

Government response to the Integrity and Oversight Committee's report *Inquiry into the adequacy of the legislative framework for the Independent Broad-based Anti-corruption Commission*

Introduction

The Victorian Government thanks the Integrity and Oversight Committee for the valuable analysis provided in its report and acknowledges the considerable amount of work involved, including assessing public submissions and undertaking public hearings with key stakeholders.

The Committee made 31 recommendations with respect to the legislative framework for the Independent Broad-based Anti-Corruption Commission (IBAC) and the broader integrity framework that IBAC operates within, 29 of which were directed to government. The Committee directed recommendations 19 and 31 to IBAC. The government notes that many of the Committee's recommendations are interconnected and need to be considered holistically.

Background

IBAC was established in 2012 under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act), to prevent, expose and investigate serious public sector corruption and police misconduct. IBAC is also responsible for the application of the *Public Interest Disclosures Act 2012*, which outlines IBAC's and other agencies' roles in the Public Interest Disclosure (PID) framework, and operates in accordance with other legislation on a range of matters, including the *Victoria Police Act 2013* and the *Charter of Human Rights and Responsibilities Act 2006*.

IBAC operates within a broader integrity system, with IBAC's remit focusing on serious and systemic corrupt conduct and police personnel misconduct as well as improper conduct across the public sector. This system includes the Victorian Ombudsman (VO), which investigates complaints about the administrative actions and decisions of public sector organisations, the Victorian Auditor-General's Office (VAGO), which provides assurance to the Victorian Parliament and the community about the financial integrity and performance of public sector agencies, the Parliamentary Workplace Standards and Integrity Commission, which is responsible for considering allegations of misconduct involving Victorian members of parliament, and Integrity Oversight Victoria (IOV), which provides independent oversight of Victoria's integrity and accountability agencies, including IBAC, the VO and VAGO. Specialised bodies also oversee specific legislation and frameworks, such as the Local Government Inspectorate and the Office of the Victorian Information Commissioner (OVIC). Victoria Police also has a role in investigating and prosecuting allegations of criminal behaviour including theft, fraud, bribery of a public official and misconduct in public office.

These agencies all operate within a networked system, rather than as a series of isolated watchdogs. This means that the different legislative frameworks in which they derive their powers, duties and functions from interact with one another in various interconnected ways – for example, by providing referral pathways, creating reporting and oversight obligations and information-sharing frameworks. As such, any change to one agency's powers and jurisdiction is likely to have flow-on impacts across the entire integrity system, affecting the remit of multiple agencies.

The Integrity and Oversight Committee heard evidence that IBAC's current framework lacks clarity, has limitations on capacity and transparency, provides for weak feedback and enforcement mechanisms, misaligned resourcing, and a mismatch between police oversight needs and IBAC's anti-corruption mandate. It is imperative that Victoria's anti-corruption framework is fit for purpose, balancing fairness and due process protections with the public interest in transparency, public confidence, and genuine deterrence.

Overview of government response

The Victorian Government is committed to ensuring IBAC is empowered and adequately resourced to perform its vital functions to promote integrity and expose public sector corruption and police misconduct. Given the importance of IBAC's mandate, the Committee's recommendations have been thoroughly examined, and the government has sought to provide considered responses to the recommendations directed to it, which have been informed by preliminary consultation with IBAC, IOV and other agencies such as VAGO and Victoria Police. As a result, the government supports in principle 21 of the Committee's recommendations and places a further 8 under review, with detailed responses to all recommendations directed to the government set out in the table below.

The Committee's recommendations propose fundamental policy and legislative changes to the types of matters IBAC can investigate and its processes, raising important questions about IBAC's purpose, its role in Victoria's integrity system and its interaction with both the criminal and civil justice systems. Further, the Committee's recommendations represent the most significant proposed expansion of IBAC's jurisdiction and powers since its establishment and would result in a significant shift in IBAC's core functions and purpose.

The diversity of opinions expressed in the submissions to the Committee, highlights the differing opinions about the conduct that IBAC should be empowered to investigate and the role IBAC should play in Victoria's broader integrity framework. Further consideration and consultation is required to understand these perspectives and ultimately determine what should be IBAC's core purpose and functions and how any expanded jurisdiction and powers fit within the established and interconnected integrity framework, including its interface with the criminal justice system. As such, government will bring together Victoria's key integrity agencies with Victoria Police and other select stakeholders to form an expert reference group best placed to examine the system-wide impacts of implementation of the Committee's recommendations, from a legal and operational perspective and inform government's delivery of a comprehensive legislative reform package.

