

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner of Police in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use VPM Professional and ethical standards to inform the decisions they make to support compliance.

Reviews of discipline and professional conduct outcomes

Context

Under the complaints and discipline system, employees may be subject to a variety of actions and outcomes including:

- interim action
- resolution of professional conduct matters
- Admonishment Notices
- discipline inquiry outcomes.

In some circumstances that are explained in this policy, employees can apply for a review of the action or outcome.

There are internal review mechanisms available as well as external reviews via the Police Registration and Services Board (PRSB) or Independent Broad-based Anti-corruption Commission (IBAC).

This policy sets out the types of review available, the circumstances in which they can be accessed, and the process for review.

Policy at a glance

This policy includes:

- reviews of discipline and professional conduct resolution outcomes internally within Victoria Police
- reviews of some discipline outcomes by the PRSB
- reviews of some discipline outcomes by IBAC.

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Definitions

Admonishment Notice – an intervention used when a police member commits a minor breach of discipline, whether on or off duty, to support the discipline process.

Discipline outcome – an outcome from a disciplinary process, including interim action, resolution of professional conduct matters, Admonishment Notices and other discipline inquiry outcomes as per section 10, **VPM Discipline**.

Discipline Intervention Program – a process that allows affected and interested parties to apply to have their discipline investigation concluded early and progressed to a final outcome. Refer to section 14, **VPM Complaints** for further information.

Interim action - action taken under ss.126, 127, or 135, *Victoria Police Act 2013* (the Act), against police officers or protective services officers who are reasonably believed to have committed or have been charged with a breach of discipline and/or a criminal charge punishable by imprisonment. Interim action includes:

- transferring the subject employee to other duties
- directing the subject employee to take accrued leave (other than personal leave); or
- suspending the subject employee with or without pay.

Police member (or member) - Any employee, excluding VPS employees, employed by Victoria Police in accordance with s.7, the Act. This means police officer, protective services officer, recruit, and reservist.

Professional conduct matter - matters where the customer service or other behaviour of an employee has been inadequate or unsuitable, but does not constitute a complaint of misconduct. Professional conduct matters include, but are not limited to:

- customer service-based complaints
- minor breaches of police rules or procedures
- correspondence related issues
- complaints/allegations where an employee's performance has failed to achieve appropriate service or behavioural standards.

Professional Conduct Resolution - is a procedure that may be used to address professional conduct matters either at the time a complaint is made, or during the investigation of a complaint. PCR may be used at region, command or department level in order to resolve Class 3 complaints and other matters assessed as suitable by Professional Standards Command (PSC). Refer to section 5, **VPM Complaints**.

Subject member – the police member who is the subject of the complaint and any subsequent related disciplinary process.

Scope and application

This policy applies to outcomes that have been determined by Victoria Police in relation to a complaint or discipline matter.

Employees' rights to appeal under the criminal justice system in relation to criminal matters are not affected by this policy.

Responsibilities and procedures

1. Principles

Under the complaints and discipline system, employees may be subject to a variety of actions

and outcomes. In some circumstances, employees can apply for a review of the action or outcome where the principles of natural justice and procedural fairness may not have been followed.

1.1 *Natural justice*

Under the requirements of natural justice, parties within the complaints and discipline process have:

- the right to be heard
- the right to be treated without bias
- the right for any decisions made to be based on relevant evidence.

1.2 *Procedural fairness*

Under the requirements of procedural fairness, the subject member must:

- be informed of the nature of the allegation made, and receive all relevant documentation
- be given the opportunity to respond to the allegation and make a submission as to any sanction that may be imposed
- have their response genuinely considered
- be provided with reasoning to support a decision.

2. Eligibility for review

2.1 *Overview*

- Members who are subject to interim action under **VPM Complaints** may apply in writing to the Assistant Commissioner, PSC within 14 days from the service of the Notice of Disciplinary Transfer/Leave Direction/Suspension to show cause as to why the action should be varied. Refer to section 2 of this policy.
- Subject members who have applied for the Discipline Intervention Program (DIP) but have had their application rejected have no right to review.
- Subject members who have had the DIP applied to their matter but wish to have the resulting discipline outcome reviewed should refer to section 6 of this policy.
- Admonishment Notices arising from the **Discipline Intervention Program** process (refer to section 14, **VPM Complaints**) are only reviewable in certain circumstances in accordance with section 6 of this policy.
- Subject members who have had a complaint resolved via Professional Conduct Resolution (PCR) under **VPM Complaints** can request a review of that action. Refer to section 5 of this policy.
- Subject members who have been issued with an Admonishment Notice as a result of PCR or a PSC investigation can request a review of that action. Refer to section 6 of this policy.
- For subject members, discipline outcomes arising from a Discipline Charge Notice (DCN) can be reviewed by the PSRB. Refer to section 7 of this policy.
- For outcomes from VPS misconduct matters, refer to **VPM Review of actions (grievance)**.

