

Parliament of Victoria
Integrity and Oversight Committee
Parliament House
Spring Street
East Melbourne VIC 3000

By email only: inquiryibac@parliament.vic.gov.au

Dear Dr Read,

Re: Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission – Questions on Notice

Thank you for your correspondence of 13 October 2025 to provide an opportunity for the Law Institute of Victoria ('LIV') to respond to the Integrity and Oversight Committee's ('IOC') Questions on Notice ('QoNs') from the recent public hearings for its inquiry into the adequacy of the legislative framework for the Independent Broad-based Anti-corruption Commission ('IBAC').

The LIV's responses to the IOC's QoNs are outlined below.

Q1 – Accountability Round Table has given evidence that the current claim of privilege process under sections 146 and 147 of the IBAC Act 2011 (Vic) should be changed to place the onus for making an application to the Supreme Court on the claimant. In your view, would such a change reduce time delays resulting from claims of privilege?

1. The term 'privilege' is broad under the IBAC Act and encompasses all privileges that a person is entitled to claim before a court or tribunal (except for journalistic privilege). This includes, for example, legal professional privilege and parliamentary privilege. The LIV's response to the question is limited to views concerning legal professional privilege (LPP) as this is of particular interest to the LIV as the peak-body for the Victorian legal profession. However, the LIV notes that jurisdictional approaches to determine parliamentary privilege vary significantly and this is a matter the IOC may wish to consider further as part of its inquiry.
2. In short, the LIV considers that amending the privilege process to require an LPP claimant, rather than the IBAC, to apply to the Supreme Court to determine the claim would likely have minimal effect to reduce time delays in the process. Further, any potential timeliness that may be gained could be at the expense of access to justice if a claimant is required to cover Supreme Court filing costs to have the Supreme Court assess their claim.
3. Having read the Accountability Round Table's submission, the LIV is uncertain as to whether its submission advocates for, in the proposed reverse process, IBAC to have access to the material that privilege is claimed over to make a first instance ruling on whether to accept or reject the privilege claim. The LIV notes that the Accountability Round Table submission refers to processes

in Royal Commissions, and notes that the *Royal Commissions Act 1902* (Cth) authorises a member of a Royal Commission to require a person to produce the document for inspection for the purposes of whether to accept or reject a legal privilege claim.

4. Concerning whether IBAC should have access to the document or information over which someone claims LPP, the LIV support in-principle the current process whereby the documents are sealed and referred to the Supreme Court to determine LPP without IBAC viewing the material. As a matter of principle, the LIV maintains its view that the Judiciary is the only arm of Government that may ultimately determine whether information is subject to LPP. The IBAC Act specifies that the Commissioner is an independent officer of the Parliament.¹ The LIV holds concern over any proposal that may lead to a blurring of the lines between the arms of government and their distinct functions defined through the separation of powers.
5. In addition, the LIV holds concern about the potential for conflict of interest, perceived or otherwise, where the Commission responsible for exposing corrupt conduct² also views material it summonses to assess legal professional privilege claims. The LIV is conscious that there may be an objective perceived bias in a process where IBAC is provided an opportunity to view material that may, indeed, expose corrupt conduct, but may also be subject to legal professional privilege and fall within the exceptions to the general legal privilege abrogation under the IBAC Act.
6. The LIV considers the process outlined in the *Crime and Corruption Commission Act 2001* (Qld) (CCC Act) is a useful comparison. Under the CCC Act, if a person claims LPP and refuses to produce information summonsed by the Crime and Corruption Commission (CCC) they must provide submissions to the CCC that outlines their LPP claim. The submissions are then assessed by a CCC officer (who may not view the material subject to the claim). The CCC officer then either accepts the claim or refuses the claim and refers the matter to the Queensland Supreme Court for final determination.
7. Explicitly outlining this process in the IBAC Act may assist the IBAC deal with LPP claims in the first instance without automatically referring the matter to the Victorian Supreme Court. For example, it could provide both the IBAC and the LPP claimant to agree that only certain parts of a document attract LPP, and agree to release the remaining document to IBAC.

