commonly identified in relation to C2-1 and C2-5 files (36 per cent and 28 per cent respectively). These file classifications were also the two most commonly represented files in the audit.

FIGURE 24: BREAKDOWN OF DETERMINATIONS BY COMPLAINT CLASSIFICATION

Determination	C2-1	C3-2	C3-3	C3-4	Total	%
Not substantiated	24	18	6	1	49	26
Unfounded	15	14	9	3	41	21
Substantiated	10	8	14	0	32	17
No complaint (sanctioned by law)	19	5	2	0	26	14
Unable to determine	9	4	6	1	20	10
Withdrawn	4	4	1	0	9	5
Not proceeded with	4	2	1	0	7	4
Lesser deficiency	1	0	2	0	3	2
No complaint (denied by victim)	1	1	1	0	3	2
Exonerated	1	1	0	0	2	1
Total	88	57	42	5	192	100

FIGURE 25: SUBSTANTIATION RATES BY COMPLAINT CLASSIFICATION

Classification ¹⁰⁷	Substantiated	Total determinations	% substantiated
C3-3	14	42	33
C3-2	8	56	14
C2-1	10	88	11
C3-4	0	5	0

In some cases, the discrepancies reflected appropriate revisions of the determinations presented in the final report. However, the audit identified instances where the final determination was not clear because of inconsistencies between the documentation on the file and ROCSID.

CASE STUDY 19

A complaint was made against two officers comprising six allegations including assault and denying access to legal representation (duty failure).

For subject officer A, the allegation regarding duty failure was recorded as ‘no complaint’ on ROCSID but in the final letter to that officer (and the complainant), the determination was ‘not substantiated’.

For subject officer B, one allegation of assault was recorded as ‘unable to determine’ on ROCSID but in the final letter to the subject officer, the determination was ‘no complaint’.

There were also discrepancies in memoranda written by the EPSO. In a memorandum to the regional superintendent, the determination for the duty failure allegation was stated as ‘not substantiated’ while his memorandum to PSC on the same day stated that the determination was ‘no complaint’. There was no reason noted on the file for these differences.

The quality assurance check of the file undertaken by PSC failed to identify the inconsistencies.

In other cases the discrepancies demonstrated a lack of best practice. In particular, there appeared to be some confusion around the use of ‘resolved’ and ‘not resolved’ and a lack of understanding that those determinations should apply only to LMRs and MIMs (and indeed, for those classifications, are the only determinations available):

- In a MIM file, the investigator’s final report appropriately determined that the complaint could not be resolved. However, a file note from an inspector referred to the allegation being unsubstantiated (not a relevant determination for a MIM) and then stated that the matter was resolved despite there being a lack of clarity about the complainant’s attitude towards continuing or resolving the complaint. ROCSID and the final letters to the subject officer and complainant refer (inappropriately) to the complaint being resolved when a more appropriate determination would have been ‘unresolved’.
- In another MIM file, the letters to the subject officer and complainant said the determination was ‘substantiated’ when in fact the correct determination was resolved.
- In a preliminary enquiry file concerned with a check of an officer’s fingerprints found on property, the letter to the subject officer stated that the matter had been addressed through the MIM process and was ‘resolved’. The final report stated that the matter was ‘unfounded’. The final memo from the EPSO stated that the matter was no complaint – which was the determination recorded on ROCSID.
- In a correspondence file, the final letter to the complainant states that both allegations are ‘resolved’. The EPSO final memo and ROCSID records the outcome as ‘no complaint’.

¹⁰⁵ Note there were no substantiated determinations for C1 files.

4. FINDINGS FROM THE AUDIT

FIGURE 26: DISCREPANCIES IN RECORDING DETERMINATIONS BY COMPLAINT CLASSIFICATION

Classification	Count of discrepancies	% of total discrepancies	% of files with this classification
C2-1	19	36	29
C2-5	15	28	19
C3-2	6	11	14
C3-3	6	11	18
C1-6	4	8	25
C1-5	2	4	4
C1-8	1	2	3
C1-7	0	0	0
C3-4	0	0	0
Total	53	100	15

In other files it was sometimes difficult to establish what determination was settled upon and the process for arriving at that determination. For example, in a misconduct off duty file, the final report had two different determinations (unable to determine and unfounded) for the one allegation of stalking.

The letter to the complainant stated the result was 'unsubstantiated'. And ROCSID recorded the determination as 'not proceeded with' – which was the most appropriate determination.

FIGURE 27: INAPPROPRIATE DETERMINATIONS BY COMPLAINT CLASSIFICATION

Classification	Count of inappropriate determinations	% of total files with inappropriate determinations	% of total files at this classification
C2-1	16	28	24
C3-2	11	19	25
C2-5	9	16	11
C2-4	6	10	12
C1-6	6	10	38
C3-3	6	10	18
C1-5	3	5	5
C1-7	1	1	5
Total	58	100	14

4.5.2.6 Analysis: Appropriateness of determinations

There were 58 files (including LMRs) (14 per cent of total files) where auditors assessed that the determinations listed on either ROCSID or the paper file were not appropriate.

Excluding determinations that only applied to a few files (two or less), the determination category with the highest proportion of inappropriate findings was not substantiated.

There were cases where material on the file appeared to substantiate an allegation, yet a determination of 'substantiated' was not made. It is understood that determinations can be subjective, however, there were a number of instances where IBAC was of the view that, on balance, allegations had been substantiated.

CASE STUDY 20

A complainant alleged that, in the course of being moved from court to police cells:

1. officer A 'clothes lined' him
2. officer A knocked him to the ground, and rammed his head into the ground
3. while he was on the ground, officer B stood on his head.

The CCTV footage of the court custody area was the primary evidence. It showed that allegations one and three were unfounded.

According to officer A and police witnesses' version of events:

- the complainant was agitated in the holding cell (confirmed by CCTV footage)
- one indicator of his aggression was that the complainant ripped off his shirt in the cell – this is not supported by the footage which showed him unbuttoning and removing his shirt calmly and placing it over his shoulder
- according to the use of force form submitted by a police witness, when the complainant was being transported to the police cells, the complainant stepped towards officer A with a clenched fist – this is not supported by the CCTV footage
- according to officer A, the complainant stepped towards him aggressively – this is not supported by the footage
- the final report states that the complainant appeared to quicken his stride towards officer A – this is not supported by the CCTV footage and is not corroborated by the statements of officer A or the two police witnesses.

The CCTV footage shows the complainant walking down a corridor, with three officers. Officer A, was walking a short distance in front of the others. The complainant appears to be talking and is gesturing with his arms. Officer A stops, turns around and tackles the complainant to the ground where he is restrained. The tackle appears sudden and confrontational. The final report also states that 'it appears the actions of [officer A] were a proactive measure in order to prevent [the complainant] from assaulting him or the other members'. The footage does not support this. Officer A appears to be the aggressor using excessive force against the complainant.

The determination for this complaint was not substantiated. A more appropriate determination would be substantiated or lesser deficiency (failing to handcuff the prisoner while transporting him).

Officer A had nine complaint files (since 2001), with six allegations of assault (none substantiated).

4. FINDINGS FROM THE AUDIT

FIGURE 28: INAPPROPRIATE DETERMINATIONS

Determination	Count of inappropriate determinations	% of determination total
No complaint (sanctioned by law)	19	13
Not substantiated	14	28
Unfounded	5	13
Substantiated	3	9
Unable to determine	3	15
Not proceeded with	2	29
Exonerated	1	50
Lesser deficiency	1	33
Withdrawn	1	11
MIMs and LMRs:		
Resolved	13	13
Not resolved	4	12

The audit also identified instances where ‘not substantiated’ was the determination but ‘unable to determine’ would have been more appropriate. ‘Not substantiated’ means the evidence is weighted in favour of the police officer. ‘Unable to determine’ means it could not be established whether the complaint was true or not.

CASE STUDY 21

A complaint was received from the mother of a 17 year old boy who alleged that:

1. police choked him by placing their hands on his throat securing him against a wall
2. when his hat fell off, police put it in a bin and did not allow him to retrieve it
3. that he was pushed onto a train and verbally abused.

The complaint had credibility based on the following:

- A message was sent, via Facebook, to the boy's sister immediately after the incident by a friend of the boy who was present.
- The complaint was lodged the morning following the incident.
- The mother visited the train station that morning and found the hat in a rubbish bin. She photographed the hat in situ. She also asked a member of the public to witness her checking the bin and finding the hat. That person agreed and provided his details (forwarded to police) but later refused to provide a statement.
- The boy was not charged with any offence so there is no suggestion that he hoped to use the complaint as leverage.

CCTV footage of the train station was not available due to a delay in PSC processing this file (the file was not classified until 32 days after the complaint was emailed to PSC).

The final determination was 'not substantiated'.

The investigator relied, inter alia, on the following:

- Clear statements of the police involved (subject officers and police witnesses).
- Inconsistencies in the statements of the boy and his two friends – for example, they varied in the number of police they believed were present at the time of the incident and in some cases, could not describe the 'attributes' of the police involved.
- The presence of the hat in the bin was not considered evidence of wrongdoing.

There is no indication the investigator attempted to contact witnesses nominated by one boy present (although it is noted that the full name of one witness was not known). It is understood that these witnesses were young people who were friends or associates of the complainant.

A determination of 'unable to determine' would have been more appropriate – that is, there was insufficient evidence to establish the truth of the complaint. There was inadequate evidence (aside from the police version of events which consistently denied the allegations) to support the police account.

In some instances, it will be appropriate to determine a complaint as 'withdrawn' or 'not proceeded with' when a complainant independently decides not to pursue a matter – for example, if the complaint is vexatious or groundless. However, where there is sufficient information to indicate there may be a case to answer and/or where the allegations are sufficiently serious, an investigation should proceed regardless.

