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Submission to the Yoorrook Justice Commission inquiry into the criminal justice system

May 2023

The Independent Broad-based Anti-corruption Commission (IBAC) acknowledges the Traditional Owners and custodians of the land and waterways across Victoria. IBAC acknowledges and pays respect to their cultures, and their Elders past and present. IBAC recognises the ongoing strength and resilience of the traditional owners and custodians of Victoria despite the past and present impacts of colonisation and dispossession. IBAC acknowledges that the sovereignty of Aboriginal people¹ has never been ceded.

IBAC also acknowledges the importance of the Yoorrook Justice Commission's truth-telling process into historical and ongoing injustices experienced by First Peoples in Victoria, its role in developing a shared understanding of the impact of colonisation, and the strength and resilience of First Peoples' cultures.

¹ This submission uses the term 'Aboriginal' and is intended to include people who identify as being of Aboriginal or Torres Strait Islander descent.

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1 Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) was established under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) and is responsible for preventing and exposing public sector corruption and police misconduct. IBAC commenced operations in early 2013. IBAC's jurisdiction includes state and local government, police, parliament and the judiciary.

Due to Yoorrook's focus on the issue of police oversight in its work on the criminal justice system IBAC is providing this submission to assist the Commissioners with their consideration of reform opportunities. In addition, some information is provided regarding our public sector oversight functions as this may also be relevant to consideration of reform opportunities related, in particular, to child protection, youth justice, Corrections, health, and education.

This submission provides contextual information about IBAC's role and purpose and Victoria's police oversight framework; some of the key resources that guide IBAC's decision-making and processes in providing oversight of the public sector, including Victoria Police; and explains IBAC's integrity and oversight functions, including its role, functions and powers relating to police oversight. In setting out Victoria's police oversight framework, this submission also explains some of the key differences and similarities between IBAC and the Police Ombudsman of Northern Ireland (PONI), which has been the subject of evidence and submissions to Yoorrook. This submission contains information about the steps already taken, and to be taken, on IBAC's actions to improve and change IBAC's response to complaints from Aboriginal Victorians about public sector corruption and police misconduct.

2 Context

2.1 About IBAC

IBAC is independent of the government of the day and is accountable to Victorians through the Victorian Parliament. The IBAC consists of a Commissioner, Deputy Commissioners, a Chief Executive Officer, and public service employees.² IBAC employs approximately 223 FTE staff, including approximately 42 investigators.³

Critically, IBAC is not subject to the direction or control of the Minister in respect of the performance of its duties and functions and the exercise of its powers.⁴ The IBAC Commissioner is an independent officer of the Victorian Parliament.⁵

The IBAC Act sets out IBAC's functions, which include:

- identifying, exposing, and investigating corrupt conduct and police personnel misconduct⁶
- receiving information, conducting research and collecting intelligence⁷
- ensuring that the highest ethical and professional standards are maintained by police officers⁸

² IBAC Act, ss 14, 23, 33, and 35.

³ Chief Commissioner Shane Patton's witness statement dated 31 March 2023 at paragraph [126] records that there are 260 FTE staff in PSC, and 62 in PSC's Investigations Division. IBAC's total FTE as at June 2022 was 223.1 (see IBAC's [Annual Report 2021/22](#), Table 31 on page 64).

⁴ IBAC Act, s 18.

⁵ IBAC Act, s 19.

⁶ 'Police personnel misconduct' is defined in s 5 of the IBAC Act.

⁷ IBAC Act, s 15(7)(a).

⁸ IBAC Act, s 15(3)(b)(ii).

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- ensuring that police officers have regard to the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006*⁹
- education and prevention functions¹⁰
- publicly reporting on the performance of IBAC's duties¹¹
- making recommendations to Victoria Police and other public sector agencies.¹²

In discharging IBAC's functions, IBAC uses a spectrum of regulatory approaches.

2.2 IBAC's police oversight role

Victoria's police oversight system is a 'mixed civilian review model'. The model is used throughout Australia and provides a balance between Victoria Police's role in managing and overseeing internally their own workforce, and an external, independent police oversight body.¹³ IBAC's role within Victoria's police oversight framework means that IBAC:

- receives complaints and notifications about police personnel conduct¹⁴ (including complaints received by Victoria Police, which are mandatorily reported to IBAC)
- assesses these complaints and notifications to determine which are to be investigated by IBAC, which are to be referred to Victoria Police for action, and which are to be dismissed¹⁵
- conducts 'own-motion' investigations, where IBAC commences an investigation without receiving a complaint
- conducts private or [public hearings](#) as part of IBAC investigations into serious or systemic police misconduct
- undertakes research and other strategic initiatives, such as auditing how [Victoria Police handles complaints made by Aboriginal people](#)
- oversees Victoria Police's compliance with five Acts, including the *Drugs, Poisons and Controlled Substances Act 1981*, *Witness Protection Act 1991*, *Firearms Act 1996*, *Crimes Act 1958* and the *Sex Offenders Registration Act 2004* (in addition, IBAC will also assume a compliance and reporting function in relation to Victoria Police's registration and management of human sources, which is expected to commence in 2023)
- informs and educates the community and Victoria Police about police misconduct, encouraging the reporting of, and advising on ways that, corruption and police misconduct can be prevented
- makes recommendations for Victoria Police to strengthen its policies and procedures to address systemic police misconduct and improve its officers' conduct.