Q2 – IBAC has submitted to the Committee that the definition of ‘restricted matter’ in the *IBAC Act 2011* (Vic) should be expanded to include the subject matter of a preliminary inquiry, and the subject matter under investigation regardless as to whether a witness summons has been issued. In your view, would there be any disadvantages of the proposed change?

¹ *Independent Broad-based Anti-corruption Act 2011* (Vic) s 19(1).

² *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 8(a)(i)

8. The LIV would support a proposed amendment to the 'restricted matter' definition to include the subject matter of a preliminary inquiry or investigation (regardless of whether a witness summons is issued), and also who is the subject of a preliminary inquiry or investigation.
9. The LIV notes that the IBAC's submission to the IOC outlines what it considers a significant gap in the IBAC confidentiality framework. In particular, that the definition of 'restricted matter' in the IBAC Act is too narrow and can lead to circumstances whereby an individual who is under a confidentiality notice may legally disclose the subject matter of a preliminary inquiry or investigation, or the individual/s who are the subject of a preliminary inquiry or investigation. For reference, the definition of 'restricted matter' is included below.

restricted matter means—

- a) *any evidence or information given to, or obtained by, the IBAC;*
 - b) *the contents of any document, or a description of any thing, produced to, or obtained by, the IBAC;*
 - c) *the contents of any document, or a description of any thing, which the IBAC has made a copy of or seized under Division 3 or Division 4 of Part 4;*
 - d) *the existence of, or any information about, a confidentiality notice or a witness summons;*
 - e) *the subject matter of an investigation in relation to which a witness summons has been issued;*
 - f) *any information that could enable a person who has been, or is proposed to be, examined by, or who has produced, or may produce, any document or thing to, the IBAC, to be identified or located;*
 - g) *the fact that a person has been, or is proposed to be, examined by, or has produced, or may produce, any document or thing to, the IBAC;*
 - h) *the fact that a disclosure or related disclosure has been notified to an appropriate entity for assessment under Part 3 of the Public Interest Disclosures Act 2012;*
 - i) *the fact that a disclosure or related disclosure has been determined under Part 3 of the Public Interest Disclosures Act 2012 to be a public interest complaint;*
10. The LIV understands that the 'restricted matter' definition is largely enlivened when the IBAC issues a confidentiality notice under section 42 of the IBAC Act. Section 42 authorises the IBAC to issue a confidentiality notice under the following circumstances:
 - a. During an investigation - to any individual if the IBAC considers on reasonable grounds that disclosing the information would likely prejudice that investigation, the safety or reputation of a person, or the fair trial of a person who has been, or maybe be, charged with an offence.
 - b. During a preliminary inquiry – to an individual who has received a witness summons, if the IBAC considers that on reasonable grounds that the disclosure of information that is a restricted matter would likely prejudice the preliminary inquiry.
 11. Notably, the IBAC Act places a distinction between the IBAC's ability to issue a confidentiality notice during a preliminary inquiry and investigation. That is, during a preliminary inquiry the IBAC may only issue a confidentiality notice to an individual who has received a witness summons to provide

information to the IBAC concerning that preliminary inquiry. Conversely, during an investigation the IBAC may issue a confidentiality notice to any individual. This distinction recognises the difference between a preliminary inquiry and investigation, and the seriousness of a confidentiality notice. Importantly, Section 43 of the IBAC Act creates an offence that carries a 120 penalty unit or 12 months imprisonment if an individual breaches the terms of a confidentiality notice.

