

Operation Wingan

Operation Wingan was an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) into the conduct of Victoria Police officers during the apprehension of a person (Person A) at Epping, Victoria on 13 September 2020.

What IBAC did

IBAC may investigate police personnel conduct in response to a complaint or a notification from Victoria Police, or on its 'own motion'. IBAC decided to investigate the conduct after receiving a complaint from a member of the public about the way police treated Person A.¹

Operation Wingan investigated whether there was any police misconduct arising from actions of the police officers on 13 September 2020.² The investigation considered:

- the facts and circumstances leading up to Person A's apprehension
- Victoria Police's apprehension of Person A including the force used and whether criminal charges should be laid in relation to the force that was used
- the actions of Victoria Police officers following the apprehension of Person A including the provision of aftercare to them after they had been sprayed with oleoresin capsicum (capsicum) spray.

IBAC's examination of the available evidence from various sources included:

- material from Victoria Police related to the incident including body worn camera footage
- other video footage including from CCTV and material recorded by members of the public
- recordings of calls to triple zero and police radio communications
- interviews and witness statements from police, members of the public (including Person A) and expert witnesses.

Incident overview

On 13 September 2020, after waiting in the emergency department at the Northern Hospital for a number of hours, Person A became distressed and damaged an exit door of the hospital by kicking it several times before leaving the hospital on foot. A triple zero report was made, and the situation was broadcast on police radio. Police subsequently attended the area.

Police observed Person A acting in an agitated manner. Despite police attempts to speak to Person A, Person A did not comply with police instructions and struck the police vehicle.

Person A then ran on to a busy road among traffic and towards oncoming cars and continued to fail to comply with police instructions to stop and get on to the ground.

Attempts were made to stop Person A. One of the police officers chased Person A on foot and struck them with an extendable baton. Person A pushed the officer away. Police also sprayed Person A with capsicum spray a number of times. This did not stop Person A from continuing to run through traffic.

Some police officers at the scene formed the view that there was a danger that Person A would access cars being driven by members of the public that had stopped on the road.

At this point, an officer (Officer 1) drove a police vehicle into the oncoming stationary traffic, stopped behind Person A, then drove the police vehicle into the back of Person A's legs which propelled Person A forward causing them to land approximately three metres from the front of the police vehicle on the road. Person A stood up immediately and ran from police again. Officer 1 stated they were attempting to stop Person A and allow nearby police to apprehend them.

¹ Pursuant to power under s 64(1)(a) of the *Independent Broad-based Anti-corruption Commission Act 2011*.

² When considering whether any criminal offences had occurred, including any decision to prosecute, IBAC is required to assess the evidence against the criminal standard of proof – beyond reasonable doubt. When considering whether any breaches of police discipline had occurred, IBAC considers evidence against the civil standard of proof – on the balance of probabilities.

At this stage, two police officers from the Critical Incident Response Team (CIRT) arrived in a police vehicle (Officers 2 and 3). One of the CIRT officers (Officer 2) ran after Person A and grabbed hold of their shirt causing it to rip. There was a physical altercation during which Person A swung their arms and struck the side of Officer 2's face with their hand. Person A was again sprayed in the face with capsicum spray by police. Six police officers at the scene then surrounded Person A. Person A then crouched on their knees on the ground with their hands on the ground above their head. Officer 3 instructed Person A to lay on the ground.

IBAC has reviewed the Body Worn Camera footage³ from the scene which shows Person A moving on the ground. Officer 2 moved in closer and kicked Person A once to the left side of their legs which caused Person A to move from a crouched position to lying down. Officer 3 instructed Person A to lay on their stomach. Person A then moved their feet in a way that suggested they might try to stand back up. The officers stated that in order to prevent Person A from doing so Officer 2 then kicked Person A twice to their left hip area and Officer 3 brought their right foot down on the back of Person A's upper body area.

Other police officers at the scene then moved in more closely. Several police then restrained Person A by taking hold of their limbs and applying firm pressure to hold them lying face down, flat on the ground with their arms behind their back. Person A was then handcuffed.

The time between Person A being struck with the police vehicle and being handcuffed was approximately two minutes.

After being handcuffed, Person A repeatedly asked for water to help remove the capsicum spray. Despite the large amount of capsicum spray on Person A's face, they were only provided with a small amount of water from a police officer's personal drink bottle.