2.3 IBAC's approach to police oversight activities

IBAC's functions, duties and powers in relation to Victoria Police are contained in the IBAC Act. IBAC's approach to implementing these functions, duties and powers are articulated in the following documents:

- **The IBAC Act** contains IBAC's functions, duties and powers. The Act requires that IBAC must prioritise serious or systemic corruption for investigation.¹⁶ It also requires IBAC to "identify,

⁹ IBAC Act, s 15(3)(b)(iii).

¹⁰ IBAC Act, s 15(5).

¹¹ IBAC Act, s 15(7)(b).

¹² IBAC Act, s 15(7)(b) and s 15(6)(b).

¹³ Victorian Parliament, Independent Broad-based Anti-corruption Commission Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018), accessible at: https://www.parliament.vic.gov.au/file_uploads/IBACC_58-06_Text_WEB_2wVYTGrf.pdf

¹⁴ 'Police personnel conduct' is defined in s 5 of the IBAC Act.

¹⁵ The IBAC Act requires IBAC to assess police personnel conduct, but IBAC's functions are limited to investigating police personnel misconduct (see IBAC Act, s 15(2)).

¹⁶ IBAC Act, s 15(1A).

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expose and investigate police personnel misconduct” as well as “to assess police personnel conduct”.¹⁷

- [The IBAC Plan 2021–25](#) sets out IBAC’s strategic direction and priorities from 2021 to 2025. The IBAC Plan sets out IBAC’s targeted approach to police misconduct to ensure that Victorians who experience vulnerability or marginalisation are supported, and the community understands IBAC’s role in identifying, exposing and preventing police misconduct. In preparing the IBAC Plan, IBAC consulted with various stakeholders, and analysed IBAC’s own data and intelligence holdings.
- [IBAC Annual Plan 2022/23](#) sets out IBAC’s priorities for the current year. The Annual Plan explains the activities that IBAC will undertake to target police misconduct in 2022/23. IBAC’s annual plans are reviewed and published annually to ensure they capture emerging risks and accurately reflect the corruption and misconduct landscape relevant to each year. Each Annual Plan is the subject of consultation with the Victorian Parliament’s Integrity and Oversight Committee, prior to finalisation and publication.¹⁸
- [IBAC’s Strategic Focus Areas](#)¹⁹ guide IBAC’s work to prevent and expose corruption and police misconduct. Through IBAC’s information gathering and data collection, IBAC maintains a comprehensive picture of the corruption and police misconduct landscape and uses the data to target prevention work, measure effects of its prevention work and influence reforms. Based on this and other ongoing information gathering, data analysis and engagement with stakeholders, IBAC develops its strategic areas of focus and reviews them annually to ensure they remain relevant.
- [The IBAC Operating Model](#) visually depicts how IBAC operates, and how IBAC delivers value to the Victorian community.

IBAC’s current strategic focus areas relating to Victoria Police are:

- High-risk police units, divisions & regions
- Use of force on people at risk
- Police responses to family violence incidents and predatory behaviour.

IBAC is currently developing its Annual Plan for 2023/24.

2.4 IBAC’s public sector jurisdiction

While this submission provides the Commissioners with detailed information about IBAC’s police oversight role, IBAC notes that its role in dealing with public sector corruption is also relevant to the work of Yoorrook.

In overseeing the public sector, IBAC’s corruption prevention work can support and assist Aboriginal people who may also be affected by corruption within these sectors – for example, where an Aboriginal person makes a complaint to IBAC about corrupt conduct in the health or education sectors. IBAC’s public sector corruption functions also encompass youth justice, corrections and other custodial settings in Victoria. IBAC is aware of the historical and ongoing challenges and injustices that Aboriginal people have experienced and continue to experience in custodial settings in Victoria.

IBAC has previously reported on [Corruption risks associated with government funded human services delivered by community service organisations](#). The report identified a number of corruption risks that could affect community service organisations as well as suggesting a range of corruption

¹⁷ IBAC Act, s 15(2).

¹⁸ IBAC Act, s 168.

¹⁹ More information about IBAC’s strategic focus areas can be found in the IBAC Annual Plan 2022/23.

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prevention strategies to help mitigate them. Many of the risks and drivers identified in IBAC's report are also relevant to community-controlled organisations.

IBAC's [Special Report on Corrections](#) highlighted a range of corruption risks that occur in corrections settings. These risks include excessive use of force, smuggling of contraband, and inappropriate relationships, all of which can adversely impact on Aboriginal Victorians who have contact with the corrections system.