CASE STUDY 22

The complainant was arrested for being drunk in a public place and placed in a brawler van for transportation to a police station. At the station the complainant was sprayed with OC foam, handcuffed and placed in a holding cell. Upon release, the complainant said he was not satisfied with his treatment by the police, specifically that he was wrongfully arrested, assaulted (OC sprayed) and not provided with dry clothing while in the holding cell.

The investigation file lacked detail, with CCTV footage from the station the only evidence on file. The complainant withdrew his complaint in the course of the investigation, which may be the reason for the lack of investigative activity.

However, the CCTV footage shows that once at the station, within the sally port area, five officers were preparing to remove the complainant from the vehicle and had OC foam at the ready. The investigation report and incident fact sheet state that the complainant was aggressive and would not get out of the brawler van, however the CCTV footage does not support this. The complainant appears to exit the van calmly. The footage then shows the complainant moving towards the officer with the OC can, not in an aggressive manner as stated in the incident fact sheet, before being sprayed with OC foam. This does not appear a reasonable use of force.

This file was determined to be 'not proceeded with', reflecting the complainant's withdrawal of the complaint. The CCTV footage suggests a determination of 'substantiated' would have been more appropriate in relation to the assault allegation or at the very least, should have prompted a more fulsome investigation.

Of the 19 files that were identified as having made an inappropriate determination of no complaint (sanctioned by law), there were three C1-5s, six C1-6s, one C1-7, six C2-1s, one C2-5 and two C3-3s. This demonstrates a spread of misuse of 'no complaint' across all levels of complaints.

The audit identified a number of cases where the final determination was 'no complaint' which did not appear justified on the facts of the matter.

4. FINDINGS FROM THE AUDIT

CASE STUDY 23

A complaint was received alleging that an off-duty sergeant had assaulted a 17-year-old boy, by pushing him in the chest with both hands at football training after the boy had caused a disturbance. It was also alleged that the sergeant effected a glancing blow to the boy's head.

In a statement, the boy said he was aware the sergeant had resigned from the football club committee and was happy with that outcome as it suggested the sergeant was remorseful.

The investigator, after evaluating the evidence, concluded that the complaint could not be substantiated. This was endorsed by the superintendent. However, following advice from the EPSO, ROCSID records the determination as no complaint. There is no information on the file to justify the change in determination.

Not substantiated was the appropriate determination, as there was insufficient evidence to support the account of the complainant but not strong enough evidence to exonerate the sergeant.

'No complaint' is defined as a complaint 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. The complainant did not withdraw his complaint – he indicated he was happy that the sergeant had resigned from the football club committee and considered the matter resolved.

Also, the final letter to the complainant stated:

'As discussed with you, the action/behaviour of [the sergeant] on this occasion has been discussed with [him] by management resulting in an outcome desirable to yourself.'

This implies that Victoria Police recognised that the sergeant's conduct was undesirable (at a minimum) and had spoken to him about it. There is no indication this occurred – the recommendation recorded on ROCSID was no action.

Other issues identified in relation to determinations assessed as inappropriate by the audit are described below:

- There were files where determinations were based on inadequate investigations.
 - In one case, a theft allegation was found to be substantiated even though there was a lack of evidence to support the finding.
 - A complaint of perverting the course of justice was found to be 'unable to determine'. Because the complainant was unable to provide an exact date for the incident, the investigator did not question the subject officer or the two witnesses to the alleged event. Such basic steps would have assisted in establishing whether the event occurred (notwithstanding that there might be inadequate evidence to support a finding of substantiated).
 - A MIM file was determined to be resolved although there was no indication that the matter had been investigated. The subject officer was not spoken to, and there was no indication the complainant was contacted prior to the matter being determined. An email on the file from an inspector indicates the complainant was not happy with the result.
- In relation to LMRs, there were a number of cases where there was insufficient information on the file to determine whether the matter had been resolved. For example, one LMR related to concerns raised by a member of the public about items seized under warrant. There is no information attached to the ROCSID entry outlining actions taken by the investigator or whether the complainant was satisfied with any explanation or apology provided.
- Also in relation to LMRs, there were at least four instances (eight per cent of LMRs) where the matter was recorded as resolved even though there was no evidence of contact being made with the complainant. Given LMRs are intended to be a service orientated approach to resolving minor issues, it is expected that unless a complainant has been spoken to and accepts an explanation or apology provided, the file should be marked as unresolved.

- Different messages were sometimes communicated to the complainant and subject officers about determinations. For example, at the conclusion of an investigation into assault allegations, the letter to the subject officer stated that the determination was 'not substantiated' as 'the available evidence does not support the account of events as described by the complainant'. However the letter to the complainant states that the 'available evidence does not permit me to establish whether the complaint was true or not'. This interpretation is more accurate and reflects that the determination should have been 'unable to determine' (rather than 'not substantiated').

There are two key issues with determinations. Firstly, determination categories should be as streamlined as possible and be easily understood by subject officers, investigators and complainants. The second issue is that all parties to a complaint must have confidence that a determination is correct: a determination must be based on the information gathered during an investigation otherwise confidence in the complaints system will be undermined.

4.5.2.7 Key Findings: Determinations

In summary, the following issues were identified in relation to determinations following complaint investigations:

- only nine per cent of files audited had at least one allegation with a determination of substantiated, a lower rate than identified in other jurisdictions
- the most common determination was no complaint (sanctioned by law) which partly reflects its high incidence in relation to C1 files (including oversight files, files checking LEAP usage and fingerprint enquiries, and legal process matters)
- C3-3 files had the highest rate of substantiation (33 per cent)
- discrepancies were identified in 53 files (13 per cent) but this sometimes reflected corrections made by reviewing officers
- in 58 files (14 per cent) determinations were assessed by IBAC auditors to be inappropriate (including cases where a matter appeared to be substantiated but were not found to be, and where not substantiated was used when unable to determine would have been more appropriate)
- there was infrequent use of five determination categories, namely exonerated, no complaint (denied by victim), lesser deficiency, not proceeded with, and withdrawn – these determinations comprised a total of nine per cent of determinations (excluding LMRs and MIMs).

4. FINDINGS FROM THE AUDIT

Areas for improvement

It is suggested that Victoria Police review its system of determinations, to reduce and simplify determination categories. The current system of 13 determinations is an unnecessary distraction to officers subject to investigation who do not always understand the nuanced distinctions between categories. As has been suggested in an earlier internal Victoria Police review, it would be advantageous to reduce determinations to broad categories such as 'case to answer, 'no case to answer' and 'unable to determine'. A streamlined system of determinations would be better understood by police and complainants, and would reduce the opportunity for incorrect determinations being recorded against allegations.

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

It is also suggested that officers responsible for reviewing complaint files (being commanding officers at the region, command and department level as well as EPSOs) be reminded of their responsibility to identify cases where an incorrect determination has been made, including where further investigative work is required to better inform the determination.

Further quality control could also be considered to ensure that the determination listed on ROCSID matches the determination reached on the file. This is particularly important to ensure ROCSID probity checks undertaken on officers for promotions and awards programs accurately reflect officers' complaint histories.

4.5.3 Recommendations included in complaint investigation reports

4.5.3.1 Policy and practice

The Victoria Police complaint management and investigations procedures and guidelines state that the investigator should recommend what, if any, action is required to address issues identified during an investigation. Recommended actions include:

- no actions
- management intervention including the provision of education, advice and guidance to positively address an employee's performance issue (not a disciplinary process or a punitive measure)¹⁰⁶
- admonishment
- discipline charges
- criminal charges
- action to manage underperformance
- action on any identified deficiency in Victoria Police premises, equipment, policies, practices or procedures.¹⁰⁷

The integrity management guide states that in relation to MIMs, investigators are to establish whether there was any deficiency with the conduct or actions of police officers, and if there was, to develop recommendations to address that deficiency. The investigator is also required to consider whether the investigation has highlighted any deficiency with station or unit processes and if so, to develop appropriate recommendations.

4.5.3.2 Previous reviews

Victoria Police's 2012 Ethical Health Process Review recommended the simplification of the managing underperformance policy to ensure it maintained procedural fairness and natural fairness principles. This was based on the view that the existing policy was under-utilised due to its complexity.

¹⁰⁶ Note that in practice, the audit identified that that recommendations concerning management intervention were frequently described as workplace guidance.

¹⁰⁷ Victoria Police manual guidelines, Complaint management and investigations, section 12.3

The review posited that if that policy was used more frequently as an early intervention tool (in conjunction with the formal performance management system) it would reduce the risk of more serious ethical breaches leading to formal discipline processes.¹⁰⁸

The *Victoria Police Blueprint 2012–15* acknowledged that its performance management and development systems and processes are not sufficiently flexible and responsive, and listed as a priority the strengthening of the organisation’s system for performance management to provide employees with better feedback and understanding of their roles and responsibilities.

Reviews undertaken by the OPI of Victoria Police’s discipline system in 2007, 2008 and 2011 advocated a discipline system focused more on development (where officers reflect on their conduct and learn from their mistakes) and less on the traditional adversarial, discipline model. The OPI supported the introduction of MIMs as a less formal, more management focused approach to dealing with less serious conduct issues. The 2011 report highlighted the growth in non-punitive outcomes of disciplinary hearings between 2005 and 2010.¹⁰⁹

4.5.3.3 Analysis: Summary of recommendations

The most common recommendation made following the audited investigation was ‘no action’. This recommendation represented 82 per cent of all recommendations. This may in part reflect that the majority of files had at least one allegation where the determination fell within the broad categories of no case to answer or not able to be determined.

