Submission No 6

INQUIRY INTO THE ADEQUACY OF THE LEGISLATIVE FRAMEWORK FOR THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

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Submission to the Victorian Parliamentary Integrity and Oversight Committee Inquiry into the Adequacy of the Legislative Framework for IBAC

A. Amend definition of 'corrupt conduct' in S.4 to remove the requirement that for the conduct specified in s 4(1)(a) – (da) to be 'corrupt conduct' it must 'constitute a relevant offence' and provide that the conduct specified in s 4(1)(a) – (da) becomes the conduct which satisfies the threshold for IBAC's jurisdiction.

Breaches of integrity in public office involves a spectrum of improper conduct, only a small proportion of which can be deemed criminal. The rest -grey corruption-is equally deleterious to the public interest but it is presently beyond IBAC's reach, unlike other effective integrity Commissions.

Reference to the public interest occurs throughout this submission. All public officers, whether elected, appointed or in the public service have an overriding obligation to honour the public trust. That duty requires that their conduct always prioritises the public interest over all other interests.

The existing requirement that the conduct must be criminal to be corrupt seriously hinders IBAC from being an effective integrity oversight body. It precludes the investigation, exposure or rectification of misconduct which cannot satisfy the elements of a criminal offence.

"Corrupt conduct" should not be confined in s.4 to misconduct which requires that IBAC say positively that it is a criminal offence. The words at the conclusion of s 4 - "being conduct that would constitute a relevant offence," should be removed so that all of the misconduct specified in s 4(1)(a) to 4(1)(da) is defined as corrupt conduct.

All of the conduct specified in s.4 (1), namely:
(1)(a) conduct of "any person that adversely affects the honest performance by a public officer" of "his or her functions";

(1b) "conduct of a public officer that involves the dishonest performance of his or her functions";

(1)(c) "conduct of a public officer that involves knowingly or recklessly breaching public trust;"

(1)(d) "conduct of a public officer that involves the misuse of information acquired in the course of the performance of his or her functions as a public officer" and

(1)(da) "conduct of a person intended to adversely affect the effective performance by a public officer of their functions" and that results in that persons obtaining any of the benefits specified in (i) to (iv)

are all forms of grey corrupt conduct in public office even if the conduct does not meet the higher threshold of a crime.

After extensive inquiry and consultation the Federal Parliament in s 8 of the *National Anti-Corruption Commission Act* 2022 (the NACC) adopted these very forms of conduct to define 'corrupt conduct' rejecting the notion that the conduct should also amount to a crime. This brought grey forms of corruption within the investigatory ambit of the Commission providing necessary accountability and oversight of public office.

The common feature of these forms of misconduct is that there is an improper purpose which does not serve the public interest which has motivated the conduct. Where the improper purpose is personal financial gain, the conduct is readily seen as criminal. But most misconduct in one or more of these forms in s.4(1) is for a different improper purpose- often to further a political party interest or to maintain or gain political power or favour, which serves a personal interest at the expense of the public interest. In this grey area there is less clarity about whether the conduct is criminal hence the description of grey corruption.

Replace term 'corrupt conduct' with the term 'serious misconduct' or 'misconduct in public office'.

As the concept of 'corruption' is normally associated by most citizens with something criminal, the Committee should consider replacing the words 'corrupt conduct' with the words '**serious misconduct'** or **'misconduct in public office'** to remove the association of these forms of misconduct with a crime.

Operation Daintree, an IBAC special report published in April 2023 only came to be investigated by IBAC because the Ombudsman, having commenced to investigate the matters, held a reasonable suspicion that the conduct was criminal and thus was obliged to refer the conduct to IBAC. IBAC found on further investigation that there was serious misconduct by Ministers, Ministerial advisor and public servants, motivated by an improper desire to benefit the affiliated Health Workers Union and advance a party-political interest. This was serious grey corruption which damaged the public interest although the misconduct was thought to fall short of the higher threshold of a crime.

Similarly, as the Ombudsman and I stated in the branch stacking investigation in Operation Watts, no crime had been committed but there was serious misconduct designed to favour political interests which corroded decision making in the public interest. The public response from the primary person of interest was that there were no findings of corruption. As the Ombudsman and I stated, this grey corruption has precisely the same deleterious effects on the public good as a crime, **but it is far more prevalent**.

