

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 the VPM Professional and Ethical Standards to inform the decisions they make to support compliance.

Management of misconduct (VPS Employees)

Context

Victoria Police aims to provide the community with a policing service that is highly professional, lawful, responsible, accountable, fair and based on sound ethical behaviour and judgement. To ensure this, standards of behaviour for Victoria Police employees are contained in:

- law (including the *Public Administration Act 2004*)
- the Victoria Police Manual and other relevant corporate and local instructions
- the *Victorian Public Service Enterprise Agreement 2024* (Agreement)
- public sector employment principles.

To maintain these standards and comply with legislative requirements, Victoria Police has processes in place:

- to receive complaints and protected disclosures about unethical behaviour
- to ensure certain matters are reported to Professional Standards Command (PSC)
- to ensure that complaints and issues are investigated
- to determine what action is taken in relation to employees who fail to meet appropriate service or behavioural standards, commit a breach of discipline or have a criminal charge proven
- to ensure that the principles of procedural fairness have been adhered to.

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Scope and application

This policy applies to:

- all Victorian Public Service (VPS) employees of Victoria Police, including ongoing, fixed term and casual employees; and
- all contractors.

Responsibilities and procedures

1. Delegates in the discipline process

The Director, Business Partnering & Workplace Relations Division (BPWRD) is the primary Delegate in the discipline process, with the Assistant Commissioner, Professional Standards Command (PSC), Assistant Commissioner, Human Resources Command (HRC) and Executive Director, Legal Services also having delegated responsibilities in the discipline process in accordance with the following delegations:

- Delegation No: D.U. 6.1 – Suspend, Transfer or Direct Leave During Preliminary Investigation
- Delegation No: D.U. 6.2 – Determine discipline outcome
- Delegation No: D.U. 6.3 – Terminate employee
- Delegation No: D.U. 6.4 – Direct employee not to speak to other employees of Victoria Police about the matter and/or not visit certain places of work.

For the purposes of this policy, 'Delegate' will refer to these delegations only.

2. Overview

- The Delegate may take action against VPS employees who are alleged to have engaged in misconduct and/or VPS employees who have been charged with a criminal offence.
- The Delegate may terminate a VPS employee's employment on the grounds that they have engaged in misconduct.
- This policy sets out the disciplinary processes (for non-criminal matters), responsibilities and entitlements applicable to VPS employees, in accordance with the Agreement.
- BPWRD has oversight over all VPS misconduct files to ensure they are conducted in accordance with the Agreement.
- PSC will retain responsibility for investigating all criminal allegations in accordance with **VPM Complaints**.
- When the matter relates to unsatisfactory work performance, firstly refer to **VPMP Performance and professional management**. Any matters that have arisen under the management of unsatisfactory work performance process may be considered in the misconduct process.
- The Delegate or a representative of BPWRD appointed by the Delegate ('BPWRD representative') may instruct an external consultant to be the workplace investigator ('the investigator') for VPS misconduct files (refer to section 7.1 of the policy for the investigation process).

- Where necessary, the investigator will work with the criminal investigator (a police member) for all matters that are under criminal investigation by PSC, including Taskforces, to investigate criminal behaviour/activity involving VPS employees.
- An employee is entitled to be represented by a person of their choice (including a union representative) at any stage of the misconduct process.
- Any document related to the discipline process may be served by:
 - delivering documents to the VPS employee personally;
 - leaving documents with a person nominated by the VPS employee (includes union);
 - sending documents by post or courier to the VPS employee's usual or last known place of residence; or
 - sending documents to the VPS employee's personal email address.
- Further guidance for local managers may be found in the supplementary document 'Managing the VPS employee misconduct process Guideline' (found under VPM, Professional and ethical standards, Practitioner guides and resources).

3. Employee wellbeing

- Participating in a misconduct process may have an effect on an employee's health and wellbeing. The Delegate or BPWRD Representative must provide details of Victoria Police's Wellbeing Services to all parties involved in a misconduct process.
- Regular welfare checks should be conducted by an appropriate representative.
- The Delegate will also outline the employee's rights to procedural fairness under clause 27.6 of the Agreement.