FIGURE 29: RECOMMENDATIONS

Recommendation (all files inc LMRs)	Count	% of recommendations
No action	343	83
Management intervention/ MIM developmental	51	12
Admonishment	7	2
Discipline charges	4	1
Criminal charges	3	0.7
Action in accordance with the VPMG managing underperformance	0	0
Other	5	1
Total	413	100

Where some form of action was recommended in response to a complaint, that action took the form of management intervention (typically workplace guidance) in 73 per cent of cases. The OPI reported that the proportion of workplace guidance rose from 13 per cent in 2008 to 47 per cent in 2010. It appears workplace guidance is well established as the preferred outcome of a complaint file.

The audit did not identify any instances where it was recommended that the managing underperformance policy be instigated. It is likely that performance issues are primarily addressed through management intervention, most commonly in the form of workplace guidance.

For files where at least one allegation was substantiated, management intervention was the most common recommendation. Note that the following table excludes recommendations made in relation to LMRs and MIMs (as these files can only be determined as resolved or not resolved rather than substantiated).

108 *Victoria Police Ethical Health Process Review*, 2012, p 8

109 Office of Police Integrity, *Improving Victoria Police discipline and complaint handling systems: a progress report*, 2011, p 16

4. FINDINGS FROM THE AUDIT

FIGURE 30: RECOMMENDATIONS FOR SUBSTANTIATED FILES

Recommendation (substantiated files)	Count	% of substantiated
Management intervention	15	38
No actions	11	28
Admonishment	6	15
Discipline charges	4	10
Criminal charges	3	7
Action in accordance with the VPMG managing underperformance	0	0
Other	1	2
Total	40	100

4.5.3.4 Analysis: Discipline or criminal charges

Discipline charges were recommended in four files. This represents one per cent of all files (not including LMRs and MIMs) and 13 per cent of files with at least one substantiated allegation.

Criminal charges were recommended in three files. This represents (one per cent of all files (not including LMRs and MIMs) and nine per cent of files with at least one substantiated allegation.

There was one other file (concerning allegations of exceeding the legal blood alcohol limit) where no action was taken due to the officer retiring due to ill health.

No disciplinary hearings were conducted in relation to these files as the relevant subject officers resigned before either the preparation of the discipline brief or the hearing.

4.5.3.5 Analysis: Admonishment notices

Admonishment notices are intended to be used when there is a minor breach of discipline. It is not part of the statutory discipline regime and is designed as an alternative to the formal discipline process. Admonishment notices can be issued by a supervisor or PSC investigator.

FIGURE 31: DISCREPANCIES IN RECOMMENDATIONS BY FILE CLASSIFICATION

Classification	Count of discrepancies	% of files with discrepancies	% of total files at this classification
C2-5	12	29	15
C1-5	7	17	13
C2-1	6	15	9
C3-2	6	15	14
C3-3	5	12	15
C1-7	2	5	11
C1-8	2	5	6
C1-6	1	2	6
C2-4	0	0	0
Total	41	100	10

The audit identified only seven instances (two per cent of recommendations) where it was recommended that an admonishment notice be issued. Admonishments were most commonly issued in relation to misconduct off duty files (three files).

It is not clear why admonishment notices are not more widely used, but they may be viewed as an adverse outcome and therefore are infrequently used.

4.5.3.6 Analysis: Discrepancies in recommendations

There were 41 files (12 per cent) where discrepancies were identified between the recommendations listed on ROCSID and in the paper file. Discrepancies were most commonly identified in relation to MIM files.

The discrepancies were most commonly associated with the no action recommendation.

FIGURE 32: DISCREPANCIES IN RECOMMENDATIONS

Recommendation	Count of discrepancies
No actions	32
Management intervention/MIM developmental	8
Action in accordance with the VPMG managing underperformance,	1
Admonishment	1
Discipline charges	1
Other	1

*Note that total count of discrepancies in this table exceeds 41 because multiple recommendations were sometimes identified in relation to a discrepancy.

The most significant and frequent basis for discrepancies was where some form of action was recommended on the paper file (most commonly management intervention or workplace guidance), yet 'no action' was recorded on ROCSID. In some files it was not clear whether the recommended action had been taken, but in other instances action has clearly been taken (usually workplace guidance) but was not recorded on ROCSID.

Outlined below are some examples:

- A complaint alleging assault was not substantiated but the final report stated that local management should proactively talk to the subject officer and monitor his performance, particularly in light of a similar recent allegation made against him. ROCSID records no action.
- Following an investigation of a complaint involving allegations of falsifying information on an official document, the file states that the subject officer received workplace guidance. It was also recommended that standard operating procedures for the relevant work unit be amended to address the issue identified. ROCSID records no action.
- A MIM concerning allegations of failure to investigate recommended that the three subject officers receive training regarding their attitude and demeanour to members of the public, as well as in relation to how they conduct investigations. The letter to the complainant stated that this would occur. ROCSID records no action.
- A complaint alleging assault was not substantiated but the file states that the main subject officer was required to prepare and present a case study to divisional management in relation to risk assessment around transporting prisoners. ROCSID records no action
- The final report for a C1-7 file states the subject officer had been spoken to 'at length' by his supervisor in relation to the incident. ROCSID records no action.

4. FINDINGS FROM THE AUDIT

4.5.3.7 Analysis: Appropriateness of recommendations

There were 39 files (10 per cent of total files including LMRs) where IBAC auditors assessed that the recommendations listed on either ROCSID or the paper file were not appropriate. This most commonly occurred in relation to C2-5 and C1-5 files.

FIGURE 33: INAPPROPRIATE RECOMMENDATIONS BY FILE CLASSIFICATION

Classification	Count of inappropriate recommendations	% of total files at this classification
C2-5	11	14
C1-5	9	16
C2-1	8	12
C3-2	5	11
C3-3	2	6
C2-4	2	4
C1-6	1	6
C1-7	1	5
Total	39	10

Inappropriate recommendations were most commonly associated with 'no action' (82 per cent of the total number of inappropriate recommendations identified).

FIGURE 34: INAPPROPRIATE RECOMMENDATIONS

Recommendations	Count of inappropriate recommendations	% of inappropriate recommendations
No action	32	82
Management intervention/MIM developmental	6	15
Other	1	3
Total	39	100

There were three broad issues identified in relation to recommendations assessed as inappropriate:

- As indicated in section 4.5.3.6, there are a number of files for which ROCSID records a recommendation of no action, yet the file clearly states that action (most frequently some form of management intervention) has been taken.
- No action was recommended on the file when management intervention was appropriate.
- Management intervention was recommended when a serious allegation was substantiated.

CASE STUDY 24

A complaint was made alleging assault in the holding cells at a large police station. CCTV footage supported the allegation. A brief of evidence was submitted to the Assistant Commissioner PSC for charges of assault and recklessly cause injury. As the statute of limitations had expired due to delays in the investigation, summary assault charges could not be laid.

The PSC Discipline Advisory Unit recommended that as a minimum, the subject officer be issued an admonishment notice. However, local management provided workplace guidance (15 months after the incident) which was noted on the officer's PDA. ROCSID records that the allegation of striking was not substantiated and that no action was recommended.

CASE STUDY 25

The complainant was agitated during the execution of a search warrant and spat in the face of Sergeant A. The complainant alleged that while she was restrained on the ground, the sergeant stomped on her head.

Statements provided by the sergeant and police witnesses indicated that:

- First Constable B placed his knee on the complainant's head to restrain her
- Sergeant A then placed his foot on her head – he said with sufficient pressure to keep it in place and to prevent her from spitting again.

There were no apparent injuries to the complainant's head and no medical records on file.

The investigator concluded that 'the version of events is weighted in favour of the police'. The determination was no complaint. A more appropriate determination would have been unable to determine or not substantiated.

The recommendation was 'no action'. The sergeant should at a minimum have received workplace guidance around appropriate restraint techniques.

Another issue identified was the provision of informal workplace guidance in response to issues raised in a complaint file, but that guidance not being recorded on an officer's PDA. In the consultations conducted for the audit, some participants said the use of PDAs in conjunction with workplace guidance is under-utilised. They said that PDAs represent an important source of information on an officer's work history and should be used to record guidance given in response to performance issues.

Case Study 26 provides an example of where a review of a complaint file resulted in informal guidance being entered onto the subject officer's PDA.

CASE STUDY 26

A MIM file was created when a senior constable's Facebook post (made when off duty) was identified as inappropriate, as it could have been perceived as criticising Victoria Police and appeared to disclose information about shift arrangements.

The officer agreed the post was an error in judgement and accepted workplace guidance reminding her of her obligations when using social media. In the issues cover sheet, the investigator stated that the senior constable was now aware of her obligations, the possible implications of her post and the potential damage to the reputation of Victoria Police.

The investigator also initiated a reminder to the broader PSA of their obligations in relation to social media.

In his review of the file, the superintendent said this outcome was inadequate as the workplace guidance was not recorded on the officer's PDA. Subsequently, the guidance provided was entered onto her PDA.

It was also decided that an entry should also be added to the investigator's PDA as a reminder that workplace counselling discussions should be included in officers' PDAs.

4.5.3.8 Key Findings: Recommendations included in complaint investigation reports

By far the most common recommendation was no action – 82 per cent of all recommendations. Although this is undoubtedly related to the small number of files audited with substantiated allegations, it is disappointing that more opportunities were not identified for developmental or corrective action arising out of complaints.

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

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This may reflect an organisational shift towards a more developmental and less adversarial system. On the other hand, the audit identified 10 per cent of files where the recommendation was assessed as inappropriate – including instances where workplace guidance was recommended but information on the file indicated a more serious recommendation would have been appropriate. Other issues identified with inappropriate recommendations were ROCSID failing to record action had been taken when it clearly had (usually some form of management intervention) and no action recommended when management intervention would have been appropriate.

As expected, the number of recommended discipline and criminal charges was very small – less than two per cent of all recommendations. Admonishment notices also represented only two per cent of all recommendations.

