

Integrity and Oversight Committee’s review of the performance of Victorian integrity agencies in 2022/23

QUESTIONS ON NOTICE

Public Hearing 25 November 2024

In answering the questions on notice from the Integrity and Oversight Committee we have used the term “she” in some examples provided. This has been done for convenience. We acknowledge that police perpetrated family violence can impact all genders, and our reference to one gender in these examples should be read more broadly. The examples referenced in our responses have been de-identified to protect victim-survivor privacy and safety. Cases and police complaints referenced are not current.

(i) What is the scale of police-perpetrated family violence in Victoria?

One of the issues is the lack of publicly available data on police-perpetrated violence, as detailed in Beyond Survival’s submission to the perpetrator data inquiry:

https://www.parliament.vic.gov.au/4ae927/contentassets/670b9ec2531a440dbeadb70304cbf218/submission-documents/038_24.06.05_flat-out-police-acct-project.pdf and attached as an appendix.

The prevalence of police-perpetration is under-researched and under-studied in Victoria. Victoria Police do not publicly report on the information they hold about perpetration by their officers and other staff, including the number of reports, active investigations against officers, and the outcomes of these.

Data from international studies indicates that police perpetrate domestic and family violence at rates higher than in the general community.¹

When it comes to perpetration data for Victoria Police, the limited information is deeply concerning. IBAC’s *Perception of Corruption 2024: Victoria Police* report found that:

- 8% of Victoria Police had observed police perpetrated family violence, and
- A further 18% suspected police perpetrated family violence occurring.²

¹ Anderson, B., Farmer, C. and Tyson, D. (2024) “Police-Perpetrated Domestic and Family Violence: A Scoping Review of Australian and International Scholarship”, *International Journal for Crime, Justice and Social Democracy*. doi: 10.5204/ijcjsd.3582.; and, Conor Friedersdorf (2014) ‘Police Have a Much Bigger Domestic-Abuse Problem Than the NFL Does’ *The Atlantic*, September 19, 2014.

² Independent Broad-based Anti-Corruption Commission. *Perceptions of corruption 2024: Victoria Police* (October 2024): <https://www.ibac.vic.gov.au/perceptions-corruption-2024-victoria-police>

As it stands, much of the data available in Victoria is that gathered directly by survivors, journalists and community projects via lengthy Freedom of Information (FOI) Requests, and the case studies provided in IBAC's reports into predatory behaviour by Victoria Police.

Given the significant risks and safety issues for victim-survivors to report this violence, and the inherent conflict of interest in reporting to the institution that is also the employer of the perpetrator, the figures obtained under FOI will not represent the full scale of the violence.

What FOI data also brings to light is that it is not just the prevalence of this violence, but the power differentials when the perpetrator is a police officer. In addition, the ways that family violence perpetrated by police officers is more concerning and dangerous given the greater systemic knowledge and access, weapons access and role in society of police officers, the specific tactics that police use, and the risk this creates for the people [women] they target. Those tactics are discussed elsewhere in our answers. Crucially, what the FOI data makes clear are the massive disparities in the way family violence perpetrated by police members is policed. For instance, despite a huge increase in the number of reports about family violence perpetrated by police members, data obtained by journalists for the period 2015-2019 shows that in five years, 82 officers were charged with family violence offences, but only one officer was found guilty, and not a single officer had a conviction recorded.³

The charges this data relates to included offences such as breaching family violence intervention orders and recklessly causing injury, false imprisonment, rape, making threats to kill and aggravated assault. Of the total officers charged, just ten went to court and of these, nine officers had their charges withdrawn. Just one officer received a finding of guilt, but had no conviction recorded.

In stark contrast, comparative figures for the general community showed that 84% of people facing family violence charges were found guilty. Only 11% of defendants finalised in Victorian criminal courts had their charges withdrawn by the prosecution.

These figures provide a glimpse into the pattern of inaction and impunity surrounding officers who perpetrate family violence. Our forthcoming data from the Beyond Survival and RMIT practitioner survey on policing and family violence provides practice-based evidence of the frequency with which practitioners encounter this violence, as well as the particular risk and safety challenges, and barriers to service support and justice for women targeted by this violence.

There is a pressing need for consistent reporting data on the prevalence of police-perpetrated family violence in Victoria drawn from data sources within Victoria Police, the Crime Statistics Agency (which would require the collection of more detailed data about all family violence offenders and FVIO respondents), and Family Safety Victoria (noting that in our experience the

³ Hayley Gleeson (2020) 'Abusers in the ranks' ABC News, 19 October 2020 <https://www.abc.net.au/news/2020-10-19/police-in-australia-are-failing-to-take-action-against-domestic/12757914>

family violence victims of police perpetrators are less likely to report to police when seeking help).

Journalists, IMCL, Beyond Survival, the police-perpetrated-family-violence-victim-survivor-network (victim-survivor network) and individual members of that network have struggled to get data on the prevalence of police perpetrated family violence from Victoria Police by way Freedom of Information requests. In one case a request was unanswered for more than two years. We are informed that the Crime Statistics Agency, Courts and the Orange Door do not consistently collect statistics on perpetrators by profession, just as granular statistics on the conditions breached in intervention order breach offences are not recorded. We submit that this needs to change, so as to reveal the extent and nuance of the problem and inform targeted measures to address it and better directed funding.

Lastly, we note that whenever there is a story in the media about police perpetrated family violence, the victim-survivor network and Beyond Survival are contacted by other people, predominantly women, experiencing police-perpetrated violence. Given the high-risk nature of this violence and the danger associated with disclosing it, we know that these contacts are likely the tip of the iceberg, and that data will under-represent the scale and impact of this violence.

(ii) What concerns do you have about Victoria Police’s current approach to responding to police-perpetrated family violence (including in relation to conflicts of interest and confidentiality)? How, in your view, does it need to change?

Issues with Current Response –

SOFVU is not handling all police perpetrated family violence matters, conflicts of interest remain an issue in regionally delegated matters, and confidentiality breaches remain an inadequately mitigated issue

Victoria Police has a new unit to deal with and oversight police perpetrated family violence cases. That unit is known as Sexual Offences and Family Violence Unit (SOFVU). The establishment of SOFVU is something the victim-survivor-network sought in long-running advocacy. While the establishment of SOFVU does represent a significant improvement in the way Victoria Police addresses police-perpetrated family violence, the benefits resulting from the existence of SOFVU for the victims of police-perpetrators are publicly oversold, noting that:

- A) SOFVU does not directly-manage or direct-investigate all police-perpetrated family violence matters, only dealing with a fraction of these and regionally delegating most matters to be dealt with by non-SOFVU members.

- B) SOFVU does not provide witness support officers to all victims of police perpetrated family violence (noting all accused perpetrators are provided a welfare support officer irrespective of whether their case is SOFVU managed).
- C) SOFVU triages (and effectively outsources) most police-perpetrated family violence matters for regionally delegated investigation/action based upon a non-MARAM based assessment of current risk and has been known to underestimate victim-survivor risk as a result.
- D) SOFVU claims that it has “oversight” those regionally delegated matters, however that oversight is reliant upon the information provided back from the regions being accurate. We have several instances showing that the information provided back from the regions can be wildly inaccurate, and understate both risk and ongoing offending (particularly in regional areas or where the perpetrator is well known and liked in the region).
- E) SOFVU only direct-investigates family violence cases meeting a particular threshold. Intervention order matters, including breaches are generally dealt with under the regional delegation model not by SOFVU, as in some cases are more serious and high risk matters in remote regional areas.

The nature of family violence disclosures by high-risk victims

High-risk victim-survivors in active family violence circumstances rarely disclose the extent of the abuse to which they have been subjected upon first report. These victim-survivors often only disclose more serious offending when they feel safer or feel that they can trust the person they are disclosing to, usually subsequent to their initial police interactions. Given current policing family violence response practices, it is inevitable that most family violence victims (including the victims of police-perpetrators) will make their initial disclosure of family violence to a general duties member of Victoria Police.

For victim-survivors of police members in rural and remote areas, this will often result in disclosures being made to an officer whom the victim knows, and who is a colleague of the perpetrator or knows him. This can increase the known reticence of many high-risk victims of police-perpetrators in their first family-violence related interaction with police, on account of victim-survivor concerns about member conflict of interest, and confidentiality and trust concerns (in dealing with the immediate colleagues of their perpetrator). This is problematic, as SOFVU is reliant upon these first recorded utterances/reports to triage cases and decide whether to regionally delegate them or not. Consequently, SOFVU often triages cases and assesses risk based upon inaccurate information.

Some of the highest risk victims have their cases regionally delegated to the divisional colleagues of their perpetrator by the SOFVU triage process (on the basis that they are not “high risk” and do not meet SOFVU’s above mentioned thresholds based upon what has been initially disclosed/reported). SOFVU does have access to body worn camera (BWC) footage

from general duties members attending police-perpetrated (and other) family violence incidents. However, for the reasons explained above, that footage will not materially assist the accuracy of SOFVU's triage and risk assessment or alter outcomes.

We note that in the context of matters deemed not to meet SOFVU thresholds and so regionally delegated, victim-survivors can continue to refrain from making further disclosures, because they are concerned about conflicts of interest, information leaks and the impact of these things on their safety. In instances where further disclosures are made, these are usually not captured by BWC (as these disclosures are usually made in settings where members are not wearing BWC), and can be minimized, misconstrued or not passed on at all by divisional members to SOFVU for re-assessment or re-consideration. In some instances, information about those disclosures can seemingly make its way to perpetrators. If Victoria Police wants to ensure that all high-risk matters are dealt with by SOFVU, then all Family Violence Safety Notices (FVSN) and Family Violence Intervention Orders (FVIO) matters involving a police member/employee and all "minor" family violence complaints involving a police member must be handled by SOFVU after initial SOFVU notification by attending general duties (or other non-SOFVU) members.

FVIO breaches can mask more serious offending

SOFVU generally considers FVIO breaches to be beneath its threshold and regionally delegates the investigation these and unlawful assault allegations. In our view, FVIO breaches by privileged offenders are not minor. We also have concerns about misidentification of the predominant aggressor in the context of breaches, particularly in same-sex relationships, and/or where there are cross applications.

We note further that where a member perpetrator can obtain an order against their victim-survivor (either as a result of misidentification of the predominant aggressor, or as a cross order), they will often weaponise the order, attempt to leverage it to force their victim to withdraw any cross order, and/or use the order against the victim in family court and with Department of Families, Fairness and Housing (DFFH). Such behaviours could be reduced in frequency, and more quickly detected and addressed by Victoria Police, if SOFVU were to deal with all civil/FVSN/FVIO matters and breach matters, as well as intervention order applications.

Conflict of interest (COI), confidentiality and trust issues

Local/divisional members have an insurmountable conflict of interest (whether actual or perceived) when managing or investigating DFV matters involving a colleague they know or are connected to. The survivor network can provide a slew of examples provided by survivors of local members discouraging victim-survivors from reporting, including but not limited to police members -

- a) stressing employment consequences and mental health adverse impacts for the perpetrator and the consequent adverse impacts for the victim-survivor and her children;

- b) seemingly weaponising child protection (telling victim-survivors that if family violence disclosures are made, reports will need to be made to child protection and that the victim-survivor may be assessed as “not a protective parent”);
- c) authoritatively telling other members not to believe the victim-survivor and accusing her of being the protagonist (this is often followed by police-colleagues supporting the accused member in court appearances);
- d) minimising offending and victim blaming, or refusing to take a report of family violence against a member or to action a breach of an FVIO;
- e) recording that no offending has been disclosed in written notes when audio recordings made by survivors show offending was disclosed; and
- f) informing the alleged perpetrator what the victim-survivor has asked or disclosed as a “heads up mate”.

Present SOFVU oversight of regionally delegated matters is dependent upon information being provided by local/divisional members, in circumstances where local members may influence the reporting conduct of victim-survivors (absent any countervailing forces or direct SOFVU interventions) and/or minimise and misconstrue the information (inclusive of victim-survivor disclosures and reports of violence) being on-provided to SOFVU.

Victim-survivor concerns about the above member behavioural issues, as well as the impacts of these behaviours on victim-survivor confidence in the system and future reporting decisions, could be addressed if SOFVU were to directly manage all police perpetrated family violence matters.

The particular tactics used by police officers in both perpetrating family violence and procuring breaches of confidentiality to obtain information about their victims

Police perpetrators are not the same as other family violence perpetrators. Police perpetrator can and do exploit their systemic knowledge of police and court processes to evade accountability, engage in family violence in ways that are heard to prove in court, control the narrative with investigators, and get in first with allegations or make cross allegations (thereby increasing victim-survivor mis-identification risk). For example, police perpetrators have been reported by victim-survivors to:

- a) Stalk and intimidate victim-survivors using both police equipment/systems and information gained through social engineering tactics with their police colleagues (confidentiality breaches). Victim-survivors have reported perpetrators abusing LEAP; soliciting information about a victim-survivor and her complaint from other members; plate-checking the cars of people associated with victim-survivors (or getting their colleagues to do the same for them), getting colleagues to do “drive bys” and welfare checks (often after engaging in “DARVO” [Deny, Attack, Reverse Victim and Offender] tactics with their immediate colleagues regarding victim-survivors, similar to the tactics described immediately below).

- b) Engage in harassment using other police members (and in the case of police-member-victim-survivors encouraging others to make complaints against the police-member-victim-survivor). Such harassment can also involve convincing colleagues that the victim-survivor is mentally unstable, has veracity issues, is maliciously making allegations or is abusing the children, resulting in those colleagues conveying these sentiments to the family violence informant/investigator.
- c) Use police information to intimidate the victim-survivor and convince her that other police members have the same toxic attitudes about family violence and victims of crime as the perpetrator (e.g. showing a victim-survivor images of murder/serious assault victim photos, joking about these in a menacing way, and convincing the victim-survivor that Victoria Police will not believe them or have empathy for them).
- d) Impersonate victim-survivors online to alienate them from others or gather information about the victim-survivor from her unsuspecting friends; e-surveil victim-survivors and use tracking devices & apps; and hack victim-survivors' accounts (more so than the average perpetrator).
- e) Posture and interrogate victim-survivors (including children) police style - to intimidate and control.
- f) Reset devices to destroy evidence, as police-perpetrators know what evidence police will look for, use VPNs when engaging on online offending, and offend in ways that are hard to track and prove because they (police perpetrators) "know the system".
- g) Try to "set up" victim-survivors – for example by abusing the victim-survivor and then recording her reaction, and only using the recorded reaction if she responds in an emotional or explosive way in either –
 - i. threatening to use that information to take an intervention order out against the victim-survivor and have her identified as a primary aggressor, if she reports his (the perpetrator's) violence, or
 - ii. "getting in first" - accusing the victim-survivor of being a perpetrator and seeking an order against her before she has an opportunity to make a report to police.
- h) Make actual or implied firearms threats and emphasising how proficient the perpetrator is with firearms. We note that unsuspended police members have access to firearms and systems whether formal firearms licenses have been revoked or not. By way of further explanation, unless a member is suspended with premises access cut, in practice and using social engineering and flaws in weapons security processes, they can still access police weapons and systems).