4. Definitions

4.1 Misconduct

Misconduct, as defined in the Agreement, includes:

- A contravention of a provision of the *Public Administration Act 2004*, the regulations to that Act, a binding code of conduct or a provision of any statute or regulation that applies to the employee in the employee's employment;
- Improper conduct in an official capacity;
- A contravention, without reasonable excuse, of a lawful direction given to the employee by a person authorised to give the direction;
- An employee making improper use of their position for personal gain; or
- An employee making improper use of information acquired by them by virtue of their position to gain personally, or for anyone else, financial or other benefits or to cause detriment to the Victorian public service or the public sector.

4.2 Serious misconduct

Serious misconduct, as defined by the *Fair Work Regulations 2009 (Cth)* includes:

- Wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
- Conduct that causes imminent and serious risk to the health or safety of a person or the reputation, viability, or profitability of Victoria Police's business;
- The employee (in the course of their employment) engaging in theft, fraud, or assault;
- The employee being intoxicated at work; or

- The employee refusing to carry out a lawful and reasonable instruction that is consistent with their contract of employment.

5. Directions

5.1 *Powers of the Delegate*

- Where an allegation of misconduct has been made against an employee ('the Employee'), the Delegate may do any of the following in accordance with clause 27.7 of the Agreement:
 - make an initial assessment of the alleged misconduct before commencing the formal process to determine if an investigation is required
 - determine that it is appropriate to immediately commence an investigation of the alleged misconduct
 - direct the Employee to immediately to perform alternative duties or work at an alternative place of work
 - direct the Employee not to speak to other employees of Victoria Police about the matter or not to visit certain places of work
 - suspend the Employee with pay.
- Where the Delegate reasonably believes the Employee has committed a criminal offence, they are not required to delay or cease the investigation into allegations of misconduct, but may:
 - if the Employee admits the allegations, proceed to the determination of the discipline outcome stage
 - suspend the Employee with pay. The suspension will continue until a final outcome of the alleged misconduct is determined.
- The Delegate will outline the employee's rights to procedural fairness under clause 27.6 of the Agreement.
- Details of Wellbeing Services should be provided to the Employee at the earliest opportunity.

5.2 *Notification of interim action*

- Where a Delegate makes a direction in accordance with cl 27.7(a)(iii), (iv) and/or (v) of the Agreement of interim action, the Employee will be served with a written notice as soon as reasonably practicable to advise them of the interim action.
- The written notice will be prepared by the Delegate or the BPWRD representative and served on the Employee.
- Where it is impractical to issue a written notice, interim action may be issued as a verbal direction by the Delegate or the BPWRD representative, and in the case of a criminal matter, a police member. A verbal direction is to be first approved by the Delegate.
- Written notice is to be provided as soon as practicable after the verbal direction has been issued.
- A Wellbeing Management Plan should be completed by the Line Manager/Local Area Manager as soon as practicable (see **VPM Complaints**)
- Where interim action is to be rescinded, the Employee will be advised in writing.

5.3 *Suspension with pay – conditions*

An Employee who has been suspended (in accordance with clause 27.7 (a)(v)) as a result of allegations of misconduct or criminal charges is subject to the following conditions:

- Temporary return to work – the Employee must comply with a direction to temporarily return to work. This provision may be used to require an Employee to attend for the purpose of service of documents, or any other legitimate purpose.
- Secondary employment – the Employee:
 - may only seek secondary employment with the approval of the Chief Commissioner
 - is required to seek further approval in accordance with **VPM Conflict of interest** to continue even if they had pre-existing approval prior to being suspended.
- Entry to Victoria Police premises – the Employee:
 - will have their right to access Victoria Police premises (other than those areas available to the public) withdrawn
 - if they have reason to enter such premises, must first seek permission from the highest ranked manager of a work location/complex.
- Police equipment – the Delegate or the BPWRD representative responsible for issuing the interim action must seek to obtain the return of the following items from the Employee:
 - Victoria Police ID
 - Approved Driver's Authority
 - all items of police equipment
 - keys or similar item used to access police premises
 - any other item issued to the Employee for use while employed within Victoria Police.
- Review – the Delegate will:
 - review the decision no later than a date which is four weeks after the commencement of the suspension; and
 - confirm whether the suspension is to continue or is no longer necessary and will notify the Employee accordingly.