The government will also have regard to striking an appropriate balance between affording IBAC with the powers and capabilities it requires to effectively discharge its functions and ensuring necessary protections and safeguards are in place, noting the significant impact investigations can have on individuals' rights, welfare and reputations.

As noted above, Victoria's integrity framework is complex and interconnected, and amendments to the IBAC Act are likely to have system-wide impacts affecting multiple agencies. For example, changes to what is considered 'corrupt conduct' will likely increase the volume of complaints and mandatory notifications IBAC will receive for assessment and investigation, have implications for the public interest disclosures scheme, to which IBAC acts as steward, and may increase the volume of referred matters to the Victorian Ombudsman and other agencies and government departments to which IBAC can make referrals. This in turn may have flow on impacts for the timeliness of assessments, investigations and outcomes for complainants. These types of expected flow-on impacts for other agencies are canvassed in the government's response to relevant recommendations. However, further, in-depth consideration is required to minimise any unintended consequences, ensure complainants accessing the system are protected, and the system works as a coherent whole which has the confidence of stakeholders and the public alike.

Finally, as acknowledged by both IBAC and the Committee, the Committee's recommendations are likely to have significant resourcing implications. While the government response outlines at a high level where recommendations are expected to have resourcing implications, it is appropriate that the government, in consultation with stakeholders, takes the time to determine the most resource effective and efficient approach to implementation. Further, a number of the recommendations relate to changes to Victoria Police oversight are noted as 'under review' due to the need to consider these recommended changes to the *Victoria Police Act 2013* collectively, along with recommendations made by the former IBAC Committee's *Inquiry into the external oversight of police corruption and misconduct in Victoria* and recommendations from the *Yoorrook For Justice* report.

Informed by these considerations, the government will seek to identify reforms that offer the greatest value to furthering IBAC's mandate and that of Victoria's broader integrity framework, noting Victoria Police's primary role as it pertains to criminal conduct. In doing so, the government will be guided by the advice of the reference group on core issues of IBAC's role and purpose, key risks and benefits and system flow-on impacts.

The Reference Group will be asked to provide advice to inform the detailed drafting of legislation to implement those recommendations that are supported in principle. It will also provide advice on the feasibility and options to acquit the intent of those recommendations under review.