- i) Send intimate photos of victim-survivors to colleagues &/ threaten to do so or to make deep fakes (or pretending he has to make his victim-survivor less likely to report offending to those colleagues).
- j) Using physical abuse methods that don't leave marks, including using chokeholds and pressure points.

The use of the above tactics by police perpetrators can be hard to detect to all but specialist family violence workers (and specialist police) and hence can make high risk perpetrators and family violence offending appear to be low risk. In our view, surfacing and dealing with such behaviours earlier (and hence assisting victim-survivors earlier) can only be achieved if SOFVU is funded to take and direct manage all family violence matters (both criminal complaints and intervention order applications), with the training provided to SOFVU members maintained or scaled up and the roles of witness support offices maintained, so as to ensure existing SOFVU competence levels do not drop.

What needs to change in how Victoria Police is managing police perpetrated family violence

The victim-survivor-network endorses the establishment of SOFVU. However, as noted above, SOFVU is only directly investigating/managing a minority of police-perpetrated family violence cases and is, in our view, under-resourced. From a victim-survivor perspective, we suggest the following four changes to improve the way in which Victoria Police manages police perpetrated family violence, and to ensure the extent and management of police perpetrated family violence is visible (thereby permitting the measurement of improvements and better SOFVU resourcing and operating procedures).

CHANGE 1. – All police perpetrated family violence matters must be directly handled by SOFVU (with tactical fixes deployed in the interim to improve victim systemic-confidence and safety):

- A) ***SOFVU thresholds need to change so that all police perpetrated family violence matters are handled by SOFVU.***

This will mean that all FVIO matters involving Victoria Police members and employees, and all family violence allegations (criminal allegations, inclusive of FVIO breaches and unlawful assaults) involving members and employees of Victoria Police will be handled by SOFVU and not regionally delegated.

As a second order matter, SOFVU should treat family violence perpetrated in Victoria by members of other Australian Police Forces (including the AFP) as SOFVU cases,

given the privileged nature of these police perpetrators and their ability to obtain information from Victoria Police and influence investigations. We note that we have come across a number of cases where an alleged perpetrator is a former Victoria Police member and current AFP member, or an interstate member from a border area with a Victoria Police authority card (meaning they have limited authority to act as a member of Victoria Police).

B) *While FVIO application and most family violence matters involving Victoria Police members and employees continue to be regionally delegated/managed by SOFVU, tactical improvements are needed to improve the safety and experiences of victim-survivors.* We suggest the following tactical improvements:

- a) SOFVU be required to directly check in monthly with victim-survivors/Affected Family Members (AFM) (including children over the age of 10) to help mitigate intimidation and conflict of interest issues.
- b) All victim-survivors/AFM be given a SOFVU witness support officer (i.e including those with regionally delegated matters) - to encourage the further reporting of undisclosed matters, and the more prompt escalation of any concerns about local investigations, confidentiality issues and conflicts of interest.
- c) That all police-perpetrator DFV cases (including “only an FVIO” matters) to go to Risk Assessment and Management Panel (RAMP) as police perpetrators are inherently high-risk offenders.
- d) That the Multi-Agency Risk Assessment and Management (MARAM) Framework be used to assess victim-survivor risk.

C) *More training for members on police perpetrated family violence* – While we acknowledge that Victoria Police does train members at the Police Academy on a police perpetrated family violence scenario (along with other scenarios), we suggest that SOFVU members and other members locally handling FVIO and DFV matters involving Victoria Police members/employees (in any capacity – e.g. respondent/AFM or accused/complainant) – be trained to be more aware of the specific abuse and system manipulation techniques perpetrators use (the survivor-network understands this is under consideration, and have been lobbying for this since 2021).

CHANGE 2. – Confidentiality protections for victim-survivors to reduce risk, avoid a repeat of Emma’s case, and improve victim-survivor confidence (particularly for police-member victim-survivors): including -

- A) A complete and formal separation between member welfare management and victim-survivor/AFM welfare management, including by -
 - i) clarifying this matter in Employee DFV Policy of Victoria Police, and
 - ii) amending that policy to more clearly define roles, and to delineate obligations and responsibilities re welfare and confidentiality in regionally delegated matters.
- B) Prohibiting investigators (particularly regional investigators) from dealing with a member accused of being a perpetrator or their member’s welfare manager and immediate colleagues - other than by email (thereby making all contact documented), unless verbal contact is required for the purposes of an investigation or FVIO matter - in which case that contact must involve a corroborator/witness (which may not include a witness support officer or colleague of the perpetrator) and be documented.
- C) Taking discipline action against members disclosing and/or intentionally soliciting information about active police perpetrated family violence matters to other members for non-investigation-related purposes or gossip. We note that presently Victoria Police either does not discipline such members beyond providing “workplace guidance” or giving them at most an admonishment in our experience. We observe that until there are enforced sanctions for enablers and information leakers, members will know that they can engage in such activities without consequence. We observe that victim-survivors would have more confidence in Victoria Police if these behaviours were treated more seriously by Victoria Police.
- D) Ensuring that the names of all AFM/complainants and other parties listed on an FVIO (including children) in matters involving Victoria Police personnel are more consistently flagged in LEAP, with any “look-ups” immediately investigated and justified by members accessing those records (we note that flagging practices have improved in the period since the Emma case but require further improvement, so that LEAP misuse is proactively detected and dealt with).

CHANGE 3. – Measures to reduce unnecessary adverse mental health outcomes and distress for victim-survivors of police officers: including -

- A) Changing police practices so that the police discipline process runs concurrent with the criminal investigation process, or at least does not wait until the conclusion of that process so as to -
 - i). avoid protracted processes for victim-survivors – which we observe consistently has deleterious impacts upon victim-survivor mental health, and
 - ii). avoid police perpetrators asserting in Family Court that the allegations against them are not believed by Victoria Police on the basis that Victoria Police has taken no discipline action (noting that this is common perpetrator practice)

- B) Formalising arrangements and changes with the Office of Public Prosecutions (OPP) to improve the speed of the charge authorisation process for police perpetrated family violence (including sexual violence) matters, so that the charge authorisation timeframes for police perpetrators is reduced to be similar for the charge authorisation timeframes for civilian family violence perpetrators. We note that the charge authorisation time frame for police-perpetrated family violence matters is in many instances a multiple of the charge authorisation timeframe for civilian-perpetrated family violence matters.

- C) The provision of SOFVU witness support officers to victim-survivors with regionally delegated matters (as also recommended above).

- D) To reduce intimidation of victim-survivors,
 - i). prohibiting Victoria Police members from attending court in support of their colleagues on Victoria Police time, unless they are a designated welfare officer; and
 - ii). specifically prohibiting Victoria Police members from attending court in Victoria Police uniform in support of their accused or FVIO/FVSN-respondent police-colleagues at any time.

CHANGE 4. – Measures to improve transparency so that improvements in addressing police perpetrated family violence and issues are visible and can be quickly addressed:

These measures include -

Obtaining perpetrator occupation data from Family Safety Victoria (the Orange Door) and funded family violence services, as police figures alone will not provide a full picture of the

extent of police perpetrated family violence, given the underreporting of the issue by victims-survivors of police perpetrators.

Requiring Victoria Police annually to publicly report about police perpetrated family violence, including:

- A) How many FVSN/FVIO have been issued involving members and
 - i). In what capacity (i.e. was the member a Respondent or AFM)
 - ii). What the outcome was (finalised/ revoked & term (if applicable))
 - iii). Whether there were cross orders
 - iv). The genders of the parties
 - v). Whether the Respondent member had their firearm authority reinstated during the term of the FVIO
- B) How many complaints have been made against members and what those complaints related to (particularised) whether charges resulted or not.
- C) How many members have been charged for DFV offending and-
 - i). Whether these matters were locally managed or SOFVU managed
 - ii). The outcome of those matters (broken down by SOFVU v locally managed)
- D) How many members have been referred for discipline outcomes re DFV and
 - i). what the referrals related to (type of conduct – e.g. breaches of FVIO, unlawful assault etc)
 - ii). li. the outcome of those referrals

(iii) How effective is the welfare support provided to victim-survivors/complainants by Victoria Police and IBAC? What could Victoria Police and IBAC do to become trauma-informed, and victim- and complainant-centric, in how they handle complaints and reports about police-perpetrated family violence?

The welfare support provided to victim-survivors/complainants by Victoria Police is best described as variable. The welfare support provided to victim-survivors/complainants by IBAC is best described in practice as of no meaningful assistance at all. That is, the support provided to victim-survivors will largely depend upon whom handles their complaint, and whether they are a member of Victoria Police or not.

Support for victim-survivors whose cases are direct investigated by SOFVU

The small minority of victim-survivors who have their complaints directly investigated by SOFVU are provided with a witness support officer by Victoria Police. SOFVU witness support officers

are sworn members, each assigned to a victim-survivor/complainant, and tasked with acting as an intermediary and support person for that victim-survivor/complainant. Such witness-support officers are also provided by Victoria Police to all members subject to a complaint (perpetrators) whether the complaint against them is being dealt with by SOFVU or not.

Feedback from survivors is generally (but not always) positive about SOFVU witness-support officers. For example, victim-survivors have reported on several occasions that their SOFVU investigator is rude, dismissive, fails to communicate or has toxic and victim blaming beliefs, but the same victim-survivors have also reported that when told about these behaviours – their witness support officer “*went in to bat*” for them with the investigator, and helped to address their issues. Victim-survivors have also reported that their witness support officer made them feel supported in court proceedings, with member-victim-survivors reporting that they felt their witness support officer understood their predicament.

We note however, that in some instances victim-survivors have reported that their witness support officer has made matters worse. Others have expressed concerns that SOFVU witness support officers are still sworn police officers, and shared experiences showing that those officers are prone to issuing warnings to survivors that if further disclosures are made by the victim-survivor about not coping, having poor mental health or further offending – that notifications to child protection will need to be made. While such warnings are doubtless well intended, they serve to silence victims and leave them feeling judged and unsupported.

Victim-survivors whose matters are dealt with by SOFVU commonly suffer poor mental health outcomes while their cases are under investigation. This, in our experience, is in large part due to the extraordinary delays in the SOFVU process and police discipline process. The bulk of these delays are attributable to -

- A) The lengthy period between a brief of evidence being submitted for authorisation by SOFVU and the OPP’s decision to approve or reject charges (which can be up to twelve months).
- B) The delays in dealing with discipline matters, caused by Victoria Police’s practice of not dealing with discipline matters and criminal matters concurrently. Police discipline matters are not dealt with at all until the withdrawal or resolution of criminal matters arising from the same or related facts. There is no legal impediment to these processes being run concurrently, as happens in other industries in Australia, overseas police forces and NSW Police (see for example the 2024 dismissal of Constable Beau Lamarre-Condon prior to his trial on murder charges in a police-perpetrated family violence case, and the recent (2024) dismissal of Senior Constable Kristian White prior to his trial for the manslaughter (by Taser) by NSW Police).

Victoria Police’s SOFVU witness support officers, as noted above, are police officers and not mental health professionals. Despite the best efforts of these members, they are not appropriately trained to support victim-survivors suffering deleterious mental health impacts

caused by delays in the OPP authorising charges and the police discipline system. If the charge authorisation process cannot be expedited to align with the timeframes for authorising charges in other (non-police perpetrator) family violence cases; and if the civil police discipline processes cannot be changed to run concurrent with criminal investigation matters (or at least not be stayed until the cessation of such matters), further investment in specialist mental health supports for victim-survivors is required.

Lastly, we have heard several unverified reports from Victoria Police members that unlike their Family Violence and Investigation Units (FVIU) and Sexual Offences and Child Abuse Investigation Team (SOCIT) counterparts, members of SOFVU do not have formal onsite debriefing support. FVIU and SOCIT are Victoria Police units dealing with similarly traumatic factual content to SOFVU, only FVIU and SOCIT investigators do not have to deal with the additional complication and emotional weight of the perpetrator under investigation being a police colleague (and the associated feelings of shock, denial, rage and betrayal for investigating members occasioned by such acts being committed by a colleague). Absent appropriate debriefing support SOFVU members (including SOFVU members whom are witness support officers), those members will likely leave SOFVU or develop compassion fatigue at higher rates than members provided with debriefing support: This, in turn, will adversely impact the wellbeing and support provided to the victim-survivors SOFVU members deal with. This situation needs to be addressed for the benefit of both victim-survivors and SOFVU members. This point is given particular stress by the members of the victim-survivor network with lived experience of physical family violence exacerbated by the work-related PTSD of police-perpetrators.

Victim-survivors whose complaints and FVIO matters are handled under the regional delegation model (not SOFVU)

The majority of victim-survivors who have their complaints and FVIO matters handled under the regional delegation model (on paper under SOFVU oversight), do not have a witness support officer provided by Victoria Police. By contrast police-member perpetrators (including FVIO respondents) are always provided with a welfare and support manager by Victoria Police, with support also often separately provided by Victoria Police's EAP provider/Police Welfare and the Police Association Victoria.

While the victim's network successfully advocated for SOFVU contact points for victim-survivors in these regionally delegated matters, and for SOFVU's contact details for the escalation of concerns to be published in the SOFVU Victims' Options Guide (co-designed with "Emma" and the victim-survivor network), in practice these victim-survivors report feeling isolated, unsupported and often not believed by Victoria Police, with many stating that "*they can't take the blue out of it*" or "*all that seems to matter is his job and him*". As noted elsewhere, many of these victim-survivors are the victims of undisclosed indictable family violence crimes (crimes they are too afraid to disclose to the colleagues of their perpetrator for fear of retribution and due to a lack of confidence in police).

The victims of police perpetrators whose matters are regionally delegated are substantively left completely unsupported and on their own (by comparison to victim-survivors with matters direct-managed by SOFVU). These circumstances are compounded where a victim-survivor lives in a rural or remote area. More needs to be done to both a) support these victims, and b) prove to them that they can safely report more serious offending and have any such reports dealt with impartially, with appropriate supports throughout the process.

Support provided by IBAC

IBAC claims to provide support for complainants through Converge, hence on paper it appears that IBAC is providing support to complainants/victim-survivors. However, in practice the support provided by this service is not adequately communicated to complainants, provides little and very limited support and does not address the underlying issues perpetuating harm upon and causing mental distress (including suicidality) to complainants/victim-survivors by IBAC and its processes. Put another way, providing such “support” is of no practical assistance to victim-survivors at all, and does nothing to ameliorate distress or suicidal ideation caused by IBAC’s practices and deficiencies. The IBAC practices causing mental anguish to complainants/victim-survivors include ongoing failures by IBAC to provide updates to or communicate with complainants, and extensive delays in reviewing/dealing-with complaints followed by an absence of explanations or reasons for decisions in blunt, cold and legalistic IBAC communications.

