

T R A N S C R I P T

I N T E G R I T Y A N D O V E R S I G H T C O M M I T T E E

Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission

Melbourne – Monday 25 August 2025

M E M B E R S

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Eden Foster

Paul Mercurio

Rachel Payne

Belinda Wilson

WITNESS

Associate Professor William Partlett, The Centre for Public Integrity.

The CHAIR: I declare open this public hearing for the Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission.

I would like to welcome the public gallery and any members of the public watching the live broadcast. I also acknowledge my colleagues participating today. Let us go from this end: Eden Foster, Paul Mercurio, Belinda Wilson, Ryan Batchelor, me – Tim Read – Kim Wells, Jade Benham and Rachel Payne. We have got the full Committee here.

On behalf of the Integrity and Oversight Committee, I acknowledge First Nations peoples, the traditional owners of this land which has served as a significant meeting place for the First People of Victoria. I acknowledge and pay respect to the elders of First Nations in Victoria past and present and welcome any elders and members of communities who may visit or participate in the committee's public hearing today.

To our witness, some formalities – before you give your evidence I need to cover a couple of points. Evidence taken by this Committee is generally protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, those comments will not be protected by this privilege. Any deliberate false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence given today is recorded by Hansard, and you will be provided with a proof version of the transcript to check once available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

I welcome Associate Professor Will Partlett from The Centre for Public Integrity. Thank you for coming in. Professor Partlett, if you have got any brief opening comments, we would be interested to hear them.

William PARTLETT: First of all, I would like to thank the Committee for having me. I also acknowledge the traditional custodians of the land, the Wurundjeri people of the Kulin Nation.

I am going to give a very brief set of remarks before we discuss our submissions. My research at The Centre for Public Integrity, as the Stephen Charles fellow, has been looking specifically at anti-corruption commissions across Australia and looking at the history of anti-corruption commissions. The Victorian IBAC fits very much within the tradition, in some ways, of the general practice of anti-corruption institutions in Australia. Victorian legislation charges IBAC with a solemn duty as an 'Independent Officer of Parliament', with the key goal to prioritise the investigation of serious or systemic corrupt conduct.

In the second-reading speech, the responsible Minister said that IBAC was established in 2011–12 to ensure community confidence in public sector accountability. In this way IBAC is an institution created to allow Parliament to play its traditional role in overseeing the executive branch, and the expansion of the executive branch that we have seen in the last 50 years has been unprecedented. In that way it plays an important role in ensuring responsible government – an evolving form of responsible government – particularly as it has been harder for Parliament to hold the executive to account over time.

On that basis, with that in mind, we make our four submissions. First, we think it is significant and important that section 4 of the IBAC Act, which limits the definition of 'corrupt conduct' to a relevant offence, meaning either an indictable criminal offence or one of four specific common-law crimes – we think that that definition is too narrow and that it hinders the Independent Broad-based Anti-corruption Commission from investigating what many experts call grey corruption, non-criminal forms of misconduct which are serious and systemic that exist in public administration. In order for IBAC to be able to ensure what it is meant to do, which is ensure community confidence in public sector accountability, it is critical that IBAC be given the power to investigate grey corruption. Therefore, the definition in section 4 of corrupt conduct should be expanded.

Our second submission is we think that it is important to remove IBAC's ability to prosecute itself. IBAC currently has the power to bring criminal proceedings for an offence in relation to any matter arising out of its investigation. We think that that is inappropriate – this power to actually criminally prosecute. If IBAC itself

comes across information that is criminal or conduct that is criminal, it should refer that to the Director of Public Prosecutions and instead focus itself on looking at systemic or serious forms of public corruption – grey corruption or other forms. In that way the idea here is that IBAC itself is not a kind of souped-up law enforcement institution but instead is a public trust body.

