

**Report on investigations into the use of force at the
Metropolitan Remand Centre and the Melbourne
Assessment Prison**

June 2022

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The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my *Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison*.

A handwritten signature in black ink, appearing to read 'Deborah Glass', with a stylized flourish at the end.

Deborah Glass OBE
Ombudsman

22 June 2022

Warning: This report contains language some readers may find offensive.

Contents

Foreword	4	The Department's responses to the Ombudsman's draft investigation reports	80
Background	6	Overall conclusions	81
Why we investigated	6	Recommendations	82
Other reviews and investigations	7	Department response to recommendations	85
The Victorian corrections system	7	Appendix 1: Jurisdiction and procedural requirements	89
The use of force in Victorian prisons	9	Authority to investigate and make enquiries	89
Frequency of use of force incidents	13	Procedural fairness and privacy	89
Frequency of complaints about use of force incidents	14		
Substantiating complaints about use of force incidents	16		
During an incident	17		
Escalation or de-escalation	18		
Surveillance	29		
Conclusions	37		
After an incident	39		
Incident reporting	40		
Misconduct assessments and investigations	48		
Conclusions	57		
Culture	59		
Culture lacking in respect	60		
Culture of silence	69		
Conclusions	78		

Foreword

‘You’re complaining to thin air, nothing gets done anyway. And then your jail just gets harder.’

– Prisoner

For as long as I have been in my role as Ombudsman, allegations of excessive force against prisoners have been high on the list of themes complained about to my office. Sometimes they become public interest (whistleblower) complaints referred by IBAC.

Despite their frequency, some 31 per cent of matters referred to us each year by IBAC, none have resulted in my reporting to Parliament – until now.

These allegations are usually hard to investigate, and harder to substantiate. Prisons are inherently challenging environments. Prisoners can frequently exhibit violent and unpredictable behaviours. Many prisoners have complex needs which can result in behaviour that endangers themselves, prison officers or other prisoners. The use of force by prison officers may frequently be necessary in the interests of safety and good order of the prison. Allegations may also be vexatious.

But sometimes they are justified. And when there is a justifiable complaint about unreasonable force, prisoners face uniquely difficult circumstances. The imbalance of power between a prisoner and prison officer is acute. While allegations of assault are sometimes referred to the police, many of their investigations, like our own, go nowhere for lack of evidence. Prisoners themselves may be reluctant to co-operate for fear of reprisal. The culture of silence within prisons makes it harder to obtain objective evidence than in other environments.

Many reports, from many agencies, over many years, have sought to examine the extent and nature of this problem. Most recently, IBAC tabled a *Special report on corrections* in June 2021 which highlighted four cases and made extensive recommendations for addressing workplace culture.

My report examines a small number of incidents of use of force, all matters referred by IBAC about two Victorian prisons, in that broader context.

It follows eight separate incidents alleging excessive force, with injuries ranging from minor bruising to a broken wrist, at the Metropolitan Remand Centre and the Melbourne Assessment Prison. We substantiated four of the eight cases, but all showed concerning behaviour or poor decision making by officers.

While this is a small number, the evidence of our investigations – in the context of previous reports, reviews, and the overall data – illustrates the persistent and endemic nature of the problems, despite the best efforts of Corrections Victoria to address them.

Allegations of unreasonable use of force do not appear to be declining. The incidents in this report present a disturbing picture; even when the allegations were not substantiated, we found officers used force on people with acquired brain injuries or other vulnerabilities, because the prison environment had created a situation where it became necessary.

‘ You never rat on a blue shirt. Never. ’

– Prisoner supervisor

For example, a young man with an acquired brain injury who thought he was going to court that day and expected to be allowed home, found out after waiting more than two hours that the court cells were full and he had been left behind. Not surprisingly he was upset. Upon being taken back to his cell, he responded with verbal threats. This resulted in a physical altercation with five officers. We did not substantiate that the force was excessive, but we had little doubt it could have been avoided if the situation had been handled better.

The shifting population of remand prisons, where officers are largely unable to develop positive working relationships with prisoners, increases the likelihood of incidents escalating and force being used. However, these cases are still suggestive of the broader prison culture.

Corrections Victoria has undoubtedly worked hard to address the problem, including increasing the use of body worn cameras, and it says its recruitment is focused on finding candidates with the appropriate attitude and capabilities.

But the problem remains. Among other things, performance management processes still do not do enough to identify and act on patterns of poor officer behaviour. A culture of silence in which officers do not report wrongdoing by their fellows has long been known to exist within the prison environment. However, as the evidence in this report also shows, strong leadership within a prison can help shift this culture and support greater accountability for officers who cross the line.

This report makes several recommendations which I hope help to address the problems, and I am pleased that Corrections Victoria has mostly accepted them. I also welcome the continuing *Cultural Review of the Adult Custodial Corrections System* commissioned by the Government, with its intention to improve the safety and wellbeing of both staff and prisoners.

There is no easy fix for these longstanding and sometimes intractable issues, and this report does not purport to solve them. Its purpose is to expose what is too often hidden behind prison walls and to encourage actions in addition to words, in the interests of everyone's safety. And to ensure that our prisons are what we signed up for in our Charter of Human Rights legislation: places where prisoners have the right to humane treatment when deprived of liberty.

Deborah Glass
Ombudsman

Background

Why we investigated

1. In early 2019, the Ombudsman began investigating a complaint that a prison officer 'choked' a prisoner in an unmonitored cell at the Metropolitan Remand Centre ('MRC'). In 2020, we concluded the prison officer had used unreasonable force.
2. The Independent Broad-based Anti-corruption Commission ('IBAC') then referred further complaints involving the use of force by MRC officers to the Ombudsman, which we investigated at the same time.
3. While there were no obvious links between the cases in terms of the alleged victims or individual officers involved, some recurring themes suggested systemic problems with the use of force and the workplace culture at the MRC.
4. In September 2020, the Ombudsman began investigating a similar complaint about unreasonable use of force at the Melbourne Assessment Prison ('MAP') involving specialist Security and Emergency Services Group ('SESG') officers based at the MRC.
5. This report collates and highlights the issues identified by these eight investigations into allegations of unreasonable use of force. We substantiated four of the eight cases, but all showed concerning behaviour and poor decision making by officers. This report also considers broader data and complaints related to the conduct of prison officers.
6. The eight investigations and the prisoners who were alleged to have been subjected to unreasonable force are listed in the summary panel. The prisoners and officers referred to throughout this report have been given pseudonyms to protect their privacy.



The eight investigations

Mr Griffin

Allegedly 'choked' while in his MRC cell in September 2018

Mr Wade

Allegedly had his wrist fractured while handcuffed at MRC in June 2019

Mr Ruiz

Allegedly threatened and punched in the head at MRC in December 2019

Mr Lloyd

Allegedly kicked in the head after the court transport van left him behind at MRC in February 2020

Mr Novak

Allegedly thrown against a wall and punched at MRC in February 2020

Mr Snow

Allegedly slapped while sitting in his MRC cell in March 2020

Mr McPherson

Alleged use of unreasonable use of force in the supervisor's office at the MRC in April 2020

Mr Russo

Allegedly kicked in the head by SESG officers at the MAP in July 2020

Other reviews and investigations

7. In 2017, the Justice Assurance and Review Office ('JARO') – then known as the Office of Correctional Services Review – examined the use of force in Victorian prisons. Their unpublished report is the most detailed analysis we found of the use of force in Victorian prisons in recent years. We considered this information in preparing this report.
 - the wellbeing and safety of staff within the adult custodial corrections system
 - the system is safe for people in custody, promotes rehabilitation and caters to their needs.
8. In 2019, the Ombudsman reviewed all allegations of unreasonable use of force on prisoners received from IBAC which we dealt with in 2017-18 and 2018-19. This unpublished review identified some common themes discussed in this report.
9. In June 2021, IBAC released its *Special report on corrections: IBAC Operations Rous, Caparra, Nisidia and Molarra*, which looked at corruption risks in the corrections sector. It identified similar themes to those discussed in this report, including:
 - excessive use of force
 - failure to activate body worn cameras
 - issues with internal investigations and reporting
 - the potential for a workplace culture of 'masking or covering up' corrupt conduct.
10. This report builds on IBAC's *Special report on corrections* by providing further insight into the corruption risks and cultural issues surrounding the use of force in Victorian prisons.
11. The same month IBAC released its report, the Victorian Government announced an independent *Cultural Review of the Adult Custodial Corrections System*. The Cultural Review, currently underway, is examining both private and public prisons and aims to ensure:
 12. We intend for this report to inform the Cultural Review.
12. We intend for this report to inform the Cultural Review.

The Victorian corrections system

13. Victoria has 14 prisons. Three are privately operated and the other 11 are publicly run, including the MRC and the MAP.
14. Corrections Victoria is the unit within the Department of Justice and Community Safety ('the Department') responsible for the oversight of all prisons.
15. In June 2020, Victoria held in prison 136 people for every 100,000 adults living in the state. This is a 27 per cent increase from June 2010. The increase was largely made up of prisoners on remand (awaiting the outcome of court proceedings).
16. Corrections Victoria data shows the percentage of unsentenced prisoners grew from 18 per cent in 2010 to 35 per cent in June 2020. This trend has continued. At 31 January 2022, 44 per cent of the 6,663 people held in Victorian prisons were unsentenced.
17. Due to this increase, remand prisoners are now housed at 10 Victorian prisons, rather than exclusively at special remand facilities. In December 2021, there were 2,563 people on remand in Victoria and only 20 per cent of these were held at the MRC.

The Metropolitan Remand Centre

18. The maximum-security MRC has general accommodation, protection, orientation, special needs and management units. At 28 February 2022, it held 700 prisoners.
19. The MRC is a 'front-end' prison, meaning it holds people pending trial, appeal or sentencing.
20. Most prisoners at the MRC are on remand. If found not guilty, they return to the community. If convicted and sentenced, they are transferred to another prison. Some prisoners at the MRC have been sentenced and are awaiting appeals. A small number are sentenced prisoners from the MAP.
21. Prisoner turnover at the MRC is high compared to most other prisons. About 150 new prisoners arrive at the MRC each week and about the same number leave.
22. The MRC is a complex environment for prisoners and officers. The high turnover makes it difficult for staff to get to know prisoners, develop relationships and understand likely trigger points for incidents. Many men housed at the MRC have mental health conditions and some are withdrawing from drugs and alcohol when they arrive.

The Melbourne Assessment Prison

23. The maximum-security MAP provides assessment and orientation services. At 31 January 2022, it housed 172 prisoners. This includes prisoners with complex needs, such as those awaiting placement at a secure forensic mental health hospital and those arriving direct from court or police custody who may have an untreated mental illness or be suffering from drug or alcohol withdrawal.

24. The MAP is also a 'front-end' prison and is the first point of contact for all male prisoners entering the prison system in Victoria. Corrections Victoria has commented that MAP is 'perhaps the busiest prison in the state, with many prisoners arriving for assessment or being transported out to other facilities daily'.

Prison officers

25. The prison officers involved in the incidents discussed in this report include general duties officers, and officers from both the Emergency Response Group ('ERG') and the SESG.

General duties officers

26. The main responsibilities of general duties prison officers are supervising prisoners and maintaining the security and good order of the prison. Their day-to-day activities include searches, escorts, observing and assessing prisoner behaviour, operating security equipment, preparing reports and responding to incidents. They also have case-management responsibilities for individual prisoners.

Emergency Response Group

27. ERG officers provide support in response to prison emergencies. They are usually general duties officers who have more training and qualifications. They are authorised to use tactical equipment, such as batons and capsicum spray.
28. They ordinarily perform general duties but may be rostered to perform specific ERG duties, such as escorts of prisoners on handcuff regimes in management units.

Security and Emergency Services Group

29. Specially trained SESG officers provide a range of services across Victorian prisons, including emergency incident management, high-security escorts and dog handling.
30. SESG units are based at a number of prisons across Victoria. SESG officers are rostered to patrol different prisons and can be sent to any prison across the state to conduct searches and patrols, or respond to emergencies.
31. SESG officers carry and are trained to use tactical equipment, such as batons and capsicum spray. They are also responsible for training other staff, including general duties officers, in tactical operations.

The use of force in Victorian prisons

32. Within prisons there are times when it is both necessary and lawful for officers to use force on prisoners. Given the acute power imbalance between prisoners and prison officers, and the need for accountability of prisoner officer conduct, the use of force is regulated by laws, policies and procedures and is subject to various layers of scrutiny.
33. The law allows a prison officer to use force against a prisoner if:
 - they have a lawful reason for using it
 - the force used is proportionate (not unreasonable in terms of the level or type of force and the length of time it is applied)
 - the use of force is consistent with *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter of Rights Act').

Terms

34. When discussing the use of force in prisons, the terms 'unreasonable use of force', 'unlawful use of force', 'excessive use of force' and 'assault' are sometimes used interchangeably. This reflects the varying terms and definitions in the relevant Victorian legislation, policies and reporting frameworks.
35. This report uses the term 'unreasonable use of force' to describe a use of force without a lawful reason or where the force used was disproportionate.
36. Any unreasonable use of force may also be unlawful, excessive, a criminal assault and a breach of the Charter of Rights Act.

When force can be used against a prisoner

37. The *Corrections Act 1986* (Vic) allows prison officers to use 'reasonable force to compel a prisoner' to comply with an order which they believe to be 'necessary for the security and good order of the prison or the safety or welfare of the prisoner or other persons'.
38. The *Crimes Act 1958* (Vic) allows any person (including a prison officer) to use force 'not disproportionate to the objective' that they 'believe on reasonable grounds' to be necessary to prevent an indictable offence. Indictable offences in the prison context may include assaults on staff and assaults on other prisoners.

39. The use of force in prisons is further guided by the Commissioner's Requirements, a statewide policy applied to both public and private prisons. Based on the Corrections Act and the Crimes Act, the Commissioner's Requirements state that 'reasonable force' may be lawfully used by prison officers on prisoners to:

- compel a prisoner to comply with a lawful order
- prevent a prisoner from escaping custody
- prevent the commission, continuance or completion of a crime
- arrest someone believed to be committing or have committed a crime
- prevent a prisoner from assaulting another person or being assaulted
- control a situation where a person is using or threatening to use force against another person
- prevent a suicide.

40. The JARO's unpublished 2017 analysis found the most common events leading to the use of force were prisoners being 'non-compliant', attempted assaults on staff, and prisoner fights.

41. Corrections Victoria data from 2018 to 2021 shows these three reasons remain among the most common, with 'non-compliance' topping each of these years.

42. In May 2020, the Commissioner's Requirements were updated. Before this, when force was used to ensure compliance, non-compliance was defined as a prisoner simply 'refusing to follow an order'. Under the updated requirements, the refusal to follow an order must constitute 'an unreasonable risk to the safety of a person, or to the security and good order of a prison' in order to justify reasonable use of force.

43. The Commissioner's Requirements were also updated to state that 'other options such as containment must be considered first, unless impractical or unsafe in the circumstances'.

'Reasonable' use of force

44. The Commissioner's Requirements reflect the relevant provisions of the Corrections Act, the Crimes Act and case law. 'Reasonable' force is defined as force which is the 'minimum amount required for the minimum time' and 'not disproportionate' to achieve the 'safety and good management of the prison'.

45. The Commissioner's Requirements state:

- officers should attempt to resolve the situation using communication skills
- reasonable force should only be used to control a prisoner 'where no other means of control are suitable or available'
- 'physical intervention must only be used as a last resort'
- officers must assess tactical options and minimise the risk of injury
- when using force, officers will act with 'humanity, caution and prudence'
- when using force, no person should be exposed to undue risk
- where force is required, officers must only use force that is 'reasonable and necessary to control the situation'.

46. The Commissioner's Requirements provide a range of tactical options for managing and controlling prisoners, ranging from officer presence and negotiation through to using capsicum spray, batons and firearms.

Human rights

47. Any use of force within a Victorian prison must always be considered in light of the Charter of Rights Act. Sections 10 and 22 state:
- a person must not be treated or punished in a cruel, inhuman or degrading way
 - a person deprived of liberty must be treated with humanity and with respect for their inherent human dignity.
48. A human right may only be limited in a reasonable and justified way. Such limitations must account for:
- the nature of the right being limited
 - the importance of the purpose of the limitation
 - the nature and extent of the limitation
 - the relationship between the limitation and its purpose
 - any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.
49. In the context of use of force in prisons this means using force as a last resort, where non-violent de-escalation techniques have failed. This is also demonstrated by training staff to manage challenging prisoner behaviour in different ways.

Oversight and review mechanisms

50. Use of force incidents and allegations of assault by prison staff are subject to a range of internal and external reporting and review mechanisms.
51. Prisoners, or any other person, can also report an allegation of unreasonable use of force directly to an external body, such as Victoria Police, the Ombudsman or IBAC.

Figure 1: Internal reporting and oversight framework for use of force incidents and allegations of staff on prisoner assaults

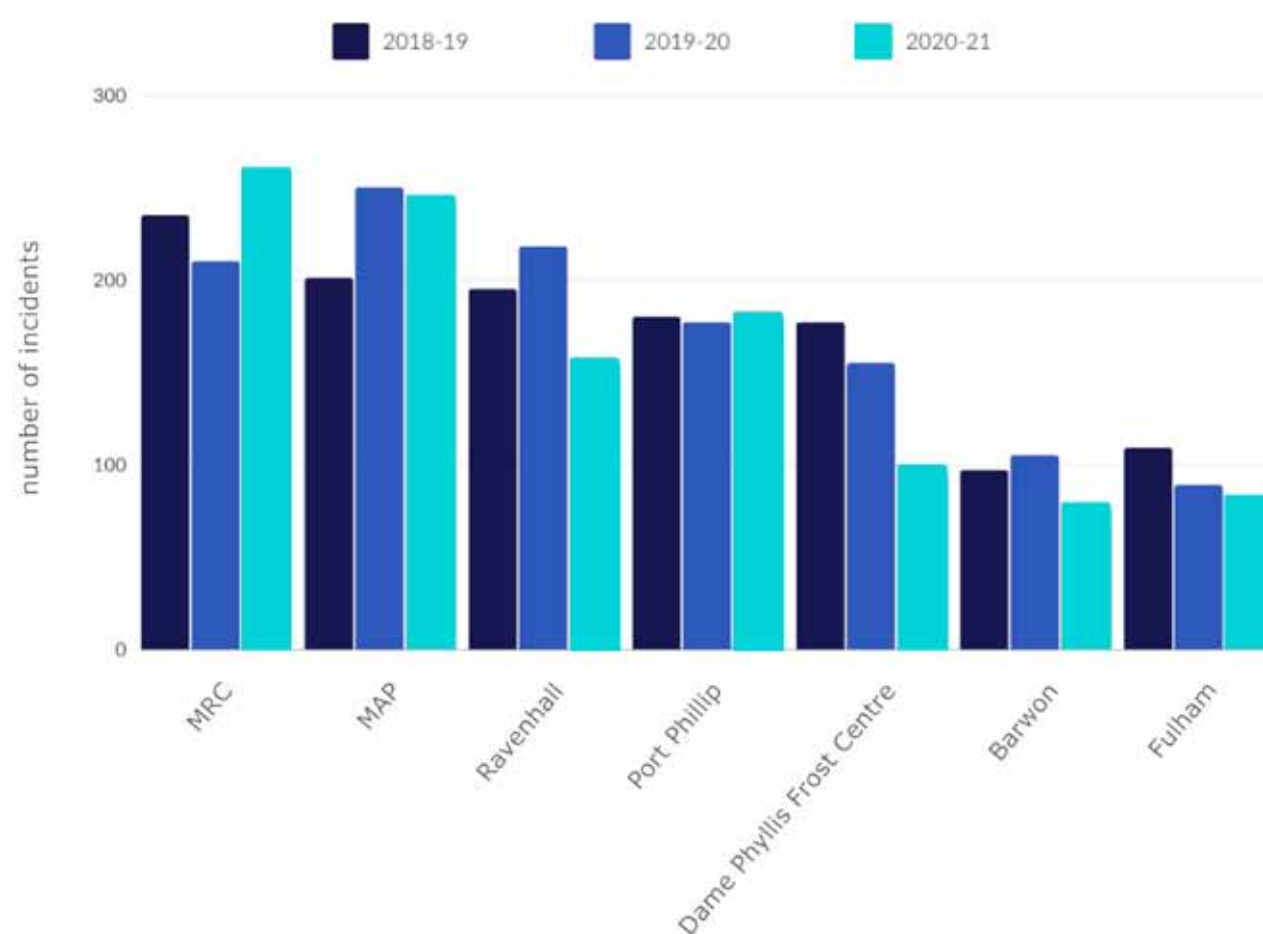


Source: Victorian Ombudsman, based on information from the Department of Justice and Community Safety

Frequency of use of force incidents

52. A 'use of force incident' is an incident in which a prison officer reports a use of force through the prison's incident reporting system. The JARO's 2017 analysis found that in 2014 and 2015, the MAP had the highest monthly use of force incident rate per 100 prisoners across Victorian prisons. The MAP was followed by the Dame Phyllis Frost Centre, the MRC and Port Phillip Prison.
53. More recent Corrections Victoria data shows the MRC recorded the most use of force incidents over the last three years, with a total of 709, followed closely by the MAP with 699. Figure 2 shows the number of incidents at seven Victorian prisons. (The remaining prisons each had fewer than 80 incidents in total across the three years.)
54. The JARO's 2017 review noted the prisons with the highest rates of use of force were all 'front-end' prisons and stated:
- this higher rate may in part be affected by these prisons accommodating prisoners who have recently been received, who may be experiencing withdrawal from alcohol and drugs, and/or are new to the corrections system.
55. In response to a draft of this report, the Department also stated that high rates of mental health issues may also impact the number of use of force incidents at particular prisons. It further stated:
- The context of a use of force incident in Victoria is important. Any time an officer puts a hand on a prisoner it is reported as a use of force. This can include if an officer places a hand on someone's arm or back to guide them to where they are needed to be.