3 IBAC's police oversight functions

3.1 IBAC assesses complaints about police misconduct

IBAC receives allegations of police misconduct either directly from the complainant, or through a notification from Victoria Police.²⁰ IBAC comprehensively assesses every complaint.

For every complaint or notification, IBAC must either:²¹

- dismiss the complaint or notification if there are grounds to do so
- make a referral of the complaint or notification if satisfied it would be more appropriate for another body to investigate the complaint rather than IBAC
- investigate the complaint or notification.

In 2021/22, around two thirds of allegations of police conduct complaints that were assessed by IBAC were dismissed.²² IBAC dismisses complaints for a number of reasons, including that a complaint:

- does not provide sufficient information or lacks substance or credibility
- does not fall within IBAC's jurisdiction, for example allegations about service-level complaints that do not meet the threshold for either police personnel conduct or police personnel misconduct²³
- is already the subject of an investigation.

IBAC refers complaints to other agencies for investigation, including Victoria Police, the Victorian Ombudsman, Victorian Inspectorate, or the Information Commissioner. In 2021/22, IBAC referred just under one third of the police misconduct allegations it had assessed to other entities, most of which were referred to Victoria Police.²⁴

IBAC's decisions to refer complaints to Victoria Police, and other agencies, are shaped by the IBAC Act, which requires IBAC to consider whether the complaint or notification is relevant to the duties, functions, and powers of the other agency, and it would be more appropriate for the complaint or notification to be investigated by that body, rather than by IBAC.²⁵ For instance, where a complaint has been made to Victoria Police, who commence an investigation, a similar/identical complaint made to IBAC will be referred to Victoria Police to allow them to continue their existing investigation. In other cases, the decision to refer will be made due to certain specialised investigative capabilities that Victoria Police has compared to IBAC (for example, capabilities such as forensics, ballistics, or specialist investigative skills, experience or technology), established

²⁰ The Chief Commissioner of Victoria Police must notify IBAC of complaints Victoria Police has received about corrupt conduct or police misconduct by a Victoria Police employee or police recruit.

²¹ IBAC Act, s 58.

²² IBAC, Annual Report 2021/22, 39 (Table 20).

²³ 'Police personnel conduct' and 'police personnel misconduct' are both defined in s 5 of the IBAC Act.

²⁴ IBAC, Annual Report 2021/22, 39 (Table 20).

²⁵ IBAC Act, s 73.

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relationships between investigators and witnesses or complainants, and a variety of other considerations.

3.2 IBAC independently reviews many investigations undertaken by Victoria Police

When IBAC refers a complaint to another agency for investigation, it has the power to request information from that other agency about their investigation at any time.²⁶ IBAC increasingly uses this power to conduct reviews of Victoria Police investigations of referred matters. In addition, IBAC has a ‘standing own motion’ investigation in relation to all deaths or serious injuries after police contact. This enables IBAC to review these incidents where appropriate, without waiting to receive a notification or complaint.

IBAC recognises there is an inherent risk of conflict of interest where a Victoria Police officer investigates a complaint about another police officer. Therefore, every time IBAC refers a complaint to Victoria Police, IBAC considers whether a review of the Victoria Police investigation is warranted in part to ensure conflicts of interest are being managed appropriately.

IBAC’s reviews help to ensure that investigations of referred matters are being conducted:

- appropriately, fairly and in accordance with Victoria Police’s policies, and
- in a way that ensures the human rights of those involved are genuinely considered.

In selecting referred matters for review, IBAC considers matters such as:

- alignment to IBAC’s strategic focus areas
- seriousness of the allegations
- seniority or position of personnel involved
- established patterns of behaviour or history, for example any history of complaints against the police officers involved
- issues of strategic or public interest
- common management practices or systemic issues
- vulnerability of complainants, for example where the complainant is Aboriginal
- human rights.

Where appropriate through its reviews, IBAC makes recommendations that Victoria Police take action to rectify any issues identified, for example, by reinvestigating a complaint or taking certain action in relation to an investigation. Additionally, IBAC’s review work aims to promote systemic changes in an agency’s practices to improve the overall quality of decision-making, policies and procedures.

In 2022, IBAC finalised 241 reviews of Victoria Police internal investigations, and made 62 requests to the Chief Commissioner of Police to take action to address an inadequacy in the investigation or for policy or practice change.²⁷

In 2021/22, IBAC commenced undertaking thematic reviews to consider Victoria Police investigations that concentrate on a strategic focus area or a specific theme or topic. These reviews can analyse a body of cases, rather than being confined to individual matters, and aim to identify systemic and emerging issues for Victoria Police. In May 2023 IBAC published its first [thematic review on predatory behaviour by police](#). Thematic reviews exploring serious incidents involving the use of police dogs and excessive use of force against people at risk will also be published in 2023.

²⁶ IBAC Act, s 78.

²⁷ IBAC can request the Chief Commissioner of Police take any action that IBAC considers appropriate under s 160 of the IBAC Act.