12. Given the serious consequences an individual may face if they breach a confidentiality notice, any amendment to 'restricted matter' must be carefully examined as it directly affects what an individual can and cannot disclose whilst subject to the confidentiality notice. Any amendment that broadens the information captured under 'restricted matter' increases the associated risk for an individual that they may inadvertently breach the terms of their notice and face possible criminal prosecution.
13. On balance, the LIV is comfortable with the IBAC's proposal to broaden the 'restricted matter' definition to:
 - a. Include the subject matter of a preliminary inquiry,
 - b. Remove the caveating factor in paragraph (e) that requires a witness summons to be issued concerning the subject matter of an investigation, and
 - c. The individual/s who are the subject of an investigation or preliminary inquiry.
14. The LIV considers the proposed amendments are within scope and theme of the existing restrictions and would place additional safeguards to protect the reputation of individuals whilst they remain under investigation or subject to a preliminary inquiry. In addition, the proposed amendments would minimise risk that an investigation or preliminary investigation is jeopardised if an individual discloses that a matter is before IBAC (for example, the LIV recognises that there is risk evidence could be destroyed if it becomes known that a matter is before IBAC).
15. Further, the LIV suggests the IOC should consider recommending that Paragraph 42(1A)(b) is broadened to allow the IBAC to issue a confidentiality notice during a preliminary inquiry if it considers that the disclosure would likely prejudice the safety or reputation of a person. Currently, the IBAC may only issue a confidentiality notice if it considers that disclosure may jeopardise the preliminary inquiry. This limitation may prevent the IBAC from issuing a confidentiality notice where it believes there is genuine risk to an individual's reputation or safety if information is disclosed, but there is minimal risk that the disclosure could jeopardise the preliminary inquiry. A person's safety and reputation are relevant IBAC considerations when issuing a confidentiality notice during an investigation. Arguably, the risk to an individual's safety or reputation is higher during a preliminary inquiry whilst the matter remains in the very early investigation stage.
16. For clarity, the LIV supports the current restriction that, during a preliminary inquiry, the IBAC may only issue a confidentiality notice to a person who has received a witness summons. Given the significant consequences an individual may face if they breach a confidentiality notice, the LIV believes that the IBAC should be restricted to only issue a notice to those who are directly relevant

to the preliminary inquiry (that is, they are familiar enough with the matter that the IBAC has issued a witness summons).

Q3 – If IBAC’s jurisdiction is expanded, there is the potential for IBAC to have a great deal of discretion as to what they would prioritise. In your view, should IBAC be able to make determinations in an expanded jurisdiction, or should there be some other mechanism to ensure that the prioritisation that is occurring in the expanded jurisdiction is appropriate to the objects of the organisation? What might that other mechanism be?

17. The LIV understands this question seeks the LIV’s view on whether:

- a. The IBAC should make determinations about what matters it should investigate, or if not,
- b. What other mechanisms are available to make that determination.

18. The LIV will limit its response to the scope identified in the above paragraph. If the IOC is asking what other determinations the IBAC could make (for example, determination about privilege) please advise and the LIV can respond accordingly.

19. Ultimately, the LIV considers that the IBAC is best placed to use its discretion to determine which matters it will investigate so long as the conduct falls within its defined legislative jurisdiction. The IBAC is the primary agency that is empowered to seek information that would inform any determination it makes about whether a particular matter meets the defined legislative threshold to conduct an investigation.

20. To minimise risk that IBAC uses covert and coercive powers on low-level matters (for example, workplace misconduct), the LIV considers that the Parliament must carefully amend the IBAC Act to set IBAC’s jurisdiction at an appropriate level. As stated in our submission to the IOC, the LIV considers that the current threshold is too high and should be lowered from a ‘relevant offence’, to also include conduct that could be capable of terminating employment.

21. The IOC may wish to consider whether it is appropriate to place an additional threshold that, incorporating the LIV’s recommended amendments to ‘corrupt conduct’, requiring that the IBAC only investigate corrupt conduct that it considers is either ‘serious’ or ‘systemic’. This would go beyond the current mechanism under Section 8 of the IBAC Act which outlines that an objective of the IBAC Act is to provide for the IBAC to prioritise the investigation and exposure of serious corrupt conduct or systemic corrupt conduct, and section 15(1A) that requires the IBAC to prioritise its attention to investigate corrupt conduct that it believes may constitute serious corrupt conduct or systemic corrupt conduct.

22. Should the IOC pursue this option, the LIV would encourage that the IBAC retains ability to conduct a preliminary inquiry into all corrupt conduct (including corrupt conduct that may not be serious or systemic). This would enable IBAC to assess which matters reach a serious or systemic threshold and move into investigation under Section 60 of the IBAC Act to enliven its more invasive investigative powers (such as private or public examination). If the IBAC considers the corrupt

conduct is not serious or systemic, the existing referral powers under Section 73 are likely sufficient to enable the IBAC to refer the matter to a more relevant authority for investigation (for example, the principal officer of an agency to undertake a workplace misconduct investigation).