Recommendation by recommendation analysis

Committee recommendation	Government response
<p>Recommendation 1</p> <p>That the Victorian Government seek to broaden the definition of ‘corrupt conduct’ in section 4 of the IBAC Act, to remove the requirement that conduct constitute a relevant offence and include matters involving a serious disciplinary offence, misconduct worthy of termination or other relevant offences or instances considered in breach of public trust in the public officer by reason of their appointment as a public officer.</p>	<p>Support in principle</p> <p>The Victorian Government acknowledges the Committee's findings that the definition of ‘corrupt conduct’ in the IBAC Act is limited by the current ‘relevant offence’ definition.</p> <p>The government supports the intent of this recommendation and will consider legislative options to broaden the definition of corrupt conduct, including possible removal of the relevant offence requirement, with consultation through the reference group and other stakeholders, as required.</p> <p>Consideration will be given to an appropriate threshold to determine what conduct could be included under a broadened definition. Consideration will also be given to possible flow-on effects across the integrity system, noting that the definition of ‘corrupt conduct’ in the IBAC Act is adopted in other integrity agencies Acts, including the Ombudsman Act and the Public Interest Disclosures Act as well as any possible overlaps with other agencies’ jurisdictions a broadened definition would cause.</p>
<p>Recommendation 2</p> <p>That the Victorian Government seek to clarify the offence of ‘misconduct in public office’ under the definition of ‘relevant offence’ in section 3 of the IBAC Act and insert statutory offences.</p>	<p>Support in principle</p> <p>The Victorian Government will further consider this recommendation, through the reference group and in consultation with other stakeholders, as required. Further work is required to understand the broader circumstances in which the offence is used in Victoria, and the possible system-wide implications of creating new statutory offences which apply more broadly than just for the purposes of the IBAC Act. Consideration will be given to approaches of other jurisdictions and recommendations of the UK Law Commission’s Report on ‘Misconduct in public office’ which was referred to in the Inquiry.</p>
<p>Recommendation 3</p> <p>That the Victorian Government provide proportionate funding to IBAC to support the expansion of the definition of ‘corrupt conduct’, and the realisation of any changes to the IBAC Act resulting from this inquiry.</p>	<p>Support in principle</p> <p>The Victoria Government acknowledges that any changes to the IBAC Act may require additional funding to ensure that IBAC has sufficient resources to effectively deliver both its public sector and police oversight functions. As noted throughout the government response, many of the recommendations have resourcing implications for IBAC but also for other agencies. Government will work with the integrity agencies through the reference group and any other affected agencies to scope resourcing impacts and inform its approach to the recommendations, noting the budget independence of the integrity agencies.</p>
<p>Recommendation 4</p> <p>That the Victorian Government seek input and advice from the Commonwealth Government and other stakeholders to clarify and streamline the definitions of ‘public officer’ and ‘public body’ under section 6 of the IBAC Act.</p>	<p>Support in principle</p> <p>The Victorian Government supports the intent of this recommendation and will consult with relevant stakeholders through the reference group on any reforms to clarify and streamline the definitions of ‘public officer’ and ‘public body’ to ensure workability across jurisdictions.</p> <p>The Government also notes that this recommendation is closely related to recommendation 5 and that amending the definitions of ‘public officer’ or ‘public body’ could be further explored, in consultation with stakeholders, as an alternative avenue to enable IBAC to investigate corrupt conduct in the use of public funds. Please refer to the commentary on recommendation 5 below.</p>
<p>Recommendation 5</p> <p>That the Victorian Government seek to amend the IBAC Act to provide the Commissioner of IBAC with powers comparable to the Victorian Auditor-General including:</p> <ul style="list-style-type: none"> • investigation of corrupt conduct of third party and private subcontractors where there is a substantial connection between alleged corrupt conduct and government funding; and • follow-the-dollar investigatory powers. 	<p>Support in principle</p> <p>The Victorian Government notes that the delivery of projects and services through the public sector in Victoria often engages third-party contractors. The government acknowledges the complexity of those contracting and engagement frameworks, and that rightly, there is strong public interest in ensuring that public funds are spent appropriately and in line with their intended purpose.</p> <p>IBAC can currently examine the conduct of any person, including contracted service providers, if appropriate links to public officers, public bodies and their functions are satisfied. Implementation of this recommendation would, in practical terms, clarify and expand IBAC’s jurisdiction as it currently pertains to third parties and government contracting to deliver public functions.</p> <p>The Government supports the intent of this recommendation and will assess legislative options through the reference group to enable IBAC to oversee the use of public funds expended through private entities, where appropriate. Careful consideration is required to ensure that any expansion to IBAC’s jurisdiction does not detract from its core focus on serious and systemic conduct of public officers and bodies.</p>