Figure 2: Use of force incidents, 2018-19 to 2020-21



Source: Victorian Ombudsman, based on information from Corrections Victoria

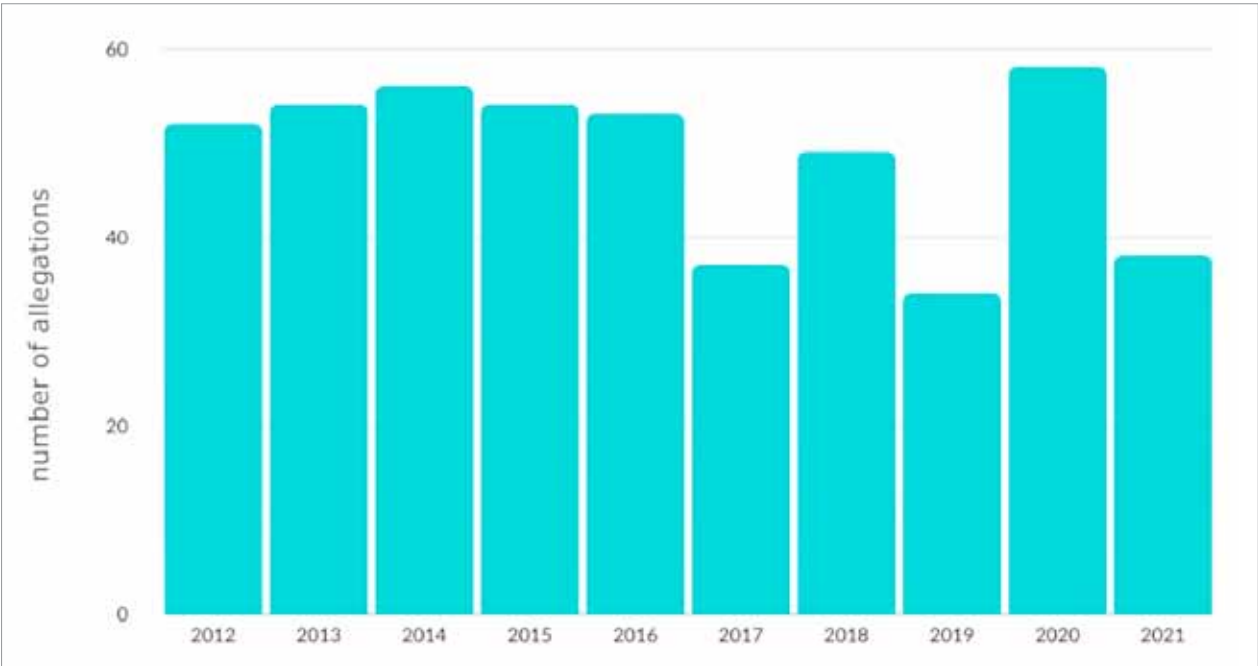
56. While this may be so, the number of recorded incidents does not suggest these lower-level uses of force are routinely reported.

Frequency of complaints about use of force incidents

57. The Ombudsman has taken complaints from prisoners and about prisons for decades. Prisoners can access a direct free phone line to our office or can write. Other parties can also complain to us about prisons and the treatment of particular prisoners.
58. In 2020-21, the Ombudsman received 3,367 complaints about Corrections Victoria. Most were about day-to-day issues such as access to medical treatment, placement within the prison system, property and visits.
59. About 3 per cent alleged improper conduct by prison officers, such as:
- misuse of position, authority or power
 - serious professional misconduct
 - misuse of information
 - bribery, extortion or secret commissions
 - detrimental action
 - unreasonable use of force.
60. When prisoners and other parties make an allegation to a prison that a prisoner has been assaulted by a staff member, it is recorded as an incident of 'alleged assault by staff on prisoner' in the prison incident reporting system. Some of these will also have been reported as 'use of force' incidents.

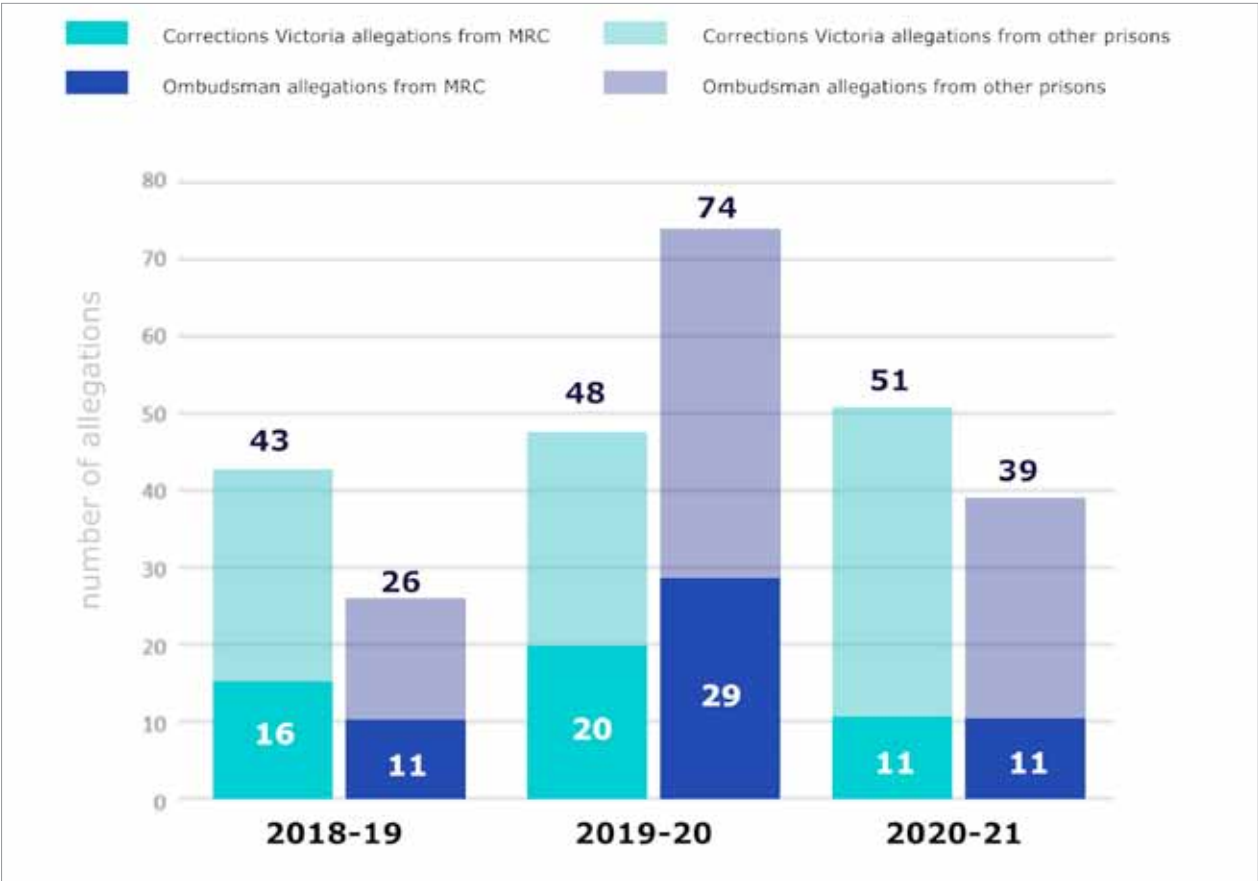
61. Figure 3 shows the number of allegations of assault by staff on prisoners received by Corrections Victoria over a 10 year period.
62. Figure 4 shows the number of cases involving allegations of unreasonable use of force received by the Ombudsman and the number of allegations of assault by staff on prisoners received by Corrections Victoria over the last three financial years.
63. Not all allegations reported to the Ombudsman are reported to prisons directly. The allegations made to Corrections Victoria related to 10 different prisons. The Ombudsman received complaints about 11 of the 14 Victorian prisons.
64. There was an increase in use of force complaints to the Ombudsman in 2019-20, and a significant drop in 2020-21. This is possibly related to differing restrictions imposed on prisoners during the COVID-19 pandemic and associated impacts on access to complaint services.
65. The MRC consistently accounts for more than a quarter of prison-related unreasonable use of force complaints made to the Ombudsman.
66. The MRC also accounted for a third of all allegations of assault by staff on prisoners received by Corrections Victoria over the past three years.

Figure 3: Allegations of assault recorded by Corrections Victoria, 2012-21



Source: Victorian Ombudsman, based on information from Corrections Victoria

Figure 4: Cases involving unreasonable use of force allegations, 2018-19 to 2020-21



Source: Victorian Ombudsman, based on information from Corrections Victoria

Substantiating complaints about use of force incidents

67. The number of substantiated complaints about unreasonable use of force in prisons is relatively small compared to the number of complaints made.
68. In response to a draft of this report, the Department stated that the reason for the low number of substantiated complaints is that 'many were vexatious'.
69. However, the investigation formed the view that part of the reason for the low substantiation rate is that it can be difficult to obtain conclusive evidence of unreasonable use of force. There are also many situations where a complaint is not 'vexatious', but rather, a prisoner genuinely believes the force used against them was unreasonable, despite it having been used in accordance with policies and procedures.
70. Between 1 July 2018 and 30 June 2021, the Department received 142 allegations of staff on prisoner assaults and referred 32 matters for employee misconduct assessment. Of these 32 matters:
 - 10 did not progress to formal misconduct investigations into allegations of excessive use of force
 - seven progressed to formal investigation but were not concluded by 30 June 2021
 - 15 progressed to formal investigations and were concluded.
71. Of the 15 investigations concluded, five were substantiated, three were incomplete due to the employee resigning and seven were unsubstantiated.
72. In the same three-year period, the Ombudsman received 139 allegations involving unreasonable use of force, investigated 12 allegations and substantiated four. It is not unusual for allegations of assault or unreasonable use of force to be made about situations where officers have not reported using force. This means no use of force records would have been created about the incident. If prisoners do not promptly make an allegation of assault to the prison or an external body, there may be no contemporaneous incident reports or other records created about the event, and relevant surveillance footage may be destroyed.
73. Even when incidents are reported, there is often insufficient or inconclusive evidence. As discussed later in this report, closed-circuit television ('CCTV') does not record sound and many incidents occur where there is no surveillance. Where footage is available, with fast-paced violent incidents it can still be hard to identify the actions of individuals and determine if the use of force was reasonable.
74. It can also be difficult to substantiate allegations because the culture in some parts of the prison system discourages officers from reporting on each other. In many cases there is nothing more than the prisoner's word against the officer's word.
75. The Ombudsman does not investigate most allegations of unreasonable use of force because of this lack of corroborating evidence. Of the complaints referred to the Ombudsman by IBAC in 2017-18 and 2018-19, 84 per cent did not proceed to investigation. This is why the number of complaints received is useful to consider, along with substantiated assaults. The fact that an allegation was not substantiated does not mean that an unreasonable use of force did not occur – the absence of evidence leaves many allegations neither substantiated nor unsubstantiated. Of the eight allegations of unreasonable use of force discussed in this report, the Ombudsman substantiated four.

During an incident

‘What we say and how we say it can be so powerful in keeping the environment calm.’

– Corrections Victoria recruitment material

‘If you get offended by somebody mouthing off at you, you are in the wrong workplace if you are working as a prison officer.’

– Prison officer

‘The problem with difficult situations is that they can arise very quickly with no warning and if you do something that management deems wrong, you can find yourself unemployed. Staff are seen as liabilities. Things don’t always go as the training manual says they will.’

– Prison employee

76. In any prison, decisions about using force often need to be made quickly and always carry a degree of risk. The most immediate and obvious risk is to the physical safety of those involved or nearby. Incidents also carry the risk of psychological trauma or injury.
77. In ‘front-end’ prisons in particular, officers face the challenges of quickly evaluating prisoners with complex needs, trying to develop or maintain constructive relationships and deciding the best way to de-escalate issues. Some prisoners are in prison for the first time and most are facing the stress of pending court cases. Language and communication difficulties can also make defusing incidents harder.
78. Officers involved in use of force incidents can also face legal, employment and reputation-related risks.
79. During our 2019 investigation *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people*, the Ombudsman surveyed Port Phillip Prison staff on issues including training and support. Some talked of needing to make rapid decisions and the additional pressure created by fearing ‘a wrong call’:
- The problem with difficult situations is that they can arise very quickly with no warning and if you do something that management deems wrong you can find yourself unemployed. Staff are seen as liabilities. Things don’t always go as the training manual says they will.
- Prison employee with more than 10 years’ experience
- [We are a]lways questioned on use of force used even when appropriate. We are trained to use it but always the way we are accused sometimes you hesitate to do anything with fear of being punished for doing our job.
- Prison employee with 5-10 years’ experience
80. Prisoners involved in use of force incidents also risk being subject to disciplinary processes with serious consequences, including possible criminal investigation and charges.
81. The most obvious way to reduce these risks is to avoid use of force incidents whenever possible. The Commissioner’s Requirements state that officers must try to de-escalate situations before using force.
82. Other ways Corrections Victoria reduces risk include widespread prison surveillance through CCTV and body worn cameras (‘BWC’), as well as officer training and clear reporting requirements.

83. However, as the eight case studies in this report show, these strategies are not always effective. We saw several examples where officers could have avoided using force if they had handled the situation better. We also saw examples where officers incited or escalated situations.
84. In this chapter, we discuss two themes arising from the cases we investigated:
- whether prison officers use de-escalation techniques to avoid and resolve incidents in line with requirements
 - the adequacy and appropriateness of surveillance, including CCTV and BWCs, during use of force incidents.

Escalation or de-escalation

85. The Commissioner's Requirements and Corrections Victoria training programs set out tools and strategies prison officers can use to manage prisoners in the pressured and sometimes violent prison environment. Response options include 'non-contact', 'less than lethal force' and 'lethal'.
86. Non-contact and less than lethal force options are regularly used by prison officers to control prisoners, prevent injury, stop an incident spreading and maintain order.
87. De-escalation is the first tactic prison officers should use to manage an incident. It involves using time, space and calm communication to defuse heightened or escalating prisoner behaviour. It aims to control a situation with no injury to the prisoner or officers and without using force.
88. The Commissioner's Requirements make it clear that physical force is a last resort and that 'negotiation and communication' is the most fundamental tactical option available to officers.
89. Other non-contact options include officer presence, or disengaging from the prisoner. A technique known as 'ICE' (isolate, contain and evacuate) includes moving other prisoners away from the incident, containing a prisoner in their cell, and allowing them time to calm down.
90. In the second part of JARO's report on the *Review of the application and management of reasonable force in the corrections custodial environment*, one MRC staffer with more than five years' prison experience reflected:
- Prisoners often display a lot of bravado to advertise their toughness to other prisoners, once you remove them from the group situation the performance is over and a dialogue can start.
91. In response to a draft of this report, the Department noted that it is not always appropriate to remove a prisoner from a situation as a de-escalation technique because this often requires force, which escalates the situation further.
92. Less than lethal force options include 'empty hand' tactics such as:
- guiding a prisoner with hands and arms
 - restraining a prisoner using hands and arms (including 'taking a prisoner to the ground')
 - defensive tactics (like standing at a distance)
 - delivering authorised strikes.

93. Prison procedures and officer training are focused on officers selecting the most appropriate tactical option based on the prisoner's behaviour, the surrounding situation and factors such as the availability of backup and the prisoner's history.
94. General Managers of Victorian prisons must ensure officers complete approved training for the security level of the prison they work in. This training includes 'appropriate use of force' and 'prisoner management and conflict resolution'.
95. Use of force training materials provided by the Department indicate that prison officers are trained in de-escalation techniques in workshops which include different scenarios and incidents.
96. The training manual teaches officers to identify prisoner behaviours which indicate an incident may be escalating towards violence, and officer behaviours that might escalate conflict. It teaches 'tactical communication' strategies to de-escalate incidents and gain prisoner compliance without physical confrontation.
97. All staff are required to complete online learning and a practical assessment each year in use of force and de-escalation techniques. ERG members do other monthly training, which may include training in use of force.
98. Individual staff training records are kept centrally by the Department. Each prison is responsible for ensuring staff complete annual training requirements.
99. In February 2022, the Department advised us that it was not compliant with the training requirements as the COVID-19 pandemic had affected face-to-face training. The Department stated this training was delivered where possible.
100. The Department also advised it has recently conducted its first 'whole of package' review of its tactical options training since 2017. It told us that it is making changes as a result, which are expected to be ready for teaching to operations staff and new recruits from early 2023. It is also trialling a new de-escalation model at Barwon Prison, which will be evaluated and considered for adoption in the broader training program.
101. In six of the eight cases discussed in this report, officers failed to avoid or de-escalate situations or behaved in a way that escalated conflict.
102. Concerningly, some prison officers not only failed to apply tactics that could have avoided violence but behaved in a way that created incidents. This behaviour violates the Commissioner's Requirements, the *Code of Conduct for Victorian Public Sector Employees* ('Code of Conduct') and the Charter of Rights Act.
103. In three cases, witnesses said prison officers attempted to incite prisoners to engage in violence before any physical confrontation took place.
104. In two cases, the evidence shows the officers instigated the violence.

Incidents that could have been avoided

105. The case involving prisoner Mr Russo at the Melbourne Assessment Prison is an example of officers exercising poor judgement which led to an avoidable violent incident.



Mr Russo – taken to his cell by SESG officers and allegedly kicked

In July 2020, SESG officers took Mr Russo to his cell at the MAP after he tried to get their dog's attention. Officers decided they needed to 'address the prisoner's behaviour' by taking him to his cell, where they allegedly used unreasonable force, including kicking him.

In a sentence management interview, Mr Russo admitted making a 'funny noise' to get the dog's attention. Two memos submitted by prison unit officers corroborated that Mr Russo asked SESG officers about what kind of dog they had. Another prisoner who was interviewed during the Department's internal investigation said Mr Russo's conduct was not aggressive at the time.

However, the SESG officers' account emphasised the danger posed by Mr Russo's attempt to 'incite the dog'. It was their assessment his behaviour escalated to the point where it was necessary to put him in his cell and address his behaviour. When asked at interview why they entered the cell with the prisoner, one SESG officer said:

... you want to just get everyone away so you can have a proper engaging conversation ... To have a chat to him about not speaking to the canine. At that stage we got him away from his friends, and then that whole ... 'putting on a show', is taken out of the question so we can have a rational conversation as adults.

A memo prepared by Corrections Victoria on the incident noted CCTV footage showed an SESG officer 'remonstrating with [Mr Russo] and pointing his finger in [Mr Russo's] face' prior to directing him into his cell.

Unit officers submitted reports saying the reason Mr Russo's behaviour escalated so quickly was the way SESG officers addressed him. A report by the Department's Intelligence Unit also suggested some staff felt the situation was avoidable, as the way SESG officers spoke to Mr Russo was a key reason for his defensiveness and agitation.

The report indicated some staff believed the SESG officers' actions had created an unsafe environment for the unit, as it set off two other prisoners who began kicking the door in the exercise yard. They noted this could have had a chain reaction, setting off the whole unit.

We found the SESG officers should have secured the prisoner in his cell to de-escalate his behaviour, allowing unit officers to address his conduct when he was calmer. A member of Corrections Victoria staff who reviewed the incident for the Department raised similar concerns.