Q4 – Do you have anything to add regarding the question raised by Mr Ryan Batchelor MP on pages 20-21 of the transcript on the topic of how to operationalise the expansion of the jurisdiction of IBAC in order to avoid the mistakes that we currently have, including concerns relating to IBAC’s coercive powers and transparency?

23. The LIV understands this question seeks to address concerns similar to Question 3, which goes toward ensuring that in the proposed expanded jurisdiction IBAC only investigates matters that warrant covert and coercive investigative powers.
24. In an operational context, and beyond the LIV’s comments in response to Question 3, the LIV suggests the IOC may wish to seek further information from IBAC itself about its coordination and triage practices with agencies to determine how matters are managed and referred for either IBAC investigation or workplace misconduct investigation. The LIV does not have visibility over the way in which IBAC manages its internal case assessment process to offer any substantial comment.
25. A Memorandum of Understanding (MoU) between IBAC and public sector agencies may assist to coordinate and triage matters that are referred to IBAC (if not already in place). It is likely that IBAC has the power under Section 16 of the IBAC Act to enter into a MoU with a public sector agency.

Q5 - As a matter of principle, should IBAC be expressly empowered to make findings/opinions of corrupt conduct and police personnel misconduct? What public interest benefits (or harms) do you foresee in the Victorian context?

26. Firstly, the LIV recognises the inherent difficulty an anti-corruption commission is faced between meeting public expectations to publicly report and name individuals whose conduct has, in the commission’s opinion, amounted to corrupt conduct, and weighing the privacy rights of an individual, along with the long-lasting reputational and wellbeing impacts of being labelled ‘corrupt’. This is not an enviable task.
27. In modern media reporting, it is likely that the ‘corrupt’ label will last forever and any particular nuance or mitigating factors in a finding, such as alternative witness event recollection, can easily get lost in reporting. Indeed, should a corrupt finding ultimately be overturned through judicial review, any reputational mitigation may be futile as the *‘genie is already out of the bottle’*.
28. The LIV understands that the IBAC carefully considers proposed wording in a special report to avoid an inadvertent breach of the IBAC Act prohibition on IBAC including a statement that a person has committed, or is guilty of, a criminal offence or serious disciplinary action. Consequently, from the LIV’s review, an IBAC special report will generally make findings of fact about an individual’s specific actions or conduct, without labelling those actions as ‘corrupt conduct’.

29. The question posed by the IOC, in essence, asks whether the IBAC should expressly be empowered to take that 'final step' in a special report and label conduct it has found an individual to have engaged in as 'corrupt conduct', or whether the current practice whereby 'sunlight acts as the best disinfectant' is sufficient. The LIV asks the IOC to carefully consider the concerns referenced above to ensure a careful balance is struck in making any recommendation regarding this express power.

Corrupt Conduct

30. The LIV considers that there is a reasonable view that the IBAC Act already enables the IBAC to make an adverse finding of corrupt conduct against a person. However, as the IBAC outlines in its submission, it takes a conservative reading of the IBAC Act concerning a finding of corrupt conduct against a person to prevent against any inadvertent breach of Section 162(6).

31. The LIV's interpretation of the IBAC Act is based on:

- a. Subsection 15(2) of the IBAC Act provides the IBAC with a function to identify, expose and investigate corrupt conduct. Following an investigation, the IBAC is empowered to refer matters to relevant entities (including prosecutorial bodies), provide recommendations, or produce a special report which is tabled in Parliament and made publicly available.
- b. Section 162 of the IBAC Act outlines what the IBAC may and may not include in a special report. For example, the IBAC may include adverse findings about a public body (see section 162(2)), and comments or opinions that are adverse to a person (see section 163(3)). However, the IBAC Act prohibits the IBAC from including a statement that a person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence (see section 163(6)(a)). Further, the IBAC must not include in a special report a recommendation that a person should be prosecuted for a criminal offence or disciplinary offence (see section 163(6)(b)).