Herein lies the key to understanding why defining corruption as a" relevant offence" provides a safe haven for politicians and public officers who serve them and has such a disabling effect for an integrity commission in exposing breaches of integrity.

Each of those forms of conduct in s 4(1) harms the public interest whether or not it satisfies all the elements of a criminal offence. That is why the ICAC (NSW), the NACC, and other Commissions are given the breadth of jurisdiction to investigate such forms of corrupt conduct regardless of whether they constitute a crime.

The investigation of the former NSW Premier in **Operation Kepler** would not have fallen within ICAC's jurisdiction had ICAC been required to be satisfied that the conduct constituted a 'relevant offence'. And if at a State level, a Robodebt type allegations had been the subject of a complaint to IBAC, it could not have been said with sufficient certainty that any public officers conduct 'would constitute a relevant offence'. IBAC would not have been able to investigate the Ministers or the public servants, could not have made or published serious findings and could not have ensured that the damage done to the public interest could be rectified.

The tragic irony in all cases where there is grey corruption of the type enumerated in s 4(1) (a) to (da) is **that the harm done to the public interest** by each of those forms of conduct **is exactly the same** as it would be if the conduct also amounted to a crime.

During my period as IBAC Commissioner, IBAC refrained from holding public hearings in numerous private examinations concerning significant misconduct that was conduct in one of the forms set out in s 4(1)(a) to 4(1)(da) because IBAC was unable to say with sufficient certainty that the misconduct was criminal let alone that it was '**serious** corrupt conduct' as required by s 117 (1) (d)(i). See B below. That requirement further raises the bar so IBAC cannot hold a public hearing, unless the facts alleged amount to a **serious relevant offence,** not merely a crime.

B. **Amendment of s 117 to remove requirement of "exceptional circumstances" in order to hold a public examination**.

In order to hold a public examination, the following provisions should be removed:

(i)The presumption of private hearings

(ii) the requirement in s 117(1)(a) of 'exceptional circumstances,'

(iii) the requirement in s.117(1)Id)(i) and (ii) that the subject of the investigation be 'serious corrupt conduct' or 'systemic corrupt conduct,'

(iv) the consequential requirements in s.117(4) (a) and (b.

It must be recognised that public hearings serve the public good. Their many benefits, long recognised in the context of Royal Commissions and other integrity institutions such as ICAC, may be summarised as follows:

Public hearings:

- **(i) Provide transparency and hence effectiveness**
- **(ii) expose corruption**
- **(iii) make it difficult for entities or persons of interest to misrepresent the gravity of findings**
- **(iv) increase public confidence in the integrity institution**
- **(v) identify and encourage the need for reforms in the institutions the subject of the inquiry**
- **(vi) educate the public sector and community**
- **(vii) make investigations more effective by encouraging witnesses to come forward**
- **(viii) deter others from engaging in corruption**
- **(ix) improve the integrity of the public sector**
- **(x) expose the commission to greater accountability to the public in its fair treatment of witnesses and persons of interest.**

Some of these important qualities which public hearings bring to any Royal Commission or other inquisitorial inquiries, particularly where coercive powers are exercised, were highlighted by the High Court arising out of the Royal Commission Inquiry into the Builders Labourers Federation. The Court considered the ultimate worth of the Royal Commission was bound up with the publicity that the proceedings attracted. It was thought that private hearings at the Royal Commission had seriously undermined the value of the inquiry and shrouded the proceedings with a cloak of mystery which raised suspicion that the inquiry was unfairly oppressive. The High court found that this had denied the proceedings the public character essential for public acceptance of an inquiry.

These sentiments also underlie the concept that 'open courts' are fundamental to the administration of justice. One need look no further than the secrecy surrounding IBAC's large number of private examinations over the last decade to see how it has provoked continuous public criticism and distrust over its hidden processes.

The requirement of 'exceptional circumstances' is antithetical to these values as IBAC has previously submitted. It imposes a very high hurdle which means, as stated by the Victorian court of Appeal in *R & M v IBAC (2015) 253 A Crim R 35 [67]* that only in 'quite rare and unusual circumstances' will an examination be other than private. The 'exceptional circumstances' limitation has provided a source of litigation for those who have been summonsed to a public hearing.

Is there a substantial risk of reputational damage to witnesses?