The Ombudsman found the incident was entirely avoidable. The SESG officers exercised poor judgement in entering the cell in the manner they did and effectively escalated the incident.

Figure 5: CCTV stills showing Mr Russo and SESG officers



Source: Corrections Victoria

106. The second case where allowing time for the prisoner to calm down could have averted the use of force was an incident involving Mr Wade at the Metropolitan Remand Centre.



Mr Wade – had his wrist fractured while handcuffed

Mr Wade was a volatile and physically strong prisoner who engaged in challenging behaviours including verbally abusing and attempting to assault staff. At the time of the incident, on 24 June 2019, he was on a handcuff and movement regime which involved him putting his hands through the slot in the cell door to have his handcuffs taken on or off before he was moved in or out of his cell.

When doing this, officers said it was standard practice to secure a prisoner's handcuffs to the outside of the door with a baton placed vertically through the handcuff chain. This prevented the prisoner pulling their handcuffed hands back through the slot.

In the investigated incident, Mr Wade was being escorted to his cell. He started resisting and struggled with officers. Officers said in incident reports that he was being racially abusive.

The officers tried to remove Mr Wade's handcuffs for 45 seconds while both his arms were through the slot in the door, secured by a baton. In this struggle, Mr Wade's arm was injured. It was later found to be fractured.

It was alleged that Officer Fosse twisted the baton, causing the injury. Officer Fosse denied this allegation, saying the alleged twisting movement of his hands captured on the CCTV footage was simply him changing his grip on the baton.

Our investigation concluded it appeared an unorthodox baton twist was used in the heat of the moment to control the problematic conduct of the prisoner. We noted the urgency of the situation, the volatility of the prisoner during the incident and the heightened state of both the prisoner and the officers involved.

We found the actions of the officers led to the prisoner's injury and that the outcome could have been different if officers had chosen to slow the handcuff removal process.

In response to our investigation, the Department noted the highly resistant conduct and history of the prisoner. It stated it is often impractical for staff to slow down and this could have exposed them to further risk.

It also noted that planned upgrades will allow prisoners to be secured to cell doors by a built-in drop bolt, particularly in high security and management units, reducing the use of the baton method in the future.

107. The case we investigated involving Mr Novak showed multiple missed opportunities for de-escalation. It illustrates how interactions between staff and prisoners can escalate over days, with one incident linked to the next. It is one of several cases we investigated where use of force incidents were preceded by earlier altercations.



Mr Novak – allegedly thrown against a wall and punched

In February 2020, the night before a use of force incident involving Mr Novak at the MRC, the prisoner requested Panadol – which was not provided. Officers said in incident reports that Mr Novak was abusive that night, at one point calling Senior Officer Gowty a ‘cocksucker’. Mr Novak stated that Senior Officer Gowty said to him, ‘We’ll see how cocky you are when no-one’s around’.

The next morning, Mr Novak said he was told ‘the senior wants to talk to you’. Prison officers escorted him from his cell to a staff area near the holding cell where, Mr Novak said, ‘there is no CCTV’.

While Mr Novak was standing next to the holding cell door with three or four prison officers, Senior Officer Gowty told him he was going to be moved to the Attwood Unit.

Senior Officer Gowty described the Attwood Unit as being:

for prisoners that have been non-compliant, or their behaviour has been poor. So therefore they’re more limited with time out of the cell, limited with visitors ... more often than not, prisoners aren’t happy about going there.

Accounts of what happened next vary. Mr Novak said that when he asked when he was moving, Senior Officer Gowty suddenly shouted ‘stop resisting!’ and threw him against the wall, before giving him ‘a couple of punches’. Mr Novak alleged the incident was retaliation for the night before.

However, the incident report created by a prison supervisor stated:

On arrival at holding cell, prisoner became non-compliant and refused a number of instructions to enter the holding cell. Prisoner became agitated and aggressive towards staff. Staff under belief they may be assaulted. Prisoner taken to the ground, Code Blue called.

Our investigation ultimately did not find the officers used unreasonable force on Mr Novak, but concluded the incident was avoidable. The decision to tell Mr Novak about his move to the Attwood Unit before he was secured in the holding cell escalated the situation.

One of the officers involved in the incident acknowledged the decision to tell Mr Novak about the move while outside the holding cell contributed to the incident. He said ‘some incidents don’t go as planned, as you want them to’.

Prison officers inciting prisoners and instigating incidents

108. In some investigations, such as the case of prisoner Mr Lloyd, we saw evidence of prison officers deliberately or recklessly inciting and instigating violent incidents.



Mr Lloyd – allegedly kicked in the head after the court transport van left him behind

In this incident, it was alleged that Mr Lloyd was ‘stomped’ on, ‘kicked in the head’ and ‘bashed’ by three prison officers at the Metropolitan Remand Centre. The incident took place in February 2020, when Mr Lloyd was due to attend a court hearing. After waiting more than two hours in the prison’s reception area, he was left behind by the transport van because of a lack of space in the court cells.

It was alleged that Acting Supervisor Parrino and at least two other officers took Mr Lloyd to a CCTV blind spot. Mr Lloyd told the investigation that Acting Supervisor Parrino asked him if he ‘wanted to have a dip’ at the officers. The prisoner said he replied he just wanted to go back to his cell. It was alleged that Acting Supervisor Parrino then punched Mr Lloyd, pushed him to the floor and started kicking him in the head, and that other officers kicked and stomped on him.

In their incident reports, five officers gave accounts that Mr Lloyd was the instigator. They said when he returned from reception, they directed Mr Lloyd to go back to his cell, but he began threatening staff, including threatening to blow up their cars. The incident management system entry states Mr Lloyd then attempted to headbutt and punch officers which led to the use of force and restraint of the prisoner on the ground in a ‘two man take down’.

Mr Lloyd was a young man with an acquired brain injury who had expected to go home following a court appearance on the day of the incident. Our investigation ultimately did not substantiate the allegation of unreasonable use of force. However, it found the incident could have been avoided if the officers had taken into account Mr Lloyd’s circumstances and the news he would not be attending court.

Another incident occurred that morning, as officers took Mr Lloyd to an observation unit following the ‘two man take down’. Our investigation found one of the officers escorting him, Officer Munro, hit Mr Lloyd on the back of the head. Despite Mr Lloyd provoking the officer during this incident, Officer Munro displayed unprofessional conduct by giving way to anger and being unduly rough. Mr Lloyd also had two collisions with doors or door jambs during the escort. The evidence indicated the officers’ actions in these collisions may have been deliberate, which they disputed.

109. This case also shows that the ability to defuse situations varies from officer to officer. The CCTV footage shows that Officer Munro engaged with the prisoner verbally and physically and did not exercise physical or emotional self-control.
110. By contrast Senior Officer Nelson, another officer with more experience involved in the escort, maintained his professional composure throughout despite Mr Lloyd’s resistance and likely provocation.

111. Another case where there is evidence an officer tried to incite a prisoner to violence is that of Mr Snow. In this case, the Ombudsman substantiated the allegation of unreasonable use of force.



Mr Snow – slapped while sitting in his cell

In March 2020, Officer Georgiou entered Mr Snow's cell at the Metropolitan Remand Centre to speak about a behaviour issue. Mr Snow said on that day he had been 'a bit lippy to staff' about the conduct of another inmate when he 'shouldn't have been'.

Mr Snow was sitting at his desk when Officer Georgiou spoke to him. Officer Page, who was standing in the doorway, stated that Officer Georgiou said 'Do you wanna go me? I'm here now, hit me cunt', and that Mr Snow responded, 'I'm not dumb enough to throw the first punch', just before Officer Georgiou slapped Mr Snow.

Officer Page said '[I] witnessed [Officer Georgiou] open palm slap [Mr Snow] across the face ... [Mr Snow] then stood up and retaliated and a physical altercation quickly escalated with punches being thrown'.

Mr Snow's account also described Officer Georgiou speaking in a way that suggests he was inciting Mr Snow to violence. Mr Snow reported that Officer Georgiou said, 'what are you going to do about it?'.

Officer Georgiou's behaviour in the cell escalated the incident. He made no attempt to verbally defuse the situation or withdraw.

Also, some witnesses questioned whether Officer Georgiou even needed to enter the cell at all and suggested if he had checked with a senior officer, they would have advised against it.

Our investigation substantiated the allegation of unreasonable use of force. We found the incident could have been avoided if Officer Georgiou had chosen not to enter Mr Snow's cell to address his behaviour at that time and that this action was both unwise and unnecessary, indicating Officer Georgiou was acting in the heat of the moment.

Officer Page also described Officer Georgiou using inciting language in an incident with another prisoner shortly before the incident with Mr Snow:

I know [Officer Georgiou] drew his baton first because [Officer Georgiou] was sort of egging him on 'let's go let's go' and then he drew his baton and the prisoner pulled out his blade almost in self-defence and it escalated from there.

112. Our investigation into the case of Mr Griffin also shows prison officers behaving in a way that contravened the Code of Conduct, the Commissioner's Requirements and the Charter of Rights Act.



Mr Griffin – 'choked' while in his cell

It was alleged that in September 2018, Officer Averill went into Mr Griffin's Metropolitan Remand Centre cell and choked and slapped him.

CCTV footage shows Mr Griffin and his cellmate Mr Rivera walking past Officers Averill and Beringer. Mr Griffin said:

I think [Mr Rivera] said 'hello' to the officers, then they followed us back to the cell calling us 'smart arses' or something.

Officer Averill said:

I remember walking the tiers and said g'day to him and a few other prisoners that were in the area and he displayed a belligerent attitude, so part of our role as prison officers is to correct or challenge their behaviour.

Officer Averill said he could not remember what the prisoner had said but it was something derogatory which was 'unacceptable'.

CCTV footage shows the officers patting down the prisoners outside the cell. Mr Rivera appears to be asked to move further away from the cell while Mr Griffin goes inside with Officer Averill. Officer Beringer enters the cell and closes the door and the officers remain in the cell with Mr Griffin for two minutes.

At interview, Officer Averill provided the following explanation for taking Mr Griffin into the cell:

So that day he was displaying belligerent activity or behaviour towards us so I remember taking him into his cell so I could afford him some privacy because if you put them on show it's a bad thing. So if you speak to them in front of other prisoners that is detrimental for them ... It can inflame the situation, like if there are other people there to interact, they can egg him on or yell at him and stuff and they can communicate with him when you're just trying to have a one on one.

Mr Griffin and the officers gave different accounts of what happened inside the cell. Mr Griffin said:

I got singled out and [Officer Averill] was yelling at me to 'sit down'. I didn't want to sit down. I had no reason to, you know what I mean. And then I ended up sitting down ... then he started choking me out and calling me a smart arse and shit and just being a fucking idiot. I don't know, don't understand why.

Mr Griffin said Officer Averill let go and then started choking him against the glass and air vent at the back of the cell. He said Officer Averill had both thumbs in 'my Adam's apple'.

Officer Averill denied that he or Officer Beringer assaulted or used force against Mr Griffin:

I remember speaking with him in his cell and telling him his behaviour was inappropriate ... He wasn't really getting the point. He just kept telling us 'whatever' ... I spoke to him and wasn't really getting anywhere so I left the cell and went back to the officers' post ... and that's as much as I remember.

Interviewed later, Mr Rivera said he heard 'a bit of noise' from the cell during the incident. He said Mr Griffin's neck was red when he came out of the cell and Mr Griffin said 'those dogs choked [and] slammed me'.

Our investigation found it was likely that Mr Griffin said something Officer Averill described as belligerent. Prison officers have discretion in how they deal with disrespectful behaviour from prisoners. Entering a prisoner's cell to discuss behaviour is within that discretion. However, allowing the prisoner time alone in his cell in this instance may have led to a better outcome. It appeared that Officer Averill failed to consider that entering the cell would escalate the situation.

The investigation found it was more probable than not that Officer Averill used unreasonable force against Mr Griffin.

Following our report, the Department investigated the allegations against Officer Averill, but found there was insufficient evidence to pursue a misconduct investigation.

It referred the assault allegation to Victoria Police, but they closed their file when Mr Griffin declined to provide a statement.

113. Another case we investigated involved Mr McPherson. This case did not show a failure by officers to de-escalate a situation, but rather a deliberate escalation where an officer incites a prisoner and instigates an assault.



Mr McPherson – unreasonable use of force in the supervisor’s office

In April 2020, prison officers at the MRC told Mr McPherson to go to the unit’s holding cell. Officers then led him to a small supervisor’s office in the staff area not covered by CCTV. A prison supervisor, Supervisor Hinson was seated at a desk.

Mr McPherson said the supervisor said something like ‘your attitude hasn’t been the best lately, has it been?’. Mr McPherson said he replied ‘Nah it hasn’t been. I don’t appreciate your officers saying I’m a sex offender when I’m not’.

In a memo to a manager, the MRC’s Aboriginal Liaison Officer (‘ALO’) wrote:

[Mr McPherson] stated that when he was in the supervisor’s office [Officer Koeman] stated to [Mr McPherson] ‘come on have a go at me now’. [Mr McPherson] stated that he responded by telling [Officer Koeman] ‘my kids were more important and it isn’t worth it.’ [Mr McPherson] then stated that [Officer Soren] and [Officer Koeman] hit him whilst he was seated on the chair, he then fell to the ground and was hit again.

In a phone call to his mother after the incident, Mr McPherson said:

Can you get onto my lawyers for me? Because the screws have just punched the fuck out me ... These screws aren’t getting away with it. Literally the whole side of my face is swollen right now. My ribs are all fuckin’ red and everything.

Mr McPherson was not medically examined until two days later when he reported the incident to the ALO. Records from that examination noted bruising on his right eye and minor bruising to his left chest and upper arm.

When interviewed under oath or affirmation by the Ombudsman, the two officers involved denied they had taken part in or witnessed an assault, and said they believed the prisoner was stressed about being in prison.

Supervisor Hinson said he had no recollection of the meeting except notes he made at the time.

Our investigation found that Officers Koeman and Soren used unreasonable force on Mr McPherson. There was insufficient evidence to show that Supervisor Hinson was in the supervisor’s office at the time the force was used.

Surveillance

114. The use of CCTV and BWCs in prisons is primarily guided by the Commissioner's Requirements and Deputy Commissioner's Instructions. The Commissioner's Requirements say that while human rights and a prisoner's dignity must be considered, surveillance is necessary to create a safe environment for prisoners, officers and members of the public.
115. Prisons use surveillance to:
- keep good order
 - prevent injury to officers, prisoners and the public
 - identify behaviours such as self-harm and smuggling of contraband
 - help investigate allegations of unreasonable use of force and inhumane treatment by prison officers against prisoners.
116. CCTV can be used for live monitoring of prisoners and for producing recordings as evidence where an incident occurs that may be subject to later review or investigation.
117. Everyday surveillance footage from CCTV and BWCs in prisons is only required to be kept for seven days. The Commissioner's Requirements mandate that recordings related to an incident involving use of force or an allegation of a staff assault on a prisoner must be retained for seven years.
118. This footage can protect officers from suspicion, complaints and further investigation. It can also help investigators determine whether a prisoner was treated in accordance with relevant laws and policies.

119. For reasons discussed throughout this report, without this footage it can be difficult to substantiate allegations of unreasonable use of force.

CCTV

120. Fixed CCTV cameras record images but not sound. They are mounted in many areas of prisons, but do not cover all spaces prisoners access. Areas not covered by CCTV cameras are known as 'blind spots'. These include spaces where no cameras are installed, and those parts of a room or corridor not visible on footage even where there is a camera.
121. All prisoner cells are blind spots as none have CCTV cameras. There are also no CCTV cameras in many staff areas.
122. The Ombudsman's 2019 review of prisoner assault allegations to our office found that of the incidents complained about in 2017-18 and 2018-19, 33 per cent did not occur in the presence of CCTV. In another 23 per cent, it was unclear whether the incident occurred in the presence of CCTV or not. Of the incidents which did not occur in the presence of CCTV, half were in prisoner cells and a further 36 per cent were in other areas which did not have cameras.
123. Corrections Victoria reports it is working to improve CCTV coverage in prisons:
- the minimum standard for CCTV for all medium and maximum security locations, is 100% coverage of all 'holding' or common areas, 100% of the time.
124. It states that Loddon and Marngoneet prisons are currently undergoing upgrades to meet this standard but that all other medium- and maximum-security locations (including the MRC and MAP) already comply.

125. Of the eight incidents detailed in this report, only one was captured on CCTV. This was the incident in which Mr Wade's wrist was fractured when his handcuffs were being removed through a cell door. Corridors outside prisoner cells are monitored, but the footage in this case was not conclusive. It is hard to see each person's actions during the incident as four officers are crowded around the door and sometimes positioned in a way that blocks the camera's view.
126. The other seven incidents occurred in blind spots:
- Three occurred in the corridor and area outside the unit's holding cell.
 - Three occurred in the prisoners' cells.
 - One occurred in a supervisor's office.
127. Even when incidents occur in blind spots, CCTV is valuable in helping establish the facts from footage of prisoners and officers immediately before and after incidents.
128. Mr Griffin, who was 'choked' in his cell, was filmed before the incident apparently making a passing comment to Officer Averill. In the CCTV footage Mr Griffin emerges from the cell after the incident looking upset. The footage shows him speaking to his cellmate and putting his hand up to his throat. Soon after, the CCTV footage shows Mr Griffin approaching two prisoners, one of whom points to his throat and touches his jaw.
129. Mr McPherson, who was subjected to unreasonable force in the supervisor's office, can be seen in CCTV footage in the holding cell immediately before and after the incident. Before, he appears calm and composed and is wearing a necklace. After the incident he appears upset. He is crying and wiping his face with his singlet. His neck and shoulders are red, and the necklace he was wearing is held in his left hand.

Figure 6: CCTV stills of Mr Griffin after the incident



Source: Corrections Victoria

Figure 7: CCTV stills of Mr Griffin after the incident



Source: Corrections Victoria

Figure 8: CCTV stills of Mr McPherson before and after the incident



Source: Corrections Victoria

130. The Ombudsman also investigated cases where CCTV captured glimpses of incidents.
131. The incident with Mr Novak, who was allegedly thrown against a wall and punched after being told he was being moved to the Attwood Unit, took place outside the unit holding cell. CCTV footage shows his head and body suddenly jerk backward and forward. His head then moves out of camera range. Our investigation could not substantiate the allegation of unreasonable use of force, but noted all three officers' incident reports were inconsistent with the CCTV footage.
132. In response to a draft of this report, in relation to the inconsistency between the officer incident reports and the CCTV footage, the Department stated:
- Staff do not get to see footage before writing reports and they are written from their own memory of the events. They are also not to collaborate with other staff.
133. There is also partial CCTV footage of what happened in the cell in the incident with Mr Russo.



Mr Russo – taken to his cell by SESG officers and allegedly kicked

CCTV footage captured Senior Officer Schwartz appearing to kick Mr Russo

After Mr Russo tried to get the attention of the SESG dog, officers took him to his cell to 'address his behaviour'.

The CCTV camera outside Mr Russo's cell showed him being followed in by Supervisor Ramsey and Senior Officer Schwartz. Senior Officer Jernigan stood in the doorway and partly closed the cell door. This obscured the CCTV view inside the cell. After 45 seconds, Senior Officer Jernigan walked into the cell and closed the door.

About 40 seconds later, the dog outside the door tilted its head left and right and looked towards the cell.

The officer holding the dog opened the cell door and the CCTV camera briefly captured what was occurring inside. Senior Officer Schwartz was leaning on what appeared to be a desk at about waist height. His left foot moved, delivering what may have been a kick. The contact point of his foot was out of camera frame.

About 15 seconds later, Mr Russo tried to crawl out of his cell between the legs of Senior Officer Jernigan while the officers all attempted to stop him. General duties unit officers then arrived and assisted in restraining Mr Russo on the ground while the SESG officers applied handcuffs and a spit hood. He did not appear to struggle as the cuffs were applied.

Officers interviewed under oath or affirmation by our investigation denied that Mr Russo had been kicked. They said the CCTV footage looked more like Senior Officer Schwartz had lost his balance or was 'bouncing off the wall, he got pushed into the wall maybe'.

However, the footage of this incident helped substantiate Mr Russo's allegation. We found that the officers failed to de-escalate the situation, that they shouldn't have entered Mr Russo's cell and that therefore the force used was unreasonable.