6. Initial assessment of misconduct

- The Delegate may, at their discretion, nominate a person (for example, the BPWRD representative) to conduct an initial assessment of the alleged misconduct (clause 27.7(a) of the Agreement).
- The purpose of an initial assessment is to determine if a formal investigation of the alleged misconduct is required.
- Alternatively, the Delegate may determine that it is appropriate to immediately commence a formal investigation.
- The person nominated to conduct an initial assessment may:
 - inform the Employee of the details of the alleged misconduct and seek a response from them
 - interview persons able to provide relevant information
 - collect any relevant materials
 - fully document the information gathered during the initial assessment
 - forward all documentation to the Delegate for consideration.
- Taking into account the results of any initial assessment, the Delegate may direct that a formal investigation of the alleged misconduct be conducted or may make a decision including (but not limited to):
 - take no further action

- determine that the matter be dealt with through other appropriate processes (for example, for unsatisfactory work performance refer to **VPMP Performance and professional management**)
 - where the Employee admits the alleged misconduct, proceed to determining appropriate disciplinary action.
- Under the Agreement, there is no obligation to notify the Employee of an initial assessment.

7. Formal investigation of allegations of misconduct

7.1 *Investigation process and appointing an investigator*

- If the Delegate considers that a VPS employee may have committed misconduct, the Delegate may determine that a formal investigation into the matter is required.
- PSC will retain responsibility for investigating all criminal allegations in accordance with **VPM Complaints**. BPWRD will retain responsibility for managing the investigation into the misconduct allegation(s).
- As soon as practicable after the alleged misconduct is identified, the Delegate or the BPWRD representative will prepare the allegation(s) so that they are capable of investigation.
- The Delegate will engage the investigator and will provide the investigator with the misconduct allegation(s).
- The investigator will investigate the misconduct allegations (and, if necessary, will liaise with the member managing the criminal investigation).
- The misconduct investigation may include:
 - collecting relevant material
 - speaking with the Employee
 - speaking with relevant witnesses
 - providing the Employee with specific particulars to allow the Employee to properly respond to the alleged misconduct
 - seeking an explanation from the Employee
 - investigating any explanation made by the Employee for the purposes of verifying the explanation as far as possible.
- The investigator is not bound by rules of evidence and may inform themselves in any way they see fit.

7.2 *Notification of allegations and employee's response to allegations*

- The Employee will be given 10 days to provide a response to the allegations.
- If the Employee does not provide a written response or does not attend a meeting with the investigator within the specified timeframe (without a reasonable excuse), the investigation will proceed based on the available evidence and without the benefit of any information the Employee may be able to provide.
- Upon receipt of a written response to the allegations from the Employee, the investigator may contact the Employee and provide the Employee with an opportunity to meet and discuss the allegations and the Employee's response. The investigator may provide the Employee with the opportunity to attend a meeting even in circumstances where the Employee fails to provide a written response within the specified timeframe.
- The Employee may be accompanied to any meetings with the investigator by a support person. A support person may be a person who the Employee feels is appropriate and of their choosing (e.g. a friend, work colleague, union representative).

- If, after a first meeting, the Employee requests a further meeting, the investigator may arrange this if he or she considers it to be appropriate taking into account all the circumstances of the allegation(s) and investigation.
- Any meetings with the Employee or any relevant witnesses may be recorded however they must not be covertly recorded (see **VPM Recording devices, CCTV and digital asset management**).
- Any meetings may be conducted in a number of ways including (but not limited to) face to face, telephone or video link.