- Subject members cannot request a review of discipline actions under **VPM Review of actions (grievance)** if that review can be raised with the PRSB in accordance with the Act.

3. Interim action review

3.1 *Application to vary interim action*

- When a subject member is suspended/directed to take leave/transferred to other duties by the Assistant Commissioner, PSC, the member may within 14 days from the service of the Notice of Disciplinary Transfer/Leave Direction/Suspension respond in writing to the Assistant Commissioner, PSC to show cause why the action should be varied.
- When a subject member is suspended and the Assistant Commissioner, PSC or Deputy Commissioner is considering suspension without pay, that decision will be made 10 days after the service of the Notice of Interim Action. The member may make a written submission to the Assistant Commissioner, PSC or Deputy Commissioner within 10 days of the notice requesting:
 - consideration of the subject member's entitlement to pay
 - consideration to allow the subject member to access accrued leave entitlements by being directed to take leave prior to being suspended without pay.
- A decision regarding the subject member's entitlement to pay and/or request to utilise accrued leave entitlements will be made after written submissions are made by the subject member or at the expiration of the 10-day period in the absence of a submission.
- Subject members must be notified of the outcome in writing.
- No further review rights exist.

4. Discipline Intervention Program review

4.1 *Overview*

- Where an application for the DIP is assessed as not meeting the criteria, no appeal or grievance can be made by the applicant.
- Where the DIP process has been applied to an investigation, the outcome will be considered a discipline outcome, and the outcome can be reviewed via the processes under section 7 of this policy, with the exception of Admonishment Notices issued as a result of the DIP which are not reviewable, except for the circumstances provided in section 6.1 of this policy.
- The Assistant Commissioner, PSC retains the authority to overturn any disciplinary outcome reached during the DIP process or review of the DIP process, other than a discipline outcome arising from a discipline inquiry. Any discretionary decision-making power exercised by the Assistant Commissioner to overturn a DIP process must be documented.

5. Professional Conduct Resolution review

5.1 *Internal review*

- A subject member who believes that PCR action taken by a resolution officer under **VPM Complaints** is unfair may seek a review of that action by the line manager of the resolution officer.
- The manager conducting the review must provide the subject member and the resolution officer with a written response. The response must be attached to the file.
- If there is any change to the outcome of the initial file or complaint as a result of the review, the complainant must be advised in writing.
- The review must be conducted within 14 days.

5.2 *Review by external bodies*

- IBAC has the legislative authority to review all complaints, including Class 3 complaints involving professional conduct matters.
- Professional conduct matters that have been resolved under **VPM Complaints** may be subject to scrutiny in other jurisdictions, including but not limited to Workcover, the Victorian Equal Opportunity and Human Rights Commission, the Commissioner for Privacy and Data Protection, or the Office of the Health Complaints Commissioner.

6. Admonishment Notice review

6.1 *Making an application*

- For the review of an Admonishment Notice, the subject member must make a written request that:
 - is submitted within 10 days of service the Admonishment Notice
 - states the grounds on which a review is being sought and the remedy being sought
 - should include any relevant supporting documentation.
- An Admonishment Notice issued as a result of a DIP outcome may only be reviewed to correct an identified factual error in the notice. Please note that disagreement with the wording of the Admonishment Notice, in the absence of an identified factual error, is not grounds for a review.

6.2 *Submission of application*

- Applications for review of an Admonishment Notice should be submitted to:
 - for Admonishment Notices issued by PSC to the Discipline Advisory Unit (DAU), via the DISCIPLINE ADVISORY UNIT-PSC-OIC PBEA.
 - for all other Admonishment Notices, the relevant Divisional Manager/Department Head.