Third, removing the responsibility of IBAC to oversee the police. I am sure you are all aware that the IBAC Act charges IBAC with a vast range of oversight over the Victorian Police. These duties include ensuring that:

... the highest ethical and professional standards are maintained by Police Officers and Protective Services Officers ...

as well as ensuring that Police Officers and Protective Services Officers have regard to the human rights set out in the Charter of Human Rights and Responsibilities. This really broad set of responsibilities, in addition to its trust ensuring, is too much, we argue, for an institution like IBAC, and that a specialised model should be adopted by the Victorian Parliament in which IBAC is focused exclusively on its core purpose, which is looking into, investigating and reporting to Parliament and the public on systemic and serious forms of public corruption, in that way ensuring public trust in the oversight and the exercise of public administration. We think that police oversight should be given to a separate created institution or a separate body that is focused particularly on oversight of the police.

Finally, we think the IBAC Act could be updated to better protect individual liberty and reputation. IBAC clearly has exceptional powers, including the power to abrogate the right against self-incrimination and so forth. We think that, first of all, the legislation empowering IBAC to do this type of thing is appropriate, but its exercise of these powers should not be used in criminal prosecutions, thereby allowing a kind of end run around the protections against self-incrimination so that in that case the use of its exceptional powers, such as this, should itself carry use immunity provisions. I note that principle 5 of the fundamental anti-corruption principles that were decided and agreed on last year by all of the anti-corruption commissions made a similar finding on this idea of use immunity.

The final thing is we think that clearer statutory language needs to be included in the idea of natural justice provided to individuals who are facing an adverse finding. This was recently the subject of a High Court case, *AB v IBAC*, in which in section 162(3) the High Court decided that if someone was facing an adverse finding, they needed to receive more information than what IBAC was provided [providing]. We think it is very important that the legislature and Parliament in this case make very clear exactly what is provided to an individual facing an adverse finding under the IBAC Act, in the use of its powers, and that in the process of doing so they themselves think of and balance the public interest versus the interest of an individual and their actual reputation. With that, I will conclude my submissions, and I look forward to questions from the Committee.

The CHAIR: Thank you. I might start. In your submission you refer to IBAC as a parliamentary agent of responsible government. How does that role fit with the IOC's function to oversight IBAC given its extraordinary powers, including coercive powers?

William PARTLETT: I think it suggests that this Committee, the Integrity and Oversight Committee of Victoria, has a very important role in overseeing the IBAC, in asking hard questions of the IBAC and in ensuring that the IBAC receives sufficient funding and that the appointments made to IBAC are suitable and acceptable to this Committee. It is, I think, a very important duty that this Committee has in representing the interests of Parliament and then of course to the people of Victoria – the community and the voters. Parliament has created IBAC as one of its agents, as an independent officer of Parliament, and it is this Committee's role to ensure that it is playing that role and living up to its responsibilities.

The CHAIR: Thank you. Why don't we go to Paul Mercurio.

Paul MERCURIO: Thank you, Will, for coming in. In your opening statement I think you said that corrupt conduct was too narrow, and you also mentioned it should be expanded. You also stated that it should be expanded to include grey corruption. I guess the elephant in the room is: how do you define 'grey corruption'? Should that definition be included in the IBAC Act? If so, with what level of detail?

William PARTLETT: There are different approaches to this. In the New South Wales ICAC Act they limit what we call non-criminal forms of conduct that would constitute corrupt conduct, meaning something that would form a disciplinary offence for a public sector employee – so they actually could be disciplined for

performing or acting in that way and are in some ways violating their code of conduct. I think the ICAC Act in New South Wales can provide a good limitation so that it is not purely just within the remit of the commission itself to decide what grey corruption is but that it goes beyond criminal forms of corruption – the kinds of things where people are putting money into briefcases and that kind of thing. It reaches things where we see unethical forms or parts of behaviour that are systemic and serious behaviour, which are in violation of the code of conduct or could result in some form of disciplinary firing of that individual or that group of individuals.

Paul MERCURIO: Should it be included in the Act?