32. The High Court has considered the powers in Section 162 and included in judgement that it would include the ability to make a finding that a public body or a person has engaged in corrupt conduct (notwithstanding the issues around 'relevant offence' raised earlier). In *AB (a pseudonym) v Independent Broad-based Anti-corruption Commission* [2024] HCA 10, the High Court stated:

The obligation imposed by s 162(2) is engaged where IBAC intends to include in a special report an "adverse finding" about a public body, whereas the obligation imposed by s 162(3) is engaged where IBAC intends to include in a special report a "comment or ... opinion which is adverse to any person". The words "finding", "comment" and "opinion" are not defined in the IBAC Act. **It is unnecessary to explore whether there is any substantial difference between those words in this context, as there is no doubt that each of them at least includes a conclusion that a person has engaged in "corrupt conduct"**. If it were otherwise, the protections afforded by s 162(2) and (3) would be illusory.

33. The LIV notes the IBAC's submission to this inquiry which outlines its view that the construction of the 'corrupt conduct' definition hampers its ability to expressly make a finding that a person has

engaged in corrupt conduct.³ Specifically, that the conduct '**would**' constitute a 'relevant offence'. The IBAC submission outlines that:

The prohibition in s 162(6) of the IBAC Act does not prevent IBAC from making findings of fact. However, **IBAC takes extreme care to avoid such findings being construed as a determination of guilt of a criminal or disciplinary offence.** Further, IBAC cannot make a finding or form an opinion of corrupt conduct. This is since corrupt conduct must be a 'relevant offence' which is defined to only include criminal offences. Therefore, the restriction at s 162 of the IBAC Act would apply... most jurisdictions also have an express provision in their legislation that a finding of corrupt conduct is not a finding of guilt or the commission of an offence.⁴ That is because those agencies also have an express power to make a finding or form an opinion in relation to the conduct that determines their jurisdiction.⁵

34. In light of the above, the LIV considers that section 162 of the IBAC Act likely already provides power for the IBAC to make findings of 'corrupt conduct' but is hampered by the drafting in section 4 which requires that 'corrupt conduct' is a 'relevant offence'. However, the IBAC has likely proceeded with caution due to this drafting, and the restriction in section 162 (6) of the IBAC Act which prevents the IBAC from making a finding that an individual has committed an offence. There is an inherent tension between these two sections, as if IBAC were to make a finding of 'corrupt conduct', it is indirectly concluding that the particular individual has committed a 'relevant offence'.
35. To note, other jurisdictions do not use absolute language in their anti-corruption legislation. For example, the ACT define 'corrupt conduct' as conduct that '*could*' constitute a criminal offence. This language is not absolute and leaves room for the ACT Integrity Commission to make a finding of corrupt conduct without necessarily concluding that an individual has committed a criminal offence.

Police Personnel Misconduct

36. The LIV would take this opportunity to reiterate its comments during the public hearing that our overall view is that there must be an independent body, separate to IBAC, with the sole function to investigate allegations of police misconduct. The LIV considers this best ensures transparency, accountability and independence when dealing with police misconduct, and to ensure public trust in integrity bodies that complaints are appropriately addressed.
37. Whilst IBAC continues to have responsibility for police complaints and public sector corruption there will be inherent public confusion (and at worst mistrust) as to what function the IBAC is directing resources. Further, and as the LIV raised at the public hearing, there does not appear to be sufficient commonality between public sector corruption and police misconduct. Police work on the front-line

³ IBAC, submission to the Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for IBAC (15 July 2025) available here: [23.-ibac_submission-as-at-3.10-pm_20250715_redacted.pdf](#)

⁴ NSW ICAC Act, s 74(B)(2); CCM Act (WA), s 217A(3); IC (ACT) Act, s 207; NT Independent Commissioner Against Corruption Act 2017, s 48(2B).

⁵ In NSW and ACT, this is 'corrupt conduct'. In WA, this is 'serious misconduct'. In NT, this is 'improper conduct'.

to uphold law and order and are often required to act and make quick decisions in the moment. Public sector corruption is typically more long-term, planned and coordinated.