We have seen multiple cases where victims have become suicidal after escalating concerns to IBAC about Victoria Police mishandling their complaints. Despite being aware of the risks to these complainants and their welfare status, in each case IBAC has failed to engage with Victoria Police, make any inquiries about the concerns raised, or to offer welfare support or react in a trauma informed or complainant-centred way. We are aware of one case in which a victim of a police perpetrator (who had complained to IBAC and had her case referred to Victoria Police) attempted suicide. We are informed that the suicide attempt was a reaction to IBAC’s callous indifference to the victim-survivor and her later substantiated and significant concerns. Concerns have been raised with IBAC about how this particular case was handled by IBAC (the case is not presently active). In the time since, we have seen no evidence of change or learning within IBAC (in terms of how it deals with victims). We note that the case arose at a time when IBAC claimed to have adopted trauma informed and welfare-concerned practices and social workers on hand to assist. The above provides a good example of IBAC’s operational practices and actions not meeting what is written in its assertions, training and policies.

Providing support to victim-survivors often falls to unfunded and volunteer peer support networks such as the victim-survivor-network, and the community coalition and representatives appearing before the Committee in November 2024. Our lived experience of IBAC is that IBAC provides no practical support to the victim-survivors of police perpetrators. For completeness we note that IBAC has recently run a direct investigation pilot but we are informed did not deal with any police perpetrated family violence cases. Consequently, we cannot speak to how IBAC manages complainant welfare while directly investigating police perpetrated family violence complaints.

What could Victoria Police and IBAC do to become trauma-informed, and victim- and complainant-centric, in how they handle complaints and reports about police-perpetrated family violence?

In the lived experience of the victim-survivor network, both Victoria Police and IBAC need to significantly improve their practices to become trauma-informed and complainant-centric in how they handle complaints and reports about police perpetrated family violence. However as noted above, we acknowledge SOFVU does have more trauma informed and complainant centric practices: SOFVU does provide witness support officers to victim-survivors as well as taking steps to protect their privacy and confidentiality, and attempt to give them a degree of agency during the investigation phase. While not all victim-survivors in the network have has a positive experience with SOFVU, their experiences are markedly better than those of their peers with regionally delegated matters who are not having the same experiences. While some victim-survivors with regionally delegated matters have encountered trauma informed practice from Victoria Police members, more have not.

In terms of the comparison of victim-survivor experiences with Victoria Police compared to IBAC, overwhelmingly and despite their often negative experiences with (and perceptions of) Victoria Police, the victim-survivor-network is of the view that *IBAC is less trauma informed and complainant centric than Victoria Police*, communicates less and in a more confusing and distressing way than Victoria Police, and is less likely to listen to feedback from victim-survivors. In addressing further questions from the Committee about whether IBAC should investigate all police perpetrated family violence matters, both when giving evidence and in this response, we have been cognisant of the victim-survivor-network's lived experiences of IBAC as an institution that is not trauma informed or complainant centric, does not understand family violence or family violence risk, does not respond to correspondence promptly and clearly, and when it does communicate – communicates in “legalese”.

In respect of the “Emma Report” and Emma’s case, we note that Victoria Police has apologised, taken steps to improve processes and in fact made operational improvements (albeit that there are further improvements still required). By contrast, IBAC maintains that it stands by the way it handled Emma’s case and stands by its response to the Emma Report. As noted in response to another question on notice, from a victim-survivor perspective IBAC has not changed its operational practice, with its implementation of the recommendations arising from the Emma Report showing operational change in form not in substance. We suggest the following measures to improve trauma informed and complainant centred practice within Victoria Police and IBAC respectively.

Victoria Police changes

- A) All intervention order application and family violence criminal complaint matters (including FVIO breaches) should be dealt with directly by SOFVU, with all victim-

survivors/ AFM provided both a witness support officer and access to mental health support.

- B) In the interim, and until SOFVU can take all matters, all victim-survivors with regionally delegated matters (FVIO and criminal) should be provided with -
- a SOFVU witness support officer and regular check-ins with that officer, and
 - access to mental health support; and
 - SOFVU should rely upon the MARAM assessment to assess its thresholds and the risk to victim-survivors.
- C) Avoidable mental anguish to all victims-survivors (of police perpetrators) with criminal complaints (dealt with by SOFVU or regionally delegated) should be contained by Victoria Police –
- i). taking measures to attempt to align OPP charge authorisation time frames with the authorisation time frames for civilian family violence matters; and
 - ii). ensuring that police-discipline investigations and proceedings are not delayed until after the cessation of criminal matters and where appropriate, running these concurrently. [We note that discipline proceedings have a civil burden of proof, involve different charges/allegations to criminal proceedings and the outcome of a discipline proceeding does not prejudice a criminal proceeding arising from the same facts. We refer to the practices of NSW Police in this regard, particularly in respects of the cases of officers Beau Lamarre-Condon and Kristian White. Unlike Victoria Police, NSW Police runs discipline processes concurrent with the criminal process.]
- D) SOCIT equivalent onsite debriefing services should be provided to SOFVU members, including witness support officers (this is based on the principle, put colloquially – supporting the welfare of SOFVU members, supports the victim-survivors they work with).

IBAC changes

- A) IBAC should solicit/commission detailed lived-experience-based “IBAC complaint lifecycle” guidance, also informed by the specialist family violence sector - on:
- i). IBAC’s family violence training for its staff and executives,
 - ii). IBAC’s interaction touch points with victim-survivors and communications arising at those touch points (inclusive of whether there should be more communications, what these should say and how they should be expressed), and

- iii). what is needed for IBAC to better support and communicate in a trauma informed way with family violence victims (particularly the victims of police-perpetrators, marginalised family violence victims and victims misidentified as the predominant aggressor by Victoria Police).

To be useful in practice, the above guidance must be bespoke and integrated into IBAC's existing practices, template communications and interactions with victim-survivors. IBAC's current practices, even after the deployment of family violence training, show that generic training and resources (and standalone – as opposed to integrated - policies) have not operationally changed IBAC's culture, improved the experiences of family violence victims with IBAC, or reduce the level of harm and distress caused to victim-survivors by IBAC.

- B) IBAC should use the above guidance to co-design and improve complainant welfare management processes, interactions and support via –
 - i). more appropriate and well telegraphed support services,
 - ii). trauma informed communications that appear “less legalese and threatening” and are more informative, and
 - iii). more transparent practices and pathways for escalating concerns to IBAC.
- C) IBAC should schedule welfare check-ins with complainants, particularly those identified as suffering distress, at physical safety risk, or experiencing one or more vulnerabilities.
- D) IBAC should ensure that its risk assessment processes are administered by personnel whom understand family violence risk and have family violence sector experience. IBAC should also repeat welfare and risk assessment processes during the life of a complaint (as both welfare and risk cannot be seen to be “set and forget” items as both are subject to material change with both time and new circumstances)
- E) IBAC must improve communications to complainants throughout the life of a complaint by providing regular updates, as well as reasons for referrals and responses to concerns.
- F) The above initiatives, like IBAC's compliance with the Emma Report recommendations by the Victorian Inspectorate, must be subject to substantive (rather than desktop) assurance using triangulated qualitative and quantitative data. Such assurance will help ensure that IBAC's changes are changes in substance (and hence will make a difference to complainant experience) rather than change merely in form.

Lastly, none of the above changes at IBAC will be effective unless and until IBAC staff feel emotionally safe to raise concerns, can speak up and challenge conduct and practices that are not trauma informed or have avoidable adverse impacts upon complainants, and are

empowered to make suggestions for improvement. We observe that presently, IBAC is not a safe organisation for complainants to deal with, and that this will not and cannot foreseeably change unless and until IBAC is a safe organisation for its staff.

(iv) Could you elaborate on the need for better data collection, analysis and reporting in relation to police-perpetrated violence in Victoria, and, in particular, with respect to:

(a) the handling, assessment, investigation and outcomes of complaints dealt with by Victoria Police and IBAC; and

Issues with the self-investigative police complaints system

The lack of published data from police (discussed earlier) is exacerbated by the self-investigative complaints system in Victoria. This system offers victim-survivors either:

1. A pathway directly to police – a pathway that victim-survivors of police-perpetrated violence frequently feel precluded from taking or approach with trepidation due to risk and safety issues, and the inherent conflict of interest in making a complaint to the same institution that employs the perpetrator (and on occasion to police officers who work with the perpetrator), and may have already demonstrated inaction or bias – or;
2. To complain to IBAC. In the latter instance, the vast majority of complaints are returned by IBAC to Victoria Police, and so regardless of pathway, it's largely a case of police investigating other police when complaints are made, and the overwhelming majority of these complaints are returned found 'unsubstantiated'.

It is further noted by the victim-survivor network that in conducting these investigations, Victoria Police has admitted it does not usually run e-discovery processes, instead asking officers/'members' under investigation and other relevant staff to forward relevant documents and evidence supporting their version of events to the investigator, in a process survivors have described as '*getting police to mark their own homework*'. This materially flawed and conflict of interest ridden self-investigation process is then compounded by the legislative deficiencies imposed upon the IBAC review process (where these files are reviewed by IBAC): IBAC in conducting a review cannot run e-discovery on Victoria Police's data bases and ensure all relevant information has been gathered and considered, and can only base review on the documents provided by Victoria Police. The matters described above further hinder and obstruct the task of gathering clear data and make tracking the scale of the harm difficult.

To date, there is no public reporting on the number of police-perpetrated family violence complaints received by Victoria Police Professional Standards Command (PSC) or IBAC, how many of these were investigated, or the outcomes of any investigation.

To build a more accurate picture, Victoria Police and IBAC should be required to provide data including:

- The number of complaints received related to family violence police responses
- The categorisation and outcome of these complaints (noting that due to the barriers and safety issues for survivors in making complaints, this data will still be under-representative of the violence).

(b) the extent of perpetration, and complaint and investigation outcomes in relation to police perpetrators compared with other perpetrators (including impunity); and

(c) breaches of intervention orders by perpetrators.

In answering both of these questions we refer to our answer to question one and also the attached perpetrator data submission. That submission discusses information obtained from Victoria Police under Freedom of Information about police perpetrated family violence, showing Victoria Police is aware and has internally conceded in writing that it is policing its own differently when members engage in family violence - including under-charging and under-conviction. This and other factors contribute to the culture in which police perpetrators can believe they have impunity.

As noted earlier, police do not publicly report data related to police perpetration.

To make inroads into examining rates and scale of perpetration, as well as to more effectively examine the discrepancies in response when the perpetrator is an officer or civilian police employee, Victoria Police should be required to publicly report on police-perpetrated violence including:

- The number of reports about officers perpetrating family violence
- The number of officers investigated and the outcomes of these investigations, including disciplinary action
- The number of intervention orders issued
- The number of intervention order breach reports concerning Victoria Police officers and employees
- Charges and their outcomes
- The number of officers who had weapons removed
- The number of officers and employees on paid leave while being investigated for use of family violence

- Any officers whose employment was terminated as a result of their use of family violence

We wish to further note that in addition to the matter of the number of officers perpetrating family violence, it is our practice experience that very concerningly the officers in these cases have often undertaken police training in responding to family violence, and in some instances even worked in or transferred to family violence roles or teams whilst perpetrating violence themselves.

These observations from the project are echoed in the findings by IBAC in their 2023 thematic review, *Predatory Behaviour by Victoria Police*, which found: “*Concerningly, four subject officers in the cases reviewed were from units undertaking sensitive work involving close contact with very vulnerable members of the public, including children in the care of the State*”.

Further to this issue, both Victoria Police and IBAC data on the role and rank of officers investigated for the use of family violence is of central importance in building an accurate picture of risk and impact of police perpetrated family violence.

(v) Should all complaints about police-perpetrated family violence be investigated by IBAC? If so, why? If not, why not? Is IBAC the best agency to have oversight of these investigations?

We refer to our earlier comments about IBAC not being trauma informed or complainant centric, and victim-survivor lived experience of IBAC being comparatively worse than victim-survivor lived experience of Victoria Police on those measures. In part based on that lived experience, in respect of the question posed here, our answer is “*No, not all complaints about police-perpetrated family violence should be investigated by IBAC, as it is presently structured, skilled, and operating in practice*”.

IBAC is not structured to be complainant centered, trauma informed, or to resolve complaints, and as noted above is persistently failing victim-survivors in these respects and causing further harm and trauma. IBAC is not competent to oversee and opine on the quality of Victoria Police investigations of police perpetrated family violence, given IBAC’s demonstrated lack of family violence awareness and competence. IBAC cannot effectively oversee investigations of a subject matter that IBAC does not adequately understand.

Even if IBAC were to evolve into a complainant centric and trauma informed, family violence aware and competent complaint handling entity, in our view, IBAC should still not be direct investigating all police-perpetrated family violence cases for the following reasons.

We note that there are some offences, such as sexual offences and offending against children where SOCIT and other specific skills are required. These are skills IBAC does not have, could acquire, but would be costly to maintain and retain: These are unique skill sets requiring training

and accreditation - such as taking video evidence from children, collecting and preserving forensic evidence in the context of sexual assault and so on.

Similarly, domestic violence homicide, firearms discharge offences, and some forms of attempted murder and serious assaults require the application of specialist policing skill sets IBAC does not presently have, theoretically could acquire but would require significant investment to maintain. These specialist skill cases should however be more closely overseen by IBAC (which will require some subject-matter-competence-upskilling by IBAC) or jointly investigated by Victoria Police and IBAC. In some instances, it may be appropriate for the joint investigation to be run by secondees of another police force with IBAC oversight (for example if a family violence complaint involving harm to children and sexual offending were to be made against a commissioned officer of Victoria Police - as in those circumstances there will be no member of Victoria Police without a conflict of interest to act as the complaint investigator).

If IBAC is to continue to oversee Victoria Police's management of police perpetrated family violence complaints (both those investigated by SOFVU and regionally delegated) –

- A) IBAC must improve its family baseline violence investigation and specialist practice skills, so that IBAC can - from an informed position = review and constructively critique these investigations and matters. As noted elsewhere, this will require some investment by IBAC in acquiring baseline investigation and specialist skills, as well as a material improvement in IBAC's complainant interactions (to be trauma informed).
- B) IBAC must have direct access to Victoria Police systems and documents, rather than relying upon these being provided by Victoria Police, in both IBAC's monitoring and complaint review activities (as well as any IBAC directly investigated complaints). We note that defective investigations of police perpetrated family violence (and related complaints), are often defective because of what an investigator has not considered and placed key evidence on file. That is, a complaint file and "unsubstantiated" complaint outcome may look to IBAC to be sound on review, because the file does not contain a key document or piece of evidence substantiating the complaint. Commonly these omissions will occur because a Victoria Police investigator has not conducted an e-discovery exercise, and instead has asked the member under investigation or members with a conflict of interest, to "*provide all relevant documents and information*" (being a requested response fraught with moral hazard). These deficiencies cannot be detected and interrogated upon review by IBAC, absent direct access to Victoria Police systems and documents.