William PARTLETT: Yes, I think it should be included in the Act, that it would be limited to that. Another option which could also be considered, if there are some discussions, is that the NACC, the *National Anti-Corruption Commission Act* at the Commonwealth level, does not actually provide anything beyond that it needs to be serious and systemic, so therefore it leaves it within its discretion. I think there are two different models there. I would think that the ICAC Act has 40 years of experience with it, so I would lean in that direction. People can take different approaches, and Commissions can take different approaches to how they draft this. I think the ICAC Act provides a reasonable way of understanding what grey corruption is and what can be investigated.

Paul MERCURIO: Great. Thank you.

The CHAIR: Thanks. Let us go to Eden Foster.

Eden FOSTER: Thanks, Chair. Thank you, Will. Just on the topic of grey corruption, as we know, IBAC has investigative jurisdiction in relation to corrupt conduct, whereas the Victorian Ombudsman has jurisdiction in relation to maladministration, which includes various kinds of misconduct. Where would you draw the line between grey corruption and maladministration given the distinctive jurisdictions of IBAC and the Victorian Ombudsman?

William PARTLETT: I guess there are two answers to that question. First of all, in reference to my most recent answer, I think that one difference would be that corrupt conduct would be something that actually constitutes formally a disciplinary offence, like we see in the ICAC Act. That could be a way of distinguishing between the jurisdiction of the Ombudsman and IBAC. That would be one way to look at it. The second answer to your question is there inevitably is going to be overlap. We have seen in the past practice where IBAC and the Ombudsman have worked together on looking into systemic forms of public corruption. Operation Watts I think is the most recent example, and in that case very fruitful cooperation can be had between the two institutions when looking into grey corruption. Depending on how the changes would be made to the legislation, there could be an actual definitional or legal difference, but I think overall there are going to be some things where they overlap. It could be very sound practice for the two institutions themselves to work together in that type of investigation.

Eden FOSTER: Thank you.

The CHAIR: We go to Belinda Wilson.

Belinda WILSON: Thank you. Thanks for being here. You said in your submission that integrity agencies such as IBAC:

... have exceptional powers to investigate and report on allegations of corrupt conduct, including the power to abrogate the privilege against self-incrimination. These extraordinary powers can have very damaging impacts on personal reputation or could lead to harsh criminal sanctions in a later prosecution. They must, therefore, be exercised with safeguards.

You also recommend that the definition of ‘corrupt conduct’ be significantly expanded, which would then be seen to enable IBAC to investigate and potentially name many more individuals, thereby potentially harming the reputation of people who are found not guilty or not to have engaged in any wrongdoing. Your submission addresses a couple of safeguards, but are there any other safeguards if IBAC were to have this expanded power? Can you elaborate on what you think these would be?

William PARTLETT: One of the safeguards – this is me speculating at the moment – could be to say that if the IBAC finds evidence of criminal conduct, then that kind of evidence does not go into a public report. Instead that kind of evidence is passed to the relevant public authority – the DPP, the Director of Public

Prosecutions – and the kinds of adverse findings that are made are on issues of grey corruption and other things. The importance of that I think would be to ensure there is not prejudice to criminal trials by having information released to the public that would potentially make a suggestion on that basis. There is another model as well which works very well in the NACC, which I think also is a good outcome for this, which would be an actual provision saying that nothing in any public report should have any bearing on a criminal trial at all. I think making that proviso would be also a very important aspect – assuming that the corrupt conduct definition is expanded – to be put into the Act. There are relevant examples, as I said, in the NACC Act and other anti-corruption commission Acts around Australia that protect individuals against that kind of prejudice. I think that that would be important as part of that to ensure that the balance is right here and that IBAC is able to do what it is legislatively and statutorily mandated to do, which is to protect community confidence in public administration, but also to do that with balance, because of course it is also important for the community to know that this institution is acting responsibly in the exercise of its powers.

Belinda WILSON: Thank you.

The CHAIR: Great. Thank you very much. Kim Wells.

Kim WELLS: Thanks, Chair. In your opening remarks you spoke about IBAC being able to do the investigation and then the prosecution and being able to transfer the information to prosecutors. What change in the Act needs to be given so that IBAC can transfer that information to law enforcement agencies and prosecution bodies?