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	<p>Consideration will also be given to possible overlaps such an expansion could cause with other agencies' jurisdictions, including that of Victoria Police, and ensuring that agencies can work as part of an overall system that maintains high standards and probity in the use of public funds</p> <p>The reference group will also consider how best to ensure the proposed laws can be applied retrospectively</p>
<p>Recommendation 6</p> <p>That the Victorian Government seek to amend section 91 of the IBAC Act for a search warrant issued under this Act to include the power to:</p> <ul style="list-style-type: none"> • require the names and addresses of all persons present • require persons present to provide assistance to access a computer or data storage device • access data held in, or accessible from, a computer or data storage device, including data held off-site. 	<p>Support in principle</p> <p>The Victorian Government recognises the importance of ensuring that Victoria's integrity agencies have the powers they need to perform their functions effectively. In particular, due to the prevalence of information now being stored digitally, it is important that IBAC's investigations are not impeded by virtue of information or data being held on a computer or other storage device. The government will engage further with IBAC, IOV and Victoria Police through the reference group to inform its approach and consideration of additional investigative powers for IBAC as well as to scope out any resourcing implications.</p>
<p>Recommendation 7</p> <p>That the Victorian Government seek to amend the IBAC Act to include an offence to destroy or conceal a document or thing that is, or is likely to be, required in connection with an IBAC preliminary inquiry or investigation.</p>	<p>Support in principle</p> <p>The Victorian Government will engage further with IBAC and IOV through the reference group to inform its approach to this recommendation, which seeks to aid in IBAC's ability to conduct effective and proportionate investigations that meet IBAC's statutory objectives.</p>
<p>Recommendation 8</p> <p>That the Victorian Government seek to amend section 117(5) of the IBAC Act to require IBAC to notify Integrity Oversight Victoria (IOV) of its intention to hold a public examination prior to issuing the related witness summons.</p>	<p>Under review</p> <p>Stakeholders advised during preliminary consultation that the existing safeguards in the IBAC Act in relation to notifications provided to IOV are sufficient. In addition to the requirement under section 117(5) requiring IBAC to notify IOV not less than 10 business days before a public examination is held, IBAC is also required to notify IOV before it announces its intention to hold a public examination under section 117(5A). In addition, section 122 of the IBAC Act also requires IBAC to give a written report to IOV within 3 days after the issuing of a witness summons for public and private examinations.</p> <p>The government further notes that there is a risk that this recommendation, if implemented, would erode the independence of IBAC's decision-making processes, delay the conduct of investigations and increase the administrative burden on IBAC. The government will consult further on this recommendation through the reference group, to determine if legislative reform is necessary to achieve the intent of this recommendation.</p>
<p>Recommendation 9</p> <p>That the Victorian Government seek to amend the IBAC Act to require IBAC to table and publish procedural guidelines for:</p> <ul style="list-style-type: none"> • IBAC's process for deciding whether to hold a public examination • procedural fairness processes for witnesses in public examinations. 	<p>Support in principle</p> <p>The Victorian Government supports the intent of this recommendation, to promote transparency and ensure procedural fairness for witnesses.</p> <p>The government notes that, since the report was tabled, IBAC has independently published its 'IBAC public examinations: a guide for witnesses' on its website. In light of this, further consideration will be given to whether a mandatory legislated requirement to issue guidelines is necessary, or whether consideration should instead be given to a discretionary power or non-legislated approaches.</p> <p>The government will consult with IBAC, IOV and others through the reference group, as required on the most appropriate approach to implementation of this recommendation.</p>
<p>Recommendation 10</p> <p>That the Victorian Government seek to amend the IBAC Act to permit IBAC to hold public inquiries for the purposes of its educative and preventive functions, and to be able to summons parties to attend public inquiries, without criminal sanctions for not complying with the summons. The Victorian Government should ensure IBAC is not able to use any other coercive powers in its educative and preventive functions.</p>	<p>Support in principle</p> <p>The Victorian Government supports the intention of this recommendation, to empower IBAC to examine, prevent, and remedy corruption risks and systemic issues in the public sector. The government acknowledges the benefit in, and stakeholder support for, expanding IBAC's powers to better inform the public and public sector about corruption risks, for example, by accessing the knowledge of academics and subject matter experts.</p> <p>Careful consideration is required as to the most appropriate way to achieve the intent of this recommendation whilst ensuring safeguards are in place to promote witness welfare and guard against educative and preventive functions being used as a tool for gathering evidence against individuals. Further consideration is also required</p>