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Of note, IBAC currently undertakes reviews without an express legislative function. As mentioned above, IBAC's reviews are conducted under the power to request information about a referred complaint or notification for investigation by an agency and the actions that the agency intends to take.²⁸ IBAC also relies upon the general function it has to ensure that the highest ethical and professional standards are maintained by police officers and protective services officers, and that police officers and protective services officers have regard to the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).²⁹

Section 4 of this paper proposes suggested enhancements to IBAC's powers, including the introduction of a legislative framework to strengthen the impact of IBAC's reviews of referred investigations.

3.3 IBAC prioritises allegations of serious corrupt conduct or police misconduct for investigation

Under the IBAC Act, IBAC must prioritise its attention to the investigation and exposure of serious and systemic corrupt conduct.³⁰ This means IBAC's investigations are prioritised toward serious and systemic public sector or police corruption matters. IBAC must also investigate every complaint or notification regarding an Assistant Commissioner, Deputy Commissioner, or the Chief Commissioner of Victoria Police.³¹ The number of serious or systemic police corruption complaints and notifications received by IBAC is small in comparison to the public sector and reflected in the number of investigations undertaken.

Since 2018, IBAC has commenced 66 preliminary inquiries or investigations into Victoria Police officers. When determining which allegations to investigate, IBAC considers a range of factors.³² These include:

- the seriousness of the allegation, including the severity of any alleged harm or potential harm, the presence of any aggravating circumstances, and whether there is evidence of wilfulness or culpability
- whether there are systemic issues of the conduct that have broader impacts on the public sector
- the likelihood the alleged conduct will continue if no action is taken, or whether the conduct is historical
- whether the conduct involves a vulnerable member of the community
- whether or not a different agency is more appropriate to investigate a complaint (for example, whether the referring agency lacks investigative capability or is too conflicted)

3.4 IBAC delivers education and engagement programs to Victoria Police about ethical and misconduct vulnerabilities and risks

IBAC regularly delivers education and engagement programs to different cohorts within Victoria Police. These programs reinforce the importance of Victoria Police upholding ethical standards in policing. The programs also build awareness of IBAC's police oversight role among Victoria Police officers and employees and the protections available under the Public Interest Disclosure (PID) scheme to encourage reporting of suspected police personnel misconduct.

²⁸ IBAC Act, s78(2).

²⁹ IBAC Act, s15(3)(b)

³⁰ IBAC Act, s 15(1).

³¹ IBAC Act, s 65.

³² The factors listed are in addition to the information contained in section [2.3] above.

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In 2022, IBAC's Victoria Police education and engagement program delivered sessions to Victoria Police's:

- Foundational Development Recruit training to introduce recruit officers to IBAC's police oversight role and issues of particular significance (such as the obligation of police officers to report misconduct that they observe, and case studies of recent IBAC and other interstate integrity body investigations)
- Centre for Crime Investigation (formerly known as Detective Training School) to educate newly qualifying detectives about their role in the criminal justice system, including witness statement taking and making and disclosure obligations
- Police Managers Qualifying Program, which delivers education to senior sergeants who have been in their roles for approximately one year or more
- Inspectors Development Program
- Superintendents Training Program

IBAC also regularly communicates with other groups within Victoria Police for engagement or education purposes, including Victoria Police's Audit and Risk Committee, Professional Standards Strategic Advisory Group Meetings (PSSAG), local Professional Standards committees, Ethics and Professional Standards Officers (EPSOs), and different commands and executive teams.

Through strategic communication and engagement with Victoria Police, information and resources are provided to improve Victoria Police's understanding of corruption and misconduct, and ways in which it can be prevented.

In addition, IBAC's prevention and education functions are informed by the data IBAC collects in relation to complaints. All complaints provide IBAC with data that IBAC uses to identify trends and patterns in corruption and police misconduct. This informs IBAC's prevention activities and strategic priorities, helps to identify serious and systemic issues for possible 'own motion' investigations, and assists IBAC's assessment of future complaints and notifications.

3.5 IBAC engages with community stakeholders, undertakes research, and other strategic initiatives to help prevent police misconduct and corruption

In 2022, IBAC conducted a series of [surveys](#) of [employees of Victoria Police](#), the [Victorian public sector](#) and of the [community](#) more broadly, to better understand attitudes towards, barriers against, and incentives for reporting police misconduct.³³

As part of these surveys, IBAC conducted interviews with organisations and individuals representing vulnerable communities in Victoria. Consultations were conducted with members of the Aboriginal and Torres Strait Islander community, LGBTIQ+ community, people who are living with a disability, and people from culturally and linguistically diverse backgrounds. These communities raised common themes including:

- issues with accessibility to information, for example complex language use and difficulties in navigating technology
- a fear of interacting with police due to power imbalances, fear of repercussion and perceptions of unfair targeting
- fears regarding personal ramifications and safety and concerns for their personal welfare should they make a report
- a desire for clarity around the reporting process.