Body worn cameras

134. BWCs record video and audio. They can assist in resolving conflicting accounts of an incident, and can record incidents in areas not covered by CCTV, such as prisoners' cells. The use of BWCs is also intended to be a de-escalation tool on the basis that if a prisoner knows they are being recorded, they may moderate their behaviour.
135. BWCs are generally used by SESG supervisors and ERG officers in public prisons, and by equivalent specialist response officers in private prisons. General duties officers do not routinely wear BWCs, which means there is usually no BWC footage of incidents unless specialist officers attend.
136. In some cases where specialist officers attend there is still no footage of incidents, because some fail to turn on their BWCs.
137. BWCs are worn on the left-hand side of an officer's vest at chest level. The cameras have a 150-degree field of vision, night vision and the capability to record 30 seconds prior to activation if on standby.
138. To turn the camera on, officers press the camera button once for buffering and again to activate. A red light indicates the camera is recording. Officers are required to announce when the camera is activated. Footage is date and time stamped and cannot be deleted by an officer once the camera is activated.
139. The Commissioner's Requirements state that BWCs must be activated:
 - when an incident is taking place
 - where an officer believes a situation is escalating and may result in the use of force
 - where the safety of any person is compromised
 - when prison property is being vandalised
 - when a code is called.
140. There are reasons why officers may not activate cameras. Officers interviewed as part of our eight investigations said they were fearful of physical harm if they looked away from a prisoner to activate their camera during a difficult or violent situation. Others spoke of difficulties pressing the button twice to activate the camera.
141. If an officer fails to use their BWC during a serious incident, it can leave them open to suspicion and further complaints and investigations.
142. BWC footage is one of the few sources of evidence not based on a subjective recollection of the incident. It can help substantiate witness accounts of events and establish how the prisoner was treated.
143. BWC footage was available of only two of the eight incidents discussed in this report.
144. In three cases, the officers present were not wearing BWCs.
145. In the other three cases, the officers said there was no reason to activate their cameras. One of these was the incident involving Mr Wade, where he had his wrist fractured while handcuffed. We concluded it was likely the officers involved considered transferring Mr Wade to his cell to be 'routine' and not requiring the use of BWCs. The other two unrecorded incidents were the McPherson and Griffin cases, in which the officers denied any incident took place at all.
146. In the two cases where BWC footage was available, it was only partial because officers activated cameras after the incident started or turned them off during.



Mr Ruiz – threatened and allegedly punched in the head

BWCs turned off during a violent incident

In December 2019, MRC officers directed Mr Ruiz to a holding cell after he asked about some missing property. He became agitated and abusive and refused to go. Senior Officer Simpson reported that when she directed Mr Ruiz to move away, he said 'I'm not moving, I'm going to fuck you up'.

The following incident was violent. Officer Molina noted that Mr Ruiz was a 'big guy' and required four or five officers to subdue him when he did not want to comply with staff directions. Officer Molina said he heard the prisoner say 'I'll kill youse all' during the incident.

The first piece of BWC footage came from Senior Officer Parrino's camera and lasted 22 seconds. It showed Officer Reeves and Senior Officer Simpson moving Mr Ruiz through a door. Mr Ruiz thrashed around while officers tried to restrain him. Senior Officer Simpson's face and neck made contact with the door frame.

At 10 and 11 seconds in the BWC footage, an officer put his arm around Mr Ruiz's neck, and dragged him into a room opposite the holding cell.

At 15 seconds, the footage showed Mr Ruiz face down on the ground, as officers struggled to restrain him.

For the remaining seven seconds of the footage, Mr Ruiz could be heard yelling loudly and repeating several times 'Stop fucking hitting me!'. Senior Officer Parrino then manually turned off his BWC, even though the incident was not over.

The second piece of BWC footage came from Officer Georgiou and lasted about 90 seconds.

This footage also showed officers bringing Mr Ruiz to the floor and captured him saying, 'Stop fucking hitting me!'.

For several seconds Mr Ruiz struggled on the floor while officers strained to control him. During this time, Mr Ruiz shouted loudly, including obscenities and threats to sue the officers. Officer Molina told Mr Ruiz to 'Comply!' and 'Stop resisting!', while Mr Ruiz continued to shout and struggle.

At one minute and two seconds into the BWC footage, Officer Molina had his hand on Mr Ruiz's neck. He leaned in close to Mr Ruiz's head and said '... or I'll break your fucking neck'.

Mr Ruiz continued to shout while handcuffs were applied.

At one minute and six seconds into the BWC footage, Officer Molina, still leaning over Mr Ruiz with his hand on his neck, said 'Understand? Or I'll break your neck, understand?'.

Mr Ruiz then stopped struggling and became quiet.

The BWC footage then shows the officers checking on each other's welfare and seeking to reassure each other.

In an interview with the investigation, Officer Molina acknowledged he told Mr Ruiz he would break his neck and said it was because he feared for his life.

The third piece of footage again came from Senior Officer Parrino. One minute and eight seconds after he turned his BWC off, he turned it back on for 42 seconds. This footage showed Officers Molina, Reeves and Georgiou and another officer kneeling around Mr Ruiz's head, shoulders and back, while Senior Officer Simpson was lying diagonally across Mr Ruiz's lower legs.

Senior Officer Parrino turned around and opened the holding cell door, likely in anticipation of Mr Ruiz being moved there. Senior Officer Parrino then returned to the room Mr Ruiz was in and Officer Georgiou reached over and turned off Senior Officer Parrino's BWC.

Senior Officer Parrino said he thought Officer Georgiou was trying to turn it on, and that his BWC 'must have already come on during the initial melee'.

When a BWC is recording, a red light comes on. While Senior Officer Parrino may not have seen this on his own chest, Officer Georgiou was more likely to have.

Officer Georgiou said he could not recall why he turned Senior Officer Parrino's camera off, speculating it was because 'there was no threat anymore', and he 'must have thought it was safe to do so'. He said on reflection, the incident was 'not over', as Mr Ruiz still needed to be moved, and the BWCs should not have been turned off.

There is a fourth piece of BWC footage, taken about half an hour later, when officers came to escort Mr Ruiz to the medical centre. On this recording two officers confirmed verbally that the 'camera is on'. Mr Ruiz responded by saying 'you've got the camera on now because you beat the shit out of me'.

147. In the incident involving Mr Russo, who was taken to his cell and allegedly kicked after trying to get the attention of the SESG dog, Supervisor Ramsey only activated his BWC once Mr Russo was secured on the floor. Supervisor Ramsey said he did not want to take his eyes off the prisoner to turn his camera on because he was concerned for his safety.
148. The footage showed Mr Russo being verbally aggressive, saying 'fuck off dog' and 'you're a weak fucking dog'.
149. Mr Russo can also be heard specifically mentioning that officers failed to use their BWC, saying 'if your cameras were on, you'd see it. They weren't even on me'.
150. While Mr Russo is being secured face-down on the floor, a few more exchanges occur where officers respond to an apparent threat to shoot them. This is not audible on the footage, and Mr Russo can be heard denying he said this while the officers restrain him.
151. Just before the officers help Mr Russo stand up, the prisoner exclaims '[t]hat Alsatian is fucking cool isn't it!', then the footage ends.
152. A member of Corrections Victoria staff who reviewed the incident acknowledged that no body worn cameras were activated and that officers 'went into the cell when they could have just secured him in there'.
153. The review stated that given Mr Russo's 'belligerent behaviour' the SESG supervisor should have activated his BWC when staff made the decision to follow Mr Russo into his cell. It also stated:

The use and activation of body worn cameras has been the subject of ongoing discussion over the past 18 months or so, given the number of incidents and reviews highlighting staff failure to comply with policies.
154. The Department audits use of force incidents monthly and between July 2019 and December 2021 audited 267 incidents. In 11 of these cases, around 4 per cent, the general manager of the relevant prison was asked to issue a reminder about activating BWCs.
155. The Ombudsman, IBAC and JARO have all examined regulations and procedures surrounding the use of BWCs.
156. In its *Special report on corrections*, IBAC noted interference with video recordings was an issue in prisons across Australia. The report further noted alleged assaults frequently occur in CCTV blind spots, something also noted by the Ombudsman in our investigations and other complaint data.
157. In the Ombudsman's 2019 review of prisoner assault allegations, 88 per cent were either not captured by BWCs or the Ombudsman was unable to access the footage. In many cases there was insufficient information to determine why no BWC footage was available. Some of these incidents were attended by officers without BWC. Others should have been captured but officers did not turn on their cameras.

158. It was hard to draw firm conclusions about this, as it was not always clear from the files why there was no BWC footage. It is possible footage was not captured for valid reasons.
159. Alternatively, it is possible BWCs were not used in order to avoid detection of improper prison officer conduct and behaviour.
160. In January 2020, Corrections Victoria strengthened the Commissioner's Requirement on BWCs to include a direction that:
- when an alarm or Code is raised, control room staff will issue a reminder to staff to activate their Body Worn Camera. Staff responding to incidents must activate their Body Worn Camera as soon as they can, to enable footage to be captured at the earliest opportunity.
161. Corrections Victoria told us it is expanding its BWC program. They are buying 135 new cameras for the SESG, so every operational member can wear one. They are also replacing older BWCs at some prisons and expanding their use into medium-security prisons.
162. The cases discussed in this chapter show failures by prison officers to adequately de-escalate and avoid use of force incidents. While acknowledging prison officers work in a challenging environment and using force will sometimes be necessary, the actions and decisions of some officers are inappropriate and not in accordance with the law and the Commissioner's Requirements.
163. There is a clear disconnect between Corrections Victoria's intentions and the actions of some officers on the ground.
164. In response to a draft of this report the Department emphasised that the incidents in the report should be considered in context. It stated that there were 25,308 incidents in Victorian prisons in 2021 and that:
- [m]ost incidents are managed well by staff but all incidents should be taken seriously, responded to appropriately, and any cultural issues identified addressed.
165. The Commissioner's Requirements make it clear the use of physical force should be a last resort, but some prison officers are escalating situations rather than defusing them. This means officers are unnecessarily endangering themselves and prisoners. For some officers, the use of force seems to be the first resort, rather than the last.
166. Corrections Victoria's current recruitment material focuses on 'soft skills' and building relationships, but some officers are inciting violence and instigating incidents. Corrections Victoria's hiring and vetting practices are not always effective in filtering out inappropriate applicants.
167. The role of prison officer requires a high level of resilience, good judgement under pressure and empathy. A person who has difficulty controlling their emotions, or who is capable of using unreasonable force without provocation should never have been hired as a prison officer.
168. It is often hard to judge whether the use of force by officers was justified because of a lack of objective evidence. The frequency with which use of force incidents occur in CCTV blind spots is concerning. This issue was also raised in the IBAC *Special report on corrections*.

Conclusions

169. In a number of our cases, officers took prisoners to unmonitored areas to discuss or address an issue with behaviour. Some witnesses gave evidence about the importance of having these conversations in private, as the presence of other prisoners has the potential to 'inflare' prisoner behaviour.
170. Isolating prisoners from others is a legitimate de-escalation technique, but it can create problems where they are moved into a CCTV blind spot. Any conversation in which prisoner behaviour is being addressed has the potential to escalate.
171. When incidents do occur in CCTV blind spots, the officers involved can face suspicion about their actions and motives. Having these types of conversations in a private but monitored area, such as a holding cell, protects both staff and prisoners.
172. A number of incidents we investigated occurred in corridors outside holding cells, which are CCTV blind spots. Holding cells are used for containing prisoners after incidents or when transferring them to places they may not wish to go. Given this, corridors outside holding cells are high-risk areas for incidents and should be covered by CCTV.
173. Another way of mitigating the risks of confronting prisoners in CCTV blind spots is by using BWCs, but officers frequently fail to use BWCs as required. As with CCTV avoidance, not using BWCs raises concerns about the motivation and conduct of officers and can lead to further complaints and investigations.
174. Choices by a prison officer such as avoiding surveillance can not only increase the likelihood of complaints and impede investigations but can also indicate 'masking behaviours'. The IBAC *Special report on corrections* describes masking behaviours as those which 'cover up the wrongdoing of colleagues'. These may be 'deliberate or unintentional behaviours which have the effect of concealing what really occurred'.

After an incident

‘The majority of all reports written after a use of force incident in my experience are inconsistent with each other ... due to a number of factors ... this is probably difficult to comprehend if someone has never dealt with threatening and potentially violent behaviour on a daily basis over a number of years.’

– Prison officer

‘You’re complaining to thin air, nothing gets done anyway. And then your jail just gets harder.’

– Prisoner

175. Use of force incidents and allegations of assault by staff on prisoners are subject to a range of reporting, review and investigation requirements.
176. The Commissioner’s Requirements and the Corrections Act lay out rules for reporting use of force incidents. They cover the obligations on officers to report and document use of force incidents, be it to prison authorities, the Department or Victoria Police.
177. The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) also contains mandatory reporting requirements which may be triggered by a use of force incident or an allegation of assault. Allegations about unreasonable use of force in prisons can also be reported to external bodies such as the Ombudsman, IBAC or Victoria Police voluntarily by any person.

178. The rules governing reporting the use of force in prisons aim to ensure that incidents are reported promptly and accurately in order to support accountability, ensure appropriate medical responses and enable effective oversight.

179. They also require that evidence be secured to allow for further review and investigation:

Following a use of force incident or immediately upon notification of an assault or alleged assault:

- prisoners must be referred for medical assessment;
- photographs of the prisoner must be taken, and/or
- a copy of any available CCTV, video camera or Body Worn Camera records must be created and retained in accordance with taping protocols and retention periods.

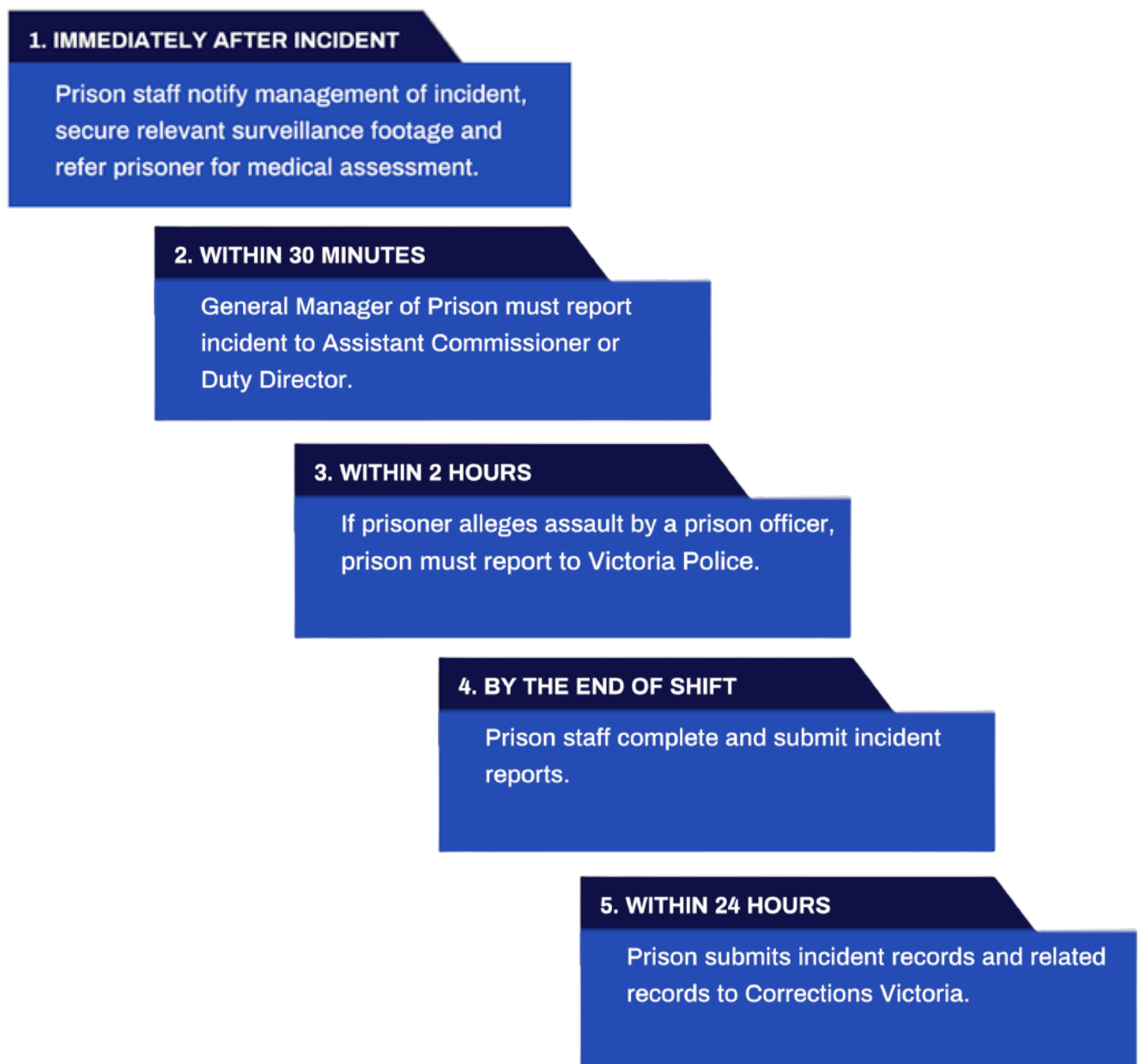
180. In the eight incidents detailed in this report, we found concerning cases where officers did not follow procedures or where investigations reached conclusions we did not agree with. In this chapter, we discuss two themes arising from the cases investigated:

- the adequacy and accuracy of incident reporting
- whether incidents are investigated thoroughly and impartially.

Incident reporting

181. Use of force against a prisoner or an allegation that an officer has assaulted a prisoner are both deemed 'notifiable incidents' by the Commissioner's Requirements. There are strict reporting timelines for notifiable incidents.

Figure 9: Timelines for reporting use of force incidents and allegations of staff on prisoner assaults



Source: Victorian Ombudsman, based on Commissioner's Requirements

182. Officers must submit incident reports by the end of their shift so their recollections are fresh and the reports can be provided to monitoring or oversight bodies promptly.
183. Each prison also has a Use of Force Register in which every use of force must be recorded. The Commissioner's Requirements state the Use of Force Register must record basic information about the event, such as time, location, who was involved and the sort of force used. It also requires officers to detail 'events leading up to the incident, including other avenues explored to resolve the matter'.
184. While our investigations reviewed a range of incident records which adhered to reporting and notification requirements, we found others which did not.
185. In response to a draft of this report, the Department stated that the Corrections Victoria Monitoring, Standards and Review Unit has mechanisms in place to review the quality of incident reporting.
186. The Department also informed us that since 2018, data about incident reporting has been collected as part of the monthly use of force audit process. This data includes whether the appropriate notifications were made after the incident, whether staff reports were included in the incident report pack, whether prisoners were referred for medical assessment, and whether CCTV footage was retained following the incident. Whether staff activated their BWCs has also been recorded since October 2021.
187. Between 2018 and 2021, the percentage of incidents where CCTV footage was not retained has reduced from 15 per cent to 4 per cent. For the same period, the percentage of incidents where staff reports were not included in the incident pack has reduced from 5 per cent to 0 per cent.
188. The Ombudsman accepts incident reporting will never be perfect, given the pressures of the prison environment. In a fast-moving and violent incident, recollections between officers can vary and it may be difficult to recall and include all relevant details.
189. Even considering these difficulties, the Ombudsman found cases where the way officers reported incidents did not meet acceptable standards. There is evidence suggesting under-reporting of alleged assaults and use of force within the prison system and at times, inaccurate or deficient reporting.

Prisoner reluctance to report allegations of unreasonable use of force

190. In 2017, the Ombudsman published a report on *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* ('DPFC').
191. The report found:

[e]leven per cent of women who responded to the prisoner survey said they had been assaulted by staff while at DPFC. A further three per cent said they had been sexually abused by staff. Forty-five per cent said that staff had threatened or intimidated them.

192. However, only a third reported an incident and only 13 per cent said the prison had acted. The report identified common reasons given by prisoners for not reporting incidents, including:

- fear that reporting would make the situation worse
- fear of reprisals by officers or other prisoners
- reluctance to be labelled a 'dog' or a 'dobber'
- lack of confidence the matter would be dealt with confidentially
- fear of not being believed if the report concerned the conduct of an officer
- past experience of no action being taken
- belief that their concern would not be taken seriously.

193. The evidence of Mr Griffin, who was 'choked' in his cell by officers at the MRC, echoes some of these concerns. He said that while he did not feel officers were trying to deliberately deter him from making a complaint, he felt intimidated:

It's all intimidation in a way. [It] took three people to establish nothing ... they made me feel bad. [I] felt like a shit ... for saying something about it but at the end of the day no one needs to go through that if you haven't done nothing, you know what I mean.