Following the apprehension, footage records that two of the officers directed unprofessional comments towards Person A.

Person A was subsequently transported back to the Northern Hospital.

What IBAC's investigation found

While there were varying accounts from officers involved as to whether they were performing an arrest under the *Crimes Act 1958* or were apprehending Person A under the *Mental Health Act 2014*, the situation justified police using force against Person A. IBAC's assessment of all the evidence gathered is that the level of force used by Victoria Police Officers 1, 2 and 3 was lawful in the circumstances. IBAC has therefore determined that criminal charges against these officers is not appropriate.

As outlined, this situation was dynamic and unfolding rapidly in an area filled with safety risks to Person A, police officers and other members of the community.

Victoria Police officers used a range of increasingly forceful tactics to bring the situation under control. Less forceful options such as verbal directions, capsicum spray and a baton strike were used first and did not work.

The evidence provided by Officer 1 was that the officer thought the use of the police vehicle was the next available option to allow Person A to be apprehended by other officers. The officer stated that they did not strike Person A front-on because of the greater likelihood this would injure them.

The strikes to Person A by Officers 2 and 3 while Person A was on the ground were done in circumstances where Person A's conduct immediately prior had demonstrated physical strength and safety concerns. At the time, Person A was not handcuffed and was moving in a way that indicated they might get back to their feet.

Notwithstanding IBAC's assessment in relation to the lawfulness of the police conduct, IBAC has identified several areas of concern in the way the situation was handled by Victoria Police that may increase the risk of police personnel misconduct (detailed further on the following pages).

IBAC also found that Victoria Police officers may have acted inconsistently with Person A's human rights under the Charter of *Human Rights and Responsibilities Act 2006* (the Charter) by not informing Person A of the reason for their detention at the time or shortly after they were detained, as required by section 21(4) the Charter.

IBAC also found that officers directed unprofessional comments at Person A at the scene after their apprehension.

Police personnel misconduct vulnerabilities

IBAC identified several vulnerabilities that might expose Victoria Police to an increased risk of police personnel misconduct including poor practice with respect to:

- the activation of police body worn cameras (BWCs)
- the provision of capsicum spray aftercare
- how the officers' use of force was reported and recorded
- the deployment of officers from the Critical Incident Response Team (CIRT)
- the delivery of mental health awareness training to police officers.

Activation of body worn cameras (BWCs)

During the pursuit and arrest of Person A, three of the officers involved did not activate their BWCs in accordance with Victoria Police requirements. One officer stated that their BWC was not working and the two CIRT officers stated that they forgot to turn their cameras on.

The failure to activate all BWCs might lead to important evidence not being captured, can hinder Victoria Police's and IBAC's investigations of incidents, and might contribute to a perception that police officers are purposefully concealing their interactions with the public when performing their duties.

³ IBAC has not published the body worn camera footage provided to IBAC by Victoria Police to protect the privacy of individuals captured in the footage.

Capsicum spray aftercare

Person A was sprayed with capsicum spray prior to their apprehension. Following their apprehension, police officers provided Person A with a small amount of water from a police officer's personal drink bottle to rinse the areas affected by the capsicum spray. Attending Victoria Police vehicles were not carrying sufficient water to provide capsicum spray aftercare and no other effort was made by attending police officers to source fresh water to provide Person A with appropriate aftercare.

Victoria Police's policies and guidelines stipulate that when someone is exposed to capsicum spray, it is essential that treatment commences as soon as practicable.⁴ This treatment will generally involve flushing the affected person's hands, face, and any other affected areas with cool water.

Inadequate aftercare after the use of capsicum spray could lead to further escalation of incidents between police and people experiencing the effects of capsicum spray exposure and may have occupational health and safety consequences.

Use of force reporting

Following a situation where Victoria Police officers use force, one of the officers is required to submit a use of force form documenting the nature of the force used by all officers involved.

In Operation Wingan, IBAC found the use of force form submitted for the incident included inaccurate and inconsistent information. This included inaccurate details about which officers deployed their capsicum spray and an incomplete record of the force used against the person. IBAC also found that there was a lack of consultation between the officer completing the form and other officers at the scene to check that the descriptions given were accurate.