6.3 *Assessment of application*

- For Admonishment Notices issued by PSC:

- the DAU will assess the application against the assessment criteria (refer to section 6.4 of this policy) to determine the merit of the application, and make a recommendation to the Reviewing Officer – Superintendent, Capability, PSC. Where the DAU is unable to assess the application due to a conflict of interest, the application may be forwarded to the Superintendent, Capability, PSC for assessment.
- where the Superintendent, Capability, PSC is unable to act as the Reviewing Officer due to a conflict of interest or other reason, they may appoint an alternate Reviewing Officer. The Reviewing Officer must be of equivalent or higher rank/grade than the employee who issued the Admonishment Notice.
- For all other Admonishment Notices:
 - the relevant region/command/department head will appoint an independent Reviewing Officer to review the notice.
 - The Reviewing Officer must be from a different region/command/department to the one where the Admonishment Notice was originally issued, and must be of equivalent or higher rank/grade to the employee who originally authorised the Admonishment Notice.
- The Reviewing Officer will make a determination pursuant to section 6.5 of this policy.
- The Reviewing Officer may require additional information prior to making a review determination and they may conduct, or cause to be conducted, further investigation. This may include the delegation of the investigation to an independent investigator to consider.

6.4 ***Assessment criteria for review***

- The reviewing officer must review the notice, taking into account whether:
 - the decision to issue the notice was supported by evidence
 - the principles of natural justice were followed
 - any additional evidence has been provided by the employee
 - the decision maker had authority to make the decision
 - the decision to issue the notice was appropriate to the circumstances.
- The reviewing officer may scrutinise/test any additional evidence provided by the employee, which may include speaking with witnesses, the investigator and the subject member.

6.5 ***Review determination***

- Following examination of the matter, the reviewing officer must either:
 - affirm the original decision
 - amend the Admonishment Notice
 - withdraw the Admonishment Notice and refer to section 6.7 of this policy for further requirements.
- Where the subject member denies the breach detailed within the Admonishment Notice, consideration may be given to recommending the issuance of a DCN to enable a DIO to determine the truth of the matter.

6.6 ***Reasons for decision***

- Regardless of the outcome of a review, the reviewing officer must provide the subject member with a written statement of reasons for their decision, if requested to do so by the member, refer to s. 8, *Administrative Law Act 1978*.
- The subject member's request for the written statement of reasons may be made orally or in writing to the reviewing officer, and the written statement of reasons must be provided within a reasonable time of that request.

6.7 *Withdrawal of notice*

- Where an Admonishment Notice relating to an investigation is to be withdrawn, the reviewing officer must do one of the following:
 - take no further action
 - issue performance management in accordance with **VPM Management of underperformance**
 - put in place appropriate Professional Conduct Resolution strategies in accordance with section 8, **VPM Complaints**
 - recommend that the member be charged with a breach of discipline.
- A decision of the reviewing officer is binding. However, the decision to issue a DCN remains with the Assistant Commissioner, PSC or other delegate.

6.8 *Timeframes for reviews*

- The Reviewing Officer must ensure that the subject member is informed of the outcome of the review within 28 days of the application being made.
- Where appointed, an independent investigator is responsible for reporting on the progress or outcome of the review within 21 days of the application being made.
- The Reviewing Officer must be advised of the independent investigator's recommendation within 21 days of the application being made.
- The Reviewing Officer may apply for one extension of up to 28 days to complete the review. Approval must be granted by an officer of or above the rank of Commander. The subject member seeking the review must be informed of the extension and the reasons for the extension.

7. **PRSB review of matters arising from discipline charges (subject members only)**

7.1 *Application*

- Division 2 of Part 8, *Victoria Police Act* outlines the circumstances in which a police member may apply to the PRSB for a review of the decision of a DIO.
- Application for review by the PRSB must be made on the application form available from the PRSB. It must be lodged no later than 4pm on the 14th day after the police member has been notified of the DIO's decision.

7.2 *Review process*

- The PRSB may issue practice notes to regulate their procedures.
- Pre-hearing procedure includes that:
 - a copy of the detailed grounds supporting the application submitted by the police member to the PRSB will be supplied to the DAU

- the Discipline Inquiry Report and material used by the DIO during the inquiry will be forwarded to the PRSB
 - on behalf of the CCP, the DAU will provide a written response to the PRSB. A copy must be provided to the police member
 - a date will be set for the parties to appear before the PRSB.
- A member may appear at the review and/or be represented by a person other than a legal practitioner.
 - The member, their representative (if any) and the CCP's representative will be invited to address the PRSB. The PRSB's representatives may ask questions of the parties.
 - Employees who are not parties to the review and who are on duty and wish to attend in support of a colleague are required to seek approval from their local management.
 - The PRSB will consider the matter and will provide written reasons for the decision to the police member and the CCP.

Related documents

- VPM Complaints
- VPM Discipline
- VPM Management of misconduct (VPS Employees)
- VPM Review of actions (grievance)

Further advice and information

For further advice and assistance regarding this policy, contact the Police Conduct Unit, PSC or a local EPSO.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
22/05/24	First issued as part of Discipline Transformation Project.	FF-226089