Where an inquisitorial process involves coercive powers, the risk must always be guarded against that unfair harm may be done to persons who are compelled to testify in public. But it is a highly unlikely occurrence under the IBAC Act that a witness's

reputation will be unreasonably damaged. Unlike some other Integrity Commissions and Royal Commissions, the IBAC Act contains a very specific provision in s 117(1)(c) that is a critical safeguard for potential witnesses. It requires that the IBAC be satisfied that **a public examination will not cause "unreasonable damage to a persons reputation, safety or wellbeing".**

This requirement ensures that if the witness is a person against whom allegations of some form of misconduct are to be made in public, **the IBAC must first be satisfied that the evidence to be traversed in the public examination will likely establish that the witness engaged in misconduct. Only then may IBAC conclude that the witness's reputation will not be unreasonably damaged**.

If there are doubts about whether the evidence will sustain the allegations, the IBAC examiner may determine at the outset, as occurred in a number of cases, that the examination should be conducted in private in order to meet the requirements of s 117. See s.117(3B)

If the examinations is conducted in public and it eventuates that the evidence does not ultimately support the allegations of misconduct, the person conducting the examination as a matter of course, would make clear at the public hearing and also later in any report that the allegation was without substance.

The IBAC legislation should continue to proceed on the assumption that the examiner at a public hearing will have sufficient experience to ensure that nothing occurs at a public examination that would unreasonably harm a witness's reputation, safety or well being.

Public interest must remain a discretionary judgment

The IBAC must retain a broad discretion when determining whether it is reasonable to conclude that a public examination will serve the public interest. There are many factors that may bear upon the exercise of the discretion and the legislation should not seek to exhaustively list the matters that may be taken into account.

Role of Oversight Victoria

Section 117(5A) provides contemporaneous oversight by Integrity Oversight Victoria to ensure the statutory safeguards concerning a public examination are observed. Not less than 10 business days before a public examination is held, the IBAC must— (a) inform Integrity Oversight Victoria that the IBAC intends to hold the public examination; and (b) provide a written report to Integrity Oversight Victoria giving the reasons why IBAC concluded that all the requirements of s 117(1) could be met.

Overly restricted regime gives rise to increased risk of litigation

Despite the breadth of these statutory safeguards, some of which unreasonably limit public examinations, complaints objecting to a public hearing are still made and in some cases litigated, on the unfounded basis that the witness's reputation would be damaged or that the 'exceptional circumstances' or 'serious corrupt conduct' requirements in s.117 could not be satisfied. See for example *R & M v IBAC*. These

forms of litigation, though not resulting in success can confer unintended advantages for the person of interest. It may require IBAC to reveal the full extent of the evidence available or as in R & M, may significantly delay IBAC's investigations.

Most of those who advance objections to a public hearing do so out of self- interest and their reason for objection is obvious. But sometimes a less discernible politically biased motivations lies at the base of such arguments. For example, one prominent media outlet in Melbourne complained vehemently about the fact that in Operation Kepler the NSW Premier had been compelled to give public evidence which destroyed her reputation and then three days later, the same journalist in the same paper, complained bitterly that the then Victorian Premier had been permitted to give evidence in a number of private IBAC hearings and not in public.

The requirement of 'serious corrupt conduct'

As stated in the final paragraph of A, the additional hurdle to holding a public hearing created by 117(1)(d) , namely that the conduct be 'serious corrupt conduct' adds a further component to the crime requirement- it must be a serious crime! This further hurdle cannot be justified. It and the provisions in s 117(4) (a) and (b) should be removed or amended.

Combined effect of definition of corruption and s 117 limitations

The unnecessary hurdles which IBAC faces in holding a public hearing, occur by virtue of the combined effect of the definition of corruption and the requirements of s117. They have the effect of greatly minimising the likelihood that anyone will be exposed to a public examination despite the explicit protections for witnesses provided by s 117(1)(c) and (5A). Hence the rarity of IBAC public hearings. Numerous examinations have been held in private because of these restrictions, when the public interest would have been best served by public exposure of that misconduct so as to advance integrity in the public sector.