³³ IBAC has undertaken perceptions of corruption surveys in 2013, 2015/16, and 2019.

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Surveys of Aboriginal people reflected these perceptions, as well as the ongoing impacts of historical institutionalised mistreatment of Aboriginal people by police and the deaths of Aboriginal people in custody. IBAC will continue to use the findings from these surveys to inform its work in its oversight of Victoria Police.

3.6 IBAC makes recommendations to Victoria Police to address misconduct risks or vulnerabilities identified by IBAC

At the conclusion of most of IBAC's investigations into police misconduct, IBAC makes recommendations to Victoria Police to address the misconduct vulnerabilities that IBAC has identified in its investigation. While Victoria Police are not bound by legislation to accept IBAC's recommendations, from early 2016 to 2022 Victoria Police accepted over 90% of IBAC's recommendations.

The IBAC Act permits IBAC to make a recommendation arising out of an IBAC investigation to Victoria Police at any time.³⁴ IBAC engages closely with Victoria Police throughout the implementation and reporting timeframes to ensure Victoria Police's response meets the intent of IBAC's recommendation. As part of IBAC's continuous improvement approach, IBAC is also currently undertaking work to make sure its recommendations have a more measurable impact, ensure change and better prevent misconduct.

IBAC also works directly with Victoria Police to influence positive change to prevent police misconduct. For example, IBAC has highlighted concerns with Victoria Police's management of conflicts of interest over many years through our oversight work, including previous audits, investigations and reviews. Aboriginal stakeholders have also highlighted conflicts of interest as a significant issue that undermines confidence in the integrity of Victoria's police complaints system.

In 2021-22, IBAC provided strong and detailed feedback on Victoria Police's new conflict of interest policy, which has improved requirements and expectations regarding how conflicts of interest are to be identified, managed or avoided. Victoria Police published its new conflict of interest policy in August 2022, which now prohibits police officers from undertaking any duties in relation to an investigation where they have a connection to a party in the matter. This means that local police officers should not investigate each other, unless it is a service-level complaint.

3.7 IBAC can charge police officers with criminal offences identified during an investigation

The IBAC Act expressly authorises IBAC to commence criminal proceedings in relation to any matter arising out of an IBAC investigation.³⁵ Where IBAC substantiates an allegation of criminal conduct in relation to a police officer, IBAC can:

- directly bring criminal charges, or
- refer matters to the Office of Public Prosecutions (OPP) to consider bringing criminal proceedings.

For example, as a result of IBAC's [Operation Durack](#), a former Victoria Police officer pleaded guilty to one charge of aggravated unlawful assault with a weapon. The victim was a 15 year old Aboriginal young person.

³⁴ IBAC Act, s 159(1).

³⁵ IBAC Act, s 190.

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3.8 IBAC publishes special reports, audits and other publications to publicly expose police misconduct risks and vulnerabilities and bring about reform

In 2022, IBAC published two reports identifying misconduct risks within Victoria Police and providing strategies to prevent them:

- [Audit report on Victoria Police’s handling of complaints made by Aboriginal people](#), published in May 2022 which examined how Victoria Police handled 41 complaints made by Aboriginal people and its oversight of 13 serious incidents involving an Aboriginal person. The audit identified concerning patterns in how Victoria Police handles the investigation of complaints made by Aboriginal people and serious incidents involving Aboriginal people. The audit also identified issues concerning indications of bias and lack of impartiality, inconsistencies in how a person’s Aboriginal status was recorded in Victoria Police’s systems and insufficient understanding of human rights in investigations. As IBAC conducted this audit within the current system of police oversight in Victoria, the recommendations do not address wider community concerns about the overall structure of the Victorian police complaints system. Nevertheless, this audit sheds new light on Victoria Police’s handling of complaints by Aboriginal people and identifies concerning patterns in current processes. Victoria Police has accepted IBAC’s ten recommendations in full and is undertaking work to deliver its implementation report to IBAC by 1 June 2023.
- [Misconduct risks associated with Victoria Police’s Critical Incident Response Team \(CIRT\)](#), published in October 2022, which identified several misconduct risks and issues relating to the CIRT’s culture, inaccurate use of force reporting, inadequate risk assessment processes and communication, and CIRT officers acting inconsistently with the Charter of Human Rights. Victoria Police has accepted IBAC’s six recommendations in full and is undertaking work to deliver its implementation report to IBAC by November 2023.

IBAC’s special reports assist in generating public awareness of particular police misconduct risks that are the subject of IBAC’s reports. The special reports are generally useful in achieving system-level reforms. IBAC reports publicly on Victoria Police’s implementation progress, and includes IBAC’s assessment of whether or not IBAC is satisfied with the work undertaken by Victoria Police.