194. Mr Griffin said he wanted to go to the prison's medical centre because his throat was sore for weeks afterwards and it was '[h]ard to eat, hard to drink, hard to swallow', but he didn't because he was worried about retaliation for complaining. He said 'because you're complaining to thin air, nothing gets done anyway. And then your jail just gets harder'.

Failure to report incidents

195. Mr Griffin's case also shows officers failing to report allegations of assault.



Mr Griffin – 'choked' while in his cell

Allegation of assault never reported

Shortly after the unreasonable use of force incident in his cell, Mr Griffin approached unit staff to complain. The unit officers took him into a holding cell.

The unit officer who spoke to Mr Griffin said he wouldn't provide details of who assaulted him or how the assault occurred. The officer said that Mr Griffin told him he didn't want to take the matter further, but just wanted a transfer to another prison.

The officer said he then informed a senior officer about the allegation and the senior officer concluded that 'if he isn't going to give more information then there is not much more we can do about it'.

The senior officer was interviewed during our investigation, but denied the allegations had ever been reported to him. He said if he had been aware of the allegation, he would have ensured it was appropriately reported.

Ultimately, the incident was never reported and documented in accordance with procedures, despite being a notifiable incident.

There was also a perception among some officers that Mr Griffin was not credible because he was a prisoner. Officer Cotterill, the unit officer that Mr Griffin originally raised the allegation of assault with, was asked at interview whether he believed Mr Griffin's allegations. Officer Cotterill said:

... [n]ot particularly given the fact that he then said – I remember specifically asking him 'What do you want me to do about it? Do you want me to take it further, I'm happy to take it further' and he said that he wasn't and he would just like to get to [another prison]. So it's not uncommon for prisoners to make allegations, not so much like that, but make allegations in order to manipulate the placement.

However, when asked if he had any experience of Mr Griffin being dishonest, Officer Cotterill said '[n]ot to my knowledge, no'.

196. The officers who used unreasonable force on Mr Griffin maintain that no force was used and that no notifiable incident took place. The unit staff who heard Mr Griffin's complaint never reported it as an incident of alleged assault, so there was limited written documentation available about the incident. The only reason the surveillance recordings from the unit that day were retained was because of the complaint made to the Ombudsman, which resulted in us contacting the prison to secure the footage.
197. Cases such as Mr Griffin's, where there is an alleged assault on a prisoner but officers have not reported any use of force, are common. Of the 163 allegations of assault by staff on prisoners recorded by Corrections Victoria between July 2018 and November 2021, only 62 were reported as a use of force incident. Eight of these allegations were determined by the Department to be substantiated assaults; and of these, only five had been recorded as use of force incidents.
198. This means that unless the prisoner makes an allegation of assault promptly, there may be limited records of the event. Surveillance footage may also be destroyed, injuries will not be photographed and medical records will not be created – all of which will hinder any later investigation.
199. This highlights the critical importance of having a culture which does not deter prisoners from making allegations, takes them seriously when they are made, and ensures reporting and notification requirements are followed.

200. Our investigations saw further examples of officers failing to make incident reports for notifiable incidents involving use of force or allegations of assault. One of these was the case of Mr Lloyd.



Mr Lloyd – allegedly kicked in the head after the court transport van left him behind

Allegation of assault made nine times before incident formally reported

Mr Lloyd internally reported allegations of assault three times on the day the incident occurred – once to a nurse in the prison and twice on his cell intercom. He made further reports in the days following.

Two days after the incident, his mother wrote to the general manager of the MRC. Three days later, she emailed the general manager again after visiting her son and seeing bruising on his knees and cuts on his mouth. Mr Lloyd reported the alleged assault again the next day.

Investigators identified nine instances between 12 February and 19 February 2020 where Mr Lloyd and his mother made allegations directly to prison staff that Mr Lloyd had been assaulted. Only on the ninth occasion was an incident report created and action taken.

An incident report was ultimately lodged a week after the incident occurred, when ERG officers escorting Mr Lloyd to the medical centre heard him telling a nurse he had been assaulted.

201. In the incident involving Mr McPherson, the officers involved only submitted incident reports at a supervisor's request after allegations of assault were made against them.



Mr McPherson – unreasonable use of force in the supervisor's office

Assault reported by Aboriginal Liaison Officer two days later

In this case, the initial incident report submitted about the alleged unreasonable use of force on Mr McPherson did not come from the officers involved, but from an ALO who Mr McPherson told about the incident two days later.

Mr McPherson told the ALO that officers had repeatedly hit him without provocation. The ALO reported the incident that day as an alleged assault by staff on a prisoner.

As no earlier report was made about use of force, Mr McPherson was not medically examined until the ALO submitted an incident report. The officers involved then filed reports at the request of prison managers.

Both officers involved denied using any force against Mr McPherson and said this was the reason they had not initially submitted incident reports. Our investigation found an unreasonable use of force incident had occurred.

202. Cases such as this demonstrate the importance of having different complaint mechanisms available to prisoners. Mr McPherson reported the incident to the ALO, with whom he felt comfortable, rather than to unit staff, supervisors or prison management.

203. Having a range of complaint avenues, some which prisoners may trust over others, can mitigate some of the deterrents to prisoners reporting use of force allegations.

Inadequate incident reporting

204. In the case involving Mr Lloyd, who was allegedly kicked in the head after the court transport van left him behind, none of the incident reports recorded any injuries to the prisoner. Because officers did not report any injuries, no photographs were taken. Yet the CCTV footage showed red marks on his body and blood coming from his mouth.

205. When speaking generally about incident reporting, one Senior Officer told investigators:

The majority of all reports written after a use of force incident in my experience are inconsistent with each other and that of CCTV footage ... due to a number of factors including individuals' adrenal responses, their physical positioning during the actual incident, that staff training regarding report writing stresses the importance of not colluding, and also the fact that staff are not able to review CCTV footage in order to see if their recollection of the incident is accurate. I understand that this is probably difficult to comprehend if someone has never dealt with threatening and potentially violent behaviour on a daily basis over a number of years.

206. The challenges to accurate reporting highlight the need for staff to clearly understand reporting requirements.

207. In response to a draft of this report, the Department stated:

The nature of incident reporting and eye-witness testimony means there can be variation in accounts. When reports are too similar this can suggest collusion. This does not mean the reporting is inaccurate or there is a lack of understanding of requirements.

208. One officer told investigators incident reporting was covered during his initial training at the MRC, including how to write a basic memo about who and what was observed, and what action was taken. Apart from that, he said, officers only received 'on the job training'.

209. Another officer told investigators incident report training occurred at recruit level and was not repeated annually. She said when writing an incident report, officers should include what they saw, what they did, and who was present if relevant. She said officers would not necessarily list everyone present as the supervisor would do that after collating reports.

210. Ombudsman investigators heard differing views from prison officers about writing incident reports, including when they should be filed and what should be in them.

211. The Commissioner's Requirements specify what information should be recorded in use of force incident reports. However, some of these directions are open to interpretation. For example, they say the use of force register must include a 'description of force used'.

212. Cases handled by our office show that officers sometimes use the phrase 'minimum force' in incident reports when asked for a 'description of force used'. The description field is intended to capture details of the technique used. This issue was identified by the 2019 Ombudsman review of unreasonable use of force files. While writing 'minimum force', may technically satisfy the reporting requirements, failing to include practical details can mask the facts and impede reviews, regardless of an officer's intention.
213. IBAC identified similar issues in its *Special report on corrections*. IBAC reviewed all prison reports related to the use of force incidents it investigated and noted in 'many cases, witnesses failed to refer to their colleagues' actions or provided an abridged version of their observations'. IBAC said that this suggested officers were engaging in masking behaviours.
214. As well as specifying what should be in incident reports, the Commissioner's Requirements direct officers to provide a 'full and detailed report covering all aspects of the incident'. In practice, this direction is interpreted inconsistently by officers.
215. In one of our investigations an officer was asked why some officers present at an incident were mentioned in one officer's report and not in another's. The officer told investigators: 'Because each officer that uses force writes a report, and that's forwarded to the Governor. [The] Governor will have each report, [and] will know who did what'.
216. This approach of not including full details in reporting can create an impression that officers are hiding something. More complete reports would help allay any suspicion of unreasonable force.
217. Some officers stated only officers 'directly involved' needed to make reports. Not obtaining reports from all officers present is a wasted opportunity to gain witness accounts. Arguably officers present but not directly involved in using force may make more accurate reports than those affected by adrenaline.
218. One potential cause for poor reporting, suggested by an MRC supervisor, is staff inexperience:
- I'll be honest, there's probably people in our workforce ... they don't know they've got to do that [report an allegation] ... there's a big turnaround of staff ... the way it is at the moment unfortunately ... you might sometimes have a day there's no permanent staff whatsoever so depends on the level of training or how good their leader or supervisor seniors are.
219. The supervisor said they coached, mentored and trained their officers but '[you] can't reach out and train everyone'.
220. In its *Special report on corrections*, IBAC recommended the obligations to report corrupt conduct be strengthened by amending the Corrections Act to require all officers to report to the prison governor or IBAC if they have a reasonable belief another officer has engaged in corrupt conduct. It also recommended imposing a penalty for non-compliance. It noted similar provisions exist in New South Wales, South Australia and the Northern Territory.
221. Some of the evidence in this section suggests officers engaged in masking behaviours. This and evidence of other possible masking behaviour, including false incident reporting is discussed in the following chapter, 'Culture'.

Misconduct assessments and investigations

222. The use of force requires robust oversight to hold individuals and the system accountable.

223. In public prisons, one review method available to the Department is an employee misconduct investigation. The Integrity, Legal and Law Reform Group does a preliminary assessment of whether there is sufficient evidence of alleged misconduct before starting a formal investigation.

224. Over the last three years, 32 use of force incidents in prisons have been referred for formal employee misconduct investigations.

225. Our investigations reviewed a range of documents related to the Department's employee misconduct assessments and investigations. In some cases, the Ombudsman disagreed with the Department's conclusions and had concerns about how particular pieces of evidence were assessed.

226. In response to the Ombudsman's conclusions, the Department conducted a detailed review of the three most recent cases in which we substantiated unreasonable use of force, but it did not. It also met with Ombudsman staff to discuss the review outcomes. While the Department's reviews found opportunities to improve investigation practices, it remained of the view that misconduct could not be substantiated in each case. It noted that in some cases the evidence we obtained differed from its own. It also commented that as the employer of the officers being investigated, it is subject to requirements under the Enterprise Agreement and employment laws. It therefore has a different burden of proof in its investigations. It stated that:

[The Department]'s investigations are conducted independently, robustly, in line with requirements and by experienced staff who act with the utmost integrity.

Figure 10: Use of force incidents from public prisons referred for employee misconduct investigation, 2018-19 to 2020-21

Work location	2018-19	2019-20	2020-21	Grand total
Melbourne Remand Centre	2	5	2	9
Melbourne Assessment Prison	4	2	3	9
SESG	1	1	7	9
Barwon Prison			2	2
Hopkins Corr Centre			2	2
Dame Phyllis Frost Centre		1		1
Grand total	7	9	16	32

Source: Department of Justice and Community Safety

227. The four cases discussed in this section are the four cases in which the Ombudsman disagreed with the findings of departmental assessments and investigations and substantiated allegations of unreasonable use of force. This report does not question the integrity of the Department staff who investigated these cases. We acknowledge that differences in methodology or legal and evidentiary requirements had some impact on our differing conclusions. However, the examples in this section demonstrate some of the challenges faced by prisoners in having unreasonable use of force allegations reviewed within the system and in establishing their credibility as witnesses.

Sources of evidence

228. When the Department investigates cases involving the use of force in prisons and allegations of assault, the standard of proof required is not the criminal standard of 'beyond reasonable doubt'. Department investigations, like Ombudsman investigations, are guided by the lower standard of 'on the balance of probabilities'.

229. The Department also faces similar evidentiary challenges to the Ombudsman in investigating unreasonable use of force. There is often not enough evidence to substantiate allegations of assault. In many cases, there is insufficient evidence to meet the threshold for investigation or to reach any conclusion.

230. In response to a draft of this report, the Department stated that in applying this standard, it is also bound by requirements of the High Court of Australia decision in *Briginshaw v Briginshaw* which states that:

'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

231. The Department stated that:

the Investigator making a finding based on evidence must be satisfied to a higher degree for allegations of a serious nature. Allegations of assault or excessive use of force constitute serious conduct and for an allegation to be substantiated, the department must be satisfied to a higher degree on the balance of probabilities that the conduct occurred. If the department, as an employer, fails to do so it risks the investigation being challenged at the Fair Work Commission.

232. As discussed in the 'Surveillance' section of this report, CCTV and BWC footage can provide critical and objective evidence of events but is often not available. Photographs of prisoner's injuries and medical reports are also important evidence. But where the incident or allegations are not reported promptly, this evidence may not exist or may be of limited value.

233. This means in many cases it is the prisoner's word against the word of officers. The credibility of witnesses is often at issue in these assessments and investigations.

Perceptions of credibility

234. The Ombudsman looked at several employee misconduct assessments and investigations where the Department concluded witness evidence about use of force was not credible. In most cases, these witnesses were prisoners.



Mr McPherson – unreasonable use of force in the supervisor's office

Prisoner not believed despite consistent account

When assessing the allegation Mr McPherson was assaulted, the Department did not accept his account of the incident, finding the accounts given by the officers to be more credible.

The two officers involved in the incident, Officers Koeman and Soren, denied any physical incident occurred in the office and said they had only spoken to the prisoner about his struggles adjusting to prison life.

The assessment gave limited weight to Mr McPherson's account, despite his story remaining consistent and there being evidence to support it.

Mr McPherson's story was supported by medical records and photos from two days after the incident. An examination found bruising to his head, arms and chest 'appeared to be resolving', which would be consistent with the injuries having occurred two days earlier.

Mr McPherson's story was also supported by the phone call he made to his mother about two hours after the incident describing what happened. The Department's investigation did not consider the contents of this call, but later stated that this would not have changed the outcome of its investigation.

Mr McPherson's account of the incident – which he gave to his mother two hours after the incident, the ALO, a prison medical officer two days later, the Department's investigator some weeks later, and also our investigation – has remained consistent.

However, the Department formed the view that Mr McPherson's account was inconsistent with other evidence.

The departmental assessment made the following comments about CCTV footage showing Mr McPherson after the incident:

He appears to be visibly upset – crying and wiping his face. His neck and shoulders appear to be red and the necklace he was wearing when he first went into the holding cell is now in his hands. While it could be argued that the redness shown on [Mr McPherson's] neck and shoulders is an indication of being assaulted, this is inconsistent with the details of his complaint, whereby he stated having been punched to the face and kicked in the ribs. He does not mention his neck or upper back. Investigators are of the view that the redness is more likely a result of [Mr McPherson's] distressed state and the fact that he was crying, which can lead to displaying a 'flushed' appearance.

The Department noted Mr McPherson's calm demeanour on the cell intercom an hour after the incident. It stated if Mr McPherson 'had been assaulted, it would be reasonable to assume that he may be heightened or somewhat aggressive and/or abrupt towards prison staff'.

An hour after the incident, Officer Soren released Mr McPherson from his cell to make a phone call. The Department noted that 'CCTV footage shows him appearing to smile/ laugh/joke with other prisoners' and concluded that this was 'inconsistent with someone who has been recently assaulted'. It also stated the footage showed 'no animosity' displayed towards Officer Soren by Mr McPherson.

What the footage actually shows is Mr McPherson with his head bowed, clearly not engaging with Officer Soren.

Mr McPherson gave evidence he was warned not to speak of the assault and threatened to behave.

Despite giving weight to perceived inconsistencies in Mr McPherson's evidence in its assessment, the Department did not comment on inconsistencies in the prison officers' incident reports which were identified by our investigation.

The Department found insufficient evidence of an assault to refer the matter for an employee misconduct investigation.

The Ombudsman reached a different conclusion in relation to this matter. We found the allegation of assault was supported by the CCTV footage of Mr McPherson's injuries, the medical examination, the call he made to his mother and his interview with the prison's ALO.

In response to a draft of this report, the Department reviewed the case but stood by its original decision. It said there were differences in the evidence Mr McPherson provided to the Ombudsman and the Department and also that the Department did not have access to the phone call Mr McPherson made to his mother. With respect to Mr McPherson's injuries, it said there was evidence suggesting he could have been assaulted by other prisoners the day after he alleged he was assaulted by officers, but prior to his medical examination. However, it did not have any direct evidence that this had occurred. The Department also did not consider the photographs of Mr McPherson's injuries were consistent with the level of force he alleged was used on him by the officers.



Mr Russo – taken to his cell by SESG officers and allegedly kicked

Prisoner was not considered a credible witness

In this case, the actions of Supervisor Ramsey and Senior Officers Schwartz and Jernigan were subject to a formal employee misconduct investigation. The Department examined incident reports and other documents, as well as CCTV and BWC footage.

Summarising a key CCTV moment, the Department described what can be seen as ‘Officer Schwartz on the right-hand side of the cell, appears to be off balance, leaning back on the desk where his right leg appears to be moving’.

This was the moment Mr Russo was allegedly kicked. But the Department concluded the medical evidence was not consistent with the type of assault alleged by the prisoner:

The photographs do not depict injuries consistent with [Mr Russo’s] complaint, that is, [Mr Russo] does not have any injuries to his face, which is inconsistent with his assertion that he was struck repeatedly to the head / face. Further, the photographs do not show injuries that would be consistent with [Mr Russo] having been kicked repeatedly as reported.

The Department also accepted the officers’ claims that the prisoner was ‘aggressive’. The supporting evidence for this was the officers’ own earlier reports. The Department made no distinction between verbal and physical aggression.

Mr Russo claimed he was not aggressive when the incident started and did not swear at officers, and this story was supported by another prisoner. However, the Department’s report dismissed the other prisoner’s evidence as unreliable.

Two unit officers witnessed the incident. Their reports corroborated the other prisoner’s version of events, but the departmental investigation did not consider the unit officers’ evidence.

Despite this surrounding evidence, the Department dismissed Mr Russo’s account as lacking credibility.

235. The Department's investigator described the CCTV footage of the alleged kick by saying Officer Schwartz 'appears off balance, leaning on the desk where his right leg appears to be moving'.

236. The Corrections Victoria review of the incident undertaken as part of the Department's performance reporting processes described the CCTV footage differently. The review memo stated:

The CCTV does show what appears to be SESG SPO [Schwartz] kicking [Mr Russo] while he is on the ground ... this in and of itself is not grounds to find that an assault has occurred as it happened in the context of the use of force.

237. Discussing this assessment, the reviewer stated that based on his experience reviewing incidents, while prisoners 'generally don't tell the truth and will generally exaggerate', he would lean towards accepting a prisoner's account if everything else they said was provable. In this case he did not recall there being any evidence that Mr Russo had lied about other aspects of the matter, but noted that he could only base his conclusion about whether excessive force had been used on the evidence in front of him.

238. He found the evidence in this case to be inconclusive. He stated:

[Mr Russo] didn't have any extensive facial injuries to suggest he'd been punched in the face ... I think the bottom line is I couldn't say with any certainty that he had been assaulted.

239. In Mr Russo's case the Ombudsman reached a different conclusion from the Department. We found unreasonable force was used, on the basis the incident was entirely avoidable, as discussed in the section on 'Escalation or de-escalation'.

240. The following case, of Mr Snow, is an unusual example in that the allegation of unreasonable use of force was supported by both the prisoner and an officer. The resulting employee misconduct investigation found both the prisoner and the officer witness lacked credibility.



Mr Snow – slapped while sitting in his cell

Officer witness was not considered credible because she gave two versions

Mr Snow gave an account of Officer Georgiou entering his cell and ‘laying into [him]’ after a verbal altercation. Officer Georgiou denied this, saying Mr Snow punched him first.

Officer Page, who stood in the cell doorway during the incident, submitted two reports. The first did not state who became violent first, saying only ‘I observed a physical altercation taking place’. The second report, provided at the request of a supervisor, Manager Dalton, described Officer Georgiou instigating the incident by slapping Mr Snow.

In its investigation, the Department found Officer Page was not a credible or reliable witness because she gave two conflicting statements.

Officer Page gave plausible reasons for this. She noted a perception among officers that ‘ratting on your colleague is the worst thing to do’. And as a new employee at the MRC, she did not want to be seen as a ‘lagger’. However, the Department does not appear to have considered her reasons.