8. Determination of misconduct investigation

8.1 *Findings and recommendations*

- After providing the Employee with an opportunity to respond and considering any response received, and considering the relevant evidence, the investigator will prepare a report for the Delegate.
- In the report, the investigator will make findings in relation to each allegation of misconduct, as to whether the allegation is substantiated, not substantiated or partially substantiated. In order to find that the Employee engaged in misconduct, the investigator must be satisfied that the evidence establishes that the alleged conduct occurred on the balance of probabilities. The investigator may also recommend a proposed discipline outcome.
- Once the Delegate has received the investigation report, the Delegate will consider the investigator's findings and confirm whether these findings are accepted by the Delegate.
- The Delegate will then formally propose a discipline outcome.

8.2 *Proposed discipline outcome*

- In determining the proposed discipline outcome, the Delegate may have regard to, without limitation, the reasons for the allegations, the response of the Employee, the meeting with the Employee and any other information or documentation obtained during the investigation.
- The proposed discipline outcome must not be disproportionate to the seriousness of the matter but should take into consideration factors including, but not limited to:
 - whether the incident is an isolated one
 - the Employee's previous conduct or behaviour
 - nature and seriousness of the incident, including the effect and circumstances
 - mitigating or extenuating circumstances
 - employment history, including length of employment
 - the reputation of Victoria Police
 - whether there is ongoing risk to the public, clients, or work colleagues
 - admission by the Employee.
- The Employee will receive the proposed discipline outcome in writing and be provided with a further 10 days to provide a written response.
- If the allegations are not substantiated the misconduct process will end and the Employee will be notified accordingly as soon as practicable.

8.3 *Possible discipline outcome*

In accordance with clause 27.12(b) of the Agreement, the possible discipline outcomes for proven misconduct are:

- No action
- Performance management
- Formal counselling
- Formal warning
- Final warning
- Assignment of the Employee with or without their agreement to a role at a classification level or value range lower than the Employee's current classification or value range
- Transfer of the Employee with or without their agreement to a different work location at the Employee's current classification level (which will not preclude the employee being entitled to payment of any applicable relocation allowance in accordance with clause 21.6(b))
- Termination of employment.

In order to avoid a more severe discipline outcome being applied to the Employee, the Delegate may apply the discipline outcomes of performance management and transfer of the Employee with or without their agreement to a different work location at the Employee's current classification level together to form a single disciplinary outcome.

8.4 *Response to proposed discipline outcome*

- The Employee must provide their response to the proposed discipline outcome to the Delegate or BPWRD representative in writing within 10 days of receiving the proposed discipline outcome.
- The Employee may accept or seek a review of the proposed discipline outcome.
- After the Delegate receives the Employee's response to the proposed discipline outcome, the Delegate will review the Employee's response and will then make a decision regarding the final discipline outcome (see section 8.6 of the policy).
- If the Employee does not provide their written response to the proposed discipline outcome within the specified timeframe, the Delegate will make a final decision without the benefit of the Employee's response.

8.5 *Seeking a review of a proposed discipline outcome*

- The Employee may seek a review of the proposed discipline outcome by providing a written response to the Delegate within 10 days after receiving the proposed discipline outcome.
- Reviews will be conducted by a Delegate (Delegation D.U. 6.2) who was not involved in the matter previously.
- Upon completion, a written outcome will be provided to the Employee as soon as practicable. This review finalises the matter.

8.6 *Final discipline outcome*

- As soon as practicable after the Delegate has made a decision regarding the final discipline outcome, the Employee will receive a written notification of the final discipline outcome.
- Where the allegation is substantiated, a copy of the notification of the final discipline outcome will be included on the Employee's personnel file.
- If the final discipline outcome is 'no action', the PSC file will be marked accordingly and the matter will be finalised. There will be no documentation added to the Employee's personnel file or the PSC file.

- If the final discipline outcome is termination of employment, the Employee's personnel file will be marked accordingly, including that the employee is not to be re-employed.