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	<p>as to whether issuing a summons without consequences for non-compliance would assist IBAC to seek information from people under secrecy obligations.</p> <p>Additionally, and as noted by both IBAC and the Committee, this recommendation is likely to require additional resources to implement, so as not to detract resources from IBAC's core functions of investigating serious or systemic public sector corruption and police misconduct.</p>
<p>Recommendation 11</p> <p>That the Victorian Government seek to amend section 194 of the IBAC Act to make clear that a Victoria Police investigation following a referral from IBAC is not an investigation 'conducted under the IBAC Act', so that documents collected by Victoria Police during such an investigation are not exempt under section 194 from the operation of the <i>Freedom of Information Act 1982 (Vic)</i>.</p>	<p>Support in principle</p> <p>The Victorian Government notes that the Committee's commentary around the application of section 194 of the IBAC Act referenced previous inquiries and historical VCAT decisions and approaches as to whether the section applied to complaints referred by IBAC to Victoria Police or another entity for investigation. Based on more recent consultation and engagement with Victoria Police, the Government understands that more contemporary approaches to section 194 take into account the later VCAT decision, which better reflects the intent of section 194 of the IBAC Act. There is also reliance on the general exemptions under the <i>Freedom of Information Act 1982</i>, rather than the IBAC Act. Clarification of section 194 will be considered by the reference group.</p>
<p>Recommendation 12</p> <p>That the Victorian Government seek to amend section 42 of the IBAC Act to permit IBAC to issue amended confidentiality notices, and require it be served in the same matter as a new confidentiality notice.</p>	<p>Support in principle</p> <p>The Victorian Government acknowledges that the IBAC Act may be too restrictive to rely on general legislative interpretative principles that allow an entity to amend issued instruments or notices. In other circumstances, entities often have an express power to vary issued notices and there is merit in such an approach. The Government also notes this has implications for all agencies that can issue confidentiality notices, as there is a degree of uniformity in the notice provisions across the statute book. Government will work with the reference group to inform the extent to which changes will need to be made to other agencies' legislation as well as IBAC's.</p>
<p>Recommendation 13</p> <p>That the Victorian Government seek to amend section 3 of the IBAC Act to expand the definition of a 'restricted matter' to include:</p> <ul style="list-style-type: none"> • the subject matter or individual who is subject to a preliminary inquiry • the subject matter or individual who is subject to an investigation, when a confidentiality notice has not been issued. 	<p>Support in principle</p> <p>The Victorian Government notes that the confidentiality and disclosure provisions in the IBAC Act are in-depth given the nature of the subject matter and types of matters IBAC deals with. These provisions are necessary not only to protect the integrity of investigations but also the interests and welfare of affected parties.</p> <p>There can be nuance in what a person is prohibited from disclosing, depending on whether there is a confidentiality notice, a witness summons has been issued, or a preliminary investigation or investigation is underway. The Government notes there may be benefit in clarifying and being more consistent on what is prohibited from being disclosed at different stages of the IBAC Act and engagement with IBAC.</p> <p>Care is needed to consider the interaction with other prohibitions on disclosure, including public interest disclosure restrictions and confidentiality notices and exemptions, to ensure there is cohesion on what can and cannot be disclosed under legislation and IBAC's authorisations or directions</p>
<p>Recommendation 14</p> <p>That the Victorian Government seek to amend the IBAC Act to provide IBAC with the ability to explicitly authorise the disclosure of certain information under section 184.</p>	<p>Support in principle</p> <p>The Victorian Government recognises the dynamic nature of investigations and IBAC's engagement with persons and that there may be merit to provide IBAC with greater flexibility to authorise what information can be disclosed.</p> <p>The confidentiality and disclosure provisions in the IBAC Act are highly prescriptive in recognition of the subject matter and types of conduct IBAC deals with during the course of its duties. These provisions are necessary not only to protect the integrity of investigations but also the interests and welfare of those involved.</p> <p>The reference group will consider the interaction with other prohibitions on disclosure, including public interest disclosure restrictions and confidentiality notices and exemptions, to ensure there is cohesion on what can and cannot be disclosed under legislation and IBAC's authorisations or directions.</p>
<p>Recommendation 15</p> <p>That the Victorian Government seek to amend the <i>Integrity Oversight Victoria Act 2011 (Vic)</i> to provide IOV with the ability to explicitly authorise the disclosure of certain information under section 97AA.</p>	<p>Support in principle</p> <p>Noting the provisions in the Integrity Oversight Victoria Act mirror those in the IBAC Act, the same considerations as outlined in the commentary on recommendation 14 apply. Any future reforms to implement recommendation 14 should also include for implementation of recommendation 15.</p>