As stated above, given the prevalence of grey corruption in the public sector, the primary beneficiaries of this unsatisfactory and overly protective legislative regime is obvious whilst the public interest continues to suffer. The reasoning of the Senate Committee that considered the NACC Bill is instructive in this regard. Those who supported the requirement of 'exceptional circumstances' in the Bill were the members of the two major political parties- who when in government might be under scrutiny- whilst those that opposed its retention were the minority parties and independents. This speaks loudly as to why governments seek to severely limit public examinations.

So long as the IBAC is satisfied that:

(i) there is a sufficient evidentiary basis to conclude that corrupt conduct, however defined, may have occurred,

(ii) it is in the public interest to hold a public hearing -s 117(1)(b),

(iii) no unreasonable damage to a person's reputation, safety or well being will be caused-s 117(c),

it should be open to IBAC to hold a public examination concerning conduct that falls within the description of s4(1)(a) to (da).

C. Insert new provision and also amend s 162 to provide for alternative procedure enabling a response to "adverse material" gathered by IBAC which it is intended may be the subject of a special report.

In summary, the unusual procedure required by s 162, where IBAC intends to publish a report of its investigation (a Special Report), requires that IBAC provide a draft of the report to every person mentioned in the report and permit them to respond to the proposed findings concerning them in the report. IBAC must then either amend the draft or fairly include the person's response in the report. This process enables persons of interest to dispute the draft findings and litigate the findings in the draft report with the consequence that the report is not published until the litigation is finalised.

The unusual procedure has profound ramifications. It has too often led to protracted litigation by persons of interest resulting in extreme delays in the presentation of a report to Parliament let alone the possible prosecution of persons of interest.

Operation Sandon is an example. There was considerable litigation and extraordinary delay before a special report could be transmitted to Parliament. For some years after the draft report was completed, the very important recommendations of Op Sandon, which were ultimately implemented, remained withheld from publication. The delay in publication also resulted in great uncertainty for some persons of interest who were awaiting the publication of the report and the possibility of possible criminal proceedings.

There is a much **more timely, efficient procedure** that for many decades has been utilised by Royal Commissions, Boards of Inquiry, interstate Integrity Commissions and other coercive inquisitorial bodies such as the Coroner's Court. This procedure has been well recognised as **one which accords with the principles of natural justice**. The procedure is as follows:

At the conclusion of the hearing of evidence, Counsel Assisting the Commission, Board Integrity Commission or inquisitorial body may make a submission summarising the evidence and contend that the Commission or Board should make adverse findings against the person of interest based upon the evidence summarised. The person of interest or their legal representative, having heard or been provided with the submissions of Counsel Assisting, must then be afforded a reasonable opportunity to respond in accordance with the common law principle that a person who may the subject of any adverse finding must always have a reasonable opportunity to be heard in response. What is a reasonable opportunity will vary and may depend on the manner in which the examinations were conducted. The person of interest or representative may then make a submission as to why no such findings should be made. Thereafter,

without any further involvement of the person of interest, the Commission or Board then writes its report which is final and provides it to government or Parliament. As a matter of course, such a report always contains the substance of the arguments raised by all parties including the person of interest and sets out why they have been accepted or rejected.

The critical feature of this process is that it does not provide the persons of interest with the extraordinary and quite novel opportunity to dispute and litigate the content of the proposed findings of the Commission.

The sound procedure, presently denied IBAC, **is invariably the procedure followed in all Courts of Law**. Each party is able to make submissions as to what findings the Court should make based on the evidence. Thereafter, without further interaction with the parties, the court writes its judgment which is then delivered. That judgment will invariably set out the arguments of the parties and provide reasons as to why they have been accepted or rejected.

The substance of this procedure should be set out in a new provision as an alternative to s 162(2) and (3). The legislation must provide that when IBAC has conducted a public hearing or private examination, and intends to publish a report of its investigation, this alternative to the procedure in s 162 (2) and (3) must be available to enable IBAC to proceed to hear submissions from those assisting the Commission and the persons of interest before preparing its report which it then transmits to Parliament.

The High Court in ***AB v IBAC*** [2024] HCA 10 recently heard an appeal concerning the meaning of the words "adverse material" in s.162(2) and in the course of doing so adverted to the traditional natural justice procedure in the procedure which I recommend should be available to IBAC. See paras [27], [32],[35], and [36].

D. Section 159(2) should be amended to permit IBAC to publish recommendation 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..