Involvement of officers from the Critical Incident Response Team

Two of the officers involved in the apprehension of Person A were from Victoria Police's CIRT.⁵ Requests for CIRT attendance at an incident must be made through the Police Forward Commander to a CIRT Tactical Commander.⁶

In this instance, no formal request was made for CIRT assistance. The CIRT officers who attended stated they heard the incident reported over police radio and decided to attend because they were nearby. They did not communicate their intention to attend the incident to the emergency services radio operator or to any of the police officers who were engaged in pursuing Person A.

The poor communication between the responding parties was inconsistent with Victoria Police requirements and had the potential to impact the effectiveness of any plan that had been put in place by the responding officers.

⁴ Victoria Police 2017, *Oleoresin Capsicum Manual*

⁵ The CIRT is a specialist area of Victoria Police with specialist training and equipment to assist in the resolution of high-risk incidents.

⁶ Victoria Police 2020, *Victoria Police Manual - Specialist Support*, Section 6.2.

⁷ Operation Lynd was an investigation by the IBAC into the conduct of Victoria Police officers at the Hares & Hyenas bookstore in Fitzroy on 11 May 2019, and the cause of the serious injury to a member of the public arising out of that incident.

⁸ An incident in July 2017 involving members of CIRT and two members of the public that resulted in CIRT officers firing two gunshots injuring both members of the public.

⁹ Information about the Royal Commission including its final report and recommendations are available at rcvmhs.archive.royalcommission.vic.gov.au

Poor practice with respect to CIRT deployment has arisen in multiple incidents and investigations including IBAC's Operation Lynd⁷ and the Inflation Nightclub incident.⁸ IBAC is therefore currently preparing a special report on police personnel misconduct issues and risks associated with the CIRT, to be tabled in Parliament in 2022.

Mental health awareness training

This investigation highlights the importance of ongoing and effective training for Victoria Police officers in the management of mental health related incidents.

The officers who responded to the incident had not yet received dedicated training developed by Victoria Police to improve officers' responses to mental health related incidents (PRIME training). Such training had been scheduled to commence in January 2020 but was delayed due to the Bushfire State of Emergency and COVID-19 restrictions.

The Royal Commission into Victoria's Mental Health System (the Royal Commission) considered Victoria Police's role in responding to mental health incidents and released its final report and recommendations in March 2021.⁹ Recommendation 10 of the Royal Commission's final report refers to changes to emergency service responses to mental health related emergencies, including that 'where possible, health professionals rather than police lead responses to people experiencing a mental health crisis, triple zero calls about mental health crises be directed to Ambulance Victoria instead of Victoria Police, and responses requiring both ambulance and police are led by paramedics'. This recommendation is yet to be implemented.

Use of a police vehicle against the person

IBAC assessed Officer 1's actions (in using the police vehicle to strike Person A and knock them to the ground) was lawful in the circumstances. A range of less forceful tactics had not worked, the officer did not strike Person A front-on because of the greater likelihood this would injure Person A, and the officer believed that if Person A was knocked to the ground they could be apprehended by other officers.

Despite this assessment, IBAC has found that Victoria Police should provide clearer guidance to its officers around the use of police vehicles in such circumstances. The Victoria Police Tactical Options Model does not provide specific guidance in relation to the use of police vehicles, referring to them only as 'other weapons'. Given the significant risks associated with using vehicles as a tactical option, Victoria Police should update the guidance it provides its officers regarding the use of police vehicles.

Conclusion

IBAC's Commissioner has written to the Chief Commissioner of Victoria Police highlighting the police misconduct risks identified in Operation Wigan and making recommendations to Victoria Police to take in response.¹⁰ The Chief Commissioner is to report back to IBAC on its implementation of these recommendations within six months.

IBAC's police oversight role

IBAC's independent oversight of Victoria Police helps ensure police act fairly, impartially and according to the law. This independent oversight is critical because of the significant powers exercised by police officers including the use of force and powers to detain, search and arrest.

IBAC's independent oversight of Victoria Police includes:

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

For more information on IBAC's investigations, prevention work and how to make a complaint about corruption or police misconduct, visit www.ibac.vic.gov.au

¹⁰ Under section 159 of the IBAC Act, these recommendations must be made in private. IBAC has raised the potential to amend this section to provide greater public visibility of our investigation outcomes and enhance the opportunities for other agencies to learn from IBAC's investigations and apply corruption prevention recommendations in their own agencies.

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July 2021

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

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