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<p>Recommendation 16</p> <p>That the Victorian Government undertake a comprehensive review of Victoria’s current Public Interest Disclosure scheme to determine whether the adoption of an alternative model would best serve the needs of the Victorian community.</p>	<p>Support in principle</p> <p>The Victorian Government acknowledges that providing robust protections for individuals who seek to disclose alleged corrupt or improper conduct by public officers is critical to maintaining trust and confidence in government and the public sector. The government also recognises the impact the Public Interest Disclosure (PID) scheme can have on entities involved in the system, the discloser, and other parties involved in the matter. By their very nature, PID assessment and complaint investigations take time and can be resource intensive. The government has a strong history of reform in this area with the PID scheme already undergoing foundational and substantive reform in the last term of government.</p> <p>The government will work with stakeholders and entities through the reference group to best balance more immediate practical concerns against a wholesale review of the PID scheme, which itself would have significant implications, resourcing and otherwise, for the whole of the public sector and integrity agencies. To this end, the government recognises the work of IBAC and its PID Consultative Group to drive operational improvements as well as explore longer term reform options. The government will work through these options with reference group members, building on their work as part of the PID Consultative Group.</p> <p>The government notes that consideration will also be given to recommendations 19 and 20 made by the Public Accounts and Estimates Committee’s Inquiry into fraud and corruption control in local government: a follow up of two Auditor-General reports.</p>
<p>Recommendation 17</p> <p>That the Victorian Government seek the amendment of the IBAC Act and the <i>Victoria Police Act 2013</i> (Vic) (Victoria Police Act) to provide that IBAC, Professional Standards Command or Victoria Police cannot refer complaints to a police investigator who is affected by a conflict of interest.</p>	<p>Under review</p> <p>The Victorian Government is committed to ensuring Victoria’s police oversight system is robust, accountable and meets the needs of the community. As evidenced by the submissions and recommendations to this Inquiry and past inquiries and Commissions, the community expects a robust police oversight system that maintains public confidence.</p> <p>This recommendation and others made by the Committee in relation to police oversight reiterate recommendations made by the former IBAC Committee in its <i>Inquiry into the external oversight of police corruption and misconduct in Victoria</i> (IBAC Committee Inquiry). The Government notes the Committee’s acknowledgement that Government’s consideration and consultation on the former IBAC Committee’s recommendations remains ongoing, which may affect the consideration and any implementation of related recommendations in the current Inquiry report. The Government continues to work through what can be achieved to better meet the needs of complainants and victims of police misconduct in the context of a constrained budget environment.</p> <p>Government notes the Committee’s recommendations relating to police oversight and is examining them from a holistic and system-wide perspective, which includes consideration of other reports and recommendations including the extensive stakeholder and public consultation undertaken during the system review of police oversight, which actively considered and consulted on the IBAC Committee Inquiry recommendations, and the Yoorrook Justice Commission’s <i>Yoorrook for Justice</i> report.</p>
<p>Recommendation 18</p> <p>That the Victorian Government seek to rewrite section 15(1A) of the IBAC Act to clarify that in performing its functions, IBAC must prioritise its attention on ‘serious corrupt conduct’, ‘systemic corrupt conduct’ and ‘serious police misconduct’. Further, unless there are exceptional circumstances, IBAC, rather than Victoria Police, should investigate complaints and disclosures about ‘serious police misconduct’.</p>	<p>Under review</p> <p>Please refer to the commentary on recommendation 17 above.</p> <p>The Victorian Government also acknowledges the evidence received by the systemic review of police oversight, which considered and consulted on recommendation 37 of the IBAC Committee Inquiry, which this recommendation adopts.</p> <p>The systemic review heard that stakeholders have differing views about the types of conduct that should fall within a definition of serious police misconduct and whether legislation should require IBAC to investigate all matters involving serious police misconduct, or whether it should have discretion to refer them to Victoria Police, with a suggestion that in such circumstances IBAC be required to conduct a mandatory review of those referred matters.</p> <p>Importantly, legal bodies and Aboriginal stakeholders submitted that should ‘serious police misconduct’ be adopted, many matters of particular concern to Aboriginal people and marginalised and vulnerable groups would likely continue to be referred to Victoria Police and not independently investigated. More broadly, stakeholders queried whether conduct definitions are the best approach to determining which agency should handle a complaint, with some stakeholders calling for the development of a more flexible test to determine</p>