Even if the above oversight improvements are made, we are of the view that IBAC (or an alternative police oversight and investigations agency) should be investigating or taking over parts of the investigations of family violence complaints against Victoria Police members in some circumstances, including (but not limited to) where:

- A) The accused member is at the rank of inspector or above or the immediate family member of a person at that rank.

- B) The accused member presently or in the past two years has worked in Professional Standards Command, eCrimes or has previously worked in SOFVU at any time.
- C) The family violence is ongoing or an FVIO remains in place, the victim has complained to IBAC about Victoria Police mishandling their complaint, and a victim has incepted civil litigation against Victoria Police (as in these circumstances Victoria Police as an institution has a conflict of interest between investigating and protecting the safety of the complainant, and defending its reputation by denying there have been any investigation failures or any family violence offending [being something we have observed]).
- D) There is evidence of an unmitigated conflict of interest potentially compromising the investigation of the complaint or handling of the victim-survivor's concerns and safety (which may include police colleagues or an accused member refusing to take a report of family violence), and Victoria Police has not immediately acted to address this.

We note that IBAC was founded as an anticorruption body at a time when police corruption (following the underworld gang wars), rather than police criminality (including police perpetrated family violence), was the form of police misconduct of greatest concern to the legislature and public. In the time since, the overwhelming majority of complaints to IBAC about Victoria Police have not been about police corruption, with police criminality and misuse of power now of greater concern to the public. In our view, IBAC's police oversight function better housed in a more complainant centric and trauma informed investigations and complaint resolution body like the Victorian Ombudsman or a standalone Police Ombudsman. We have concerns that despite the ongoing harm being caused to victims of police misconduct and criminality by IBAC, IBAC's police oversight function has not been revoked and moved to the Victorian Ombudsman (or a new Police Ombudsman) because doing so could be politically misconstrued as "defunding IBAC" when in fact, such a move would –

- A) Strengthen the function of Victoria's integrity system.
- B) Allow IBAC to focus its resources on addressing public sector corruption and putting police oversight in a more appropriate place.
- C) Improve victim-survivor/ complainant experience and confidence in the system, while reducing the additional harm perpetrated upon them the IBAC/ the integrity system as it stands.

(vi) What progress in your view has IBAC made in implementing the recommendations in the Victorian Inspectorate’s report on ‘Emma’? How would Victoria Police and IBAC respond today to similar circumstances described in this report?

On paper or in form, IBAC has implemented all recommendations made in the now two-year-old *Victorian Inspectorate: Special Report into IBAC’s referral and oversight of Emma’s complaints about Victoria Police* (the “Emma Report”). However, IBAC has not implemented three of these four reforms in operational practice and substance. While a desktop audit may confirm these recommendations as acquitted, a substantive assurance-based audit would not, noting the significant difference between IBAC’s policy and procedure on paper, and its operational real-life practices.

In commenting upon IBAC’s progress in implementing each of these recommendations, we refer to the letter from the Victorian Inspectorate of 1 December 2023, furnished to the Committee in November 2024. That letter concerned IBAC’s implementation of the recommendations made by the Victorian Inspectorate in the Emma Report and related matters.

If the circumstances of “Emma” were to re-occur today, her complaint would be referred (albeit with checklist reasons) to Victoria Police by IBAC, and be locally delegated for investigation. This has been conceded by both IBAC and Victoria Police. That is, if a case factually the same as Emma’s were to occur again today, it would follow a substantially similar trajectory.

In its press release immediately following the tabling of the Emma Report, IBAC’s Deputy Commissioner stated that Emma’s case would be referred to Victoria Police and handled the same way by IBAC (should a case like it arise again). In the time since the Emma Report, IBAC has continued to defend its handling of the Emma case and insisted that with the benefit of hindsight, the complaint(s) would be referred and managed the same way. In our view this IBAC beligerence should be a matter of concern to the Committee, as it suggests IBAC has not learned from the Emma Report and will continue to harm victim-survivors of police perpetrator making complaints to IBAC.

IBAC’s Progress Implementing Emma Report

Recommendation 1

The Emma Report revealed that IBAC was referring complaints about police perpetrated family violence (and other complaints about police misconduct) to Victoria Police for investigation:

- Without recording any reasons for the referral (if there were ever any such reasons and referrals were not processed on an automatic basis with direct investigations decided on an exceptions basis)
- Without considering whether it was more appropriate for Victoria Police to investigate the complaint than IBAC

- Without considering the impact of a referral decision where there were clear and ongoing risks to the complainant
- Without considering any of the relevant rights or obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic)
- Without consideration of whether alleged conduct could involve a breach of s227 of the *Victoria Police Act 2013* (Vic): a time limited Summary Offence relating to the unlawful disclosure of police information [Noting that Emma’s case involved the unlawful disclosure of a safety and escape plan to a perpetrator and his colleagues (with proven catastrophic and violent consequences). IBAC’s and Victoria Police’s two year delays in substantiating the complaint resulting in charges against the disclosing members being statute barred.])
- Without keeping a written record of all of the above considerations.

Recommendation 1 required IBAC to address all the above considerations in writing for each complaint referred to Victoria Police. IBAC has now amended its processes and now uses checklists covering-off the above considerations (amounting to compliance with the recommendations in form). However, operationally IBAC’s implementation of Recommendation 1 has the following substantive defects:

- IBAC considers the referral of most complaints, including complaints where the referral will pose a risk to the complainant and where the complainant is suffering ongoing risk/offending, on the basis that it is more appropriate for Victoria Police to consider the complaint due to –
 - the “complexity” of police perpetrated family violence matters, and
 - the fact Victoria Police has more resources and is more experienced in family violence investigations than IBAC.

Such reasoning does not address the risk to complainants of referral. We are yet to see a police perpetrated family violence case that has not been referred to Victoria Police by IBAC (irrespective of the inherent risk associated with the referral itself to the victim).

- IBAC appears to still be “considering” Victoria Police to be the more appropriate body to investigate complaints based upon the comparative investigation resource and budget differential between Victoria Police and IBAC.
- IBAC does not appear to be given due consideration in practice to human rights in referring complaints back to Victoria Police, and in opting not to take referred complaints back from Victoria Police (under s79 of the *Independent Board-based Anti-corruption Act 2011*(Vic) (*IBAC Act*), particularly in relation to the rights of children to be safe from violence (in the police perpetrated family violence setting), and the right of privacy.
- Despite training, IBAC staff continue to demonstrate a poor understanding of family violence risk and the risk to complainants inherent in referral (particularly for referred complaints that are then regionally delegated or beset by conflict-of-interest issues). This results in IBAC staff whom do not understand family violence risk and conflict of interest

risk - assessing complainant risk, and in doing so - often unsurprisingly under-estimating these risks and the inherent risk associated with referring police perpetrated family violence matters back to Victoria Police to investigate. Such referrals of police-perpetrated family violence cases to Victoria Police should only occur with guardrails, and with more informed and involved oversight of such matters by IBAC (including preliminary and ongoing risk assessments).

- IBAC is exempt from Freedom of Information laws and in our experience IBAC resists or does not comply with privacy access requests (seemingly managing these haphazardly). This results in complainants struggling to obtain records of the now documented considerations underpinning the referral of their complaint by IBAC to Victoria Police. In our view, IBAC should show that it is complying with recommendation 1 by providing reasons and written considerations (at least on request) to complainants.

Recommendation 2

Recommendation 2 noted the frequency of referrals to Victoria Police by IBAC (noted above) and required IBAC to develop a policy and/or guideline to support IBAC's considerations of:

- Whether allegations in a complaint about police misconduct, considered together, may constitute a pattern or system of detrimental cation and/or corrupt conduct;
- Whether to refer matters to Victoria Police; and
- Whether conflict of interest issues, risks to health and safety and other risks (such as ongoing family violence risk) need to be prioritised as considerations in deciding whether to refer a complaint.

On paper, IBAC has acquitted Recommendation 2 as part of complying with Recommendation 1. As is the case with Recommendation 1, IBAC has developed policies, deployed limited training and guidance, and implemented checklists to support compliance with Recommendation 2. However, operationally these changes are not improving outcomes for victim-survivors and appear to have resulted in a checkbox culture at IBAC, as opposed to a genuine, prudent and well-informed assessment of risk and consideration of the decision to refer complaints. We have observed instances of apparent conflict of interest not being detected by IBAC at referral, and not recalled for IBAC investigation after a poorly judged referral. We note that IBAC appears to still not understand the way in which conflicts of interest may arise in Victoria Police – particularly in regionally delegated investigations, making IBAC's assessment and consideration of the risks of conflict of interest problematic and at best perfunctory.

We observe that there is a significant gap between amended IBAC policy and procedures, and practice, with these IBAC policies and checklists delivering no tangible changes in the adverse experience of victim-survivors. Today, victim-survivor experiences with IBAC are similar to those of victims at and prior to the tabling of the Emma Report.

We are unaware of any post implementation review or substantive assurance (involving stakeholders, rather than a mere paper desktop audit) – being conducted by IBAC or the Victorian Inspectorate on –

- IBAC’s response to the Emma Report recommendations and
- whether in practice the implemented recommendations have improved the experiences of victims like Emma.

Recommendation 3

Recommendation 3 required IBAC to develop and implement policies and/or guidelines outlining the circumstances in which IBAC officers should consider withdrawing a referral under section 79 of the *IBAC Act*, and factors that may tend towards it being appropriate to withdraw a referral. IBAC has developed a forum to discuss withdrawal issues and developed an associated procedure.

On paper, IBAC’s response Recommendation 3 is significant. However, we have not seen any police perpetrated family violence complaints withdrawn from Victoria Police by IBAC under section 79 of the *IBAC Act*. We note that following the Emma Report, it was at one point proposed that Complaint 2 in the Emma Report would be withdrawn from Victoria Police by IBAC under s79 of the *IBAC Act* (noting the continuing conflicts of interests and detrimental action against a protected discloser (Emma) in that Complaint, being matters that have subsequently been formally acknowledged by Victoria Police). However, IBAC did not withdraw Complaint 2, we understand because IBAC believed the concerns raised could be addressed by Victoria Police.

We suggest that Recommendation 3 has not been effective in practice if no complaints have been withdrawn by IBAC, and if the basis of the failure to withdraw any complaints is IBAC’s assertion that Victoria Police “*has the ability to rectify the conduct complained about*”. We understand that IBAC has never withdrawn a referred Victoria Police complaint under section 79.

We refer to page three of the supplied letter from the Victorian Inspectorate of 1 December 2023 provided to the Committee, and the stated methodology IBAC is using to determine whether referred complaints should be withdrawn from Victoria Police (under s79 of the *IBAC Act*). That methodology will always result in a withdrawal under s79 being deemed unnecessary on the basis that Victoria Police “*has the ability to rectify the conduct complained about*”. That is, Victoria Police, with its extensive resources will always *have the ability* to deal with conflicts of interest, obscuring behaviours, duty failures, criminality, misuse of police information and detrimental action being taken against a protected discloser (in police perpetrated family violence cases).

The issue, as demonstrated by the Emma case, is whether once notified of concerns sufficient to justify a withdrawal of a complaint by IBAC under s79, Victoria Police exercises its *ability to rectify the conduct complained about* or instead opts to double down. This issue is not whether Victoria Police merely has the discretionary *ability to rectify the conduct*.

We suggest that the methodology being used by IBAC to consider complaint-referral withdrawals (and comply with Recommendation 3) is flawed and requires revision. Absent a

revision, it is unlikely that a case like Emma's would ever result in an exercise of IBAC powers under s79.

Recommendation 4

Recommendation 4 required IBAC to develop guidance to ensure that it notifies the Victorian Inspectorate at the earliest opportunity of any complaint or notification involving the conduct of IBAC or an IBAC officer in line with section 71 of the *IBAC Act*. IBAC has developed that recommended guidance and is referring complaints about IBAC to the Victorian Inspectorate. We are aware of some complaints about IBAC staff that IBAC has not referred to the Victorian Inspectorate, but in general IBAC's referral of these matters has improved.

The Victorian Inspectorate's comments concerning IBAC's communications

Page four of the above-mentioned letter from the Victorian Inspectorate's Mr Moran APM KC of 1 December 2023 states:

"IBAC has also informed the VI about its continued program of work to improve the experience of complainants who make a complaint to IBAC. These include recent training for staff on family violence awareness, and in trauma informed practice. IBAC will also develop a trauma informed model for complaints and enhance reporting on, and visibility of, complaint timelines."

We have seen no evidence, in the interactions members of the victim-survivor-network have had with IBAC since 2022 of any of the above claimed changes, or of any changes at all being implemented and experienced by victim-survivors dealing with IBAC either since the issue of that Victorian Inspectorate letter more than a year ago.

We note that in consultations with the victim-survivor-network and others about Victoria Police's responses to police-perpetrators, survivor advocates had to explain to IBAC representatives the meaning of the following well known family violence terms "RAMP" and "MARAM", and policing terms "L17" and "265" (both relevant in the police-perpetrator family violence context). IBAC does not have sufficient family violence system awareness, let alone family violence awareness. Both of these things are pre-requisites for trauma informed practice in dealing with the victim-survivors of police perpetrators, and in assessing Victoria Police's management and response to police-perpetrated family violence. These deficiencies have been communicated by the victim-survivor-network to IBAC's Executive management.

Lastly, and again referring to the extracted paragraph from the Victorian Inspectorate's year old letter above and IBAC's claims of trauma informed practice: We note that Complaint Two in the Emma Report was -

- Made to IBAC by Emma in 2019 and 2020, accepted/processed in 2020
- Referred to Victoria Police by IBAC in early 2021 (despite the concerns clearly articulated in the Emma Report about why a referral should not have been made)
- Returned to IBAC by Victoria Police in late 2022 and placed under review by IBAC

- The subject of an apology to Emma by Victoria Police in early 2024 (re the mishandling of material parts of that complaint) as part of a restorative justice process and relating to the same subject matter as settled litigation (with the State consenting to provide all discovered documents to IBAC in 2022 to assist in/ expedite the review of Complaint 2).

That now five-year-old Complaint 2 has been under review with IBAC for more than two years – remains under review. There have been no substantive updates by IBAC in respect of that complaint whilst it has been under review. The handful of updates provided over the 2 year period have generally been in response to chasing for an update, and when eventually provided effectively just said “we acknowledge your email, we are still reviewing Complaint 2”. Requests for substantive updates and estimates of closure time have been denied or rebuffed by IBAC. It cannot be said that such behaviour is trauma informed or demonstrates IBAC has changed in the way in which it deals with the victim-survivors of police perpetrators, particularly in relation to communications with complainants. While it may be argued that Complaint 2 is an isolated case, we submit that it is not. Based upon what we observe, the experiences of Emma are representative of the ongoing experiences of victim-survivors with IBAC.