In line with IBAC’s strategic focus areas, IBAC intends to publish two special reports in relation to Victoria Police in 2023:

- a special report on Victoria Police’s use of force, arising from IBAC’s ongoing concerns about how some police officers use force and other related police misconduct risks associated with excessive use of force
- a special report arising from IBAC’s review of the effectiveness of IBAC’s recommendations to Victoria Police, which will also highlight misconduct vulnerabilities that have been the subject of multiple recommendations by IBAC and remain areas of ongoing concern.

4 IBAC’s police oversight powers

4.1 IBAC’s existing police oversight powers

IBAC has powers available under the IBAC Act to facilitate the effective investigation of police misconduct, including powers to:

- issue witness summonses compelling persons (including police officers) to answer questions, provide documents or other things to IBAC³⁶

³⁶ IBAC Act, s 59

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- hold public or private examinations (also known as hearings)³⁷
- require police officers to give information and documents and answer questions³⁸
- enter and search any police premises, and seize documents or other things³⁹
- obtain and execute search warrants to enter premises, seize documents and other things⁴⁰
- use surveillance devices and intercept telecommunications
- conduct physical and electronic surveillance
- apply for a warrant to arrest persons who fail to comply with a witness summons
- apply for a warrant to arrest persons who IBAC considers may evade service of summons or fail to comply with a summons to attend an IBAC examination
- make recommendations to prevent police misconduct or corruption⁴¹
- commence criminal proceedings against people, including police officers⁴²
- publish reports and prevention resources.⁴³

Despite the above powers, there are gaps in the investigative powers that IBAC has which can adversely impact on IBAC's ability to effectively investigate police misconduct allegations.

4.2 The need for more powers

4.2.1.1 Increasing IBAC's powers would increase the effectiveness of IBAC investigations

IBAC has consistently advocated to government for increases in IBAC's powers to enhance the effectiveness of IBAC's work overseeing Victoria Police.

IBAC's current suite of powers are limited when compared to powers of police officers, and in some cases are not consistent with interstate integrity agencies. Investigative powers that IBAC does not currently have include:

- the power to arrest a person
- the power to compel a person to provide their name and address
- the power to compel a person to assist in accessing electronic devices (for instance, by supplying passwords or codes)
- the power to search a person present at a premises where IBAC is executing a search warrant.

Further gaps in IBAC's governing legislation can impact on IBAC's investigative functions, such as:

- the fact that police are able to continue investigating a complaint after IBAC have determined that it will investigate the matter⁴⁴
- the absence of offences within the IBAC Act for the destruction and concealment of evidence relevant to an IBAC investigation
- the absence of offences for engaging in conduct to undermine an IBAC investigation, procure false testimony and bribery of a witness
- the IBAC Act does not allow IBAC to conduct examinations relating to IBAC's prevention and education functions.

³⁷ IBAC Act, s 115.

³⁸ IBAC Act, s 84.

³⁹ IBAC Act, ss 86-87.

⁴⁰ IBAC Act, s 91.

⁴¹ IBAC Act, s 159 and 161.

⁴² IBAC Act, s 190.

⁴³ IBAC Act, s 162.

⁴⁴ Whilst IBAC may withdraw a referral to Victoria Police, and Victoria Police is then required to cease investigating the matter, this same requirement to cease an investigation does not apply to matters that have not originated with a referral to Victoria Police under section 73 of the IBAC Act.

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In addition to this, IBAC's police misconduct investigations are impacted by the fact that the IBAC Act requires IBAC to make any recommendation arising out of an investigation in private, unless it is contained in a special report to Parliament, meaning that many recommendations to Victoria Police are not published.

4.2.1.2 Legislative amendments to strengthen IBAC's referral and review powers and functions

In exercising its discretion on a referral, IBAC has recently taken steps to, where appropriate, attach conditions to a referral. The types of conditions which are made by IBAC include:

- who should investigate
- any specific steps IBAC considers Victoria Police should take relating to a complainant (for example, methods of communication or welfare support)
- conflict of interest considerations

While the imposition of conditions on matters referred to Victoria Police for investigation is a tool available to IBAC as a result of the exercise of its discretion, the absence of a clear legislative scheme to support IBAC's approach limits its effectiveness. The absence of a clear legislative framework means that IBAC often must rely on its ability to informally influence Victoria Police's decisions in relation to a referral, or withdraw the referral so that IBAC can investigate the complaint; noting that any withdrawal of the referral will inevitably impact on the timeliness of the investigation, and may lead to the repetition of critical investigative steps such as taking statements from complainants and witnesses.

IBAC also considers that its police oversight function would be vastly improved with the inclusion of specific review powers. For example, there is no legislative provision which requires that investigation to be conducted within a specified period of time or the specific conditions which must be complied with. Further, IBAC can only refer a complaint based on the information in IBAC's possession. When new information comes to the attention of Victoria Police in the course of its investigation, there is currently no requirement for that new information be notified to IBAC. Specific provisions dealing with timeliness, conditions and requirements to notify IBAC of additional information would support IBAC in deciding whether to withdraw a referred complaint.