The Department also described Manager Dalton and Officer Page’s accounts of their meeting following the incident as inconsistent. Manager Dalton said Officer Page became visibly upset and told her Officer Georgiou had slapped Mr Snow. Officer Page said that Manager Dalton prompted her, saying that her report was inadequate and there was ‘more to it’. It was not clear why the Department considered this evidence to be inconsistent.

The Department found the evidence of Officer Georgiou to be consistent through his report, written response to the investigation and interview. They concluded this despite his initial incident report stating that he threw ‘several punches’, and his later evidence at interview describing delivering one ‘clearance strike to create distance’.

The Department also found ‘no reason to doubt the truthfulness or veracity of his account’. This is surprising given the obvious incentive for him to lie, if he did in fact assault Mr Snow.

By contrast, Mr Snow’s evidence was given little weight due to what the Department saw as his ‘inherent motivation’ to deny being the instigator. The Department also formed the view that the fact that he declined to speak to Victoria Police could be evidence that he had started the fight. The Department failed to consider how Mr Snow’s previous life experience and mental impairment might affect his views about a police interview.

The Department also gave no weight to the fact that Mr Snow and Officer Page’s accounts were for the most part consistent.

241. The Ombudsman took a different view. Officer Page's credibility did not diminish, but rather increased when she wrote her second report. Doing so was against her own interests and exposed her to potential disciplinary action by acknowledging that her first report was false.

247. In this context it is particularly important that there are external, independent avenues available where prisoners and others can make complaints and have them investigated impartially. Independent investigations are especially valuable in prisons, which are closed environments operating away from public view.

Value of external investigations

242. One measure used by Corrections Victoria to assess the performance of both public and private prisons is the number of staff assaults on prisoners. The target for this measure is zero.

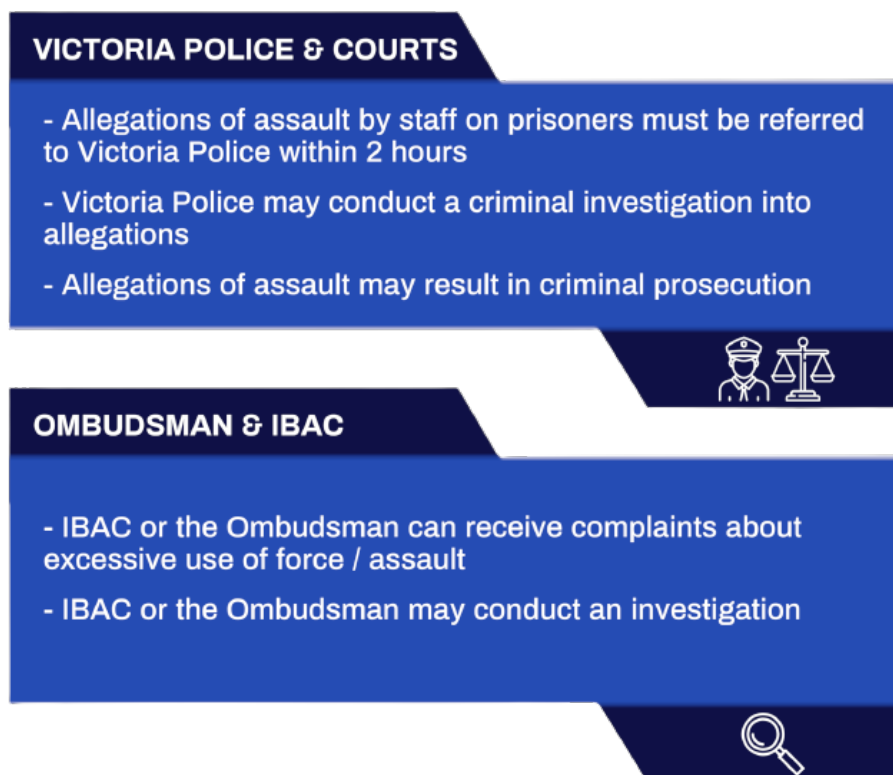
243. For an assault to be counted against this measure, the Commissioner must determine an assault has occurred.

244. The Commissioner's determination is based on a review of the incident undertaken by the Corrections Victoria Operations Directorate. The directorate has an 'arms-length' oversight role in relation to prisons.

245. Private prisons also face significant financial penalties for failing to meet the target. While this is intended to improve performance, it could lead to under-reporting of incidents. In its Special report on corrections, IBAC noted that financial incentives linked to performance could encourage prisons to manipulate data to ensure they meet targets.

246. It further stated that this could lead to the development of a culture that discourages the reporting of misconduct.

Figure 11: Internal reporting and oversight framework for use of force incidents and allegations of staff on prisoner assaults



Source: Victorian Ombudsman, based on Commissioner's Requirements and legislation

248. Allegations of assault can be made directly to Victoria Police; however many prisoners are reluctant to use this option, as shown in the Mr Griffin and Mr Snow cases.

249. The Ombudsman and IBAC provide important avenues for complaints without involving police.

250. The Department is required to report an incident to IBAC under section 57(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) where the Secretary suspects on reasonable grounds that 'corrupt conduct' has occurred. Unreasonable use of force on a prisoner can meet the definition of corrupt conduct. In its *Special report on corrections*, IBAC noted some examples of delays in such notifications, but said it had seen an increase in mandatory notifications and improvements in timeliness since late 2018.

251. If an allegation is determined by IBAC to be a 'public interest complaint' (under the *Public Interest Disclosures Act 2012* (Vic)), there are a range of protections for the person making the allegation. These include confidentiality around their identity and protection from detrimental action against them for making the complaint.

252. This is particularly relevant for complaints about use of force incidents in prisons, where both prisoners and officers fear repercussions for reporting incidents.

253. An investigation by the Ombudsman or IBAC can scrutinise evidence from prison officers and prisoners with an independent eye, examine whether policies and procedures were followed and make findings on allegations.

254. Ombudsman investigations also consider broader questions such as whether officers tried to de-escalate a situation and whether officers breached the Code of Conduct. This means we may conclude that an officer acted inappropriately in a case where the Department did not find any formal misconduct.

255. In response to a draft of this report, the Department stated that it also considered de-escalation and whether an officer's conduct contributed to the incident. It stated that while this may not lead to misconduct being substantiated, it would be noted as poor situational management.

Conclusions

256. This chapter has examined what happens after an unreasonable use of force incident. For some prisoners, unfortunately what happens is nothing. The Victorian prison system has strong mechanisms in place requiring allegations of unreasonable use of force to be reported and reviewed. Despite this, there is evidence indicating allegations of assault are under-reported.

257. The incident reporting requirements are comprehensive but are not always followed. Prison officers sometimes fail to report incidents as required, and prisoners are often reluctant or unwilling to report these incidents themselves.

258. There are many reasons why prisoners may find it difficult to report allegations of unreasonable use of force. Some are concerned they will not be believed or their allegation will not be properly investigated. Others fear their remaining prison time will be harder if they alert authorities.

259. These concerns are exacerbated in a remand setting where officers have little time to establish relationships with prisoners, but the issue exists across the prison system. The power imbalance between officers and prisoners leaves some prisoners feeling they are better off not reporting incidents. The evidence contained in this report suggests these concerns may be justified.

260. Strategies such as monthly random audits of use of force incidents can pick up some cases of unreasonable use of force which have not been reported as alleged assaults.

261. In response to a draft of this report, the Department informed us that between 2018 to 2021, the MRC has consistently had more incidents reviewed through random monthly use of force audits than other prisons. Therefore, the MRC has been subjected to a greater level of oversight.

262. It also said that the monthly use of force audits provide feedback to prison's General Managers and note any issues or instances of good practice. This data provides statistical evidence of trends that need to be addressed and will enhance Corrections Victoria's oversight of use of force incidents.

263. While this is a positive development, not all incidents are captured by these audits.

264. Even when incidents do make it to a formal staff misconduct investigation, the chances of unreasonable use of force being substantiated are low. This is especially true where there is no objective evidence, such as CCTV footage, which is often the case. Even when footage is available, it can be hard to interpret. What is described as a 'leg moving' by one person, may be described as a 'kick' by another. CCTV evidence may not be enough to determine whether the force used was the minimum amount necessary.

265. Where there is no CCTV footage, investigations rely on reports from those present. Multiple officers are able to provide reports. In contrast, prisoners have less opportunity to provide official accounts directly and often there are no other witnesses. Our 2019 review of unreasonable use of force allegations found 85 per cent of incident reports lacked the prisoners' account of events.
266. In response to a draft of this report, the Department disputed that prisoners do not have an opportunity to provide their account. It stated that:
- staff reports can detail allegations made by prisoners
 - BWC can be used when interviewing prisoners
 - incident reports will contain details of allegations
 - misconduct investigations interview prisoners when they agree to participate
 - prisoners can make allegations to integrity agencies.
267. Even when a prisoner's account is recorded, it is usually in contrast to officer accounts which support each other. In the next chapter, we discuss the culture of silence within some areas of the prison system which encourages officers to lie to protect each other from allegations of misconduct.
268. Given the seriousness of such allegations, and the consequences for officers if found guilty, it is fair and reasonable that the required standard of proof be high. However, a system where the weight of evidence usually favours officers discourages prisoners from complaining.
269. In response to a draft of this report the Department disputed that the weight of evidence favours officers and that prisoners are discouraged from making complaints.
270. For prisoners, the system creates a vicious cycle. Prisoners know that they are unlikely to be believed when they allege assault. They know that even if a report gets made, they are likely to be considered not credible and that an officer's version of events will be believed over theirs. They know that officers are rarely found to have acted wrongly, and they therefore conclude there is no point in complaining. This leads to the under-reporting of incidents and impacts the prisoners' attitude towards prison officers.
271. Some incidents not reported to the prison or identified by departmental audit processes will be picked up by the Ombudsman or IBAC. Some prisoners feel safer making an allegation to an independent body. They either feel they will be taken more seriously, or seek the confidentiality and protections offered by the public interest disclosure legislation.
272. However, despite this range of reporting and oversight mechanisms, some use of force incidents and assaults are never identified or reviewed and are slipping through the cracks. This means it is impossible to capture the true extent of the use of force in Victorian prisons.

Culture

'If you don't have the ability to empathise with others, no matter their background, then this job is not for you. Establishing boundaries is important, but we still need to forge respectful, compassionate connections with prisoners.'

– Corrections Victoria recruitment material

'When I was a young prison officer, I did see an officer assault a female prisoner, wrote something in a report and then ... I had to change the report before it got anywhere else but I was only young at the time ...

I think there's a bit of pressure out there and let's just put it this way, after I wrote the report ... you were known as a "dog" and a "rat" ... That's basically what you're regarded if you write an officer up.'

– Prison supervisor

'I think that [the 2015 MRC riot] had a lot to do with some of the poor culture up there. There was a lot of issues even bringing in case management to that location, and pushback from staff ... you know, "they're only remandees, they're only with us even for a short stint – why do we even need to get to know them, let them out and lock them up".'

– Prison manager

273. Prisons are unique workplace environments. Lived in by prisoners and staffed by prison officers 24 hours a day, they are isolated from the community and daily life is subject to limited external scrutiny.
274. We know that prisons can be challenging places to work. In addition to the physical safety risks prison officers face, the job can involve, as one officer put it, getting 'abused on a daily basis'.
275. The authority given to prison officers to maintain the security and good order of prisons through use of physical force creates a significant power imbalance between staff and prisoners, and a risk that these powers may be misused.
276. These factors mean developing a workplace culture which is strongly focused on integrity, accountability and respect is particularly critical in a prison environment.
277. Culture in any organisation is complex, developing from policies, procedures, training, relationships and the attitudes of individual staff and management to what is happening or how things should be done.
278. While culture in prisons is driven by people, it is underpinned by standards set out in the Code of Conduct and the Commissioner's Requirements.
279. The Code of Conduct requires public sector employees, including prison officers, to demonstrate respect, integrity, accountability and leadership.

280. The Commissioner's Requirements state:

Correctional employees are required to conduct themselves professionally in the manner in which they communicate and behave with prisoners, offenders, and visitors to and families of prisoners. This is critical in a correctional environment, where the power imbalance that exists between correctional officers and prisoners and offenders, and the 'closed' and residential nature of prisons, places an enhanced obligation on employees to act with the highest level of integrity and respect ...

281. Interviews with prison officers conducted during our investigations provided insights into the challenges of being a prison officer and the sometimes tense relationships between staff and prisoners, particularly at the MRC. While we found examples of prison officers who acted with honesty and integrity and senior staff who encouraged good behaviour and accountability, we also found concerning evidence of behaviours and attitudes not in line with the values and expectations of the Code of Conduct and Commissioner's Requirements.

282. IBAC's *Special report on corrections* highlighted a culture of excessive use of force among tactically trained officers, and evidence of masking behaviours which 'cover up the wrongdoing of colleagues'. The report noted that masking behaviours can be 'deliberate or unintentional' but either way have 'the effect of concealing what really occurred'. The report also found limited staff awareness of human rights within Victorian prisons.

283. Evidence from our eight investigations and other Ombudsman complaints and reports indicates problematic aspects of the culture within the Victorian prison system. These aspects echo those identified by IBAC.

284. In this chapter, we discuss two themes arising from the eight investigations and other relevant evidence:

- the lack of respect in prisons, demonstrated by officers making threats and retaliating against prisoners
- the culture of silence, in which officers protect each other from scrutiny.

Culture lacking in respect

285. The actions of individual officers and managers are crucial to developing a strong culture of integrity and respect in prisons. Effective relationships between staff and prisoners support the security and good order of prisons by encouraging prisoner compliance and minimising the need to use force. These relationships are complex, because prison officers are expected to contain and control prisoners yet also contribute to their rehabilitation and welfare.

286. The recruitment section of the Corrections Victoria website indicates a strong drive by the Department to recruit prison officers with qualities that would contribute to a relationship-focused culture. The recruitment material states no previous corrections experience is necessary, but seeks staff with qualities like empathy, resilience, emotional intelligence and good communication skills.

287. The Code of Conduct and the Commissioner's Requirements state that prison officers are expected to lead by example and demonstrate 'respect for others, including other correctional employees, prisoners and offenders'.

288. The Commissioner's Requirements also prohibit certain behaviours including:

- disclosing personal information about ... others that might increase vulnerability to threats, risks to safety, blackmail or other pressure being applied
- innuendo and gossip
- discriminatory comments and/or jokes (e.g. sexual, religious or racist)
- jokes or comments trivialising family violence and/or promoting violence in general.

Threats and unprofessional language and comments

289. Our investigations and other complaints received by our office, demonstrate that not all officers are adhering to the expectations set out in the Commissioner's Requirements. The case of Mr Ruiz shows officers at the MRC using unprofessional and threatening language during an incident.



Mr Ruiz – threatened and allegedly punched in the head

BWC footage captures officers making threats and insulting the prisoner

In the incident involving Mr Ruiz, Officer Molina was investigated for threatening serious bodily harm to intimidate Mr Ruiz into compliance.

BWC footage from the incident, during which several officers worked to handcuff Mr Ruiz on the ground, showed Officer Molina twice threatened to break Mr Ruiz's neck during the restraint. Officer Molina can be heard stating '... or I'll break your fucking neck' after ordering him to stop resisting and while leaning close to Mr Ruiz with his hand on his neck.

In an interview with our investigation, Officer Molina acknowledged he told Mr Ruiz he would break his neck but said it was because he was in fear for his life. Officer Molina said:

[there was] adrenalin running through the incident ... it was very confronting to see [a] very violent prisoner

... I basically shit my pants ... I was scared out of my wits.

The investigation gave Officer Molina the benefit of the doubt in accepting his evidence that his response was an emotional one, driven by fear, rather than an intention to intimidate Mr Ruiz into compliance.

The investigation noted the prisoner was highly resistant and verbally threatened officers during the incident. However, the officer's threat was inappropriate, unprofessional and fell short of the requirements of the Code of Conduct to lead by example and demonstrate integrity.

Shortly after the first incident, Mr Ruiz was transferred to the medical unit while handcuffed and in a spit hood. During this transfer the officers restrained Mr Ruiz face down on gravel beside a foot path.

Despite Mr Ruiz being disruptive and 'dropping weight' during the transfer to make it difficult for officers to move him, the decision to place him on the gravel was unnecessary and had the appearance of payback. Our investigation concluded officers could have easily placed him on the path, which would have been more humane.

In a BWC recording of this incident, an officer can be heard calling the prisoner 'a cunt'.

290. While the prison officer's threat to break Mr Ruiz's neck occurred during a serious and violent incident, the Ombudsman also receives complaints about officers directly or indirectly threatening prisoners in non-physically violent situations.
291. In November 2020, after observing a pattern of complaints, the Ombudsman began to track allegations of threatening behaviour towards prisoners by prison staff. Between November 2020 and December 2021, the Ombudsman received 24 allegations of officers threatening prisoners. Six of those complaints related to staff at the MRC. Some included allegations of unreasonable use of force and verbal abuse.
292. In the 2017 Ombudsman report *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, 45 per cent of prisoners who responded to our survey said they had been threatened or intimidated by staff. Forty-seven per cent said staff had made insulting remarks about them, their family or their friends.

Retaliation

293. In the case of Mr Ruiz, as discussed above, the actions of the officer in placing the prisoner face down on the gravel rather than the path had the appearance of payback. In that case the officers had grounds for using force but subjected a prisoner to additional discomfort that was avoidable. We also saw cases where the use of force incident itself seemed to be retaliatory.
294. In four of our eight investigations, evidence suggested the incident occurred in retaliation for earlier prisoner behaviour towards officers.

295. In the Mr McPherson case, we saw both threatening and retaliatory behaviour by prison officers.



Mr McPherson – unreasonable use of force in the supervisor's office

Officers' behaviour shows a cycle of retaliation

Mr McPherson said the day before unreasonable force was used against him, officers made comments implying he was a child sex offender, even though he had never been convicted of any sex crime.

He described one officer saying in a loud voice, '[w]hy don't you go rape another kid'.

Mr McPherson said he believed the officers made those comments to cause other prisoners to believe he was a sex offender, and that other prisoners had asked him about it.

In a prison environment, being identified as a child sex offender could lead to harassment or other adverse treatment from prisoners. Officers giving other prisoners the impression Mr McPherson was a child sex offender was therefore threatening.

Shortly after this altercation, Mr McPherson used his emergency intercom to contact officers and yelled:

You tell your key turnin' fuckin dog, he wants to get smart and fuckin threaten me, come back to my cell and watch what I'll fuckin do to the key turnin' dog. I'll slit his fuckin throat, cunt.

Mr McPherson told the investigation he was in a highly emotional state at that time, because he had recently entered prison and was 'coming down off drugs'.

The prison officers involved said they could not recall making comments about Mr McPherson being a sex offender. However, the audio recording of Mr McPherson's intercom call supports his story that officers said something to which he strongly objected and found threatening.

Our investigation concluded officers had made an inaccurate statement, as described by Mr McPherson, and that this prompted the threat he made against them through the intercom.

The following day, the same two prison officers who had attended his cell the night before took Mr McPherson to an office unmonitored by CCTV and used force on him without a lawful reason in retribution for his intercom threat the previous day. The officers denied any use of force against the prisoner.

296. There is a need to strengthen information security culture in prisons. While the comments made by officers about Mr McPherson's offending history were false, this case highlights the power imbalance between prisoners and prison officers around information.
297. In its *Special report on corrections*, IBAC discussed misuse of information as a corruption risk. It noted the power of knowledge within prisons and the serious consequences accessing and releasing a prisoner's confidential information can have for their safety and security.
298. In 2020-2021, the Ombudsman received at least 10 complaints regarding prison officers disclosing prisoner information to other prisoners. Most of these allegations related to information about offences, but some related to sensitive information about health or previous employment. Some of the complaints alleged information was deliberately disclosed to incite violence from other prisoners. Some also expressed concern about the safety and welfare of the prisoner as a result of the information being disclosed.
299. The McPherson case and other complaints of this type demonstrate the vulnerability of prisoners to the misuse of information and the potential for information to be used to retaliate, threaten and incite.

300. Mr Snow also believed the incident in which he was slapped while sitting in his cell was retaliatory. He said it was triggered by an altercation in which he had called Officer Georgiou 'scum' after one of his friends had been caught graffitiing and was told to clean it off.
301. Comments by Officer Georgiou at interview suggest a belief that retaliatory violence against prisoners by officers is acceptable in some situations.
302. Officer Georgiou's willingness to make these comments at interview, despite his later qualification of the statement, suggests there may be broader cultural issues around integrity, use of force and retaliation in prisons.