William PARTLETT: It is my understanding that no change needs to be made and that they have the power currently to do that. Our submissions are to the fact that section 190 of the Act actually allows them, if they choose not to do so, to themselves prosecute. I forget the actual language in the report [Act] itself, but it is in section 190. They can either charge someone or they themselves can bring a claim under section 190 itself. I think the change that could be made is to say that if they find this type of information, they do not have the option of prosecuting themselves and instead they should pass it to the DPP, who then makes an independent decision whether to pursue criminal conduct or not.

Kim WELLS: Just on that point, if they go through the public hearings and get all the information and they find that they are going to transfer it to the DPP to prosecute, do they then have to run through the whole trial again, or do they use the information and the transcripts and the video from the IBAC investigation? How would that actually work in practice?

William PARTLETT: They would take that information. I mean, you are talking about a limited subset of cases where there are actually public hearings, whereas obviously most cases with IBAC are not public hearings. But in the case of public hearings, that information – and maybe there is additional information that is not made public in the actual hearing – all of that, to the extent to which IBAC thinks it could yield a criminal form of conduct or a criminal prosecution, should be handed to the DPP to make a decision: should we prosecute this case or not? That would be the outcome, but they would not have to go about it again, and then of course DPP would have to make a decision on what they would do with that.

Kim WELLS: So if DPP make the decision that yes, there is criminal activity and there needs to be a prosecution, then there needs to be another court case to be able to lay the charges in court.

William PARTLETT: That is right.

Kim WELLS: So actually one person might have to go through the IBAC public hearings or private hearings, then that gets transferred to DPP. Then that same person might have to go through the whole court process again.

William PARTLETT: Yes, that is right. And we think that is an important way to protect individuals' liberty. In that case, if it is a criminal prosecution, they could be put in prison for that. So it is important that they go through an actual criminal prosecution with the greater protections that exist in a criminal prosecution against liberty that you do not get in an IBAC investigation, right, because of the special powers that IBAC has and so forth. So I think it would yield, essentially, two processes – you are right. But the two processes are focused on two different things as far as we understand it. The first process is really a form of understanding serious and systemic forms of public corruption and thinking about the extent to which there can be forms of

reporting and, to the public, political forms of accountability for that. And then the second process, which is a criminal trial, is legal accountability, where we are actually seeing forms of criminal conduct and criminal sanctions being applied. In that case you have a jury, you have all the protections that you have in a criminal case.

Kim WELLS: So a witness may be brought forward in a public hearing with IBAC, and then the same witness has to be brought forward, hypothetically, in a court situation to be able to give the same evidence.

William PARTLETT: Potentially, though it is possible that that witness's information or testimony could be used in another way so they would not have to appear again. But if there was a question of the need to cross-examine, then that witness would probably have to appear twice, that is correct.

Kim WELLS: Yes, and you would think that the Defence Barrister would insist on that.

William PARTLETT: Most likely – not always, but yes.

Kim WELLS: Okay, thanks.

The CHAIR: Thank you. Let us go to Jade Benham.

Jade BENHAM: Thank you, Chair. Thanks for coming in today. I have got a couple of really quick questions first. Do you think the current framework actually deters corruption, or does it merely deal with it after the fact?

William PARTLETT: I think the current framework is deterring some forms of corruption but not all, and our concern – and my concern – is that it is not deterring the systemic and serious forms of corruption which often extend beyond criminal forms of conduct, where we are actually seeing bags of cash being transferred and those types of things. The current legislative framework is not sufficient to reach beyond that into systemic forms of public corruption and maladministration that we see when you have such a specific legalistic limitation on the investigatory scope and the reporting scope of the IBAC. So I think it is hitting some but not enough, and I do think that this is something that we see very much in the community as well. The community see things that they think might not necessarily be criminal forms of corruption but themselves are unethical. Of course we have seen examples in Victorian history – say, for instance the red shirts scandal and others, which was found to be non-criminal but was clearly a misuse and misconduct in office. To the extent to which there are serious forms of this happening, we think that this is the central role, the core purpose of an anti-corruption commission like IBAC. So I think expanding the definition and kind of focusing the core idea of what IBAC is doing would help to focus on that, and therefore that police oversight and other things could be focused on, could be pushed off to another institution, so IBAC could really do its main role – its core role I think – in ensuring community confidence in public administration.