The audit did not identify any recommendation relating to the use of the managing under performance policy.

As with determinations, it is important that recommendations arising out of investigations are appropriate and that where action needs to be taken to address deficiencies, it occurs. Failure to identify appropriate recommendations is a failure to fully utilise complaints as a tool to identify deficiencies with an officer's performance and, with broader policies and practices, and to take appropriate action to address those deficiencies. It also has the potential to undermine confidence in the complaints process.

Areas for improvement

Victoria Police could improve the use of recommendations in relation to complaints in the following ways:

- Publicly release aggregated information on a regular basis on the number of complaints received, their classifications, determinations and recommendations to improve transparency and accountability for outcomes
- Reiterate through training that complaints are a valuable mechanism for identifying and addressing issues with an officer's performance and conduct, and that even where an allegation may not be substantiated, there will often still be the potential for constructive developmental action
- Consider whether the managing under performance policy should be more widely used when performance issues are identified as a result of a complaint and identify why the policy is currently not used (including whether the complexity of the policy deters its use or whether there are cultural issues to overcome)
- Review the use of admonishment notices to determine whether they should be retained and if so, how to promote their use as a potential complaint outcome
- Require all workplace guidance to be recorded on the subject officer's PDA to clearly outline the issue with performance or conduct and the action taken to address that issue
- Improve quality assurance processes to ensure accurate recording on ROCSID of recommendations, including the provision of workplace guidance.

4.5.4 Investigations that identified deficiencies with policy and procedure

4.5.4.1 Policy and practice

The VPM MIM procedures and guidelines states that an outcome of a MIM file may include action to address any identified deficiency in Victoria Police policies, practices, procedures or training.¹¹⁰

The integrity management guide also states that, in relation to MIMs, investigators are to consider whether the investigation has highlighted any deficiency with station or unit processes and if so, to develop appropriate recommendations.

In practice, it appears that investigators highlight deficiencies coming out of complaint files across most, if not all, complaint classifications.

PSC has advised that it believes most recommendations are developed with a focus on a specific complaint rather than a consideration of the implications for the broader organisation. It has indicated it is considering ways of more effectively collating and analysing recommendations across Victoria Police.

4.5.4.2 Previous reviews

The OPI's 2008 report into Victoria Police's complaint handling processes stated that there was little evidence to suggest complaints were being used to identify opportunities for improvements to customer satisfaction, the performance of individual officers or general policing services. The OPI's 2011 follow-up report highlighted that it had identified a number of positive examples of instances where complaints had led to practice improvements. However, it highlighted other matters where opportunities to learn from complaints and improve service were ignored, as the focus was on closing the file once police had been cleared of wrongdoing.¹¹¹

4.5.4.3 Analysis: Investigations that identified deficiencies with policy and procedure

The audit identified 19 files (five per cent of files excluding LMRs¹¹²) where investigators identified deficiencies with Victoria Police-wide procedures or policies. Deficiencies were most commonly identified in relation to misconduct on duty (C3-2) files.

FIGURE 35: DEFICIENCIES WITH VICTORIA POLICE PROCEDURES OR POLICIES BY COMPLAINT CLASSIFICATION

Classification	Count of deficiencies with Victoria Police procedures or policies
C3-2	6
C2-5	4
C2-1	4
C1-8	3
C1-5	1
C3-3	1
C1-6	0
C1-7	0
Total	19

Investigators were more likely to make recommendations around station procedures or policies – there were 49 files (14 per cent of files excluded LMRs) where auditors identified deficiencies with station procedures or policies.

Deficiencies at a station level were most commonly identified in relation to minor misconduct (C2-1) files.

¹¹⁰ Victoria Police manual guidelines, Management intervention model, section 8.2

¹¹¹ Office of Police Integrity, Improving Victoria Police discipline and complaint handling systems: a progress report, 2011, p 34

¹¹² LMRs were excluded from this analysis due to the inconsistent information recorded on ROCSID about the resolution of C2-4s.

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FIGURE 36: DEFICIENCIES WITH STATION PROCEDURES OR POLICIES BY COMPLAINT CLASSIFICATION

Classification	Count of deficiencies with station procedures or policies
C2-1	16
C2-5	9
C3-2	7
C1-8	6
C1-6	4
C1-5	4
C3-3	3
C1-7	0
Total	49

The main deficiencies identified were:

- inconsistent or inadequate practices (34 files)
- lack of clarity of procedures and policies (10 files)
- station standard operating procedures contrary to VPM policies or legislation (one file)
- other (22 files).

Usually, it was unclear whether the recommended action to improve deficiencies in either Victoria Police-wide or station-specific policies and practices had been taken. It was not possible to check ROCSID for this information as it only records actions recommended against individual officers.

Examples of deficiencies identified in either Victoria Police-wide or station-specific policies and practices include the following:

- An investigation of LEAP usage identified a lack of clarity in Victoria Police’s policies around how LEAP checks should be documented. This was clarified and addressed through force-wide action

- In response to a complaint involving allegations of theft, the investigator identified issues with the VPM policy on property management – he made enquiries and was told new policy had been approved. He also identified guidelines on use of the Property and Laboratory Management application that had been developed by a property officer in a different region which he said would be issued to all members in the PSA relevant to this complaint
- A pursuit which resulted in an injury led to an oversight file that identified systemic issues, such as issues relating to officers working ‘one up’. It is not clear whether these issues were further considered
- A complaint alleging assault resulted in the investigator identifying areas of improvement across Victoria Police (the design of the pods of divisional vans) and station practices (contingency planning for arrests under the *Mental Health Act 2014*). It is not clear whether these improvements were further considered.

4.5.4.4 Key Findings: Investigations that identified deficiencies with policy and procedure

Complaints are a unique opportunity to address shortcomings in established policy, procedures and practices regardless of whether the investigation establishes police wrongdoing. In 19 per cent of files audited, the investigator identified a deficiency in relation to either Victoria Police-wide or station-specific policy or practice. However, it was not always clear whether identified deficiencies and suggestions for improvement had been further considered or actioned upon.

Areas for improvement

It is suggested that Victoria Police make it mandatory for a complaint file to include information on what action has been taken in response to an investigator's identification of deficiencies. It is understood that in some cases, it will not be considered appropriate for action to be taken. Where this is the case, it should be documented on the file.

Although Victoria Police policy only refers to the identification of deficiencies in relation to MIMs, investigators identified policy and practice issues across most complaint classifications. It is suggested that Victoria Police make explicit in policy the need for complaint investigators to consider whether Victoria Police or workplace specific policies and issues need to be addressed. Further, the potential of complaints to improve service delivery and overall performance should be promoted in training. Victoria Police may also consider ways to better capture the policy recommendations flowing from complaint investigations to ensure they are considered appropriately and, where relevant, developed and implemented.

4.5.5 Human rights

4.5.5.1 Policy and practice

Victoria Police is an agency required under the *Charter of Human Rights and Responsibilities Act 2006* to act in a way that is compatible with human rights and to ensure proper consideration is given to relevant human rights in decisions made by employees. The VPM policy on human rights, equity and diversity lists five questions to ask when making decisions to assist employees to appropriately consider human rights:

- What is the reason for acting?
- What is the impact?
- Is it reasonable?
- Is it necessary?
- Is there a less restrictive option?¹¹³

The integrity management guide states investigators must address human rights issues that form part of a complaint or that are discovered in the course of an investigation. Further, investigators are required to discuss any human rights breaches in their final report.¹¹⁴

The template for final reports requires an investigator to consider and address which (if any) human rights were engaged, which rights were limited, and whether the limitations were reasonable and can be demonstrably justified in the circumstances. If any human rights breaches are identified, recommendations for appropriate action must be made.¹¹⁵

4.5.5.2 Previous reviews

Victoria Police's Year Two Progress Report on *Equality is not the same* advised that PSC had been provided with human rights training 'to ensure a human rights lens is applied to all complaints and investigations'. No reference was made to the need for similar training for investigators at the regional, department or command level.

¹¹³ Victoria Police manual policy rules – Human rights, equity and diversity standards, Section 2 Application of human rights to decisions.

¹¹⁴ The integrity management guide also states that investigators are required to record any human rights breach on ROCSID but investigators do not have access to ROCSID. Victoria Police integrity management guide, April 2015, p 56

¹¹⁵ Victoria Police integrity management guide, April 2015, p 69

4. FINDINGS FROM THE AUDIT

4.5.5.3 Analysis: Human rights

The audit assessed whether an investigator's final report appropriately addressed potential human rights issues.

Excluding LMRs, the audit identified:

- 140 files (40 per cent) where human rights were addressed in the final report, issues cover sheet or file note
- 152 files (43 per cent) where human rights were not addressed
- 62 files (17 per cent) where auditors assessed it was 'not relevant' for human rights to be addressed.

There were 121 files (34 per cent) where it was considered human rights were not addressed appropriately. Issues with the way human rights were addressed included:

- A failure to identify that a complaint had raised issues relevant to the Charter of Human Rights. Two examples are:
 - The final report detailing an investigation into a misconduct file noted that an individual's privacy was breached but did not frame this in terms of human rights and did not detail responses to this breach.
 - A female complainant alleged an inappropriate physical search, including being strip searched in front of a male officer. The investigator's report did not reference possible breaches of human rights.
- The investigator stating in the final report that human rights were not engaged when they were. Two examples are:
 - The final report for a minor misconduct file stated human rights were not limited by the incident. However, the allegations directly related to section 22 of the Charter (right to humane treatment when deprived of liberty) and should have been addressed in the report.
 - A complaint specifically concerned an alleged breach of privacy. The investigator's final report stated only that 'no limitation of human rights has been identified'. The alleged breach should have been addressed in more detail.