Mr Snow – slapped while sitting in his cell

Officer views on when violent retaliation is justified

We interviewed Officer Georgiou and put to him that he had entered Mr Snow's cell and slapped him. Officer Georgiou denied this, stating:

Nah, cos I don't ... No. I don't hate him. He's not a boy that I'd ... it's like slapping a little kid. I wouldn't do that. I would slap someone else more than him. I don't have a personal vendetta against him. I always knew he had mental issues and stuff like that, I wouldn't do that to him.

Later in the interview he said:

And I felt bad, cause when he hit me I was like '[y]ou little shit', like and that's why I retaliated. And when the ERG boys, when they [took him] to the ground, I was like '[n]ah nah, he's alright'. Cos he was in the cell and said, 'I'm sorry Mr [Georgiou]'.

Officer Georgiou was asked to clarify his comment that he 'would slap someone else more than [Mr Snow]'. He said: 'I would slap someone that deserved it. He doesn't deserve that'.

When asked who he considered would 'deserve' to be slapped, Officer Georgiou said: 'I don't know, someone that spat in my face, maybe?'

These statements by Officer Georgiou demonstrated a failure to act with integrity or lead by example.

Officer Georgiou's legal representative said Officer Georgiou used a poor choice of words and qualified that Officer Georgiou would not slap someone unless 'it was lawfully justified'.

303. Another example of allegations of retaliatory violence was seen in the case of Mr Russo.



Mr Russo – taken to his cell by SESG officers and allegedly kicked

Allegations of retaliation for insults

Mr Russo was taken into his cell by SESG officers to address his behaviour towards a corrections dog. The conversation escalated into a use of force incident in which the prisoner was injured.

Mr Russo said he had been ‘bashed’, ‘belted’ and ‘kicked’ by officers in response to him ‘mouthing off’. However, prison officer reports described the incident differently. They stated while Mr Russo’s conduct in the cell was aggressive, abusive and belligerent, force was ultimately used because he ‘lunged’ at an officer.

The BWC recording immediately after the incident captured this exchange:

Mr Russo: I called you a puss and you fucking belted me...

Officer: Pretty silly, don’t lunge at staff.

Mr Russo: Lunge at staff? I called you something and you cracked it and then you fucking had it on.

The recording shows that at one point, a unit officer approaches and says something which cannot be heard to which Mr Russo replies ‘nah they’re talking shit boss, I called him a puss ...’.

Patterns of behaviour

304. Some officers mentioned in this report were involved in more than one of the investigated incidents. Some of our investigations found disrespectful behaviour or attitudes by particular officers indicating they may not be suitable for their roles.
305. Prison officers undergo various recruitment checks. As well as initial applications and interviews, they complete a police record check, psychometric testing, personality assessments, role plays and a 'situational judgement questionnaire'.
306. Despite these screening processes, suitability issues can arise after an officer is hired. We have seen patterns of complaint about particular officers. The behaviour complained about is often not as serious as unreasonable use of force, but includes disrespectful behaviour such as abusive language, threats or retaliation. In many cases these allegations do not meet the threshold for investigation or there is a lack of evidence.
307. Some officers with multiple allegations made against them are considered problematic by their colleagues as well as by prisoners. In one case, officers told a prisoner they couldn't get involved and that he should call the Ombudsman instead. This example suggests a weak integrity culture in the prison.
308. Some prisoners who contacted us about these officers wanted to remain anonymous and said they were scared of retaliation, including isolation, if they complained. They said they had seen the officers do it to other prisoners.
309. Prison records showed other staff informally raised concerns about the officers but did not want to formalise complaints for fear of retribution.
310. In some cases, the officers have been subject to performance management or misconduct processes. However, it is not clear that their suitability is being effectively addressed in unsubstantiated cases. Sometimes even when officers are the subject of multiple complaints, they resist feedback on conduct issues.
311. While unproven allegations need to be carefully considered, a mass of similar allegations lends weight to their credibility. As discussed earlier in this report, proving allegations is difficult and just because an allegation has not been substantiated does not mean it isn't true.
312. This is particularly important where the conduct may not reach the level of misconduct, but there are strong indicators inappropriate attitudes and behaviours may be entrenched.

Culture of silence

313. The *United Nations Convention against Corruption: Handbook on Anti-Corruption Measures in Prisons* from 2017 notes that the unique environment in which prison officers work can contribute to a strong team spirit amongst staff. It observes this positive aspect can turn into a 'suffocating' mentality involving 'pacts of silence':

Prison staff may ... refuse to co-operate in the investigation of critical events of staff misconduct in order to protect fellow staff members or fail to report information that may give rise to an allegation of staff misconduct. Many prison staff members would rather risk being subject to disciplinary sanctions themselves than violate a potential 'code of silence' within the correctional community.

314. During our investigations, the Ombudsman observed:

- of the 29 prison officers we identified as present during the use of force incidents, none provided evidence adverse to a colleague in their initial incident reports
- of the 22 officers interviewed who witnessed the incidents, only one gave evidence critical of a fellow officer.

315. This was despite the Ombudsman substantiating unreasonable use of force in four of the eight investigations, and identifying actions and decision making of concern by the officers involved in the remaining four.

316. The absence of officers willing to give evidence against their colleagues in these investigations is consistent with the Ombudsman's experience in handling prison complaints more broadly. While it is common for the Ombudsman to receive allegations about improper conduct by public officers from their colleagues in other areas of the public sector, it is very rare within the prison system. Most disclosures about improper conduct come from prisoners.

‘Us vs them’

317. The starkest example of prison staff being reluctant to give evidence against fellow officers and of masking behaviour was the case of Mr Snow.



Mr Snow – slapped while sitting in his cell

Officer Page submitted a false report to protect Officer Georgiou

Officer Georgiou’s report stated he entered Mr Snow’s cell to address his ‘abusive behaviour towards staff’. Officer Georgiou said Mr Snow swore at him and told him to leave the cell, but when he refused to leave Mr Snow:

stood up and took a swing at me which got me on the lower lip. I then threw several punches that got him in the face, he was still swinging so I yelled to PO [Page] to call the code.

During the incident, Officer Page was standing in the corridor and could see what was happening inside Mr Snow’s cell because the door was open. She looked away briefly to get the attention of other officers.

She told investigators she had to get the attention of other officers ‘subtly’ during the incident, ‘without [Officer Georgiou] knowing that I wanted them to come down’. She also said she feared Officer Georgiou may attack her if she physically intervened, saying ‘I felt that [Officer Georgiou] was in a rage and if I had gone in to try to pull him off, he would have turned on me’.

In the first incident report she submitted, Officer Page claimed to not have seen who threw the first punch. She said Officer Georgiou entered the cell and conversed with the prisoner. The conversation escalated and she turned to alert other staff. When she turned back, she saw a physical altercation between Officer Georgiou and Mr Snow.

Officer Page said she was relieved when later that day, Manager Dalton asked her for a second report.

Operations Manager Dalton, who questioned Officer Page about the events leading up to the incident reported that Officer Page became visibly upset during the conversation and told Manager Dalton she had ‘never seen anything like it before’.

The title of the memo written by Manager Dalton following her interactions with Officer Page that day was: *Prison Officer [Page]: Factual report requested*.

In the second report Officer Page submitted, she described the incident very differently. She said Mr Snow was sitting on a chair with his arms crossed when Officer Georgiou went ‘smack’. She wrote ‘I witnessed [Officer Georgiou] open-palm slap Prisoner [Snow] across the face. Prisoner [Snow] then stood up and retaliated’.

Officer Page told investigators she was 'relieved' her supervisor supported her to be honest and truthful in the second report. She said it 'did not feel right' to leave the first report as it was:

I would have preferred to write it the right way the first time but after [Manager Dalton] and [the supervisor] spoke to me, I felt I was more supported in being honest because it was mainly that I was worried about the backlash from what I perceived as turning against a fellow officer.

When asked why her first report had supported Officer Georgiou's version of events, Officer Page said:

I didn't want to be seen as someone who was dobbing on a fellow officer and I knew that I felt I knew that Officer [Georgiou] had started it and I didn't think that would be seen well for me personally. This is something that I have felt within the prisons that the uniformed officers stick together and its sort of an 'us versus them' mentality and I had been told that was even more so at MRC because of the amount of codes and the amount of stress that there was it was really, really important for officers to stick together, because if you turned on the officers and something went down they may not have your back.

318. As discussed earlier, the departmental investigation into this incident found Officer Page was not a reliable or credible witness because she had given two versions of events. The Department did not appear to consider the pressure that the culture of silence would have had on Officer Page not to 'lag' on her colleagues, especially as a new employee at the MRC.
319. Evidence from our interviews shows management at prisons are aware of the existence of a culture of silence among some staff at the MRC. One MRC supervisor said:
- There is a percentage of [MRC] staff, that are, 'You never rat on a blue shirt. Never. That's the lowest of lowest' ... that whole stigma, there is still that.
320. Another MRC supervisor gave similar evidence, saying there was 'pressure' out there not to be a 'rat' or a 'dog'.
321. During interviews, four officers with between five- and nine-years' experience involved in the use of force incidents under investigation were asked about the phrase 'dogging on a blue shirt'. Despite this phrase appearing to be known among corrections staff, all four officers denied knowing the term or what it meant.
322. Within a culture of silence, officers are expected to cover for one another even for less serious matters.
323. Shortly before the Mr Snow incident, Officers Georgiou and Page and a third officer were involved in another incident with a different prisoner.
324. Officer Page stated Officer Georgiou told the prisoner he had a bad attitude, to which the prisoner replied 'just you and me, it's not fair, three against one'. At that point, Officer Georgiou drew his baton.
325. Officer Page said:
- I know [Officer Georgiou] drew his baton first because [Officer Georgiou] was sort of egging him on 'let's go let's go' and then he drew his baton and the prisoner pulled out his blade almost in self-defence and it escalated from there.
326. The prisoner eventually dropped the blade onto the floor, after which Officer Georgiou retracted and secured his baton.
327. After the incident, Officer Georgiou and the third officer involved told Officer Page their reports would not say Officer Georgiou had drawn his baton, because 'you can't draw your baton without calling a code'. Officer Page told Manager Dalton that Officer Georgiou told her not to mention a baton being drawn in the prisoner's cell.
328. The third officer involved in the blade incident also omitted the use of the baton from his report.

329. The Mr McPherson case also contains evidence indicating masking behaviours.



Mr McPherson – unreasonable use of force in the supervisor's office

Similarity in officer reports

In the incident involving Mr McPherson, it was alleged two officers used unreasonable force on the prisoner in a supervisor's office. The two officers said they did not witness or take part in any assault or use of force and only submitted incident reports at the request of a supervisor after the prisoner complained he had been assaulted.

The officers' reports on the incident were inconsistent with each other and with other evidence. An entry on the prisoner's individual management file recorded the discussion with Mr McPherson in the supervisor's office and said he was crying and upset as he was 'anxious about his court case'.

However, Officer Soren's incident report, prepared four days later, made no mention of Mr McPherson's court case, instead stating Mr McPherson was upset and told Officer Soren 'he was sexually abused by a prison officer when he was a child and as such hated all of us'.

In the same report, Officer Soren wrote, '[I]t is my belief [Mr McPherson] wanted to leave the Unit and has made false allegations as a means to manipulate his placement'.

The two incident reports submitted by the officers were very similar in the words used and the order of information provided.

While the two officers denied colluding with each other in writing their reports, the investigation found they had failed to accurately record what occurred in the supervisor's office, in breach of the Commissioner's Requirements and the Corrections Act. They also failed to be honest, open and transparent as required by the Code of Conduct.

330. The frequent absence of CCTV and BWC footage of incidents has been discussed in earlier chapters and is another possible indicator of masking behaviour.
331. The prevalence of use of force incidents occurring in CCTV blind spots and the de-activation or failure to activate BWCs during incidents, gives the impression officers are deliberately avoiding surveillance. This is particularly evident in the Mr Ruiz incident, where Senior Officer Parrino manually turned off his BWC after Mr Ruiz began shouting 'stop fucking hitting me!'.
332. In the case of Mr Griffin, the prisoner was moved into a CCTV blind spot and described one officer using his body to block visibility into the cell.



Mr Griffin – 'choked' in his cell

Officers closed cell door and blocked window

Two officers moved Mr Griffin into an unmonitored cell and closed the door behind them. The investigation found one of the officers used unreasonable force on Mr Griffin during the two minutes they remained in the cell.

At interview, Mr Griffin described Officer Averill choking him while Officer Beringer 'was just blocking the window [in the door] so no one could see properly'.

Neither of the officers – who told investigators they had a long-standing friendship outside work – filed an incident report about what happened in the cell. They denied any use of force.

Officer Beringer, when shown the CCTV footage of himself and Officer Averill entering Mr Ruiz's cell, said he could not remember the incident at all. He said, 'I don't remember who that prisoner is, he's just another prisoner to me'.

When Officer Beringer was asked if he remembered Officer Averill choking or slapping Mr Ruiz he said, '[n]o, 100 per cent no ... I would 100 per cent remember that'.

333. At interview, Officers Beringer and Averill were both shown CCTV footage of Mr Griffin interacting with other prisoners immediately following the incident, including the interaction shown in Figure 7 earlier in this report. They both denied the CCTV footage showed a prisoner pointing at Mr Griffin's throat.
334. Officer Averill said 'I can see him put his hand on [Mr Griffin's] shoulder'. When Officer Averill was shown footage from a second CCTV camera, he said 'I can see him gesturing towards [Mr Griffin]'. Investigators asked again if he could see the other prisoner gesturing towards Mr Griffin's throat. Officer Averill repeated 'I can see him gesturing towards [Mr Griffin]'.
335. Officer Beringer said '[i]t just looks like he [the other prisoner] is pointing at something or gesturing'. When asked which part of Mr Griffin's body the prisoner was pointing to, Officer Beringer said 'to me it just looks like he's pointing to his chest'.
336. During the Mr Griffin investigation, the Acting Senior Officer denied Mr Griffin's allegations were reported to him by unit staff. He gave evidence that in his 13 years as a prison officer he had 'never' had a prisoner report that a prison officer had mistreated them. He said:
- Prisoners complain all the time, they do what's called officer shopping until they get the answer they want on a particular issue and when they don't and you happen to be the senior officer for the day the prisoners will say 'Senior, this person's not doing what I want them to do' but in terms of physical mistreatment, no, no, I have never had a prisoner come to me and say this officer has assaulted me or mistreated me in any way. Never.
337. This statement is at odds with evidence the Ombudsman and Corrections Victoria have collected regarding the frequency of allegations of assault by prison officers on prisoners at the MRC.
338. The evidence of Officer Page and in other complaints considered by our office shows officers being unwilling to give evidence against their colleagues because they fear retribution or exclusion.
339. The potential impacts of a 'don't dob on a blue shirt' culture were examined by a coronial inquest into the suicide of prison officer William 'Bill' Maxwell. Officer Maxwell killed himself in March 2018 at the Dame Phyllis Frost Centre, where he worked.
340. Officer Maxwell restrained and handcuffed a prisoner during a violent incident at the MAP on Christmas Eve 2016. The prisoner hit an officer, who later kicked the prisoner in the head.
341. As in the Officer Page case, in his first incident report Officer Maxwell did not mention an officer striking the prisoner. In his second incident report, he said he had seen an officer's leg 'lash out' and strike the prisoner in the head. In a more detailed, signed statement Officer Maxwell named the officer he had seen strike the prisoner.
342. In evidence to the Coroner, William Maxwell's wife said he had been the subject of workplace bullying and had been ostracised and segregated from other staff. She said she believed the harmful workplace culture was responsible for his death.

343. She said her husband told her that MAP staff told him he shouldn't have 'dogged on a blue shirt'. In evidence to the Coroner, she explained that the mentality of prison staff was that 'if you dob on a blue shirt, you are not to be trusted'.

344. The Coroner found there was a toxic culture at the MAP when Officer Maxwell was employed there, particularly when one officer wrote up another. She said:

There were remnants of old-school beliefs and an accepted unwritten code that you should always have another officer's back and never dob on or make an adverse statement about a fellow officer. There was also a strong belief that if you did, there would be consequences.

345. However, the Coroner concluded there was insufficient evidence to find Officer Maxwell was bullied at the MAP. She said he had been experiencing a personal crisis in the days before his death and that and other factors may have influenced his decision to kill himself.

346. The Coroner noted evidence that Corrections Victoria had made changes in an attempt to create a more positive and improved workplace culture since Officer Maxwell's suicide, including introducing the 2019-2022 Cultural Reform Strategy.

Attitudes towards external scrutiny and the credibility of prisoners

347. Another concerning facet of prison culture is the attitude expressed by some prison officers about the investigation process. Some comments demonstrated a resistance to external scrutiny flowing from an 'us vs them' mentality.

348. One example of this was expressed by an MRC officer interviewed in relation to the Mr Lloyd incident.



Mr Lloyd – allegedly kicked in the head after the court transport van left him behind

Officer prejudice against prisoners

After the incident during which he alleged he was assaulted, Mr Lloyd was escorted to another unit. During the escort he had two collisions with doors or door jambs. In relation to the first collision, we found although the prisoner was resisting, the actions of the officers when his face made contact with the door jamb appeared to be deliberate.

Shown CCTV footage of Mr Lloyd hitting a door frame, one of the officers escorting him, Officer Munro, said he believed they moved the prisoner through the doorway ‘appropriately’. He suggested Mr Lloyd may have deliberately pushed himself into the door frame, saying:

I don't know why I'm being asked questions about clearly a volatile person who's directed his own body weight into that door. ...

It's very easy for someone who's already very agitated and angry to completely want revenge on whoever ... But a lot of these people are chronic self-harmers and they self-harm. It's what they do and if they can take down a prison officer while they're at it and have me waste a whole day of my career in this office for a baseless interview, then they're gonna do it. They're criminals. That's what they do ... And then the exaggeration of him actually wanting to hit the door deserves an Oscar award. Terrible. Watch his leg. He dives himself into it.

In relation to the second collision, we found that at best, it showed a lack of care on the part of the officers and at worst, a deliberate act of forcing Mr Lloyd into the doorframe. The officers involved have denied any wrongdoing.

When shown later CCTV footage of the prisoner convulsing on the floor of the observation cell, Officer Munro again responded by saying the prisoner was faking his condition.

Figure 12: CCTV still of escort



Source: Corrections Victoria

349. Similar attitudes towards external oversight surfaced in a staff survey we did at Port Phillip Prison for our 2019 report, *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people*. In response to the survey, one officer with more than 10 years' experience stated:

Don't you lot have something better to do, wonder what the community would think about this waste of money.

350. Another officer with more than 10 years' experience said:

Victorian prisons are a joke with far too many outside agencies trying to get involved. Prisons in Victoria are a holiday camp. Spend the money elsewhere.

Conclusions

351. The cases discussed in this chapter show a range of examples of officer conduct falling short of expected standards. While these cases are only a small sample, it appears that the cultural issues they illustrate may exist across the broader Victorian prison system.

352. In response to a draft of this report, the Department stated it:

encourages staff to speak up to report improper conduct and does not consider any proportion of excessive use of force to be acceptable.

353. The Department also said that it wanted to learn from the examples in the report and welcomed opportunities for improved practice. However, it wished to highlight that the examples represented a small proportion of the complaints and allegations investigated or substantiated.

354. Effective and respectful prisoner-staff relationships encourage prisoner compliance and contribute to the safety and security of the prison environment. The underlying attitudes towards prisoners held by staff influence whether effective and respectful relationships can be built.

355. The way some officers speak to prisoners shows a distinct lack of respect. The language used by officers needs to be considered in the context of the prison environment and the conduct of the prisoners involved in the incidents. However, the examples we saw of inappropriate, unprofessional and threatening comments made by officers towards and about prisoners, still fall well below acceptable standards.

356. The nature of some of these comments suggests a dehumanisation of prisoners which is linked to the 'us vs them' mentality described by some witnesses. This attitude indicates a lack of awareness or attention to the Charter of Rights Act and the requirement to treat prisoners with respect for their inherent human dignity.

357. The 'us vs them' approach also has the potential to promote conflict and escalate or incite use of force incidents. It can contribute to retaliatory behaviour by prison officers against prisoners.

358. The examples of retaliation provided in this report show a culture exists within some parts of the prison system in which it is considered acceptable to use force to punish.