Jade BENHAM: When you talk about maladministration, which is the jurisdiction of the Ombudsman, and corruption, which is IBAC's jurisdiction, where is the line there and how can we find that balance?

William PARTLETT: I think the line is fuzzy and blurry, and I think, as I said before in a previous response, sometimes it could be that they overlap and that IBAC itself is working with the Ombudsman in looking into these types of things. When I think IBAC, and the anti-corruption commission in the Australian context, has real power is when it reaches serious and systemic forms, because they have the ability to actually say 'Look, this is corrupt conduct. This is something that is undermining public trust' in a way that – I do not think an Ombudsman has that form of symbolic power. So I think as a result, giving them the ability to engage in this and to look into this, sometimes with the Ombudsman and sometimes on their own, it will be important to it playing its role as a trust institution. It is probably, I would say, the flagship trust institution of all integrity institutions, and in that way I think it is important that it be given – to the extent to which there is a blurry overlap, then I do not think that is necessarily a problem, but IBAC or the Anti-corruption Commission itself should be focused on what is most serious and most systemic and the Ombudsman can focus on more individualised cases.

Jade BENHAM: In your opinion, then, does the legislative framework need to be completely rewritten, or can it be more effective with a couple of key amendments?

William PARTLETT: I think some key amendments. I think the purposes and the objects are generally good, with the exception of taking out the police oversight ideas. I think the legislation can be worked with as it is, and the amendments that we propose I think would strengthen its ability to do this role. So yes, it does not need to be fully overhauled. I think there can be some smaller amendments – not small, I guess; rather, important amendments. But these amendments would change the ability of this institution to operate and really focus it. The idea of it focusing it on its core role while also balancing individual rights and reputation at the same time I think would help reinvigorate the ability of IBAC to play its role in the system.

Jade BENHAM: Great. Thank you. Thanks, Chair.

The CHAIR: Thanks. Let us go to Rachel Payne.

Rachel PAYNE: Thanks, Chair. Thank you, Will, for presenting before us today. Just to pick up on where you mentioned police oversight and, in the submission you are referring to, that carve-out and specifically another fit-for-purpose institution so that IBAC can concentrate on public sector corruption, are there any advantages in broad-based anti-corruption commissions compared with police oversight bodies, noting that we obviously have IBAC, which was born out of that standalone Victorian Office of Police Integrity?

William PARTLETT: I think from our perspective, perhaps an advantage would be that there is not a need for actually corresponding between agencies – they can coordinate – because with the extent to which you are looking into the police, maybe it would be helpful to have that under one umbrella institution like IBAC. But I think that the advantages of that are much outweighed by the distraction and the resource issue. I know that other submissions to this Committee have raised the resourcing issue. IBAC has significant need for, obviously, resources, particularly when it is overseeing such a huge institution as Victoria Police, so as a result it is easy for its core purpose to get muddled or to be lost in the process of financing and the nuts and bolts of how these organisations work, I think. So, although there might be some advantage in having them consolidated, I think generally having them all in one institution is problematic from a resourcing point of view and also from, I think, a general idea of when the Commissioner comes into her position: ‘What exactly is my core purpose?’ I think there can be some confusion about that. So I think it is important that, in this case, we understand that in many cases the costs are much, much higher of having this broad-based approach and instead a specific approach where we have an institution like IBAC focused on its core purpose and being really fit for purpose for that core purpose will mean it will be much more effective, and it will do a better job of ensuring community confidence, I think, in public administration.