We note further that, IBAC’s position is (even after its asserted implementation of the four Victorian Inspectorate recommendations from the Emma Report detailed above) - if Emma's case were to arise again, but for the earlier flagging of *Victoria Police Act* section 227 concerns, IBAC would handle that case the same way inclusive of:

- A) Referring Emma’s complaints to Victoria Police, on the basis that Victoria Police
 - i). has more resources to investigate the complaints, and
 - ii). has the ability to address the risk issues inherent in the complaint referral, the ongoing family violence risk faced by Emma and her children, and the materialised conflict of interest risk.

- B) Not revoking the complaint referral under s79 of the *IBAC Act* (for complaints 1 or 2), on the basis that while conflict of interest concerns were evident and harm (including breaches of human rights, and ongoing family violence offending) had occurred, Victoria Police had *the ability* to address these issues (even though these issues were never addressed).

That is, despite acknowledging the catastrophic consequences occasioned by and following the referral of Emma’s complaints, IBAC maintains that it would act substantively the same way today, asserting that the harm suffered was caused by Victoria Police failures and that such failures are not a matter for IBAC.

It is our view, that without the need for a material increase in funding, IBAC could –

- A) more effectively and less harmfully oversight and actively monitor referred-complaints about police perpetrated family violence,
- B) engage with victim-survivors/complainants in a trauma informed way, and

C) make changes that could avoid a repeat of the Emma case.

To do this however requires significant cultural change within IBAC, and a resetting and reframing of IBAC's internally perceived identity amongst its personnel as primarily an anti-corruption body.

Why if Emma's case were to reoccur in 2025, it would result in the same systemic harm and failures

We note and repeat our comments above in respect of IBAC's position that it would handle Emma's case substantively the same way if it were to reoccur in 2025. This can be verified with IBAC and is consistent with both IBAC's press release concerning the Emma Report and IBAC's response to the Emma Report. Given the answers provided above in respect of IBAC's position and IBAC's implementation of the Emma Report recommendations operationally, we have focused the remainder of this answer on the Victoria Police response if Emma's case were to reoccur in 2025.

Despite the inception of SOFVU in 2021 and the recommendations of the Emma Report in 2022, if the facts of Emma case were to reoccur as at the date of this submission, it would follow substantively the same path with like catastrophic outcomes. That said, superficially, if only the high-level facts of Emma's case are considered, it *could* be argued that it *should* be treated differently by Victoria Police if it were to arise today. The nuance of these opposite positions is addressed and explained below.

The offending against Emma was, in the words of the County Court, "*grave, violent and protracted*". That offending included offending directly against children, multiple representative intentional cause injury assault charges, and persistent FVIO breach charges (amongst Commonwealth and less serious assault charges) for which the perpetrator was ultimately convicted. On that basis, these days, a case like Emma's *should* meet the SOFVU threshold. Had Emma's case been direct investigated by SOFVU, the investigation would likely not have been compromised by the conflict-of-interest issues encountered by Emma in her regionally delegated complaint, her safety and escape plan may not have been leaked, and FVIO breaches and ongoing family violence she suffered throughout the complaint investigations may have been addressed. On paper, Emma's case today should go to SOFVU and Emma would be provided with a witness-support-officer to assist her through the investigation and court processes.

However, when considering the particular details of Emma's case – today that case would not be referred SOFVU and would still be mishandled by both Victoria Police and IBAC. These details are stepped through below to demonstrate a continuing weakness in the improved system for some high-risk victim-survivors of police perpetrators living in regional and remote areas:

Aspects of Emma's case that would not change today (by reference to the chronology of events)

- 1) Emma lived near the police station where her perpetrator worked. Emma's call to police and initial notification of family violence handled by his colleagues, with Emma initially notifying police of her partner's threats of self-harm with a police firearm, menacing behaviour, threats of violence and criminal damage. As is the case today, attending Victoria Police members struggled to deal with the dual realities of a (member)-perpetrator in a mental health crisis and drunk, and the partner and primary school age children of that perpetrator disclosing his violence against them. Police dealt appropriately with only one of these realities (member mental health) and not the other (family violence and ongoing risk to victims, including children).
- 2) In the 48 hours immediately following that incident and call to police, Emma and her children disclosed family violence assaults to police. Then and now, those disclosures would not have been captured by body worn camera. The police member to whom Emma made these disclosures did not record Emma's reports of family violence. Police members minimised their narrative of the initial family violence incident and Emma's disclosures in the Family Violence Safety Notice and police application for an FVIO (both of which post dated Emma's disclosures of assaults). Members prioritised the welfare and interests of Emma's perpetrator and chastised her for raising family violence concerns - telling her to focus upon supporting her perpetrator's mental health. In a text message to the senior member who had attended the initial incident, Emma disclosed that she was in fear of her life and had been weathering violent assaults for years, excusing the violence on account of her perpetrator's PTSD issues. That text message was not communicated to Professional Standards Command or otherwise recorded within Victoria Police's systems.
- 3) The information provided to Professional Standards Command (which would now go to the SOFVU within that Command) by attending local members, showed that Emma's matter was merely as an intervention order application matter with no criminal offending disclosed. These days, Emma's initial disclosures to police (which would now be caught on body worn camera) would not meet SOFVU's direct investigation threshold (her later SMS disclosing family violence assaults would result in her case meeting the threshold, but would not have been considered by SOFVU as it was not shared with anyone by the member receiving the SMS). With the minimised information to hand and unaware of the assaults Emma disclosed to local members, today SOFVU would still assess Emma's case as not meeting its threshold for direct investigation. SOFVU would regionally delegate her matter for investigation (as Emma's matter in fact was).
- 4) Three months later and after further reports by Emma, Victoria Police began investigating a single unlawful assault witnessed by Emma's children and a "minor" intervention order breach, which today would be offences below SOFVU's direct investigation threshold and would see Emma's complaint remain regionally delegated.

- 5) Emma's separate and further disclosures of serious offending were not communicated to Professional Standards Command at all (despite that being the requirement at the time, as it is today). Consequently, in the present-day context, SOFVU would not reassess Emma's case following these disclosures, and would likely leave it being regionally managed. SOFVU would remain blind to the fact that Emma was a high-risk victim.
- 6) Emma disclosed to Victoria Police local members a near fatal strangulation event, and a separate serious assault that has left her with a permanent disability and was witnessed by one of her children. The police member to whom Emma made those disclosure, unbeknown to her at the time (but later discovered through FOI response) recorded that she had disclosed no offending to him, and reported the same to Professional Standard Command. Emma audio-recorded the same conversation evidencing her reports of serious violence, and showing the police notes and communications to Professional Standard Command to be defective. There is nothing today preventing a reoccurrence of these circumstances.
- 7) Emma contacted IBAC and raised concerns about her first complaint being mishandled by Victoria Police. She raised these concerns within days of being contacted by the referred IBAC-complaint- investigator (being a Victoria Police regional colleague of her perpetrator, and a direct colleague of the members she has complained about). In response to Emma's concerns and her circumstances of ongoing family violence risk, IBAC told her to wait for the complaint review (which occurred nearly two years later). IBAC did not recall the complaint referral from Victoria Police under s79 of the IBAC Act. Today IBAC would do the same, as IBAC has stated in a press release and separately confirmed (and as can be verified with IBAC). With the benefit of hindsight and aware of the violence/harm suffered by Emma following (and because of) IBAC's referral of her complaint, IBAC continues to stand by its response to the Emma Report and its decision not to intervene in Emma's complaint to recall its referral to Victoria Police.
- 8) Emma's disclosures of assaults, serious violence and ongoing offending, as well as her concerns about local members of Victoria Police prioritising the interests of her perpetrator over her own and not believing her - were eventually communicated to Professional Standards Command as a result of her persistence (as may happen today if Emma were to call SOFVU directly). ProfessionalStandards Command recieved this information directly, and also indirectly through Emma's referred IBAC complaint.
- 9) Local members communicated their personal opinions about Emma and her family violence disclosures to Professional Standards Command and Local Area Command. Those members opined that Emma's reports of violence were likely embellished and intended to harm her perpetrator. Professional Standards Command opted not to directly investigate Emma's complaint. Today, Victoria Police Professional Standards Command (inclusive of SOFVU) is still heavily reliant upon the information and opinions provided by local members with direct knowledge of a complainant (particularly in regional areas).

10) Emma raised further concerns with IBAC about being the victim of detrimental action because she had made a complaint, interferences with her human rights by Victoria Police, police not acting in accordance with the VPM, and ongoing family violence going unactioned. IBAC again took no action, and did not make enquiries of Victoria Police. In 2021 IBAC referred Emma's second complaint back to Victoria Police (as detailed in the Emma Report and defended by IBAC). IBAC has stated in both 2022 and 2024 that it would handle Emma's second complaint the same way and not intervene or revoke its referral to Victoria Police.

Minor positive changes late in the chronology if Emma's case where to occur today

- 11) In response to the above police and IBAC inaction, while experiencing ongoing family violence offending and while in and out of women's refuges with her children, Emma drafted her own statements and gathered her own evidence. She obtaining communication and medical records and evidence of injuries with the assistance of colleagues and family violence services, and in doing so, essentially compiled her own brief of evidence. At this point, the extent of the violence to which Emma had been subjected, and the evidence supporting her disclosures became known to Professional Standards Command (and what would now be SOFVU). However, as has been conceded by a SOFVU member, with the investigation nearing completion (but for the interview of the perpetrator and an interview with one child), these days SOFVU would have made a decision to leave the investigation locally managed (as that would be more trauma informed and avoid undue delays). We agree that this would have been a trauma informed decision for SOFVU to make.
- 12) From this point in the chronology there is an improvement, as from this point, these days, given the seriousness of the offending, SOFVU would have more closely monitored Emma's criminal complaint and commenced direct communications with Emma. SOFVU also likely would have acted upon further and continuing family violence offending by Emma's perpetrator from that point in time and may have sought to remand him in custody.
- 13) That is, comparatively - today, Emma's experience from the point her perpetrator was charged may have improved due to SOFVU involvement; and it is possible that her perpetrator may have been suspended at the point he was convicted or between the time he was charged and convicted (noting the perpetrator wasn't suspended until well after he was convicted, and after there had been a media query). However, Emma and her children still would have endured a year of unmitigated family violence offending with impunity by her perpetrator, and police conflicts of interest and mishandling of her complaint, after her initial disclosure of family violence to police (and until the point of charge).
- 14) Today, from the point in time that SOFVU would likely become involved in Emma's case, it is unlikely that her first complaint to IBAC (about the leaking of her safety and escape plan to her perpetrator and his colleagues, and mishandling of her initial reports) would

have been re-investigated. However, today it is likely that the statutory limit on any unlawful disclosure charge in relation to that leak (s227 of the *Victoria Police Act*) may not have expired prior to Emma's first complaint being eventually substantiated. However this change would not be because of any process changes within IBAC or Victoria Police, but would be due to amendments to the statute of limitations applicable to that charge (from one to three years) under s227 of the *Victoria Police Act*. That amendment was as a direct consequence of Emma's case and her advocacy.

The above illustrates the ongoing gaps in the improved SOFVU process for women in rural and remote areas -

- a) with "good country bloke" perpetrators well known to, and liked by, their colleagues, (and often (but not always) suffering work related mental health issues, eliciting an empathetic and protective response in their colleagues); and
- b) in circumstances where those colleagues attend the first notified family violence incident; and
- c) those colleagues provide the information relied upon by SOFVU to assess and reassess a victim-survivor's complaint for triage and investigation.

Promoting SOFVU's contact details and contacting victims such as Emma when a referral is first made have now been embedded as a change within SOFVU (following victim-survivor advocacy), and may help mitigate the issues illustrated by Emma's case. However, there is also no certainty that when faced with the strength of unfounded opinion offered by local members about Emma not making reports and fabricating her allegations to vindictively harm her perpetrator, a SOFVU member would have believed Emma or re-assessed her case as meeting SOFVU's investigation threshold prior to the point in time that Emma tendered her own statements.

As stated at the start of this answer, while on the facts Emma's case would today likely follow the same trajectory with similarly catastrophic outcomes, Victoria Police has deployed operational change and claims that it would possibly treat her case differently. By contrast, IBAC has not materially changed its operational practices and states that with the benefit of hindsight and aware of the materialised catastrophic consequences for Emma, it would handle Emma's case the same way.

(vii) How, overall, is the police-oversight system functioning with respect to Victoria Police's response to police-perpetrated family violence? What legislative, policy, procedural and practical changes are needed to improve the system?

We refer to our earlier comments about victim-survivor experiences with IBAC. Overall the police oversight system is failing the survivors of police perpetrated family violence. IBAC oversight has compounded the harm victim-survivors of police perpetrated family violence have

experienced, as the Emma Report clearly shows. We note that IBAC is an anti-corruption agency, it is not fit for purpose to address police misconduct and harm. The secrecy that may be required for investigating public sector corruption is incompatible with transparent and effective complaints system that supports victim-survivors. It lacks a trauma informed approach and support.

The close relationship between IBAC and Victoria Police, which again may be necessary for investigating public sector corruption, has the consequence of creating a situation of regulatory capture. IBAC appears to have a lack of insight into its own conflict of interest in this respect.

We note that in other jurisdictions an adequately funded Police Ombudsman does directly investigate all family violence matters (inclusive of family violence related sexual offending and offending against children), with skills equivalent to those of specialist police investigators retained on staff. This would be our preferred option for Victoria as a standalone entity or as a division of the Victorian Ombudsman (being a more complainant centered and trauma informed body capable of both investigating and resolving both individual and systemic/thematic complaints, unlike IBAC).

There is increasing evidence of the need for a new oversight and complaint system. We note the findings of the Yoorrook Justice Commission's investigation into Victoria's justice system, particularly recommendation 27: calling for the establishment of a new independent police oversight agency.⁴ The Royal Commission into the Management of Police Informants recommendation 61: call review Victoria's police oversight system to ensure it is 'consistent and coherent and contributes to improved police accountability'.⁵ The former iteration of this Committee, the Parliamentary IBAC Committee's *Inquiry into the external oversight of police corruption and misconduct in Victoria*, recommendation 69: that included, to ensure the recommendations of the report were implemented which included strengthening IBAC and that, 'Further recommendations will be required if the complaints system is still seen to be falling short of best practice principles.'⁶ The system is falling short of providing a complainant-centred trauma informed response to all forms of police misconduct.

While not sufficient, consistent with our evidence in person, we maintain that the existing system could be significantly improved from a victim-survivor/ complainant perspective with IBAC's existing resources or only modest increases to these, supported by legislative change. These changes are set out below: –

⁴ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (2023)

⁵ Royal Commission into the Management of Police Informants (Final Report, November 2020).

⁶ Independent Board-based Anti-corruption Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (Final report, September 2018).