This is self explanatory. Many investigations and findings by IBAC are reported privately to relevant public bodies that are connected to the matter under investigation. The findings are not regarded as necessitating a Special Report.

It is in the public interest that it is known what recommendations IBAC has made to such public bodies, thereby facilitating and advancing the prevention and education functions of IBAC. The benefits in publishing such recommendations are very similar to those for holding a public hearing. See B above

My experience has been that such recommendations made following investigation are almost always accepted and accompanied by an undertaking by the relevant institution or public agency to implement the recommendations.
The object of this amendment may be further achieved by broadening the reporting power to Parliament, even out of session, to permit a report containing such recommendations, thereby advancing the prevention and education functions of IBAC.

E. Amend the procedure for determining claims of privilege under s 59 L-M and s 146- 148

In the case where a witness at a Preliminary Inquiry (Part 3 Division 3A) claims a privilege from production of a thing or at a hearing (Part 6 Division 3) claims a privilege and objects to producing a things or answering a question at an examination, the IBAC Act again imposes a most unusual procedure that has resulted in extraordinary delay and unmeritorious claims that may be employed to delay or prevent the completion of IBAC investigations.

Sections 59L-M (Preliminary Inquiry) and s.146-8 (Hearings and examinations) provides that where a claim of privilege is raised to the production of a thing or the giving of an answer, the Commissioner or examiner **cannot rule on the claim,** no matter how ridiculous the claim may be. The prescribed procedure requires IBAC to apply to the Supreme Court within 7 days for a determination of the claim. It must then await the outcome of the determination. It is a process that creates the prominent risk of obfuscation by person of interest who are under investigation and may wish to delay or avoid investigation.

As an example, in a significant IBAC investigation, one such claim involving 1000's of document took well over a year to be resolved, with the claim only upheld with respect to some 30 or so documents. Had the usual procedure, set out below, been available, the examiner could have immediately ruled on the frivolous claims. The present procedure resulted in extraordinary delay in the completion of the investigation and publication of serious findings.

This statutory IBAC procedure is contrary to a long-standing procedure generally followed by Royal Commissions, Board of Inquiry and other Integrity Commissions that is designed to enable such Commissions and Boards to operate with maximum efficiency and expedition whilst satisfying relevant natural justice principles. The accepted procedure (1) **enables the Commissioner or Examiner to rule immediately** on whether the claim is reasonably arguable. (2) If the claim is rejected as being a claim without substance, and the claimant still wishes to maintain the claim, **the claimant is given a reasonable time by the examiner within which to make an application to the Supreme Court** and (3**) the claimant must obtain an order from the Supreme Court which would restrain IBAC from proceeding** until the claim is determined. In order to make such a ruling, the Court will usually undertakes some initial review of the issues to determine whether the claim is reasonably arguable and whether a restraining order should be made.

This process should be available to IBAC to enable it to expeditiously deal with such claims. It places the onus on the claimant to immediately demonstrate that the claim has substance and if ruled against, requires the claimant to persuade a judge that the claim is reasonably arguable so as to prevent IBAC proceeding further with the question or the production of documents. This process greatly reduces the risk that unmeritorious claims can continue to be used to delay the investigation process.

Some types of privilege such as Parliamentary privilege may be the subject of a Memorandum of Understanding or informal arrangements made with IBAC which will regulate the process to be followed.

F. Abrogate a claim of privilege against self incrimination in Part 3A Preliminary Inquiries

The IBAC Act, **s.144(1), abrogates the claim of privilege against self- incrimination** in answering questions on a witness summons and by **s. 144(2) renders the incriminating answers, information or documents produced inadmissible in legal proceedings.** However that privilege has not been abrogated for the purpose of a Preliminary Inquiry and claims for privilege made under s 59L. A provision similar to s 144 (1) and (2) should be inserted within the provisions on Part 3, Division 3A on Preliminary Inquiries.

Claimants can successfully raise the privilege against self-incrimination under s 59L to the production of documents or things at a preliminary inquiry on the ground that it may incriminate them. The Commissioner or examiner would be bound to uphold such objection whilst the privilege has not been abrogated. Thereafter the risk is significantly increased that the document or thing will be concealed or destroyed.

The abrogation of the privilege, is one of the principal tools that enables an integrity commission or Royal Commissions to expose the truth. It is essential that all relevant documents incriminating the person be produced at the preliminary inquiry, the purpose of which is to enable IBAC to determine whether it should investigate the complaint. See s 59A.