8.7 *Termination of employment*

- The Employee's Personnel Payroll Officer will calculate outstanding remuneration due to the employee.
- Refer to **VPM End of employee service** for the requirements and entitlements of discharged employees.

9. Investigation of criminal offences

9.1 *Investigation of criminal offences*

- If a VPS employee is suspected of committing a criminal offence, these matters will be investigated in accordance with **VPM Complaints** by a police member attached to PSC or another member nominated by PSC.
- If possible, criminal offences are identified by the investigator these matters will be reported to the local Ethics and Professional Standards Officer (EPSO). PSC will be responsible for managing or investigating criminal matters.

9.2 *Investigation of both criminal and misconduct matters*

- The investigation into criminal matters and misconduct matters will be separate investigations but may be conducted simultaneously, with the investigators working together where necessary.
- Where a VPS employee is investigated and/or charged with a criminal offence, the employee will also be subject to a discipline investigation to determine any possible misconduct.

10. Confidentiality

- Appropriate confidentiality must be maintained by all parties involved with regards to matters managed under this policy. If disclosure of matters is required from time to time, this should be restricted to those on a direct need-to-know basis.
- Notwithstanding the above, the Employee is not precluded from making disclosures to: a representative or a support person for the purposes of obtaining advice; where required by law; immediate family member; or in the course of seeking assistance from EAP, a counsellor, psychologist or other medical practitioner.
- Where a matter is classified as 'protected disclosure', parties must also comply with their obligations under the *Protected Disclosure Act 2012 (Vic)*.

11. Record keeping

The Delegate should ensure that complete and accurate records of misconduct processes are maintained. Documents should record the steps taken in the process, the relevant decisions made, the evidence considered, and any discipline or other action taken. Records should be accurate, complete and protected against unauthorised access or alteration. Records are not to be destroyed or removed from files unless, or until provided for, as part of proper retention and disposal.

12. Costs incurred in disciplinary investigations

VPS employees are not entitled to recover costs incurred in the preparation and presentation of their cases in relation to disciplinary investigations.

13. Notifying the employee who instigated the complaint

If the misconduct process was initiated by a complaint from an employee, the Delegate or the BPWRD representative must advise the employee that the complaint has been dealt with in accordance with clause 27 of the Agreement.

14. Dispute resolution and review of actions process

Where disciplinary action, other than termination of employment, is taken against an Employee and the Employee considers the disciplinary action unfair or unreasonable, the Employee may commence a dispute or review of actions in accordance with clause 13 of the Agreement.

An Employee may also commence a dispute when:

- an allegation of misconduct has not been made within eight weeks of the Employer having formally advised the Employee that it is taking steps in accordance with clause 27.7 of the Agreement, except where the delay is beyond the Employee's control.
- a misconduct investigation has not been completed within six months of the Employee being advised of alleged misconduct and where either party considers the delay unreasonably caused by the other party.

See also **VPM Review of actions (grievance)**.

Related documents

- VPM Complaints
- VPM End of employee service
- *Victorian Public Service Enterprise Agreement 2024*
- *Public Administration Act 2004* (Vic)
- *Fair Work Act 2009* (Cth)

Further advice and information

For further advice and assistance regarding this policy, contact the Workplace Relations Division by email PBEA: WRD-GENERAL-MGR.

Update history

DATE OF FIRST ISSUE	21/10/2019	
DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
21/10/19	Reflects provisions of the <i>Victorian Public Service Enterprise Agreement 2016</i> and incorporates	FF-145414 FF-134804

	Mental Health Review recommendations	
23/03/20	Minor amendments to align with Victorian Public Sector Commission policy.	FF-145414
18/12/20	Minor updates to incorporate changes to <i>Victorian Public Service Enterprise Agreement 2020</i> .	FF-185267
22/08/2024	Administrative amendment as a result of newly published VPM Recording devices, CCTV and digital asset management and VPM Complaints.	FF-236615
03/10/2025	Minor updates to incorporate changes to <i>Victorian Public Service Enterprise Agreement 2024</i> .	FF-265274