Further, IBAC's review function is also limited to the extent IBAC cannot require Victoria Police to change decisions it has made in relation to the conduct of a member where IBAC's review conclusion is different.

4.2.1.3 Legislative amendments to streamline police disciplinary processes following an IBAC investigation

IBAC is concerned with the discipline outcomes that sometimes occur once IBAC makes a recommendation to Victoria Police that Victoria Police consider taking disciplinary action against a police officer.

Currently, once IBAC makes such a recommendation, the *Victoria Police Act 2013* (the VPA) requires the Chief Commissioner of Police to conduct their own preliminary investigation into an alleged breach of discipline, before they can charge an officer with such a breach, hold a formal inquiry into the charge and then determining an appropriate disciplinary outcome.⁴⁵ At any point during this process, it remains open to Victoria Police to determine that the allegation is not substantiated, even in circumstances where IBAC has already substantiated the allegation.

This leads to lengthy delays in finally resolving these kinds of incidents, and is extremely difficult for complainants.

⁴⁵ *Victoria Police Act 2013*, s 126

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As part of the Victorian Government's current Systemic Review of Police Oversight, IBAC submitted to the Victorian Government that the VPA should be amended to enable the Chief Commissioner of Police to lay disciplinary charges upon receiving a recommendation to do so from IBAC. IBAC has also advocated for the removal of the Chief Commissioner's discretion to not charge a police officer with a breach of discipline in circumstances where IBAC recommends such a charge be brought against an officer and the Chief Commissioner reasonably believes that the police officer has committed the breach.

4.3 IBAC's evolving approach to police oversight

In recent years, IBAC has successfully secured additional budget which we have used to invest heavily in police oversight. This is evidenced by:

- the establishment of a Deputy Commissioner position dedicated to IBAC's police oversight portfolio
- increases to our prevention and engagement work
- focussed thematic reviews
- significant increases in the number of reviews that IBAC conducts over Victoria Police investigations of referred matters
- greater involvement in police policy work.

IBAC has also established a dedicated police team within its Prevention Policy and Research unit and is shifting its approach in Assessments & Reviews to establish a dedicated team to deal with complaints and notifications relating to police misconduct. IBAC is also considering how we investigate complaints and notifications of police misconduct, to determine how we can assess, investigate and finalise these matters in a more timely manner.

5 Supporting and engaging with Victoria's First Nations Peoples and communities

5.1 IBAC is committed to continuous improvement in supporting Victoria's First Nations Peoples and communities through its oversight and integrity functions

IBAC recognises the complex and challenging historical and contemporaneous relationship Aboriginal people have had with Victorian Government agencies and institutions, including Victoria Police.

IBAC acknowledges that it generally operates with limited public transparency, which is largely the product of our governing legislation, and the strict confidentiality obligations that are imposed on IBAC, its officers, complainants, those involved in an IBAC investigation and the information acquired by IBAC in the performance of its functions.

IBAC is acutely aware of the challenges presented by the confidentiality regime in which it operates and the need to balance public transparency with the rights of individuals involved in IBAC matters or investigations and the importance of fairness to those individuals.

In IBAC's [Audit report on Victoria Police's handling of complaints made by Aboriginal people](#), IBAC committed to prioritising complaints made by Aboriginal people.⁴⁶ While IBAC cannot disclose

⁴⁶ IBAC, [Audit report on Victoria Police's handling of complaints made by Aboriginal people](#). (May 2022), 14, which stated "In addition to these recommendations to Victoria Police, IBAC undertakes to prioritise the review of complaint investigations and serious incident oversights undertaken by Victoria Police where the

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specific information about IBAC's investigations, IBAC can confirm that we are currently investigating and prosecuting police misconduct matters that involve Aboriginal complainants.

IBAC notes the importance of having a workplace that is representative of the wider community and inclusive and respectful of Aboriginal Victorians' perspectives and lived experience. IBAC has already taken the following steps towards improving its engagement with Aboriginal Victorians:

- IBAC has developed a [Focus Communities Strategy](#) as part of its commitment to ensuring IBAC is more transparent and accessible.
- The Diversity and Inclusion Statement and Roadmap outline IBAC's strategy and action plan for building a diverse and inclusive workforce over the coming years.
- Senior IBAC staff have attended the Aboriginal Justice Forum (AJF) and Koori Caucus during the development of IBAC's [Audit report on Victoria Police's handling of complaints made by Aboriginal people](#). As agreed with the AJF, IBAC is also programming visits to Regional Aboriginal Justice Advisory Committees to discuss the audit's findings. IBAC will also return to the AJF later in 2023 to report on IBAC's assessment of Victoria Police's implementation of the recommendations in the audit. Beyond these kinds of project-specific engagements, IBAC is seeking to establish regular representation and attendance at existing forums for focus communities, including at the AJF.

IBAC is open to any further advice or recommendations Yoorrook may make regarding specific roles for Aboriginal people in Victoria's police oversight model.