Modest cost changes required to IBAC and its enabling statute

Irrespective of whether police oversight in Victoria stays within IBAC, or is moved to the Victorian Ombudsman or a new standalone Police Ombudsman, from a victim-survivor perspective, the following modest cost legislative, policy, procedural and operational changes are needed to improve that police oversight system:

Practical/operational, cultural and competence changes needed within IBAC

IBAC, and any successor body, operationally must have the following six key complainant-focused capabilities, supported by policy, procedure, training and a cultural transformation programme:

- A solid knowledge and independent understanding of operational police policy, procedure, and culture. That understanding must be regularly and independently verified and validated, and not entirely informed by Victoria Police.
- Practical competence in family violence and vulnerability risk assessments, human rights law and administrative law as a mandatory requirement of all complainant-facing and decision-making staff in making assessments and referral decisions.
- Insight into the impact of trauma on the ability to articulate complaints, coupled with the ability to support and provide accommodations to complainants experiencing trauma or vulnerability through the complaints process. Absent both of these elements, substantive complaints about criminality or misconduct will be missed or dismissed as 'service level complaints' or 'lacking merit'. In practice, this requires:
 - Experienced staff working in early complaints assessment, review and triage, rather than only at the investigation and decision-making end of the complaint lifecycle.
 - Complainant welfare officers to assist complainants suffering vulnerability throughout the life of their complaints, including providing support and explanations in conciliation processes and explaining decisions and correspondence.
 - Regular correspondence in accessible language updating complainants, irrespective of whether there has been progression of a complaint.
 - Documented complainant risk and safety plans, informed by complainants and expert in-house advisors, where trauma, vulnerability or psychological distress is evident or suspected.
 - An expedited complaint-resolution process for complainants enduring exceptional circumstances or at material risk.

- An evolving understanding of corporate and executive integrity from a community and corporate standards perspective, informed by an independent Council of stakeholder representatives.
- General staff-wide competence in complainant risk assessment to enable the identification of newly at-risk complainants.
- A demonstrated understanding of what cultural awareness and safety mean in practice, informed and assessed by an independent panel of First Nations peoples. (Noting the Victorian Aboriginal Legal Service’s Policy Paper: Reforming Police Oversight in Victoria, provides 67 recommendations to ensure the body is effective from a First Nations perspective: we would support the implementation of these recommendations.⁷)

Acquiring these capabilities will require careful planning and recruitment, however once acquired cannot be considered “done”. These capabilities must be maintained and updated, with this verified through continuous evaluation and external assurance/assessment involving stakeholder feedback and user experience narratives rather than merely desktop audits.

Legislative changes needed to benefit IBAC

There are four key (legislated) new powers IBAC (or its successor in police oversight) needs to meet its mandate of holding police perpetrators of family violence accountable; and several other legislative changes needed to improve the police oversight and integrity system for the benefit of complainants/victim-survivors, and the operation of the integrity system generally. These are discussed below.

1. The power to provide information about investigations to complainants, inclusive of specific complaint recommendations and assessment/referral reasons, and a requirement to provide such information to complainants absent a compelling reason not to do so

Presently the IBAC Act limits what IBAC can share with victim-survivors/ complainants about IBAC’s communications with Victoria Police, inclusive of refusing to share with complainants recommendations made to Victoria Police about the victim-survivor's complaint. Such secrecy is warranted in respect of corrupting investigations but not complaints about police misconduct. Further refusing to provide complainants with information, recommendations and reasons for complaint review outcomes and decisions causes distress to complainants and undermines confidence in IBAC.

⁷ Victorian Aboriginal Legal Services, *Policy Paper: Reforming Police Oversight in Victoria* (2022): available: <https://vals73.wpengine.com/wp-content/uploads/2022/07/Policy-Paper-Reforming-Police-Oversight.pdf>

2. *Changes to the FOI Act to remove the exemption for IBAC and IBAC related communications re non corruption related complaints*

Complainants cannot access information about the reasons why their complaints were referred or complaint reviews, or correspondence about their complaints between Victoria Police and IBAC under FOI. These exemptions in the context of police perpetrated family violence complaints referred to Victoria Police by IBAC, are not necessary and should be removed. Further it is difficult to hold IBAC accountable for its failures absent being above to exercised Freedom of Information access rights.

3. *The power to obtain information directly from Victoria Police systems in the context of a complaint review or referred complaint monitoring*

As noted above, presently IBAC cannot and does not have direct access to Victoria Police systems in the course of monitoring referred complaints (including referred police perpetrated family violence complaints) or when reviewing completed referred investigation files. IBAC only has these powers when direct investigating matters.

It is essential that IBAC has the power to obtain information directly from Victoria Police systems, rather than just 'compel production' in the context of reviewing referred complaint files. This will ensure that information is not hidden or omitted from internal-investigation files and information request responses. As noted above, IBAC currently does not have that power in relation to complaints it refers to Victoria Police to investigate (and may flag for IBAC review), being 98% of all police complaints received by IBAC, and 100% of police perpetrated family violence complaints received.

IBAC must have direct access to both structured and unstructured information repositories, and the ability to conduct e-discovery on those repositories. That significant power must be fettered by:

- stringent security measures and
- Victorian Inspectorate oversight, audit and review, to provide appropriate checks and balances.

If provided with full and unfettered systems access, IBAC will deal with complaints based on complete and reliable information to make decisions and assessments.

4. *Enhanced IBAC powers to investigate, publicly report and refer*

Whether or not IBAC's funding is changed to permit the direct investigation of more complaints, IBAC needs the power to directly investigate all complaints against police, publicly report and refer. This must include:

- The power to directly investigate potentially systemic issues, including systemic failures in addressing police-perpetrated and other forms of family violence, over-policing of minorities, and workplace cultural and safety issues - such as sexual harassment and racism.
- A bolstering of the power to report on those issues publicly and provide copies of recommendations to complainants.
- The power to direct investigate all matters involving allegations of criminality and misconduct by police, and for co-investigated matters (such as homicides) to sit in on interviews with accused members and witnesses and ask questions – and have power of veto over police members appointed to the police investigation team and given access to investigation information.
- Coercive questioning powers in some circumstances.
- The power to refer charges for authorisation and progression to:
 - the Office of Public Prosecutions or
 - an alternative independent counsel (such as the director of an interstate public prosecutions office) where there is an actual or perceived conflict of interest.

5. The power to make decisions that are final and binding on Victoria Police

IBAC needs the power to both make complaint-outcome decisions and discipline outcomes. Those outcomes must be:

- final and binding on Victoria Police and its members and
- published where possible and appropriate – in de-identified form (with complainant consent). This is so as to inform and manage the expectations of other complainants and their advocates, and set standards and drive cultural change within Victoria Police.

IBAC reports have commented on inadequate police discipline outcomes. Most recently, IBAC's thematic review of predatory behaviour by police members found that Victoria Police's Legal and Discipline Advisory Unit 'provided problematic advice to investigators, including recommending sanctions that were not consistent with investigation findings, Victoria Police standards or community expectations'.

IBAC needs the power (within appropriate and well-defined legislative bounds) to make and impose binding discipline outcomes that can only be challenged by a police member in an external tribunal or the Fair Work Commission. This will align police member/employee accountability standards with community standards.

6. Changes to the Public Interest Disclosure (PID) regime

It is presently an offence to take detrimental action against a protected discloser because they have made that disclosure. However, in practice while many complainants feel they are the

victims of detrimental action, or have had their status as a protected discloser compromised in the workplace. No Victoria Police member has been charged or convicted in relation to disclosing the contents of a protected complaint or identity of a protected discloser, or for taking detrimental action against a protected discloser. We suggest that this is because, in the policing context, information compromise and detrimental action is taken in concert by groups of individuals or Victoria Police as a department, rather than by one identifiable Victoria Police member. Absent legislative change to address this, the conduct will continue and discourage the making of complaints.

We note that protected disclosers in the victim-survivor network often report feeling silenced, isolated and threatened by IBAC's legalistic and overbearing PID, PIC (and previously PDC) letters, while also feeling that they are the subject of gossip and that others within Victoria Police know about the fact and content of their complaints. Amendments to the Public Interest Disclosures Act and/or the Victoria Police Act are required to address this issue and prohibit detrimental action and information compromises in concert against a protected discloser.

7. Powers to resolve disputes and award compensation up to a cap

IBAC needs the power to require Victoria Police to attend conciliation, and make decisions to resolve complaints, within bounds. These complaint-resolution decisions should include:

- requiring Victoria Police pay compensation up to a statutory cap
- requiring acknowledgement, apology or restorative justice by Victoria Police and
- requiring procedural, policy and/or training change.

Those decisions must be binding on Victoria Police and formally resolve the complaint (meaning the complainant cannot subsequently commence litigation in relation to the complaint's allegations) if and only if the decision is accepted by the complainant. This is not a power held by IBAC or the Victorian Ombudsman at present, but it is a power members of the victim-survivor network believes IBAC needs to address their concerns.

It is noted that in many cases victim-survivors merely want their referred complaints dealt with properly by Victoria Police; and where those complaints have been mishandled and caused harm, most just want an apology, a commitment to change to avoid a repeat of the conduct/failure, and discipline outcomes if there has been wrongdoing. A minority want modest compensation for substantiated expenses (such as temporary accommodation expenses after being rendered homeless due to misidentification as the predominant family violence aggressor by police). Victoria Police generally does not provide these modest requested outcomes to victim-survivors of police perpetrators where the department has failed them or mishandled their cases, and only issues apologies in rare cases.

Such conciliation processes and decisions will reduce litigation against Victoria Police while increasing police transparency and accountability (provided decisions and thematic reviews are

published by the new authority). Compared to litigation, the exercise of such decision-making powers to resolve a dispute will:

- be cheaper
- drive greater cultural change, accountability and transparency within Victoria Police
- be victim centred and trauma informed
- give victims more closure than a litigated outcome in many cases and
- be less traumatic than litigation or the current IBAC system for complainants.

A new oversight and complaints body needed

These changes will improve the situation for victim-survivors of police perpetrated family violence – but not fix it. IBAC, as outlined in these responses, is not an appropriate and effective body for police oversight and dealing with victims of police harm in a trauma informed way.

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APPENDIX

Beyond Survival, Submission No. 38 to Legal and Social Issues Committee, Parliament of Victoria, *Inquiry Into Capturing Data On Family Violence Perpetrators In Victoria*

**Submission
No 38**

**INQUIRY INTO CAPTURING DATA ON FAMILY VIOLENCE
PERPETRATORS IN VICTORIA**

Organisation: Flat Out
Organisation: Police Accountability Project
Date Received: 31 May 2024



BEYOND SURVIVAL

Perpetrator data: Submission - The Legislative Assembly Legal and Social Issues Committee

Beyond Survival

May 2024

Summary: All family violence by police is high-risk violence

The perpetration of family violence by police is under-researched with sweeping barriers and challenges for community members and family violence services seeking to access data. Family violence by police is specific and high-risk, but the scale and acuity of this violence is masked by the culture of impunity surrounding it. This violence has deep-seated implications for both community safety and statewide family violence responses.

Insight into the prevalence, detail and risk of this violence demands engagement with this harm, commitment to accurately assessing the scale and impact of the violence and consequences of this, and a foundational re-think of the role of policing in the context of the family violence service system. In the immediate term, to gather an accurate picture of this violence and to reduce harm to victim-survivors and the wider community, action must be taken to:

1. Abolish self-investigation of police complaints
2. Mandate police public reporting of data, including what is known about police-perpetrated family violence, and police action and outcomes, police complaints, as well as the linked issues of “misidentification” or wrongful identification of the predominant aggressor in cases involving police,
3. Supporting and initiating family violence responses, practice-based risk assessment and safety planning strategies that support and resource survivor-led assessments of risk
4. Research and direct consultation with victim-survivors, including with a focus on perpetrator tactics, institutional and service responses (or lack of)
5. Resourcing of specialist and survivor-led resource development and training to support family violence workers and services in responding to police-perpetrated family violence



Background: The intersection of family violence and harms of policing

The Beyond Survival: Policing Family Violence Project (BSP) is a Naarm/Melbourne-based project working at the intersection of interpersonal and state-based gender violence, where the harms of high-risk family violence are compounded by harms related to family violence policing. We respond to police accountability issues, duty failures and harms related to family violence policing, and seek to intervene into and prevent the criminalisation of victim-survivors.

Beyond Survival is an integrated social legal partnership of Flat Out Inc and the Police Accountability Project (Inner Melbourne Community Legal). Our project is directed by a working group including the Law and Advocacy Centre for Women and a network of survivor advisors. We provide wraparound legal and social work support to victim survivors, including family criminal law and family violence legal assistance, and we also conduct strategic litigation, systemic advocacy, research and training, as well as a narrative therapy “storytelling project”, gathering and documenting lived experiences of family violence policing, its impacts, and ways that survivors have responded in the face of such compounding harms.

Through this work, we are regularly in contact and undertaking co-advocacy with victim-survivors of police-perpetrated family violence, and/or providing legal or family violence support to the people – predominantly women and children – targeted by this violence.

Bringing the gendered violence of policing into focus: Foundational analysis

We are a state-wide project, and in the course of our work, our contact with survivors and support of survivor peer support networks, and documentation of stories, we regularly hear from people impacted by harmful and/or ineffective family violence policing – including situations where police are directly perpetrating this violence. Through this contact and solidarity work, we identify strong commonalities in the foundational harms of centering police as first responders to family violence, and the consequences of this for the people and communities for whom such responses are not sites of safety.

Given the increasingly understood drivers of family violence, including factors such as rigid gender roles, cultures of [hyper]masculinity and violence-supporting attitudes, and the ways that these factors are replicated and entrenched in police forces and cultures of policing^[1] around [so-called] Australia, we reject the foundational position that police should be considered central to the family violence service system. It is clear from wider evidence and ongoing data, from stories from lived experience, and in the course of our own practice that increased resourcing and endorsement of police responses to family violence is not leading to



increased safety for victim-survivors, and in fact, that the extension of this policing is directly contributing to harm towards, and the criminalisation of many victim-survivors of family violence – particularly Aboriginal women, immigrant women and Women of Colour (WOC)/Culturally and Linguistically Diverse (CALD) women.

Further, that policy and funding pressure for increasingly close relationships, and the development of more strongly fused arrangements and information-sharing schemes between police and family violence services in turn impacts the accessibility or safety of these services for the many survivors for whom police and carceral responses are not sought, do not represent safety, or in fact escalate risk and violence. This includes survivors who have been historically criminalised, those who experience targeting or discrimination related to drug or alcohol use, who are employed in industries that are marginalised, including the sex industry, or who face discrimination based on factors such as mental health issues; or who are in situations where the person using violence is either themselves a police officer, or in a position that is closely connected with police.