359. The failure by prisons to adequately address this type of behaviour contributes to a culture of tolerance that risks prisoner and staff safety and wellbeing.
360. There is evidence that prisons are not always effectively managing officers with patterns of inappropriate behaviour. This sends the message to officers and prisoners alike that there are few consequences for acting in breach of the Commissioner's Requirements and the Code of Conduct.
361. Managing problematic officers is made more difficult by the culture of silence. Some officers have described being reluctant to report their colleagues for unreasonable use of force or other misconduct, for fear of retaliation.
362. While it is critical for prison officers to support each other and to maintain a professional distance from the prisoners in their custody, an 'us vs them' culture of silence does not support integrity. At its worst, this culture can dehumanise prisoners, promote the unreasonable use of force and encourage masking behaviours.
363. This culture of silence has long been noted as a characteristic of prison workplaces. The evidence in this report confirms that pockets of it, at the least, still exist within the Victorian prison system.
364. The example of Officer Page in the Mr Snow case demonstrates the importance of strong leadership and support from management in shifting this culture and supporting transparency and accountability.
365. The 'us vs them' mentality also feeds problematic attitudes towards oversight. We acknowledge it is natural to feel discomfort about involvement in a misconduct investigation, or about giving evidence which might damage the career of a colleague. However, some of the comments made by prison officers during our investigations, and their tone, showed a resistance to transparency and a culture which sees outside oversight as a 'waste of time'.
366. This type of attitude has been expressed to our office by multiple officers from different prisons. This indicates these cultural issues are not specific to the MRC but exist across the prison system, and have for some time.
367. In its *Special report on corrections*, IBAC identified opportunities for the Department and Corrections Victoria to strengthen the prevention and detection of corrupt conduct. These included addressing workplace culture, ensuring thorough staff vetting and ensuring IBAC is promptly notified of suspected corrupt conduct.
368. The Ombudsman supports these proposals and emphasises the importance of rigorous recruitment and vetting processes for prison officers as well as careful performance management where conduct or suitability issues are identified.

The Department's responses to the Ombudsman's draft investigation reports

369. In response to the draft reports on the Ombudsman's investigations detailed in this report, the Secretary of the Department of Justice and Community Safety submitted:

DJCS is committed to the delivery of a safe and humane correctional service and has implemented a number of measures in recent years to improve the operation of our correctional system. Corrections Victoria has updated corrections policies and practices, restructured prison reporting lines, and strengthened training, integrity and oversight across the prison system.

More generally and as you are aware, the Victorian Government has commissioned an independent cultural review of the adult corrections system (the cultural review), and DJCS is now implementing its own Integrity Strategy. These key pieces of work are part of our ongoing commitment to strengthening integrity in the large DJCS portfolio where there are unique corruption vulnerabilities and challenges.

DJCS is committed to continuous improvement in the correctional system and will continue to take action to reduce the risk of inappropriate, corrupt, and unethical behaviour amongst staff, and investigate those who do not meet our high standards.

There remains more work to do, and I note the important role your office plays in identifying opportunities for improvement.

Overall conclusions

370. This report examines a small number of incidents of use of force, but in a broader context, which includes evidence from multiple sources over many years, and indicates the extent and nature of the issues.
371. It must be acknowledged that prisons are inherently challenging environments, that prisoners can frequently exhibit violent and unpredictable behaviour as a result of which force may be necessary in the interests of safety and good order, and that allegations made by prisoners are not always justified.
372. But the evidence from these investigations and other complaints received by my office, combined with previous reports and reviews, illustrates the persistent and endemic nature of the problem, despite the efforts of Corrections Victoria to address the issues. Allegations of unreasonable use of force do not appear to be declining and the incidents in this report present a disturbing picture.
373. Our investigations focused on incidents which occurred at the MRC and the MAP. The likelihood of use for force incidents happening and escalating is greater in these remand environments, given their shifting populations. However, these cases point to broader cultural issues. The underlying causes for force being used unreasonably against prisoners are the same across the prison system.
374. Corrections Victoria has updated the Commissioner's Requirements to clarify and limit when force should be used. They are increasing the use of BWCs, and their recruitment is focused on finding candidates with the appropriate attitude and capabilities.
375. But the problem remains. In some cases, performance management processes are failing to identify and act decisively on patterns of poor officer behaviour. Corrections Victoria needs to focus on improvement actions in this area and ensure that these actions translate into meaningful cultural change. So long as the culture of prisons goes unchanged, unreasonable uses of force and assaults will continue to happen.
376. In response to a draft of this report, the Department stated:
- It is not a matter of [Corrections Victoria] identifying patterns of behaviour. It must respond in line with the parameters of its operating environment. This includes the [Victorian Public Service] Enterprise Agreement, whole-of-government Management of Misconduct Policy and various legislative and policy requirements.
377. The aim of this report is to shed light on the issues raised by these investigations and consider their relevance to the broader prison system. While it does not purport to solve these longstanding and sometimes intractable issues, it seeks to expose what is too often hidden. By better understanding the causes for unreasonable use of force and the circumstances which allow a negative culture to flourish, prisons can take more effective action.
378. Reports like this one and IBAC's *Special report on corrections* can inform the Victorian Government's *Cultural Review of the Adult Custodial Corrections System* and contribute to improving the safety and wellbeing of staff and prisoners.

Recommendations

Our recommendations are informed by our investigations and other complaints. We provide these recommendations for change to the Department for action, but also to inform the *Cultural Review of the Adult Custodial Corrections System* in generating options to 'drive cultural change and promote appropriate behaviour that is consistent with a culturally safe and integrity based corrections system' in Victoria.

It is recommended that the Department:

Recommendation 1

Increase officer accountability for body worn camera activation by adding fields to incident reporting templates to capture:

- a. whether each officer was wearing a body worn camera
- b. if so, whether the body worn camera was activated for the duration of the incident
- c. reasons for any failures to activate a body worn camera for the duration of the incident.

Department response:

Accepted.

Recommendation 2

Improve compliance with body worn camera activation requirements by establishing quarterly audits of BWC activation data across all Victorian prisons.

Department response:

Accepted in principle.

Recommendation 3

Improve CCTV coverage of use of force incidents in Victorian prisons by:

- a. eliminating CCTV blind spots in corridors and entrances to unit holding cells
- b. conducting a review of at least 12 months of data about use of force incidents, assaults and alleged assaults by staff on prisoners, to identify high-risk locations in order to eliminate CCTV blind spots in these locations.

Department response:

Accepted in principle (part a) and not accepted (part b).

Recommendation 4

Issue formal guidance to prison officers requiring them to use CCTV-monitored areas, such as holding cells, whenever possible while having conversations with prisoners in which they address prisoner behaviour.

Department response:

Accepted in principle.

Recommendation 5

Review the effectiveness of current training programs for prison officers in de-escalation techniques, including considering more frequent training.

Department response:

Accepted.

Recommendation 6

Review the practice of securing prisoners to cell doors by placing a baton through their handcuffs while their hands are through the trap, with a view to:

- determining whether this is an appropriate restraint technique
- if so, ensuring that there are appropriate procedures, guidance and training in place around the use of this technique.

Department response:

Not accepted.

Recommendation 7

Review the information provided to prisoners during orientation about use of force to ensure that prisoners are receiving clear information about their rights and their avenues for complaint.

Department response:

Accepted.

Recommendation 8

Review recruitment, vetting and probation processes for public prisons to ensure they are rigorous and effective in screening out unsuitable candidates.

Department response:

Accepted.

Recommendation 9

Ensure that private prisons have recruitment, vetting and probation processes in place which are rigorous and effective in screening out unsuitable candidates.

Department response:

Accepted in principle.

Recommendation 10

Ensure prisons are actively monitoring and addressing officer conduct issues by:

- a. developing a centralised system for accessing information about officer conduct complaints and investigations
- b. incorporating regular reviews of complaints against individual officers into annual performance development cycles
- c. providing additional training and support to managers to help them effectively address officer conduct issues through performance development and management processes.

Department response:

Accepted.

Recommendation 11

Build a culture of transparency by:

- a. reporting publicly and annually on the number of:
 - o use of force incidents
 - o alleged assaults by staff on prisoners
 - o staff on prisoner assaultsin the Victorian prison system for the previous 12-month period.
- b. reporting to the Victorian Ombudsman every six months on the number of:
 - o use of force incidents
 - o alleged assaults by staff on prisoners
 - o staff on prisoner assaultsfor each Victorian prison, by month, for the previous six-month period.

Department response:

Accepted in principle.

Recommendation 12

In addition to the recommendations made above, the Ombudsman supports the following recommendation made by IBAC in its June 2021 *Special report on corrections*:

That the Victorian Government amend section 22 of the *Corrections Act 1986* (Vic) to introduce a statutory obligation on corrections officers to report to the prison governor or to IBAC if they have a reasonable belief that another officer has engaged in corrupt conduct, and that an appropriate penalty for failing to comply with section 22 be imposed.

Department response:

Accepted in principle.

Victorian Ombudsman's Update Draft Omnibus Report — DJCS response (May 2022)

Table 2: DJCS response to recommendations in VO's Updated Draft Omnibus Report

VO RECOMMENDATION	DJCS RESPONSE
1. Increase officer accountability for body worn camera activation by adding fields to incident reporting templates to capture: - whether each officer was wearing body worn camera - if so, whether the body worn camera was activated for the duration of the incident - reasons for any failures to activate a body worn camera for the duration of the incident.	Accepted - DJCS notes that Schedule 1.19(1) Incident Report Form and the corresponding incident report forms in place at the private prisons currently include a checkbox that asks if body worn camera (BWC) footage has been retained. - A free text section will be added to the incident reporting forms asking for an explanation if 'no' is checked responding to parts (a) and (c) of this recommendation. - BWC can be de-activated at various parts of an incident (e.g., if the situation has been de-escalated or if a strip search is being conducted to maintain the dignity of the prisoner). It is the prison manager's responsibility to ascertain during review whether the BWC was switched off inappropriately in line with the context of the entire incident. These expectations will be communicated to all prison staff as per part (b) of the recommendation.
2. Improve compliance with body worn camera activation requirements by establishing quarterly audits of BWC activation data across all Victorian prisons.	Accepted in principle - Corrections Victoria will explore the addition of a [BWC Activated Y/N] prompt to the incident entry module of the Prisoner Information Management System (PIMS), allowing for the collection of BWC activation data. - Corrections Victoria will then (if this mechanism is feasible) use this data for auditing purposes. It is anticipated that a randomly selected set of 10 incidents per month (where 'no' was selected) could be audited for compliance. - This satisfies the intent of the recommendation insofar as incidents will be audited for occurrences of BWC not being activated when it should have.
3. Improve CCTV coverage of use of force incidents in Victorian prisons by: - eliminating CCTV blind spots in corridors and entrances to unit holding cells - conducting a review of at least 12 months of data about use of force incidents, assaults and alleged assaults by staff on	Accepted in principle (part a) and Not Accepted (part b) Corrections Victoria is aware of CCTV blind spots that present the greatest risks and will work to mitigate these risks. This will entail communication to staff to stress that non-prisoner areas should not be used to address prisoner behaviour without the presence of an activated BWC. DJCS cannot commit to further action such as the installation of further CCTV without a funding source for this work.

Victorian Ombudsman's Update Draft Omnibus Report — DJCS response (May 2022)

VO RECOMMENDATION	DJCS RESPONSE
prisoners, to identify high-risk locations in order to eliminate CCTV blind spots in these locations.	Corrections Victoria does not consider a review of 12 months of data to be useful as it is already aware of these high-risk areas. The identification of such areas occurs contemporaneously as part of regular continuous improvement processes such as use of force reviews.
4. Issue formal guidance to prison officers requiring them to use CCTV monitored areas, such as holding cells, whenever possible while having conversations with prisoners in which they address prisoner behaviour.	Accepted in principle Advice will be communicated to prison staff that areas not covered by CCTV should be avoided when addressing prisoner behaviour unless impractical or in the presence of an activated BWC.
5. Review the effectiveness of current training programs for prison officers in de-escalation techniques, including considering more frequent training.	Accepted A whole of package review is currently being undertaken into the Tactical Options training package and method of facilitation.
6. Review the practice of securing prisoners to cell doors by placing a baton through their handcuffs while their hands are through the trap, with a view - determining whether this is an appropriate restraint technique - if so, ensuring that there are appropriate procedures, guidance and training in place around the use of this technique.	Not accepted This practice is in place to protect the safety of staff and only becomes a safety issue for the prisoner when the prisoner becomes non-compliant and attempts to pull their hands through the trap to injure staff. The only staff approved to use this technique are staff who have been trained in the use of and are licenced to carry a baton. Trap bolts (performing the same function of a baton but fixed to the cell door) are installed on most new cell doors and is included in the latest version of the Cell and Fire Safety Guidelines.
7. Review the information provided to prisoners during orientation about use of force to ensure that prisoners are receiving clear information about their rights and their avenues for complaint.	Accepted While the number of complaints made each year suggest the current processes are robust, Corrections will review and make amendments to information provided to prisoners during orientation as necessary.
8. Review recruitment, vetting and probation processes for public prisons to ensure they are rigorous and effective in screening out unsuitable candidates.	Accepted DJCS regularly reviews its recruitment and vetting policies, and a probationary period applies for all employees. While the process is seen as robust, it is inherently tied to performance and misconduct during that probationary period. DJCS notes the intersection with findings from the Cultural Review and alignment with Recommendation 1 from IBAC's Special Report on Corrections.

Victorian Ombudsman's Update Draft Omnibus Report — DJCS response (May 2022)

VO RECOMMENDATION	DJCS RESPONSE
9. Ensure that private prisons have recruitment, vetting and probation processes in place which are rigorous and effective in screening out unsuitable candidates.	Accepted in principle DJCS accepts this recommendation in principle but will need to consult further with the private prison operators.
10. Ensure prisons are actively monitoring and addressing officer conduct issues by: - developing a centralised system for accessing information about officer conduct complaints and investigations - incorporating regular reviews of complaints against individual officers into annual performance development cycles - providing additional training and support to managers to help them effectively address officer conduct issues through performance development and management processes.	Accepted Corrections Victoria is developing a register which will capture data from both use of force reviews and referrals to Conduct, Corruption and Investigations resulting from uses of force and allegations of assault by prisoners. The register will capture: • Prisoner involved • Staff involved • Prison location • Staff category (General duties, ERG, SESG) • Identified issue (excessive force, training opportunity, etc) • Result (training completed, suspended, etc) In line with the introduction of this new register will be two new findings that sit along the spectrum between appropriate use of force and assault: • Inappropriate use of force (to be used when the tactics used were inappropriate or where force could have been avoided altogether) • Excessive use of force (to be used when the force was disproportionate to the objective and is assessed as being excessive) This process will require prison General Managers to 'close the loop' on referrals made to them by advising the Corrections Victoria Operations Directorate of the action taken in response to the referral (for example that the staff member was retrained in the use and carriage of batons if a training deficiency was identified). This process will allow regular audits to take place regarding adverse events amongst cohorts of staff, particular prisons, and individual staff.
11. Build a culture of transparency by:	Accepted in principle

Victorian Ombudsman's Update Draft Omnibus Report — DJCS response (May 2022)

VO RECOMMENDATION	DJCS RESPONSE
a. reporting publicly and annually on the number of: use of force incidents; alleged assaults by staff on prisoners; and staff on prisoner assaults in the Victorian prison system for the previous 12 month period. b. reporting to the Victorian Ombudsman every six months on the number of: use of force incidents; alleged assaults by staff on prisoners; and staff on prisoner assaults for each Victorian prison, by month, for the previous six month period.	DJCS accepts the recommendation in principle but will need to consider further the most appropriate format for this public reporting and regular reporting to the Victorian Ombudsman.
12. In addition to the recommendations made above, the Ombudsman supports the following recommendation made by IBAC in its June 2021 Special Report on Corrections: <i>That the Victorian Government amend section 22 of the Corrections Act 1986 (Vic) to introduce a statutory obligation on corrections officers to report to the prison governor or to IBAC if they have a reasonable belief that another officer has engaged in corrupt conduct, and that an appropriate penalty for failing to comply with section 22 be imposed.</i>	Accepted in principle DJCS notes that this recommendation in IBAC's Special Report on Corrections was directed to the Victorian Government and not DJCS.

Appendix 1: Jurisdiction and procedural requirements

Authority to investigate and make enquiries

379. The Ombudsman has jurisdiction under the *Ombudsman Act 1973* (Vic) to investigate public interest complaints about conduct by or in an ‘authority’ or ‘public interest disclosure entity’.
380. The MRC and the MAP are part of Corrections Victoria, which is a business unit of the Department of Justice and Community Safety. The Department is an ‘authority’ by virtue of section 2(1)(a) of the Ombudsman Act.
381. The seven public interest complaint investigations referred to in this report were conducted pursuant to section 15C of the Ombudsman Act, which provides that the Ombudsman must investigate a public interest complaint, subject to sections 15D, 15E and 17. The eighth matter was determined by IBAC not to be a public interest complaint and was investigated pursuant to section 16A of the Ombudsman Act, using the Ombudsman’s own motion powers.
382. The investigation also used the Ombudsman’s own motion enquiry powers under section 13A of the Ombudsman Act to gather further information which was used in this report.

Procedural fairness and privacy

383. Each investigation referred to in this report was reported separately to the Secretary of the Department of Justice and Community Safety and the Minister for Corrections. Those investigation reports contained adverse comments or opinions about individuals that are also in this report. In accordance with the requirements of the Ombudsman Act, each of those individuals was given a reasonable opportunity to respond to the relevant material in the individual reports before they were finalised and their responses were fairly set out.
384. All individuals referred to in this report have been deidentified. Each individual has been given a pseudonym in order to protect their privacy.

Victorian Ombudsman's Parliamentary Reports tabled since April 2014

2022

Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal
May 2022

2021

Investigation into decision-making under the Victorian Border Crossing Permit Directions
December 2021

Investigation into allegations of collusion with property developers at Kingston City Council
October 2021

The Ombudsman for Human Rights: A Casebook
August 2021

Councils and complaints – A good practice guide 2nd edition
July 2021

Investigation into good practice when conducting prison disciplinary hearing
July 2021

Investigation into Melton City Council's engagement of IT company, MK Datanet Pty Ltd
June 2021

Investigation into how local councils respond to ratepayers in financial hardship
May 2021

Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund
April 2021

Outsourcing of parking fine internal reviews – a follow-up report
March 2021

Investigation of protected disclosure complaints regarding the former Principal of a Victorian public school
February 2021

2020

Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020

December 2020

Investigation into complaints about assaults of five children living in Child Protection residential care units.

October 2020

Investigation into corporate credit card misuse at Warrnambool City Council

October 2020

Investigation into review of parking fines by the City of Melbourne.

September 2020

Investigation into the planning and delivery of the Western Highway duplication project

July 2020

Ombudsman's recommendations – third report

June 2020

Investigations into allegations of nepotism in government schools

May 2020

Investigation of alleged improper conduct by Executive Officers at Ballarat City Council

May 2020

Investigation into three councils' outsourcing of parking fine internal reviews

February 2020

2019

Investigation of matters referred from the Legislative Assembly on 8 August 2018

December 2019

WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims

December 2019

Investigation into improper conduct by a Council employee at the Mildura Cemetery Trust

November 2019

Revisiting councils and complaints

October 2019

OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people

September 2019

Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions

August 2019

Investigation into State Trustees

June 2019

Investigation of a complaint about Ambulance Victoria

May 2019

Fines Victoria complaints

April 2019

VicRoads complaints

February 2019

Victorian Ombudsman's Parliamentary Reports tabled since April 2014

2018

Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018

Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria

September 2018

Complaints to the Ombudsman: resolving them early

July 2018

Ombudsman's recommendations – second report

July 2018

Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies

June 2018

Investigation into the administration of the Fairness Fund for taxi and hire car licence holders

June 2018

Investigation into Maribyrnong City Council's internal review practices for disability parking infringements

April 2018

Investigation into Wodonga City Council's overcharging of a waste management levy

April 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015

March 2018

2017

Investigation into the financial support provided to kinship carers

December 2017

Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre

November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus

September 2017

Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system

September 2017

Investigation into Victorian government school expulsions

August 2017

Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board

June 2017

Apologies

April 2017

Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board

March 2017

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville

February 2017

Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

January 2017

2016

Investigation into the transparency of local government decision making

December 2016

Ombudsman enquiries: Resolving complaints informally

October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight

September 2016

Report on recommendations

June 2016

Investigation into Casey City Council's Special Charge Scheme for Market Lane

June 2016

Investigation into the misuse of council resources

June 2016

Investigation into public transport fare evasion enforcement

May 2016

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting

December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations

November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training

September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight

June 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service

April 2015

Councils and complaints – A report on current practice and issues

February 2015

Investigation into an incident of alleged excessive force used by authorised officers

February 2015

2014

Investigation following concerns raised by Community Visitors about a mental health facility

October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria

August 2014

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