- The investigator referring in the final report to 'rights' not listed in the Victorian Charter of Human Rights or not relevant to the complainant. Two examples are:
 - The report for a minor misconduct file referred to the rights of officers and that these rights were protected by arresting the complainant for hindering police. The report did not identify that allegations made by the complainant were relevant to Charter rights, including the right to humane treatment when deprived of liberty.
 - A complaint was made alleging minor assault and abusive language following the complainant being escorted out of a shop. The final report referred to non-Charter rights such as the rights of the shop assistant being protected by the police and the complainant's right to remain in the shop.

Three files were identified where the final report or issues cover sheet included recommendations for appropriate action in response to identified human rights issues. In one file, a MIM regarding lack of police action, the investigator identified that the complainant could have been given more time to seek legal advice and recommended that the Local Professional Standards Committee develop an education strategy to reinforce the right of a person to legal representation.

4.5.5.4 Key Findings: Human rights

Positive steps have been taken by Victoria Police to encourage investigators to address human rights in the final investigation report, such as by including a section on human rights in the template. However, IBAC's audit identified a lack of understanding by complaint investigators of the human rights enshrined in the Charter of Human Rights, the requirement to consider rights that were engaged, and whether any limitations were appropriate. In 34 per cent of files audited, human rights were not appropriately addressed, with investigators failing to identify a complaint raised human rights issues, stating that human rights were not engaged when they were, and identifying human rights not relevant to those in the Charter or to the complainant.

Areas for improvement

Victoria Police's human rights training for PSC investigators could be extended to investigators at the regional, departmental and command level. In addition, clearer information should be provided to investigators to assist them to identify relevant human rights that may have been engaged and limited, including the list of twenty rights contained in the Victorian Charter of Human Rights.

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

4.5.6 Advice to complainants regarding the investigation outcome

4.5.6.1 Policy and practice

Section 172 of the Victoria Police Act requires Victoria Police to advise the complainant in writing of the results of a complaint investigation and the action to be taken, unless it would be contrary to the public interest.

A template for final letters to complainants has been developed by PSC and is an appendix to the integrity management guide. The letter is required to outline:

- a description of each allegation forming the complaint
- a brief summary of the evidence in relation to each allegation, the determination reached and how the investigator reached that conclusion
- action taken in response to the complaint.

The VPM complaints management and investigations procedures and guidelines states that complainants must be informed in writing of the results of an investigation and any action taken or proposed to be taken.¹¹⁶ The VPM references the *Victims' Charter Act 2006* which primarily relates to complaints in which a crime has occurred. However as the VPM refers to the Charter in the context of complainants, it indicates that Victoria Police requires its officers to apply the principles of the Charter in communication and dealings with complainants.

4.5.6.2 Previous reviews

As noted in section 4.4.1, Victoria Police has highlighted the importance of better communication with complainants in two significant policy statements – the 2013 *Equality is not the same* report and the 2014 Blue Paper (*A Vision for Victoria Police 2025*).

¹¹⁶ Victoria Police manual guidelines, Complaint management and investigation, section 6.1

4. FINDINGS FROM THE AUDIT

The Koori Complaints Project 2006–08 identified that in 26 per cent of files reviewed, a Koori complainant was not informed in any way of the outcome of their complaint. In some cases, this was due to police being unable to contact the complainant. In other files, some form of action was taken against the subject officer, but the complainant was advised only that the complaint was unsubstantiated. This project also noted that the language used in communication with complainants can be unclear, citing as an example the use of ‘unsubstantiated’ or ‘not substantiated’ which some complainants took to mean that the investigator did not believe their version of events. Complainants were also unsure what had been done in the investigation. The project did note that the final letters to complainants had improved since 2005, providing more information on the investigation and action taken.

In 2008 and 2011, the OPI surveyed a sample of complainants who had been involved in a MIM about that process. In 2008, 67 per cent of complainants surveyed said they had received a final letter from Victoria Police advising of the outcome of the investigation. In 2011, the percentage was 64 per cent.

4.5.6.3 Analysis: Advice to complainants regarding the investigation outcome

There were identifiable complainants in 208 of the audited files. The audit identified that the final letter to complainants was not attached to 27 of those files (13 per cent). In seven of the files without letters attached, a note on the file outlined the public interest reason for not advising the complainant of the outcome of the matter. There was no clear reason why the remaining 20 files did not contain final letters to complainants.

Of the files with letters attached:

- there were 12 files where it was assessed that the final letter to complainants did not comply with section 172 of the Victoria Police Act and/or Victoria Police policy
- there were 24 files where the final letter to complainants did not clearly explain the result of the investigation, the outcome and action to be taken.

In relation to LMRs, the final letter could not be accessed via ROCSID in 28 complaints (56 per cent). Either some form of correspondence advising of the outcome was sent but not uploaded, or no correspondence was sent. In 57 per cent of matters where a final letter could not be located, there was some indication on ROCSID that there had been a discussion between the investigator and the complainant that clarified the LMR issue which resulted in the matter being marked as resolved.

Where final letters were sent to complainants advising of the outcome of an investigation, the audit identified issues including:

- insufficient detail
- information provided that was inconsistent with other information contained on the file
- timeliness, with delays in sending out letters after an investigation was complete and actions endorsed.

Outlined below is one example of a lengthy delay between the finalisation of an investigation and the final letter advising the complainant – and the subject officer – of the outcome.

CASE STUDY 27

This file related to the conduct of an off duty officer who refused to leave licensed premises when requested by security. The officer was alcohol affected at the time.

ROCSID records the matter as being completed on 25 September 2014. On 25 September 2014, the EPSO was advised that the file had been completed and lodged with the LAC. The LAC endorsed the final report on 26 September 2014, and the superintendent a few days later.

The cover sheet on the file shows that the EPSO requested on 20 October 2014 that letters be prepared.

The final letters to the complainant and subject officer were dated 23 January 2015. There is no indication why there was a delay of almost four months between the endorsement of the final report and sending out the letters advising of the outcome of the investigation.

Case study 28 highlights inaccurate and unclear communication in correspondence to a complainant.

CASE STUDY 28

A complaint alleged police failed to update the complainant on the investigation regarding her stolen car. The matter was resolved via the MIM process. The subject officers received workplace guidance which was appropriate.

However, the final letter to the complainant did not clearly explain the outcome of the investigation. The final letter stated:

The actions of police on this occasion were appropriate and were in accordance with the law and accepted police practice. Intervening management action enabled proper feedback as to contemporary information surrounding the criminal investigation progress, court processes and overall circumstances. The members were provided with developmental advice.

This suggests there were no shortcomings in the actions of the subject officers, yet identifies that they were provided with developmental advice.

The letter should have identified the deficiency in the communication between the officers and the complainant, and that the relevant officers were provided with workplace guidance.

There were a number of files where information provided to complainants in the final letter was inconsistent with other information on the file. For example:

- A complaint was received about police conduct during an arrest. The determination was no complaint. The final letter to the complainant referred to the actions of one of the police officers (who restrained the complainant with his knee) but not the main subject officer who admitted in the course of the investigation to placing his foot on the complainant's head. The omission of this information was misleading.
- The final letter to a complainant stated the subject officers would be subject to management action, however ROCSID recorded 'no action'. Furthermore, the letter implied that two allegations had been investigated when only one was listed on ROCSID.
- The final letter to the complainant in a misconduct off duty file stated that 'the action/behaviour of [the subject officer] on this occasion has been discussed with [the officer] by management resulting in an outcome desirable to yourself'. This implies that Victoria Police acknowledged that the officer's conduct was undesirable (at a minimum) and he had been counselled. However, there is no indication this occurred. ROCSID records no action.

A MIM concerning allegations of improper behaviour was recorded as resolved on ROCSID. The correspondence to the subject officers also stated that the matter had been resolved. However, the letter to the complainant stated that the matter had not been resolved.

IBAC's audit also identified good practice in the communication of outcomes to complainants.

4. FINDINGS FROM THE AUDIT

CASE STUDY 29

This investigation examined a complainant's allegations that he had been assaulted and threatened when issued an infringement notice. The complainant did not speak English and did not understand why he received the notice.

The investigator arranged to meet with the complainant and the complainant's son – who acted as an interpreter – to discuss the allegations face-to-face. The meeting helped address the complainant's concerns regarding the appropriateness of the officer's behaviour by clarifying why the officer had acted as he had.

Upon completion of the investigation, the investigator sent a clear and detailed final letter to the complainant thanking him for meeting with her, outlining the investigation process taken and the final result. This letter was accompanied by a Mandarin translation (the complainant's first language) to help facilitate the complainant's understanding.

4.5.6.4 Key Findings: Advice to complainants regarding the investigation outcome

The audit identified 10 per cent of relevant files¹¹⁷ where there was no indication that final letters had been sent to complainants and no reason for that not occurring. In the majority of LMRs (56 per cent) there was no evidence that a final letter had been sent to complainants.

In relation to LMRs, there appeared to be some confusion about the requirement to send the complainant a final letter. In response to one LMR, the EPSO advised that as the process was completely informal, there was no need to advise the complainant in writing of the outcome of the matter. However, during consultations for the audit, one group of officers said that they were told a letter had to be sent to the complainant at the end of the process, and even an email would not suffice.

Where letters were attached, 36 files were identified where the final letter either did not comply with the Victoria Police Act or policy, such as by not clearly explaining the result of the investigation, the outcome or the action to be taken.

Communication with complainants is a critical part of an effective complaints process. Complainants' satisfaction with the way in which their complaint is handled will be influenced by how police communicate with them, including how the outcome of an investigation is explained. As the integrity management guide states, the final letter to a complainant should clearly describe the allegations, summarise the evidence in relation to each allegation, the determination reached, how that conclusion was reached, and any action taken. Unfortunately, this is not consistent practice. It was not uncommon for final letters to provide inadequate information on a complaint investigation, or for inconsistent or inaccurate information to be provided.