Committee recommendation	Government response
	which matters are more appropriate for independent oversight. As such, further consultation and work is required to ensure definitions are fit-for-purpose, which will be considered by the reference group
<p>Recommendation 19 That IBAC should formally establish a dedicated Police Corruption and Misconduct Division to increase public confidence in Victoria's system for handling complaints about police corruption and other misconduct, improve capacity to conduct effective investigations, enhance its independence, develop its expertise and improve performance. This division should have dedicated teams for complaint receipt and assessment; investigations and referrals (including reviews and audits); public information and communications; welfare management; in-house and external training; research and prevention. IBAC should retain discretion to allocate resources between divisions.</p>	This recommendation is directed to IBAC and is therefore a matter for IBAC.
<p>Recommendation 20 That the Victorian Government seek to amend and redraft the definitions of 'police personnel conduct', 'police personnel conduct complaint' and 'police personnel misconduct' in section 5 of IBAC Act and any relevant or related provisions in Victoria Police Act and <i>Public Interest Disclosures Act 2012 (Vic)</i> to provide greater clarity.</p> <p>That in doing so, the Victorian Government take into account Recommendation 20 by the IBAC Committee in the 2018 Police Oversight Inquiry.</p>	<p>Under review Please refer to the commentary on recommendations 17 and 18 above. The Victorian Government continues work on a considered approach to ensure definitions across the IBAC Act, the Victoria Police Act, the Public Interest Disclosures Act and other relevant integrity legislation are fit for purpose, and where possible, consolidated, simplified and clarified.</p>
<p>Recommendation 21 That the Victorian Government seek to amend section 59(1) of the IBAC Act so that IBAC be required to provide complainants with reasons for referral when referring a complaint to Victoria Police.</p>	<p>Under review Please refer to the commentary on recommendation 17 above.</p>
<p>Recommendation 22 That the Victorian Government seek to amend the IBAC Act so that IBAC is provided with the express function of reviewing referred investigations, the power to make recommendations from reviews and the power to put conditions on referrals.</p>	<p>Support in principle The Victorian Government supports this recommendation in principle and notes that formalising a power for IBAC to review complaints is supported by key stakeholders and would reflect established operational practice. Additionally, as noted by the IOC, formalising a review function for IBAC may also help improve the quality of an agency's complaint-handling policies and procedures.</p> <p>Consultation with IBAC and affected agencies through the reference group is required to ensure any amendments to implement this recommendation are crafted in an appropriate and balanced way. As acknowledged by both the IOC and IBAC, this recommendation may have considerable resourcing implications, for both IBAC and, depending on number of complaints referred, agencies receiving complaints referred from IBAC. As such, further consideration is required to ensure the approach to implementation of this recommendation is undertaken in a resource-efficient manner.</p>
<p>Recommendation 23 That the Victorian Government seek to amend section 163 of the IBAC Act so that IBAC is provided with the ability to communicate review outcomes to complainants when it reviews a referred matter.</p>	<p>Support in principle The Victorian Government supports this recommendation in principle and notes that implementation of this recommendation would increase transparency around the complaint handling process and provide complainants with a level of assurance that their matter has been independently examined. Key stakeholders, including both IBAC and IOV, support this recommendation.</p> <p>Noting the link with recommendation 22 above, this recommendation is likely to have resourcing implications and as such, further consideration and consultation through the reference group is required to ensure the approach to implementation of this recommendation is undertaken in a resource-efficient manner.</p>
<p>Recommendation 24 That the Victorian Government seek to amend the IBAC Act to empower IBAC to make findings of corrupt conduct.</p>	<p>Support in principle The Victorian Government supports the intent of this recommendation. The reform would provide IBAC with the express power to publish findings about, and form and express opinions of, corrupt conduct. This recommendation would need to be implemented alongside recommendation 26.</p>