38. Notwithstanding the LIV's policy position, should police oversight remain within IBAC's purview, we consider that Section 73 of the IBAC Act requires amendment to properly enable the IBAC to investigate police misconduct and make findings of police personnel misconduct.
39. Section 64 of the IBAC Act empowers the IBAC to investigate police personnel conduct following a complaint, a notification, information provided under Section 169 of the *Victoria Police Act 2013*, or on IBAC's own motion. However, Section 73 of the IBAC Act requires that the IBAC **must** refer a complaint or notification to the Chief Commissioner of Police to investigate if the subject matter of the complaint is relevant to the performance of the duties and functions, or the exercise of powers, of Victoria Police. In practice, Section 73 has likely required IBAC to refer several police personnel complaints to the Chief Commissioner of Police. For example, during 2023/24 IBAC referred 287 of 406 police complaints to Victoria Police for internal investigation (62 per cent).⁶
40. In-principle, a policing organisation investigating its own officers raises governance and oversight issues, and there may be a perceived conflict of interest in doing so. To note, in the special report on police misconduct issues and risks associated with Victoria Police's Critical Incident Response Team (2022), the IBAC specifically noted that: *'IBAC reviewed Victoria Police's investigation and concluded that Victoria Police failed to properly examine and review the conduct of police officers involved in the incident, focusing instead on the actions of the patrons'*.⁷
41. Notwithstanding the LIV view that police oversight should be separated from IBAC, the LIV submits that Section 73 of the IBAC Act is amended to refine what matters the IBAC may refer back to Victoria Police. In particular, limiting referrals to low level 'consumer complaints'. Of course, if IBAC is empowered to investigate all police misconduct matters it must be provided with commensurate resources to ensure it can fulfill its functions.

Public interest benefits and harms

42. The LIV recognises there are both benefits and harms to the IBAC making an express finding that an individual has engaged in corrupt conduct or police personnel misconduct.
43. As a benefit, it may ultimately help increase community trust in public sector institutions and office holders by ensuring accountability and transparency when IBAC deals with allegations of corrupt conduct. It may also help to provide clarity when the public reads an IBAC reports, so that the public can clearly identify what corrupt conduct is, how it manifests in the public sector, and what particular actions or conduct may illustrate corrupt conduct.

⁶ IBAC, Annual Report 2023/2024, page 117, [Annual report 2023/24 | IBAC](#)

⁷ IBAC, Special report on police misconduct issues and risks associated with Victoria Police's Critical Incident Response Team (October 2022) page 8. [Special report on police misconduct issues and risks associated with Victoria Police's Critical Incident Response Team | IBAC](#)

44. Nonetheless, the LIV considers that there needs to be a careful balance between public interest benefits and the rights of the individual. A public finding of corrupt conduct or police personnel misconduct against an individual inherently impacts upon the person's right to privacy and reputation, particularly where such findings have been made in the absence of the same procedural fairness safeguards that would have been provided in the judicial system. Arguably, in the social media age, public findings of corrupt conduct or police personnel misconduct are likely to have long lasting reputational impacts for the individual, which may culminate in severe impacts to the person's future employment and overall health and wellbeing.
45. The LIV is conscious that a public report which outlines and makes findings about an individual's conduct inherently carries risk that any future criminal prosecution is prejudiced, particularly where evidence is gathered and published by abrogating privileges that are available during a criminal trial. The LIV does not have visibility of IBAC's internal processes to triage and manage case referrals to the Office of Public Prosecutions or Victoria Police where criminality may be involved. However, the LIV notes that Section 70(2) of the IBAC Act requires that the IBAC must, if it becomes aware that civil or criminal proceedings are on foot, take all reasonable steps to ensure that the conduct of an IBAC investigation does not prejudice those proceedings.

Q6 - If supported in principle, what safeguards are essential to ensure such findings do not equate to findings of criminal guilt (e.g., fairness to affected persons, clarity of language, transparency), and why?