5.2 IBAC is taking steps towards improving its engagement with Aboriginal Victorians

IBAC is taking steps to improve its communication with, Victoria's Aboriginal community. IBAC has recently engaged an Aboriginal creative and digital research agency to achieve this.

IBAC acknowledges that the complaints process can be confronting and overwhelming for some complainants. IBAC has recently established a dedicated Witness Liaison Team to work collaboratively with teams across IBAC to ensure that timely and regular communication with witnesses⁴⁷ is maintained throughout an IBAC investigation, help witnesses understand potential IBAC pathways and processes they may be subject to and ensure witnesses are aware of the supports available to them and how to access these.

6 Comparisons between IBAC and the PONI

IBAC submits that the comparisons sought to be drawn between the PONI and IBAC are flawed due to a number of key differences. Victoria's population is approximately 3.5 times the population of Northern Ireland. The PONI employed an average of 147 FTE employees during the 2022 reporting year,⁴⁸ and oversees approximately 6,700 police officers (and 2,500 staff). IBAC employs approximately 223 FTE staff and oversees 22,000 Victoria Police officers and employees, in addition to overseeing over 300,000 public sector employees.

complainant (or person involved in a serious incident) is an Aboriginal person. Where concerns are identified with Victoria Police's investigation or oversight, IBAC can recommend that further action be taken or IBAC may commence its own investigation."

⁴⁷ The term 'witness' includes persons of interest and other persons subject to or impacted by the exercise of IBAC's duties, functions and powers.

⁴⁸ Police Ombudsman of Northern Ireland, *Annual Report and accounts for the year ended 31 March 2022*, p61. The annual report is accessible at: <https://www.policeombudsman.org/PONI/files/13/13137997-ff19-48dc-b726-1aa76c23289d.pdf>

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In addition the PONI:

- does not investigate complaints by police officers about other police officers (the PONI can only investigate complaints from members of the public, subject to certain exceptions)⁴⁹ – IBAC can receive complaints from members of the public or from police officers
- may not be considered to be entirely independent from the government, in the same way that IBAC is independent from the Victorian Government, in that the PONI:
 - is required to have regard to any guidance given by the Department of Justice⁵⁰
 - reports to the Department of Justice (though is accountable to the Northern Ireland Assembly)⁵¹
 - operates within the policy and resources framework determined by the Minister for Justice and the Department of Justice⁵²
 - operates under a Management Statement and Financial Memorandum with the Department of Justice, which sets out the framework within which the PONI operates, subject to the PONI's legislation⁵³
- does not investigate complaints about off-duty police officers, unless the fact that they are a police officer is relevant to the complaint⁵⁴ - IBAC can investigate complaints about the off-duty conduct of police officers, noting that there can be strong misconduct risks associated with off-duty conduct (such as illicit drug use)
- does not investigate complaints about former police officers or public service police employees – IBAC can investigate both former police officers and VPS and unsworn Victoria Police employees
- does not have the power to lay criminal charges against police officers, and instead must refer any possible criminal charge to the Public Prosecution Service⁵⁵ – IBAC has the power to charge police officers with criminal offences, as evidenced in section 3.7 above.

7 Conclusion

Yoorrook provides a significant opportunity to the Victorian Government to improve Victoria's police oversight system. IBAC considers that, as outlined above, the following improvements could be made, and would lead to measurable improvements in the police oversight system:

- increasing IBAC's investigative powers
- increasing IBAC's powers with respect to referrals
- providing IBAC with a statutory foundation to conduct reviews
- amendments to streamline Victoria Police's disciplinary system.

IBAC again expresses its support for the work being undertaken by Yoorrook, and again acknowledges the ongoing injustices experienced by Aboriginal people in Victoria. IBAC is committed to improving how IBAC works with and supports Victoria's Aboriginal people.

IBAC plays a critical role in the oversight of police in Victoria, and we recognise that improving police oversight in Victoria is critical to eradicating present and future injustices experienced by First Peoples in the criminal justice system. IBAC will continue to advocate for reform on many aspects of its police oversight functions with this in mind.

⁴⁹ *Police (Northern Ireland) Act 1998* (UK), s 52(4).

⁵⁰ Police Ombudsman of Northern Ireland, *Annual Report and accounts for the year ended 31 March 2022*, p11.

⁵¹ Police Ombudsman of Northern Ireland, *Annual Report and accounts for the year ended 31 March 2022*, p11.

⁵² Police Ombudsman of Northern Ireland, *Annual Report and accounts for the year ended 31 March 2022*, p44.

⁵³ Police Ombudsman of Northern Ireland, *Annual Report and accounts for the year ended 31 March 2022*, p45.

⁵⁴ Police Ombudsman of Northern Ireland, [Statistical Bulletin: The Office of the Police Ombudsman for Northern Ireland, 2021/22](#), p39.

⁵⁵ Police Ombudsman of Northern Ireland, *Statistical Bulletin: The Office of the Police Ombudsman for Northern Ireland, 2021/22*, p40.