¹¹⁷ That is, excluding files where there was a public interest reason not to inform the complainant of the outcome of the matter in writing.

Areas for improvement

Victoria Police could improve the way in which it communicates the outcome of an investigation to complainants in the following ways:

- A policy to be developed and promulgated in relation to final communication with complainants in LMR matters. Consistent with the spirit of LMRs, a verbal discussion with the complainant about action taken in response to their complaint and the proposed response could be sufficient, provided the content of that discussion is documented and recorded in ROCSID. However, in some LMRs (such as matters where communication with the complainant has been difficult) it would be preferable to email or write to document the final outcome
- Greater emphasis to be given to writing final letters to complainants that are informative, accurate and timely. In particular, focus to be given to explaining the determination reached (such as by explaining that not substantiated means the evidence was weighted in favour of the account given by the officer). Victoria Police should determine where responsibility for overlooking this rests (such as with EPSOs or the LAC) and take steps to ensure that responsibility is actioned
- Victoria Police could regularly sample complainants (with a focus on LMRs) to assess their level of satisfaction with communication during the complaint handling process, including the final advice of the outcome of their complaint.

4.5.7 Advice to subject officers regarding the investigation outcome

4.5.7.1 Policy and practice

The VPM complaints management and investigations procedures and guidelines state that the subject officer may be informed of the progress of a complaint investigation, unless a complaint is a workfile (C1-0) or corruption (C3-4) matter. Further, subject officers are to be advised in writing of the outcome of an investigation and action either taken or proposed to be taken, unless such contact would jeopardise the investigation or future investigations.

A template for final letters to subject officers is an appendix to the integrity management guide. The letter is required to outline:

- a description of each allegation forming the complaint
- the determination in relation to each allegation and action taken, and sufficient information to make clear the reason for that action.

In the focus groups conducted for the audit, some participants indicated that they or the relevant supervisor would verbally confirm with the subject officer the result of the investigation prior to the final letter being sent. They said that letters were sometimes delayed, partly because correspondence could not be sent until workplace guidance was provided, if that was the recommended action. Some focus group participants also said that investigators had discussions with subject officers after they received their final letter, to explain the final outcome as there was a variable level of understanding of the nuances of determinations.

4. FINDINGS FROM THE AUDIT

4.5.7.2 Analysis: Advice to subject officers regarding the investigation outcome

The audit identified that the final letter to subject officers was not attached to 57 files. Removing files where no subject officers were identified, this represented 16 per cent of relevant files.

Of the files with letters attached, issues were identified with 21 letters (eight per cent) as they did not clearly identify the outcome or the action to be taken. The specific concerns with letters to subject officers are outlined below.

- Some letters to subject officers differed in substance from the final letter sent to complainants.
 - The final letter to a complainant in a MIM referred to management action to be taken in relation to the subject officers' demeanour and attitude, but there is no reference to this action in the final letters to the subject officers.
- Letters sometimes did not address all of the allegations made against a subject officer.
 - In a misconduct on duty file, the final letter to the subject officer addressed one allegation (regarding falsification of evidence) but ROCSID recorded a further two allegations against that officer (both not substantiated) which were incorrectly attributed to her. As the letter did not make this clear, the officer did not have an opportunity to correct the record.
 - The final letter to the subject officer in a misconduct off duty file referred to one allegation only (concerning a specific incident of alleged drink driving) and not the second allegation that the subject would regularly drink and drive.
- Letters sometimes contained an incorrect determination (most frequently stating that a matter was resolved in files other than MIMs or LMRs) or vague determinations.
 - In an oversight file regarding an incident in custody, the letters to the subject officers did not state the determination but rather included a blanket statement that nothing wrong had been found.

- Some letters failed to state what action would be taken (if any).
 - In a MIM, the letter to the subject officer failed to state that workplace guidance was the recommended action or the form that guidance would take.
 - The final letter in a misconduct off duty file advised the subject officer that 'administrative guidance' would be provided but did not specify what issue would be addressed through this guidance.
- Letters contained general errors.
 - The final letter to the subject officer in a minor misconduct file referred to the incorrect incident (careless driving instead of an allegation of assault/manhandling at the time of arrest). In addition, the letter did not refer to informal counselling given to the subject officer by the investigator on peripheral issues identified during the investigation.

No correspondence to subject officers (either letters or emails) was identified by the audit in relation to LMRs. In some files there was an indication that the investigator had discussed the matter with the subject officer, but there was no formal record of the subject officer being advised of the outcome.

4.5.7.3 Key findings: Advice to subject officers regarding the investigation outcome

The audit found there were a significant proportion of files that did not have final letters to subject officers attached – 16 per cent. And eight per cent of letters that were attached were deficient because they were either inconsistent with letters sent to complainants, did not address all allegations, referred to the incorrect determination or did not state what action would be taken. In relation to LMRs, there was no evidence subject officers were advised in writing of the outcome of the matter.

It is important that all relevant subject officers are advised formally of the outcome of a complaint investigation and that that advice is timely and accurate. In effect, the final letter to the subject officer should reflect how the matter is recorded on ROCSID.

Areas for improvement

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

- Making it clear that finalisation of final letters is not dependent on action (such as workplace guidance) being taken against the subject officer. It is sufficient for the final letter to state that specific action will be taken
- Improving quality assurance of letters. If necessary, follow up advice could be provided to subject officers (or complainants) correcting information provided
- In relation to LMRs, ensuring subject officers are advised in writing (email is sufficient) of the outcome of the investigation. This correspondence should be uploaded onto ROCSID.

4.6 Record keeping and other issues

4.6.1 Record keeping

4.6.1.1 Policy and practice

The integrity management guide provides guidance on how investigation files should be compiled. Upon receiving a complaint, a complaint form (form 918) must be completed and forwarded to the PCU for classification and preparation of a file.¹¹⁸ Once a file has been created and allocated, documents should be attached chronologically from the back of the file and should include:

- final/interim reports
- investigation plans
- complainant statements or letters
- witness statements
- medical reports.¹¹⁹

The PSC Conduct and Professional Standards Division standard operating procedures provide guidance in relation to the recording of a complaint's ethnicity. The procedures state that when taking details of a complaint, the person lodging the complaint must be asked, 'are you claiming Aboriginal or Torres Strait Islander status?'. The answer should be recorded in ROCSID.¹²⁰

4.6.1.2 Previous reviews

A 2010 Victoria Police function audit of misconduct on duty (C3-2) and off duty (C3-3) files identified that the files:

- lacked documentation outlining the investigative process
- lacked original statements
- included documents purporting to be police statements that were unsigned or without an acknowledgement
- included photographs of a poor forensic standard.¹²¹

¹¹⁸ Victoria Police integrity management guide, April 2015, p 14

¹¹⁹ Victoria Police integrity management guide, April 2015, p 45. See also p 12 of the VPIMG which states that, 'Complaint statements are to be attached to the PSC Investigation File at the commencement of the investigation section and are not to be summarised'.

¹²⁰ Victoria Police, Conduct and Professional Standards Division standard operating procedures, September 2014, p 18

¹²¹ PSC File E10/000459, Function audit – Regional/Departmental conducted investigations, July 2010, p 11

4. FINDINGS FROM THE AUDIT

Other reports have also identified record keeping issues:

- The 2014 Blue Paper (*A Vision for Victoria Police 2025*) recognised the need for a more sophisticated computer-based system that is able to monitor complaints and other behavioural indicators to facilitate more effective early intervention.¹²²
- The Koori Complaints Project 2006–08 recommended consideration be given to providing all investigators/complaint handlers access to the complaints database. The report also highlighted the concern that because the ethnicity field on form 918 was not being used, complaints from Aboriginal people could not be disaggregated and analysed.¹²³
- The OPI's 2011 report noted that there were issues with systems used by Victoria Police to track complaints and that this contributed to the creation of stand-alone databases at a local level.¹²⁴
- The OPI's 2007 report highlighted inconsistencies around the maintenance of accurate complaint data by Victoria Police. The report noted that this had implications for the effectiveness of the complaint and discipline system and could result in police officers being treated unfairly and inconsistently.¹²⁵

4.6.1.3 Analysis: Record keeping on hard copy files

The audit identified that 29 per cent (102 files) of audited files (excluding LMRs) did not include all relevant documentation. The most significant issues identified included:

- missing letters to complainants and/or subject officers
- no investigative documentation on the file other than the final report
- failure to document contact with the subject officers and/or complainants
- unsigned or unwitnessed statements attached to files
- CCTV footage not included on the file
- material referenced or relied upon in making determinations not included on the file
- folio numbers not included on file documents, or folio numbers out of order.

CASE STUDY 30

The complainant was arrested after refusing to comply with officers' requests and acting aggressively. The day after he was released from custody, he made a complaint at the station of assault, property damage and duty failure against the arresting officers.

Several documents IBAC expected to find on the file were not attached including:

- Documented contact between the investigator and the complainant to clarify details of the incident. This would have been particularly useful given there was a six-month delay between the incident being reported and the investigation report being submitted.
- There were no police witness statements attached despite information on the file indicating there were other police in attendance. There is no indication the investigator attempted to locate or identify these witnesses through running sheets or rosters.

The pages of the file were not all numbered and those that were numbered were out of order.

These record keeping issues made it difficult to assess the appropriateness of the investigating officer's conclusions and raised questions over the thoroughness of the investigation.

¹²² Victoria Police, *A Vision for Victoria Police 2025*

¹²³ Ethical Standards Division and Department Of Justice, *Koori Complaints Project 2006–2008 Final Report*, p 17

¹²⁴ Office of Police Integrity, *Improving Victoria Police discipline and complaint handling systems: a progress report*, 2011, p 29

¹²⁵ Office of Police Integrity, *A Fair and Effective Victoria Police Discipline System*, October 2007, p 43

4.6.1.4 Analysis: ROCSID data quality for LMRs

Local Management Resolution (C2-4) files do not have hard copy files and therefore all relevant documentation must be attached to the complaint on ROCSID. Of the 50 LMRs audited by IBAC, there were 19 identified where relevant documentation was missing from ROCSID.