These inherent and foundational issues with family violence policing drive a number of trends in the harms enacted via or flowing from family violence policing. In the course of our response work, we identify and respond to a number of these, including:

1. So-called “Misidentification”: Situations where the person experiencing violence is wrongly identified by police as the perpetrator of family violence, including being listed as the respondent on a police-initiated intervention order and/or facing criminal charges as a consequence of this wrongful identification;
2. Biased and discriminatory policing and police responses, including racial profiling and racialised policing, situations where police responses and are discriminatory on the basis of factors including mental health, disabilities, histories of criminalisation , or other incidences of targeted and biased policing.
3. Police duty failures and breaches of police codes of practice for the Investigation of Family Violence, including things such as failures to enforce breaches of intervention orders and failures to adequately consider and assess the safety needs of children
4. Police responses leading to criminalisation of, or other harm to, the person experiencing family violence

And notably for this focused submission,

5. Situations where the person using family violence is a police officer or employee of Victoria Police. This includes both the barriers to reporting, data related to the scale of the harm, and the cultures of impunity and inherent conflicts of interest influencing police responses (or lack of response) to such violence, and the compounding risk and



harm of this for the people (predominantly women and children) who are the targets of this violence

For the scope of the Parliamentary Committee’s inquiry into perpetrator data, our submission is focused on practice insights related to police-perpetrated violence, but we wish to note the intersection between this violence and other key issues in family violence policing. This includes the nexus of police-perpetrated violence and the incorrect identification (“misidentification”) of victim-survivors of police violence.

We note that de-identified stories from lived experience and practice can be provided directly on request and with permission in the form of “case studies”. Given the high-risk nature of this violence, these are not provided here.

Police-perpetrated family violence: The intersection of high-risk family violence and institutional impunity

In our experience, the research and evidence base regarding perpetration of family violence, including that going into the development of the MARAM risk assessment framework currently used in Victoria, is largely focused on violence used by community members or ‘civilians’.

The bulk of the publicly available does not examine or account for the rates or specific types of violence perpetrated by police, and the corresponding risk and harm to victim-survivors and the broader community.

This excludes a very significant cohort of perpetration data – data related to not just prevalence, but also the specific tactics employed by police who abuse, the risk implications of these, and what these in turn mean for the people who are the targets of their violence.

Responding to family violence perpetrated by police – sometimes referred to as “officer-involved domestic violence” (OIDV) – and supporting the family members experiencing this violence is a core area of our project work.

From a project perspective, we have a focus on police-perpetrated violence in our direct support and advocacy work because of:

1. The high-risk nature of this violence, and the particular difficulties in escaping it, given the access, authority and family violence system knowledge that police officers hold and weaponise
2. The serious barriers and challenges survivors face in obtaining service-based support that does not further escalate risk (particularly challenging in family violence service



systems that are increasingly interconnected with police, and rely on police reports and 000 calls as default crisis response options)

3. The extent of the collusion and impunity surrounding police who perpetrate violence, the compounding risk this presents for the family members who are the targets of the violence; and more broadly what this reveals about the culture of impunity and minimisation of violence within police forces.
4. The complex and interrelated barriers to reporting at the individual level, and to accessing data on the rates and scale of the harm at the community-wide level

The scale of the violence: Under-researched and under-reported.

Despite what data and evidence reveals about police officers perpetrating violence at higher rates than the general community, this area is deeply under-researched internationally and in [so-called] Australia.

Much of the available international research dates from the early 1990s, with evidence indication that police perpetrate family violence at higher rates than those for the wider community¹. Research includes figures as high as violence being used in 40% of “police families”.²

¹ ¹ (i) Johnson, L.B. (1991). *On the front lines: Police stress and family well-being*. Hearing before the Select Committee on Children, Youth, and Families House of Representatives: 102 Congress First Session May 20 (p. 32-48). Washington DC: US Government Printing Office.

(ii) Neidig, P.H., Russell, H.E. & Seng, A.F. (1992). Interspousal aggression in law enforcement families: A preliminary investigation. *Police Studies*, Vol. 15 (1), p. 30-38.

² More recent FOI requests in the UK also revealed alarming levels of family violence/domestic abuse by police, covered here: <https://www.thebureauinvestigates.com/stories/2019-05-01/police-perpetrators-domestic-violence>

“Police officers and staff across the UK were reported for alleged domestic abuse almost 700 times in the three years up to April 2018, according to Freedom of Information responses - more than four times a week on average. The real figure is likely to be much higher as data was only provided by 37 of the UK’s 48 police forces (including specialist forces).

Beyond the number of allegations, the figures suggest reports about alleged abuse by police are treated differently. Just 3.9% in England and Wales ended in conviction, compared with 6.2% among the general population. Less than a quarter of reports resulted in any sort of professional discipline. Greater Manchester Police, one of the country’s biggest forces, secured just one conviction out of 79 reports over the three-year period.”



However, practitioners, researchers, survivor advocates and journalists both here and internationally frequently encounter structural, political and data barriers that hinder an accurate assessment. For instance, research undertaken more recently by the New York Times found that, “with no central reporting system and little definitive research, there is no accurate way to measure the problem”.³ They noted the subsequent challenges in research approaches in the absence of comprehensive data, such as relying on officer-disclosed violence. They cited examples of this: “[I]n some instances, researchers have resorted to asking officers to confess how often they had committed abuse. One such study said one in 10 officers at seven police agencies admitted that they had ‘slapped, punched or otherwise injured’ a spouse or domestic partner.” In 2000, the New York Times examined more than 29,000 police misconduct complaints in Florida, where access to this data was possible under open records laws. Their conclusion, that data “strongly suggests that domestic abuse had been underreported to the state for years.”⁴

The overseas experience is mirrored here, with insights into the nature and scale of the perpetration only made possibly as a consequence of survivor-led advocacy, journalists researching and writing from this vital public interest angle, and the work of family violence advocates. One survivor advocate refers to this work as the task of breaking down ‘the blue wall of silence’⁵ regarding abuse by police officers.

Reputational management and deliberate obfuscation of data

The private and public battle for both data and response from Victoria Police regarding police perpetrated family violence offers a revealing insight into the political nature of this issue.

Where survivor advocates and journalists had undertaken FOI requests to gather information from police about what data they held concerning officer perpetration, this revealed a recognition in Family Violence Command here and interstate both that officers are perpetrating violence, and that this perpetration is policed differently when the abuser is an officer.

³ Childress, Sarah & Sarah Cohen, Rebecca R. Ruiz (2013) ‘Departments Are Slow to Police Their Own Abusers’ *The New York Times*, November 23, 2013
<https://www.nytimes.com/projects/2013/police-domestic-abuse/index.html?mtrref=www.theatlantic.com&qwh=F80380B2D3EE5F46351D5D3E286EB892&qwt=pay&assetType=PAYWALL>

^[3] *Ibid.*

⁴ *Ibid.*

⁵ ^[4] The phrase ‘blue wall of silence’ is taken from discussions with J, who uses this term to describe the culture of silence and impunity around officers who abuse.



For instance, minutes from a 2019 meeting of the National Family Violence Executive Policing Group, contained this quote: “VicPol found if you look at data – known offending – we are policing community differently from how we police ourselves”.⁶

Further, a Victoria Police internal presentation, also obtained under FOI was titled, ‘Improving responses to family violence involving employees.’ This presentation looked at data police held about family violence involving police from 2014-2018. The presentation stated, “we are policing ourselves differently,” and that, “our differential response is not resulting in confidence to report”.⁷

Despite this internal knowledge and data held by police, public comment by Victoria Police in response media coverage of the use of high-lethality-risk violence (including strangulation and sexual violence) by a police officer, and the sharing of the victim’s escape plan with the perpetrator included this comment by Family Violence Command: “We hold our officers more accountable than other members of the community.”⁸

Other data barriers

In addition to the political obstructions to a full and frank examination of this violence across the state are a number of other specific barriers

Lack of data from police

Without any mandated public release of data from state, territory or federal police forces here, gathering information to get a picture of the violence is a laborious process of Freedom of Information requests and other data battles led by victim-survivors^[1], supportive journalists and family violence workers. In response to public scrutiny, police may release ad hoc media alerts about the instances in which individual officers are charged, but this does not give a comprehensive picture of the prevalence and detail of police perpetration, nor the outcomes where such violence is reported.

⁶ [2] National Family Violence Policing Executive Group (2019), ‘Minutes’ 16 July 2019

⁷ Victoria Police (undated) ‘Improving responses to family violence involving employees’ [FOI 2020]

⁸ *Victoria Police Assistant Commissioner, Family Violence Command, Dean McWhirter, July 2020, quoted in* Matilda Marozzi (2020) ‘Victoria Police, minister apologises to domestic violence victim after ‘appalling’ privacy breach, ABC Radio Melbourne, 17 June 2020

<https://www.abc.net.au/news/2020-06-17/victoria-police-officers-domestic-violence-lisa-neville/12332238>



Self-investigative police complaints system

The lack of published data from police is exacerbated by the self-investigative complaints system in Victoria. This system offers victim-survivors either:

1. A pathway directly to police Professional Standards Command – a pathway that victim-survivors of police-perpetrated violence frequently feel precluded from taking due to risk and safety issues, and the inherent conflict of interest in making a complaint to the same institution that employs the perpetrator, and may have already demonstrated inaction or bias – or;
2. To complain to IBAC. In the latter instance, the vast majority of complaints are returned by IBAC to Victoria Police⁹, and so regardless of pathway, it's largely a case of police investigating other police when complaints are made, and the overwhelming majority of these complaints are returned found 'unsubstantiated'. It is further noted that in conducting these investigations, Victoria Police has admitted it does not run e-discovery processes, instead asking officers/'members' under investigation and other relevant staff to forward relevant documents and evidence supporting their version of events to the investigator, in a process survivors have described as 'getting police to mark their own homework'. This materially flawed and conflict of interest ridden self-investigation process is then compounded by the legislative deficiencies imposed upon the IBAC review process (where these files are reviewed by IBAC): IBAC in conducting a review cannot run e-discovery on Victoria Police's data bases and ensure all relevant information has been gathered and considered. The matters described above further hinder and obstruct the task of gathering clear data and make tracking the scale of the harm difficult.

Data from survivor support agencies

While there is a distinct lack of data shared by police, family violence and community services who support victim-survivors have a window into practice-based evidence of this violence. However, in the absence of comprehensive data-gathering mechanisms, much of this evidence is held anecdotally. In turn, tracking these harms and consolidating a body of knowledge across family violence and community legal services is difficult when services aren't funded to do so, when data and privacy constraints make it difficult to share information.

⁹ Figures from the Police Accountability Project police complaints clinic indicate that 98% of complaints made to police from the clinic – people complaining with the assistance of lawyers – were returned 'unsubstantiated': Hopkins, T., & McDonald, J. (2016). *Police Accountability and Human Rights Clinic: Report on the first year of operation*. Melbourne, Australia: Flemington and Kensington Community Legal Centre. Retrieved from https://www.policeaccountability.org.au/wp-content/uploads/2016/09/PAC_report_softcopy.pdf



In turn, the ever-closer arrangements between police and family violence services creates a difficult environment for workers and services to speak frankly about the violence they encounter, as there is a strong impetus to maintain relationships with police.

Policy and practice: Data lost in the gap

Survivor-led media advocacy, community pressure and a number of high-profile stories of violence by police officers, as well as the release of data concerning the differences in charge and conviction rates for officers versus the wider community [detailed below] resulted in Victoria Police making some public comment acknowledging the systemic issues in police responses. Victoria Police developed and implemented a policy on Family Violence Involving Victoria Police Employees, which was incorporated into the Victoria Police Manual (VPM). Alongside this, in 2021 Victoria Police publicly announced a new ‘Sexual Offences and Family Violence Unit’ (SOFVU), which would be tasked with investigating such violence¹⁰. Detailed analysis of this policy and practice-based experience of its implementation to date is outside the scope of this submissions, but in terms of barriers to active data collection we wish to note the following:

The current policy and practice approach by police takes a position of ‘triaging’ police family violence on the basis of risk, where SOFVU will investigate family violence deemed to be high risk. It is our position that given the power differentials, access, knowledge, training and institutional connections when the abuser is a police officer, as well as the risk and barriers facing victim-survivors, all family violence by police should be understood as high risk. The current position fails to grapple with the risk and complexities for victim-survivors in disclosing to police, and the passage of such disclosures (where violence may be disclosed over time, rather than at the first instance), and also means that it limits the data held by SOFVU as a specialist unit, and disperses this back to the regions.

What we know about police perpetration

Data: What has been obtained and what this reveals about cultures of impunity

Recent Victorian data obtained under Freedom of Information laws reveals massive disparities in both responses and consequences for police who use violence against a partner or family member, versus those for a person from the wider community who perpetrates such violence.

¹⁰ Victoria Police launches Australian-first policy for dealing with family violence perpetrators in its ranks”, (11 November 2021).² Matilda Marrozzi, ABC Radio, “Victoria Police launches dedicated unit to investigate family violence involving officers”, (1 December 2021)



In Victoria, despite a huge increase in the number of reports about family violence perpetrated by police, in a five-year data period [2015-2019] just 82 officers were charged with family violence offences. Of these, just 10 went to court, 9 had their charges withdrawn and only one officer was found guilty but had no conviction recorded.¹¹

There are similarly massive disparities between these outcomes involving police, and those for the community. For the Victorian community more broadly in 2019, 11% of defendants finalised in Victoria's criminal courts had their charges withdrawn by the prosecution, and 84% of family violence defendants had their charges proven.

But in 2020 just 8 Victoria police personnel, 7 officers and 1 civilian staff member were charged, and of these only one convicted.

This difficult-to-obtain data shows very clearly that when police perpetrate family violence they are rarely charged, and they are rarely, if ever convicted.

These rates are echoed in other FOI data obtained from interstate. For instance, in 2021, NSW had more than 17 000 officers, on the force, but just 15 police officers were charged with family violence offences. This is a charge rate of 0.08%.

The NSW charge rate for police is again starkly different to that for the broader community. In 2021, about 42 people per 10,000 people in NSW were charged with domestic and family violence offences. This correlates to a charge rate of 0.42% of the general population. A comparison of these figures reveals that people in the wider community are five times more likely to be charged with family and domestic violence than police.

Again this disparity is echoed when it comes to conviction. Of the 27 officers charged in NSW for using family violence in the 2019-20 period, only five officers were convicted, and another four were found guilty but with no conviction recorded – or a 33% conviction rate for police officers charged with family violence. In contrast, in 2001, 89% of people from the community who appeared in NSW courts charged with family violence offences were convicted of these.

Given the severity and scale of the violence involved, such low charge and conviction rates speak volumes about the ongoing culture of impunity for officers who use violence, and the level of risk that targeted family members face. These figures contradict and undermine any

¹¹ Hayley Gleeson, ABC Online, "Victoria Police officer convicted of family violence back on the frontline as 'strikingly' few cops charged in 2020", (17 December 2021)



police claims that officers who use violence will be held to the same standard of account as members of the wider community.

The data regarding employment and other consequences also shows up the disparity and one of the ways in which police are insulated from consequences. Where in the general community, a family violence conviction can a person prevented even from volunteering for many organisations, data obtained from police reveals that three NSW Police senior constables convicted of family violence offences, and a further three officers found guilty of family violence charges without conviction during the 2019-20 period are still serving on the force.