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	<p>This needs to be balanced with the right to privacy and reputation under the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic) of affected individuals. It also needs to be balanced with preserving the exclusive role of courts in determining criminal guilt by, for example, IBAC expressly stating that findings of corrupt conduct and police personnel misconduct do not amount to findings of guilt (please refer to commentary on recommendation 26). The government will further consider how to achieve this balance while maintaining the intent of this recommendation, through the reference group.</p>
<p>Recommendation 25</p> <p>That the Victorian Government seek to amend the IBAC Act to require that IBAC implement additional procedural fairness requirements in respect of findings of corrupt conduct, including in respect of (but not limited to) confidentiality, timeliness and providing individuals with an opportunity to respond.</p>	<p>Support in principle</p> <p>The Victorian Government notes that this reform may be needed to offset the potential effects of recommendation 24 on individuals' rights and interests. Care is needed in crafting how prescriptive procedural fairness requirements are in legislation. At common law, the doctrine is meant to be flexible and will conform to the specific circumstances with a broad requirement to provide an opportunity for an individual who may be adversely affected to 'present their case' and have a fair hearing. If it is too rigid in the legislation, it may be unworkable in practice and be incompatible with the common law principles.</p> <p>As IBAC has noted, timelines required to reasonably respond to adverse findings, comments or opinions varies considerably from case-to-case. The legislation needs flexibility to address the common law, the circumstances of the matter, and to ensure that fairness can be afforded to all affected persons.</p>
<p>Recommendation 26</p> <p>That the Victorian Government seek to amend the IBAC Act to require that IBAC, in relevant reports, expressly states that findings in respect of corrupt conduct and police personnel misconduct do not amount to findings of guilt.</p>	<p>Support in principle</p> <p>The Victorian Government acknowledges that this reform is likely needed to offset the potential effects of recommendation 24 with respect to on individuals' rights and interests and to not prejudice court proceedings, noting the exclusive power of the courts to not only make findings of guilt but also make exculpatory decisions.</p> <p>Government also recognises that persons named in special reports, examined in public or are otherwise involved in an investigation can face adverse perceptions or treatment, despite no adverse finding being made against them. Consideration will also be given to whether reputational protection mechanisms are needed for persons named in a special report or those in a public examination.</p>
<p>Recommendation 27</p> <p>That the Victorian Government seek to amend the IBAC Act to prescribe clear and reasonable statutory time frames within which affected individuals must be notified and given an opportunity to respond before the publication of any report that may contain adverse commentary about them. These timeframes should form part of the procedural fairness requirements and ensure a consistent, transparent process for managing natural justice obligations prior to tabling or public release.</p>	<p>Under review</p> <p>The IBAC Act, seeks to strike the right balance between unreasonable delays completing and publishing investigative reports (which can be due to litigation) with the fundamental common law principles of procedural fairness for affected individuals and those individuals being able to access the courts to ensure proper administrative processes. IBAC is not a court and as an administrative body needs to be subject to the general principles of procedural fairness. These requirements need to be carefully balanced against the public interest in having the results of investigations published proximate to the events examined. Providing time limits would not necessarily remove delays due to litigation, as judicial review may shift to other aspects of IBAC's procedure and dealing with adverse material.</p> <p>The reference group will consider options to provide some legislative clarification on material IBAC has relied on to make adverse comments that may be provided to affected parties, drawing on recent High Court jurisprudence.</p>
<p>Recommendation 28</p> <p>That the Victorian Government seek to amend section 159(2) of the IBAC Act to permit IBAC to table in Parliament recommendations it has made following any investigation if those recommendations relate to any public entity, agency or institution, regardless of whether IBAC transmits a Special Report to Parliament.</p>	<p>Support in principle</p> <p>The Victorian Government supports this recommendation in principle, provided that appropriate safeguards are in place to ensure procedural fairness and promote witness welfare.</p> <p>Currently, IBAC can only publicly release recommendations that form part of a special report or annual report. Empowering IBAC to publish recommendations outside of special reports would provide greater visibility over IBAC's work, promote public trust in IBAC, and better support IBAC's prevention and education functions by allowing agencies to learn from and adopt recommendations made to other agencies.</p> <p>However, this recommendation is likely to have resourcing implications for IBAC, to ensure procedural fairness requirements are acquitted before recommendations are made public. The government will consult with IBAC and other stakeholders to ensure any reforms to implement this recommendation are appropriate, balanced and operationally efficient.</p>
<p>Recommendation 29</p>	<p>Under review</p>



Committee recommendation	Government response
<p>That the Victorian Government seek to amend the IBAC Act to require Victoria Police to:</p> <ul style="list-style-type: none">• implement IBAC's recommendations (or, where not implemented, to publicly state clear reasons and any alternative actions),• provide IBAC with a progress/implementation report within six months and at reasonable intervals thereafter.	<p>Please refer to the commentary on recommendation 17 above.</p>
<p>Recommendation 30</p> <p>That the Victorian Government seek to amend the IBAC Act to enable IBAC to table in Parliament—in de-identified form—each recommendation together with Victoria Police's implementation status and reasons, consistent with practices used by other complaint-handling bodies.</p>	<p>Under review</p> <p>Please refer to the commentary on recommendation 17 above.</p>
<p>Recommendation 31</p> <p>That IBAC, in consultation with Gellung Warl (as the permanent representative and deliberative body for Traditional Owners and First Peoples in Victoria), establish a dedicated, appropriately-resourced Aboriginal Engagement Unit — led by a First Nations leader — to embed culturally safe, trauma-informed practice; co-design engagement with communities; strengthen independence and investigative capability (including in deaths and serious injury matters); improve complaint handling, transparency and outcomes; and rebuild trust.</p>	<p>This recommendation is directed to IBAC and is therefore a matter for IBAC.</p>