The two most common issues identified in relation to LMR record keeping were:

- A failure to document contact with the complainant or subject officer
- No final report, letter or file note attached to ROCSID outlining how the matter was resolved (or not resolved).

4.6.1.5 Analysis: Recording of complainant ethnicity

There were 28 files (eight per cent of audited files, excluding LMRs) where it appeared the ethnicity field on either ROCSID or form 918 had not been completed accurately.¹²⁶ Of these, eight were due to inconsistencies between how the ethnicity was recorded between ROCSID and the form 918. The remaining 20 inaccuracies were due to other reasons.¹²⁷

It is likely that inaccuracies related to the recording of complainant ethnicity are higher than the eight per cent detected, however these inaccuracies would only be identifiable through consultations with complainants.

CASE STUDY 31

In February 2015 PSC received a complaint regarding an allegation of assault and inappropriate behaviour against an officer.

The complainant clearly identified herself as an Aboriginal woman at two points in the complaint and requested the file be sent to the Police Aboriginal Liaison Officer at PCU. Despite this, the ROCSID record of the complaint lists the complainant's ethnicity as 'Mediterranean'.

It is unclear whether the file was sent to the Aboriginal Liaison Officer, as requested by the complainant. Further, the incorrect listing of the complainant's ethnicity limits Victoria Police's capacity to identify patterns in its contact with members of different ethnic groups.

4.6.1.5 Analysis: Use of force forms

Twenty-six of the surveyed files (excluding LMRs) had a use of force form attached. However, in at least three cases, these forms were not completed until after the complaint files were generated.

Significantly, there were 48 files (excluding LMRs) where a use of force form should have been attached, but was not. This includes files where there was no indication that a use of force form was completed (despite the incident involving the use of force) as well as files that make reference to a use of force form being completed, yet it not being attached to the file. In multiple cases, the failure of subject officers to complete a use of force form was highlighted by the investigating officer.

¹²⁶ This figure excludes files where the complainant ethnicity was not recorded at all.

¹²⁷ Note that because there was no comment field associated with this question, it is not possible to identify more nuanced issues with the recording of ethnicities.

4. FINDINGS FROM THE AUDIT

4.6.1.6 Key findings: Record keeping

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

IBAC's audit team noted that although under current Victoria Police policy, files should be organised chronologically, this can make them difficult to navigate and to identify whether particular documents have been included. Files that are well organised assist those responsible for reviewing files to quickly understand the content of a file and find relevant documents. Well organised files may also assist investigators who are summarising the content of files when preparing final reports or issues cover sheets.

Shifting from a paper-based complaint file management system to an electronic system would assist in addressing many of the record keeping issues identified. An electronic system would:

- expedite transfers of files between investigators, supervisors and PSC (particularly when investigators and supervisors are located outside of metropolitan areas)
- encourage more active oversight of investigations by supervisors
- improve the security of information on complaint files
- assist in logging all investigative activities, making it easier to review contact between the investigator and relevant parties
- systematically organise evidence and supporting materials, making file navigation more intuitive.

IBAC understands Victoria Police is to conduct a trial of Interpose as a means of managing complaint files. While IBAC supports the adoption of an electronic file management system for the reasons listed above, it notes the challenges associated with the introduction of such a system such as the timeframes associated with granting access to complaint investigators, providing training to investigators, establishing appropriate security and confidentiality safeguards, and ensuring all relevant material is uploaded to the system.¹²⁸

Areas for improvement

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

- Including a checklist of steps and evidence to consider as part of the file template sent to investigators. This approach has been adopted within Tasmania Police, with positive results noted by the Tasmanian Integrity Commission¹³⁰
- Continuing the transition from a paper-based complaint file management system to an electronic system such as Interpose.

¹²⁸ Tasmanian Integrity Commission Report No 2 of 2014, p 45

FIGURE 37: NOTIFICATION OF IBAC OF COMPLAINTS BY CLASSIFICATION

Classification	Total files	Files with an IBAC CMS entry	Files where the complainant contacted IBAC
C1-5	56	0	0
C1-6	16	9	8
C1-7	18	1	0
C1-8	36	2	1
C2-1	66	58	22
C2-5	81	17	20
C3-2	44	43	11
C3-3	34	34	0
C3-4	3	3	1

4. FINDINGS FROM THE AUDIT

4.6.2 Notification to IBAC

Victoria Police is obliged to notify IBAC of complaints received about corrupt conduct or police personnel misconduct by a Victoria Police employee or police recruit.¹³⁰ These notifications must be in writing and be sent as soon as practicable.¹³¹ The detail that must be included in these notifications is outlined in regulation 61 of the Victoria Police Regulations 2014. Victoria Police must also notify IBAC as soon as Victoria Police commences an investigation into alleged misconduct by a police officer and after completing such an investigation.¹³²

Victoria Police notifies IBAC's Assessment and Review section by automated email when it classifies a complaint. However, Victoria Police differentiates between:

- 'incidents' (C1-5, C1-7, C1-8, C2-4 and C2-5 files)
- 'complaints' (C2-1, C3-2, C3-3 and C3-4 files)
- correspondence (C1-6 files).

The audit identified that Victoria Police did not routinely notify IBAC of complaints classified as C1-5, C1-6, C1-7, C2-4 or C2-5 files because Victoria Police considers these to be 'incident' or 'correspondence' files rather than 'complaints'. This has the potential to limit IBAC's capacity to oversight PSC files, to monitor trends in complaints against police and to identify Victoria Police officers attracting disproportionately high numbers of complaints.¹³⁴

In addition to the above notification arrangements, IBAC maintains an 'own motion' oversight of deaths, serious injury or risk of death or serious injury associated with police conduct classified by Victoria Police as C1-8 matters. This includes injuries in custody, non-fatal shootings and deaths associated with police contact. Victoria Police notifies IBAC of all cases involving deaths, serious injury or risk of death or serious injury associated with police conduct.

¹³⁰ *Independent Broad-based Anti-corruption Commission Act 2011*, s 57(2)

¹³¹ *Victoria Police Act 2013*, s 169(2)

¹³² *Victoria Police Act 2013*, ss 169(3), 170(3)

¹³⁴ Issues related to the notifications received by IBAC from PSC are being pursued independently by IBAC's Operations Division.

5. SUMMARY OF RECOMMENDATIONS

As a result of this audit, IBAC has made nine recommendations to Victoria Police. These recommendations should be read in conjunction with the 'areas for improvement' highlighted throughout the report.

FIGURE 38: SUMMARY OF RECOMMENDATIONS

No.	Recommendation	Page reference
1	Develop a policy for local management resolution (C2-4) files including clear parameters for their use and communication with complainants and subject officers.	27
2	Review the correspondence classification (C1-6) to determine if and when it should be applied.	27
3	Implement a policy requiring PSC to attach a subject officer's complete complaint history to all complaint files.	30
4	Require investigation plans, investigation logs and final checklists to be completed and attached to complaint investigation files.	33, 52, 90
5	Require a Victoria Police conflict of interest declaration (form 1426) to be completed for all oversight and investigation files to ensure conflicts of interest are explicitly addressed and managed.	38
6	Review the system of determinations to reduce and simplify determination categories.	70
7	Publicly release aggregated information on a regular basis (for example, in the Victoria Police annual report) on the number of complaints received, their classifications, determinations and recommendations to improve transparency and accountability for outcomes.	76
8	Require all formal and informal workplace guidance be recorded on subject officers' professional development and assessment (PDA) plans to clearly outline performance or conduct issues and the actions taken in response to issues.	76
9	Provide regional, departmental and command investigators with clearer information and training on the Victorian Charter of Human Rights to assist in identifying human rights that have been engaged by a complaint.	81

6. CONCLUSION

IBAC's audit of Victoria Police's regional complaint handling processes was undertaken to help Victoria Police improve its complaints-handling systems. A strong complaints system is essential for preventing corrupt conduct and police misconduct.

Across all six of the areas examined by the audit, IBAC auditors identified good practices and areas for improvement, and these have informed this report's recommendations and suggestions for improvement to Victoria Police. Although the audit focussed on complaint files that were investigated in Western Region and Southern Metropolitan Region, it is anticipated that the issues identified will have wider application across Victoria Police. Addressing the issues identified in the two regions will improve complaint management across Victoria Police.

IBAC acknowledges that Victoria Police has already initiated changes to improve complaint handling and investigations. For example, it is anticipated the adoption of an electronic case management system for complaints will improve the timeliness, record keeping and supervision of investigations. Victoria Police has also advised that it is committed to implementing the recommendations made by IBAC's audit.

IBAC is planning further audits of Victoria Police's complaint handling processes to identify issues and good practice across different regions, departments and to examine the way different types of matters are handled. Using this first audit as a benchmark, these future audits will assist in identifying further ways to strengthen Victoria Police's complaint systems.