G. Amend s 155(1) to permit IBAC to conduct examinations in support of IBAC's prevention and education functions.

Section 115 should be amended to ensure IBAC has capacity to examinations that are in pursuit of the objects of the Act. See s 8:

Doubt has been raised from time to time about whether IBAC was entitled to examine persons who represent public bodies in order to explore education, prevention or necessary reform issues unless they could be sufficiently related to an ongoing investigation into corrupt conduct that IBAC has commenced.

Having regard to the objects of the Act (s.8) and IBAC's functions (s 15) it should not be necessary that the examination be directed to a particular 'investigation' in order for IBAC to undertake hearings directed to facilitating the education and prevention of corrupt conduct within the public sector or Victoria Police.

Section 115 should be amended so as to incorporate the objects of education and prevention set out in the objects of the IBAC Act s 8(c) and (d) as follows:

> " For the purposes of an investigation, **or to facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct and police personnel misconduct or to improve the capacity of the public sector to prevent corrupt conduct or police personnel misconduct**, the IBAC may hold an examination."

H. Recommendation: That the prohibitions in section 7(2)(g)(iii), (2)(h), (2) (i) and 2(j) of the Parliamentary Committees Act 2003 be amended to enable the Parliamentary Committee to undertake inquiries of IBAC if satisfied that such inquiry will not prejudice any operation or criminal proceeding.

The Committee, as Parliament's integrity interface with "the IBAC," an independent officer of the Parliament, is expected to provide critical opportunities to explore important IBAC issues. The Committee is specifically required under s 7(1)(j) and (k) to monitor and review the performance of the duties and functions of the IBAC; and to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC. But the Committee is hamstrung from discharging these primary obligations effectively, as a consequence of the prohibitions contained in s. 7 (2)(g)(iii), (h),(i) or (j).

The primary duties and functions of IBAC arise in the context of IBAC's investigatory procedures. They are inextricably "related" to a complaint and its "subject matter". How IBAC manages complaints, maintains their confidentiality, controls non-disclosure, protects complainant and witnesses, exercises investigatory powers with respect to complaints, and makes and publishes findings are all effectively removed from the Committee's purview. Were there any breach of IBAC' duties- for example the 'turning of a blind eye,' misuse of its investigatory powers, inadequate exposure or reporting of misconduct in public office or confidentiality or non disclosure breaches- such matters would likely remain hidden from the Committee and hence Parliament and the public.

It is a matter of the highest public importance that the Committee is seen to be able to effectively explore such matters concerning IBAC that affect the public interest. They must surely go to the heart of how IBAC is performing its duties and functions. Yet these statutory provisions inhibit the Committee's capacity to report to Parliament on the very matters entrusted to the Committee.

It does not enhance the Committee or IBAC's perceived standing if these prohibitions are then engaged to close down discussion that may reflect adversely on the Committees or IBAC's processes. The secrecy leaves the Committee and IBAC open to claims of breach of duty, political interference and bias in discharging functions. These are not fanciful or imagined concerns Previous experiences of the Committee and IBAC arising from this lack of transparency and accountability has exposed them to such very claims and public suspicion about who has benefitted from these prohibitions.

The Act should provide that unless satisfied that a particular inquiry will prejudice an operation or potential criminal proceeding- these being questions which may be determined at a private hearing of the Committee- it should be open to the Committee to inquire into any matter concerning IBAC. This would give effect to a pressing need for transparency and accountability in the Committee and IBAC's processes.

H. Amend the IBAC Act to attach the confidentiality requirements of the IBAC Act to the making of a complaint to IBAC.

In order to give persons who are the subject of a complaint to IBAC the initial reputational protection to which they are entitled, there is a compelling basis for extending the confidentiality requirements of the IBAC Act to prohibit any person from publishing the fact that a complaint has been made to IBAC.
It is unfortunately the case that there have been numerous occasions where a person making a complaint to IBAC has then immediately made public the fact of their complaint in order to discredit the person or body the subject of the complaint or to gain some advantage.

The IBAC Act sets out the circumstances in which IBAC may publish the existence of an investigation and its outcome. The Act should make explicit, that the confidentiality requirements of the Act extend to the making and existence of a complaint to IBAC.

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