To truly track this perpetration and its impacts and start to get a picture of its implications for the community, it imperative that any research that examines this violence looks across not just rates and prevalence, but also action, outcomes and consequences including charges, convictions, disciplinary action and employment consequences, if any.

Under-representation in the data on perpetration

We also note that the figures above under-represent the scale of police-perpetrated violence. Indeed, much of the violence is excluded from these figures, including situations where people, predominantly women, have tried to report and been dissuaded, or who have not reported either because doing so will escalate risk, or because of the conflict of interest in being expected to report to colleagues and often friends of the perpetrator.

Given the role police play as first responders and in driving carceral responses to family violence – the wholesale failure to engage or deal with the family violence within police forces themselves using the very tools they seek to engage and use in the community speaks volumes.

Severity, scale and impacts of police-perpetrated family violence

“All that the kids and I have learned from going through this process of reporting to police is to never speak out about the violence, as it won’t achieve anything and will put us at greater risk.” – M, assisted by Beyond Survival

When considering perpetration data related to police, it is not just the rates but the types of violence, expanded tactics, levels of systemic collusion and extended sphere of coercive control, that are so concerning and high-risk in cases of police-perpetrated family violence. There are huge power differentials between police who use violence and the family members they target. We know that family violence is about power and control, and that the violence



used by police who abuse risks the safety and sometimes the lives of the people, predominantly women and children, who are targeted.

Police are trained in and authorised to use force in the course of their work as police officers. They have a huge amount of authority, access to police resources – including police intelligence databases such as LEAP (Law Enforcement Assistance Program) and have detailed knowledge about the family violence response system. This knowledge can include insights into the crisis response and refuge system, drop-off points, potentially locations of refuge and crisis accommodation, as well as knowledge of family violence policing and investigations, and the Family Violence Intervention Order (FVIO) system.

By virtue of their role, police have connections to and authority in dealing with other officers and services, and they also have access to weapons. When police weaponise this in the violence they perpetrate against partners or family members, this violence is often sustained, high-risk and very difficult to escape.

Their very role as police enables a specific type of pervasive and high-risk violence and tactics of coercive control, including surveillance. We work with women where the officers who perpetrate violence against them have used the LEAP [law enforcement] database to search key information about the women themselves or their family members. In a number of instances, officers have actively disclosed the information they have accessed or the fact that they are doing so to the women they are targeting. This is happening as part of the violence, and as a specific police-based tactic to create leverage, generate fear and build power and control (see below). In some instances, abusive police have used police resources, such as patrol cars, to track the movements of the person they're abusing, to increase fear and control and limit the person's sense of freedom or ability to escape.

Disturbingly, in our experiences the officers in these cases have often undertaken police training in responding to family violence, and in some instances even worked in or transferred to family violence roles or teams whilst perpetrating violence themselves.

These practice-based experiences are echoed in the findings by the Independent Broad-based Anti-corruption Commission (IBAC) in their 2033 thematic review, *Predatory Behaviour by Victoria Police* where they found: "Concerningly, four subject officers in the cases reviewed were from units undertaking sensitive work involving close contact with very vulnerable members of the public, including children in the care of the state".¹²

¹²Independent Broad-based anti-corruption Commission (2023) 'Predatory behaviour continues within Victoria Police' *IBAC Insights*, 2 July 2023



Specialist perpetration data and police tactics:

The abuse of police intelligence databases

Just as police perpetrated gender violence, including family violence, is under-researched and under-disclosed, when it comes to misuse of intelligence databases by police for predatory purposes, it's another case of police monitoring and investigating themselves, with the information about the scale of the violence not made public

Back in 2015 the IBAC report into predatory behaviour by Victoria police found that predatory behaviour by police is under-reported and that “the misuse of law enforcement information and databases is a common facet in the commission of predatory behaviour”. Despite this earlier finding, the 2019 IBAC report into data misuse and disclosure by Victoria Police made no mention of family violence, and just one reference to stalking by a police officer in Queensland. As such, a significant opportunity to scrutinise the use of police intelligence databases in the course of the perpetration of gendered and family violence was not taken, and the prevalence and acuity of this problem remains obfuscated.

As with the broader data battle concerning police violence, to confirm that this violence has occurred, it is up to individual women who are experiencing this type of abusive and unlawful accessing of their data to seek the information from police under freedom of information laws. These processes are time-consuming and confusing, and even when results are returned under FOI the documents are often heavily redacted.

When family violence is perpetrated by police, the power differentials, specialist training, authority and reputational protection afforded to police results in a particular and high-risk family violence. In the hands of police who abuse, police intelligence databases are effectively used as a purpose-built tool for the perpetration of gendered violence – offering a level of

^[1] Independent Broad-based Anti-Corruption Commission (2023) Predatory behaviour by police: Thematic Review Summary.

<https://www.ibac.vic.gov.au/predatory-behaviour-by-police>

Please note that the police violence reviewed by IBAC are, as far as we know, relates to different incidents of harm than those impacting survivors with whom we are in contact. This again speaks to the challenges and imperative of gathering a more comprehensive and accurate picture of the scale of the violence.



access into the histories, locations, police call-outs, records contact details of victim-survivors and their friends and family members otherwise unavailable to perpetrators in the community.

As we understand, Victoria Police don't currently pro-actively monitor for misuse of the intelligence databases but instead rely on complaints and/or "flag" files in some cases where a concern has been raised. Victim-survivors are clear that this system is ineffective, citing instances where abusers have requested that friends/colleagues undertake the LEAP check on their behalf, to avoid raising a complaint, and noting the ever-increasing opportunities that officers have to access databases remotely, with one woman noting that, "by the time the flag on my file notified police that he has accessed my new address, he would already be at my home and I would be dead."

There has never been an independent investigation into scale of the misuse of the LEAP database by police in the course of perpetration of family and other gender-based violence. As a small project, if predatory accesses of police data are occurring as part of the perpetration of violence in the majority of cases, this 'tip of the iceberg' insight into this specific and high-risk tactic of abuse demands more rigorous investigation.

The weaponisation of "misidentification"

We note also that police knowledge of family violence practice means that police who perpetrate family violence are specifically and uniquely able to weaponise "misidentification," and to make false reports about being the victim of family violence by the very person (likely partner or ex-partner) they are targeting. In our practice experience, this has included police perpetrators overtly threatening this, telling survivors if they disclose the violence, that in response they will tell police [their own colleagues and friends] that the victim-survivor is actually the perpetrator.

We have seen this lead to police-initiated intervention order proceedings, where the police perpetrator is listed as the affected family member (AFM), and in situations where both the victim-survivor and the person using violence are police officers or employees, to situations where internal investigations and disciplinary proceedings are initiated against the person experiencing violence. We note that this nexus of police-perpetrated violence and wrongful identification of the predominant aggressor is essential to consider in any responses to either issue, and that the incorrect identification of the Affected Family Members (AFMs) in instances of police-perpetrated family violence is an additional barrier to accurate perpetrator data.



Other tactics of police abuse:

In addition to what is described above, victim-survivor accounts of police-perpetrated violence, including via family violence risk assessments show that in addition to the evidence-based risk factors on the MARAM, police are engaging in specific forms of violence directly enabled by and correlated with their role as police.

In our practice experience, this includes tactics of abuse including, but not limited to:

- The disclosure of information gathered in the course of their other policing to generate fear. This includes [unlawful] sharing of images, audio, visual or personal accounts from violent and abusive arrests and other 'use-of-force' incidents with survivors; as well as the sharing of demeaning or derogatory content about community members who have been the subject of police action. Survivors with whom we speak detail the way these materials are shared to convey impunity around officers' use of violence, to cause fear and intimidation, and to display the collegial bonds between officers to further isolate the victim-survivor
- The use of police role to undermine and gaslight victim-survivors and to groom and manipulate services and systems. This includes tactics such as officers who abuse attended schools, daycare centres, key events in uniform and using the job to leverage information and co-operation/collusion from third parties to isolate and undermine the victim-survivor
- Making threats to use 'service' weapons
- Weaponising police resources and processes, including the use of patrol cars to surveil and the use of targeted traffic stops
- A continuum of the use of colleagues, including sharing information with other officers to discredit the victim-survivor and any disclosures about the violence; using colleagues to circumvent scrutiny of tactics of abuse or co-abuse (such as engaging a colleague to conduct a stop).

A detailed understanding of this violence requires research and data not just into the prevalence and scale of this violence, but into the specific nature, risk and acuity including the tactics of abuse by police, the way these intersect with institutional responses (or lack of response), and the impacts and experiences for victim-survivors.

In line with the global evidence base, and that used in the current MARAM risk assessment framework, which acknowledges that the most reliable predictor of serious injury and lethality



in the context of family violence is the victim-survivor's own assessment of risk and level of fear, together with the presence of evidence-based risk factors; any research approach to gather data on this perpetration must centre and support expertise and contributions from the lived experience of survivors.

What is required:

Limited reforms will not tackle the inherent issues

We note that while data about police-perpetrated family violence is difficult to access, each time we engage in public and/or media advocacy, including in collaboration with survivors of this violence, we hear from other people, predominantly women, speaking of the violence they and their children are experiencing by police officer partners or ex-partners. In many instances these people either have not reported the violence because of the way this would escalate risk; or if they have, they report being met with minimisation, disbelief or funneled into processes that would see the perpetrator's colleagues and/or friends tasked with investigating. Where victim-survivors have complaints about police responses, the self-investigative complaints system in Victoria sees the overwhelming majority of such complaints referred back to police for investigation^[5]. Given the nexus of family violence, impunity and harm, this self-investigative system poses an unacceptable level of risk and bias to these victim-survivors and others experiencing family violence.

Given the dearth of research, resources for survivor support and of accessible support pathways for survivors, coupled with extremity of risk, much of the data, practice approaches and support work is being undertaken via informal and peer support networks. We call your attention to the work Victims' Voices network, with whom we collaborate, and urge that any response action to police-perpetrated family violence and data about this violence be directed by the expertise of those with lived experience.

All family violence by police is high-risk violence

In response to survivor-led advocacy work and community pressure in Victoria, Victoria Police recently announced the expansion of Taskforce Salus to build the 'Sexual Offences and Family Violence Unit/ (SOFVU)^[6] and develop a policy for responses to 'officer-involved domestic violence'. As noted, it is our position that the SOFVU position on triaging family violence reports into higher and lower risk fails to account for the fact that all family violence by police officers is inherently high risk, that referring any OIDV reports back to the regions (and to officers who may know the perpetrator) puts victim-survivors at risk, and that any internal taskforce faces conflicts of interest and internal cultural issues, which will in turn compromise, skew, split and mask data.



Like the self-investigative police complaints system, the current approach of allowing police to internally respond and handle investigations of reports of family violence by their own officers is inherently compromised by conflict of interest. This poses ongoing risk to the safety of victim-survivors who are expected to report to the employer and colleagues of the person abusing them.

We collaborate with and write in support of the expertise, insider knowledge, lived experience and leadership of the Officer Involved Domestic, Family and Sexual Violence Network Peer Advocacy Group - a network member of the Independent Collective of Survivors. We don't seek to replicate or summarise that work here, but instead to point to their work on the specific topic of police-perpetrated family violence and police responses to this, which goes further into the specifics. More information is available directly from the network at admin@icos.org.au

Call for foundational change:

The evidence from practice (both in a post-Royal Commission context in Victoria and interstate) demonstrates the need for a foundational re-think of policy and practice approaches that resource and centralise police responses to family violence as a core tenet of the family violence service system. Putting family violence by police into this picture is core to this re-think.

This is not a case of seeking to "solve" violence and harms of policing with more police, with limited reforms like increased training or by seeking to further deepen and fund relationships between family violence services and police.

Rather than seeking to address the widespread, inherent and impactful issues with police responses to family violence via further resourcing of police, and reforms including training - which have been demonstrated to have limited effectiveness - instead future recommendations must engage with the harm that such policing entails, and look to resource and build meaningful, community-based responses to family violence that address violence, provide care and genuinely support the agency and expertise of survivors.

This includes:

- Recognising the sweeping and systemic harms that police responses to family violence are causing to survivors and communities, and the problematic, often harmful trajectory of responses from state services who are in close proximity to, and closely fused relationships with police. This includes the specific harm of police-perpetrated family violence, which must be considered as a significant cohort and core facet of perpetration data



- Substantively shifting and re-distributing resources away from policing and to community-owned organisations (most particularly Aboriginal Community-Controlled Organisations), and to community-based initiatives, specialist and culturally specific family responses that support the agency and expertise of victim-survivors and enhance safety.

Short-term information-gathering and harm reduction strategies:

Given the spread and impacts of issues related to family violence policing, and the specific harms of police-perpetrated family violence, in the immediate term there are a number of actions that should be taken to track this violence and reduce harm to people, families and communities, including:

1. Abolishing self-investigation of police complaints: To immediately address the inherent bias and serious risk posed to victim-survivors by any system that sees complaints about police internally investigated, or referred back to police by external complaints bodies, the practice of self-investigation of police complaints must be ended.
2. Mandating police public reporting of data: To better detail the extent of key harms related to family violence and policing, and to reduce the arduous burden on survivors and community advocates seeking to gather data in the public interest, police should be required to regularly release public data including:
 - i) Police-perpetrated family violence - The number of reports about officers perpetrating family violence, the number of intervention orders issues, charges and their outcomes
 - ii) “Mis-identification”: To force transparency, police should be required to publicly report data on the number of police-initiated intervention orders, the gender data on who is listed as respondents on these orders (including the number of women, trans and gender-diverse people listed as respondents on police-initiated family violence orders and family violence reports), demographic data related to the respondent and the Affected Family Member (AFM) – including cultural heritage; records/number of and outcomes in matters where a mis-identification concern is raised by family violence services or support workers and the numbers of police-initiated applications that are withdrawn, and the gender break-down of these, as well as data as to whether either AFM or respondent were police officers or employees
 - iii) The number of complaints received related to family violence police responses, and the category and outcome of these (noting that due to the barriers and safety issues for survivors in making complaints, this data will still be under-representative)



3. Supporting and initiating family violence responses, practice-based risk assessment and safety planning strategies that do not default to police as the core tenet of “safety,” and instead support and resource survivor-led assessments of risk, and direction of appropriate responses.

Other recommendations:

4. In line with our previous comments regarding survivor expertise in police-perpetrated family violence, tactics, risk assessment service response and pathways to safety, direct consultation with victim-survivors, including with a focus on perpetrator tactics, institutional and service responses (or lack of), and calls for change is imperative to gathering accurate perpetration data.
5. Resourcing of specialist and survivor-led resource development and training to support family violence workers and services in responding to police-perpetrated family violence. This includes specialist risk-assessment tools grounded in lived expertise.

Contact details:

We recognise and deeply appreciate the contributions from those we have worked with, and who sit on our survivor advisory network for their guidance in this summary content and for the direction of project work more broadly.

For further information, please contact advocacy@flatout.org.au