46. The LIV recognises the importance of ensuring that there must be sufficient safeguards to ensure that the public are aware that IBAC findings, including findings of fact, do not amount to a finding of criminal guilt or that a criminal offence has occurred.
47. The LIV notes that currently, the IBAC Act includes processes and requirements that go towards ensuring that the IBAC must ensure procedural fairness and natural justice requirements for both the person subject to investigation and those impacted by the findings. This includes:
- a. maintaining confidentiality during the investigation,
 - b. providing persons subject to investigation with the opportunity to respond to adverse findings and opinions made against them,
 - c. be given a reasonable timeframe to respond, and
 - d. The general administrative law principle that an investigation should be completed in as timely a manner as possible (justice delayed is justice denied).
48. Further, outside the IBAC Act, it remains open for an individual to commence judicial review of an IBAC finding through the Court.
49. As stated above, the LIV supports IBAC's proposed amendment to the IBAC Act that would clarify that an IBAC finding or opinion that corrupt conduct has occurred is not a finding of guilt. This

approach would align with administrative law principles and reinforces the distinction between IBAC's investigative jurisdiction and the role of the courts in determining criminal liability.⁸

50. The LIV would observe that, in practice, anti-corruption commissions generally go to lengths to outline that findings in its investigation do not equate to, nor conclude that there are findings of criminal guilt. For example, the following is an extract from an ACT Integrity Commission investigation report:

An investigation under the IC Act is not a trial: there are no parties; and no legal or evidentiary burden is placed on anyone to prove or disprove any fact. There is an applicable standard of proof in the sense that the process of investigation and the ability to make any findings must be based on a rational assessment of the relevant and available evidence to an appropriate level of certainty. In respect of findings of corrupt conduct, this is the civil, as distinct from the criminal, standard of proof. The civil standard is conventionally stated to be reasonable satisfaction on the balance of probabilities or on the preponderance of probabilities, whilst the criminal standard is satisfaction beyond reasonable doubt.⁹

51. The IOC may wish to recommend that the IBAC Act is amended to require that the IBAC must make it clear in a report that its duties and functions only relate to investigating and providing findings about allegations of corrupt conduct and police personnel misconduct, and that this does not amount to findings of criminal guilt. It must be clear that, while the IBAC has the power to bring criminal proceedings in relation to any matter arising out of an IBAC investigation under section 190 of the IBAC Act, a determination of criminal guilt is outside the scope of the IBAC, and that this is ultimately a matter for the court to determine.

Clarification on LIV Submission from Public Hearing

52. The LIV would like to clarify its position from our original submission that was raised during the public hearing. Ms Eden Foster referred to an excerpt from the LIV's position that '*any amendment to the jurisdictional threshold must ensure that the IBAC may only report on investigations that confirm allegations of serious or systemic corrupt conduct*'. The LIV can understand that, on reading that sentence, it appears that the LIV suggests that the IBAC may only prepare an investigation report in circumstances where corruption is found (and only in those circumstances). The LIV apologises for the confusion.
53. The LIV confirms its view that the IBAC should have the power to prepare an investigation report in all circumstances, including instances where corrupt conduct is not found. The LIV considers it equally important that the IBAC is empowered to clear an individual of corruption allegations, as it is to report to confirm corruption. The point the LIV should have more clearly conveyed (and is outlined on page 4 of our submission), is that the IBAC should only be allowed to name an individual,

⁸ IBAC, submission to the Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for IBAC (15 July 2025) page 21, available here: [23.-ibac_submission-as-at-3.10-pm_20250715_redacted.pdf](#)

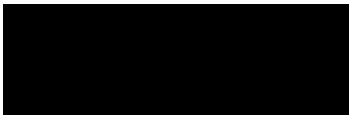
⁹ ACT Integrity Commission, Investigation Report - Operation Juno (March 2025) page 9, available here: [Investigation Report - Operation Juno](#).

and make adverse findings, if that conduct is capable of being either serious and/or systemic corrupt conduct. The LIV considers this an important safeguard to ensure that individual reputations are not unduly damaged via a public report for conduct that is considered lower-level corruption and more appropriately dealt with via a workplace misconduct investigation.

Thank you for the opportunity to provide further feedback to inform the Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for the IBAC.

Please do not hesitate to contact me if you have any further questions.

Sincerely yours,



Adam Awty
Chief Executive