7. APPENDICES

7.1 Appendix A: Audit instrument

7.1.1 Pre-investigation processes

Issue	Audit instrument questions
1. Assessment and identification of allegations	Count of allegations identified in the complaint according to ROCSID Count of allegations identified in the complaint according to the paper file Details of discrepancies: [free text] Based on the available information, does the audit officer agree with the number of allegations? If no why not: [free text] Based on the available information, does the audit officer agree with the characterisation of the allegations? If no, why not: [free text] Does audit officer agree with the complaint classification? If no, why not: [free text] Was the complaint reclassified? If yes, what reason was given for the reclassification (Not resolved in allocated time/more serious than first assessed/reclassified from C1-6) Has the complainant ethnicity field on form 918 been completed? Has the complainant ethnicity field on ROCSID been completed? Is there any indication, based on the complaint file, that the ethnicity field on form 918 or ROCSID has not been completed accurately?
2 Identification of subject officers	Count the number of subject officers identified in each complaint: <ul style="list-style-type: none"> • number of sworn officers who are subject of the complaint in ROCSID • number of sworn officers who are subject of the complaint in the paper file • number of PSOs who are subject of the complaint in ROCSID • number of PSOs who are subject of the complaint in the paper file • number of unsworn employees who are subject of the complaint in ROCSID • number of unsworn employees who are subject of the complaint in the paper file Rank of the main subject officer Based on the available information, does the audit officer agree with number and identification of subject officers? If not, why not: [free text]
3. Complaint history checks	Are relevant complaint histories regarding subject officers attached to the file? Comment on the use potential use of subject officers ' complaint histories: [free text]
4. Investigation plans	Does the file contain an investigation plan? Comments re investigation plan: [free text]

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7.1.2 Impartiality

Issue	Audit instrument questions
5. Connections between investigators and subject officers (conflicts of interest)	Rank of the primary investigator Is there a conflict of interest based on where the investigator and subject officer(s) were stationed? Does the investigating officer have a complaint history which may impact on his/her ability to investigate the complaint or incident? Comment on relevant complaint history: [free text] Was the investigator the supervisor of the subject officer(s)? What is the difference in rank between the primary investigator and the subject officer(s)? Is there any other apparent conflict of interest between the investigator(s) and subject officer(s)? If yes, describe the conflict: [free text] For any of the conflict of interest, was the conflict identified by Victoria Police? If yes, who identified the conflict? How was the conflict of interest addressed by Victoria Police? Based on the available information, was the choice of investigator appropriate? If not, why not: [free text] Has form 1426 (Oversight/Investigation Conflict of Interest Questionnaire and Approval) been completed? If yes, did form 1426 identify any conflicts of interest? Comment on how form 1426 addressed the conflict of interest: [free text]

7.1.3 Timeliness

Issue	Audit instrument questions
6. Time taken to register, classify and allocate	Date complaint received by Victoria Police as noted on the paper file Date complaint received by Victoria Police as noted on ROCSID Date complaint created on ROCSID Date complaint classified Date complaint allocated Days from receipt to classification Days from classification to allocation Reasons for any delay in classification or allocation Consequence of any delay

7. Time taken to complete investigations	<p>Due date listed in ROCSID for completion of investigation</p> <p>Date investigation completed</p> <p>Overdue days</p> <p>Days taken to complete investigation</p> <p>Were any extensions sought?</p> <p>Are all extension requests and approvals attached to the file?</p> <p>Were extensions referred to the appropriate officer for approval?</p> <p>Total period of extensions obtained (in days)</p> <p>Based on the available information, were the extensions reasonable?</p> <p>If not, provide reasons: [free text]</p> <p>Reasons for delays in completing the file</p>
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7.1.4 Investigative processes utilised

Issue	Audit instrument questions
8. Cross check CMS	<p>CMS case reference number</p> <p>CMS review ID</p>
9. Clarification with complainant	<p>Number of complainants who are members of the public</p> <p>Number of complainants who are internal police complainants</p> <p>Total identifiable complainants</p> <p>Number of complainants who are anonymous/unclear</p> <p>Number of complainants who are contacted by investigators</p> <p>Number of complainants who are interviewed by investigators</p> <p>Number of complainants who provide written statements</p> <p>Reason for not making contact with complainants</p>
10. Contact with civilian witnesses	<p>Count of civilian witnesses identified</p> <p>Count of civilian witnesses contacted</p> <p>Count of civilian witnesses who provided information via formal interview</p> <p>Count of civilian witnesses who provided information via statement</p> <p>Count of civilian witnesses who provided information via file note</p> <p>Count of civilian witnesses who provided information via other means</p> <p>Were all of the relevant civilian witnesses contacted?</p> <p>Reasons given for not making contact with civilian witnesses</p>
11. Contact with police witnesses	<p>Count of police witnesses identified</p> <p>Count of police witnesses contacted</p> <p>Count of police witnesses who provided information via formal interview</p> <p>Count of police witnesses who provided information via statement</p> <p>Count of police witnesses who provided information by adopting the statement of other police</p> <p>Count of police witnesses who provided information in response to a directions letter</p> <p>Count of police witnesses who provided information via file note</p> <p>Count of police witnesses who provided information via other means</p> <p>Based on the available information, in the opinion of the auditing officer, were all the relevant police witnesses contacted?</p> <p>Reasons given for not making contact with police witnesses</p>

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Issue	Audit instrument questions
12. Contact with subject officers	<p>Were all identified subject officers contacted by the investigator as part of the investigation?</p> <p>How many subject officers were criminally interviewed?</p> <p>How many subject officers were subject to a disciplinary interview?</p> <p>How many subject officers were asked to provide a response to a direction letter issued under s 171(1)?</p> <p>How many subject officers made a statement or had a statement taken?</p> <p>Reasons for not contacting a subject officer</p>
13. Use of directions letters	<p>Were one or more subject officers required to respond to a directions letter in relation to this matter?</p> <p>Were one or more police witnesses required to respond to a directions letter in relation to this matter?</p> <p>Did the directions letter disclose criminal conduct which then could not be pursued?</p> <p>Is there any indication of collusion?</p> <p>Details of collusion: [free text]</p> <p>Was the directions letter used for a potential breach of discipline only as per the <i>Victoria Police Act 2013</i>?</p>
14. Other evidentiary material gathered	<p>Were there relevant types of evidence that should have been examined but were not?</p> <p>What types of evidence should have been examined but were not?</p>
15. Review of investigation	<p>Was this investigation reviewed in accordance with the VPM?</p> <p>Did the EPSO at the region agree with the divisional superintendent's sign off of the file?</p> <p>If no, did the superintendent action the EPSO's recommendations for further work?</p> <p>Was this investigation reviewed by IBAC?</p> <p>Did the IBAC review process identify any deficiencies or issues?</p>

7.1.5 Conduct and outcomes of LMR and MIM resolution

Issue	Audit instrument questions
16. Conduct and outcomes of LMR and MIM resolution	<p>Was contact made with the complainant to discuss what the complainant desired as an outcome?</p> <p>Was the complainant was satisfied with the outcome?</p> <p>Does the resolution identify any deficiencies with Victoria Police procedures or polices?</p> <p>Does the resolution identify any deficiencies with station procedures or polices?</p>

7.1.6 Outcomes of complaint investigations

Issue	Audit instrument questions
17. Conciliation	<p>Was formal conciliation used to resolve the complaint?</p>
18. Determination rates (findings)	<p>What was the determination/finding?</p> <p>Were there any differences in the determinations listed on the final report, the final letters and ROCSID?</p> <p>Details of any difference between ROCSID and the paper files regarding the determination: [free text]</p> <p>In the audit officer's opinion, was the determination/finding appropriate?</p> <p>If no, reasons why the determination was inappropriate: [free text]</p>

Issue	Audit instrument questions
19. Report recommendations (outcomes)	What recommendations were made? Were there any differences in the recommendations listed on the final report, the final letters and ROCSID? Details of any differences between ROCSID and the paper file regarding recommendations: [free text] Were the recommendations appropriate? If no, reasons why the recommendations were inappropriate: [free text] Does the final report or issues cover sheet identify any deficiencies with Victoria Police procedures or policies? Does the final report or issues cover sheet identify any deficiencies with station procedures or policies? Details of deficiencies identified
20. Outcome of disciplinary hearings	Outcome of disciplinary hearing outcomes
21. Communication with complainants	Was the complainant updated on the progress of the investigation? If yes, how was the complainant updated? If no, what was the reason for the lack of contact? Is the final letter to complainants attached to the file? If yes, does the letter comply with s 172 of the Victoria Police Act 2013 and the Victoria Police policy? Was the result of the investigation/resolution and action to be taken clearly explained to the complainant? If the letter is not attached to the file, does the file note the public interest reason for not advising the complainant of the outcome (as required in s172(2)) What issues were evident in the communication with the complainant?
22. Complainant satisfaction	Has the complainant lodged the same complaint with IBAC?
23. Advice to subject officers	Is the final letter to subject officers attached to the file? Does the final letter to the subject officer clearly identify the outcome and the action to be taken? If no, provide reasons: [free text]
24. Human rights breaches	Does the final report or issues cover sheet address human rights? Is the way human rights are addressed appropriate? Does the final report or issues cover sheet include recommendations for appropriate action regarding any human rights breach? Comments re how human rights were addressed: [free text]
25. Record keeping	Was all relevant documentation included in the investigation file? Comment on what was missing: [free text] Was there are a use of force form on the paper file? Comments regarding use of force form: [free text]

8. GLOSSARY

Acronym	Explanation
CARA	NSW's complaint allocation risk appraisal process
CMS	IBAC's case management system
EPSO	Ethics and Professional Standards Officer
ESD	Ethical Standards Division (now known as Professional Standards Command)
IBAC	Independent Broad-based Anti-corruption Commission
IMG	Integrity management guide
IMP	Integrity management program
LAC	Local area commander
LEAP	Law enforcement assistance program
LMR	Local management resolution
MIM	Management intervention model
OPI	Office of Police Integrity
PDA	Professional development and assessment plan
PCU	Police Conduct Unit
PIC	Police Integrity Commission
PSA	Police service area
PSC	Professional Standards Command
PSO	Protective services officer
ROCSID	Register of Complaints, Serious Incidents and Discipline
SOG	Special Operations Group
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VPM	Victoria Police manual
VPMG	Victoria Police manual guideline
VPMP	Victoria Police manual policy