Rachel PAYNE: We have heard from some witnesses who have already presented to the inquiry that there is that prioritisation as well, and whether police oversight is actually prioritised compared to corruption. How would you recommend institutions address police corruption?

William PARTLETT: Well, a fit-for-purpose institution?

Rachel PAYNE: Yes.

William PARTLETT: There are interesting models elsewhere in the Commonwealth. The UK has a very interesting one; the former Victorian Ombudsman Deborah Glass was the head of their police oversight institution. So there are good models elsewhere in the Westminster world that provide fit-for-purpose approaches to police oversight. I think there would be a lot of learning from that. That is something that should be looked into, in terms of the extent to which this power would be given to a kind of fit-for-purpose police oversight board. You raised an important point as well to think about. When you have these two really significant purposes lodged in one institution, there is always going to be a push and pull, and some people are going to say not enough is being given to the public trust side, and not enough is being given to the police side. It is very difficult for a Commissioner and her team, I think, to manage that. So taking that away from a Commissioner and saying, ‘Look, your job under the legislation is to focus purely on public corruption, forms of maladministration and so forth, and we’re creating a new fit-for-purpose institution that focuses on the police,’ I think would make everyone’s life easier and would also help ensure that IBAC does what other anti-corruption commissions in Australia do, which is protect public trust and community confidence.

Rachel PAYNE: Thank you. Thanks, Chair.

The CHAIR: Any further questions, Ryan might have some? Sorry, I forgot.

Ryan BATCHELOR: That is all right. Will, thanks for coming in. You opened up by saying that section 4 is too narrow and that we need to expand the definition of 'corrupt conduct' to include this sort of grey corruption. I was reflecting on what the ACT Integrity Commission found in its report in March this year of the conduct of a Commissioner under their *Inquiries Act*, that the provision of information to journalists and the provision of a copy of a report to journalists before it was tabled in their Legislative Assembly amounted to corrupt conduct under the ACT's definition. That seems a big step from the things that we want IBAC to be focused on. In your expansion of what would constitute corrupt conduct, do you think that conduct like Commissioners providing reports to journalists before they are tabled in the Parliament is enough to be corrupt conduct? Or do you think that does not meet a threshold that you would like to see here in Victoria?

William PARTLETT: Two things, I think, in response to that question. First is if you look at the *National Anti-Corruption Commission Act*, which I think has a good definition of 'corrupt conduct', it says that the Commission is meant to focus on systemic and serious corruption. In that case the example you gave would not be systemic, unless we see a systemic issue of Commissioners with access to non-public information giving it to journalists, so I think that it would not fit the systemic.

Ryan BATCHELOR: What is systemic? More than once?

William PARTLETT: Yes. An example of systemic potentially would be the robodebt scandal, at least in my view. In the robodebt scandal we see public officials themselves trying to anticipate what elected officials want and then maybe not looking into the legality of what they are doing as a response to that. That is potentially systemic in the sense that we see that in more than one case. So with the example you gave of the Commissioner in the ACT, if we are seeing a lot of this happening and it is undermining public confidence, then that would be something that rightly so, I think, would be under the definition. Even though it may not be criminal, it would potentially be systemic in the sense that we are seeing it a lot and that it is something that is undermining public confidence. 'Serious' is, of course, a difficult one. The other one that we see in the NACC Act, to limit the way in which these anti-corruption commissions operate, or in that case the NACC, is 'serious'. The example you gave of how serious it is in a really high-profile case for a Commissioner to be speaking to a particular journalist I think again raises concerns here. That could be, in that case, an example that if it is not systemic it is serious, because this was correspondence with a particular journalist that led to a certain amount of reporting that was particularly problematic for the overarching understanding of an ongoing investigation and so forth.

I think there are limitations, no question, on what anti-corruption commissions can do with the ability to go into grey corruption, but the line is never going to be as legalistic as it would be in a criminal case, right, because in general the idea of these institutions is that they are there to ensure responsible government and that they engage in a form of political accountability, and any individual of course who has an adverse finding made against them of forms of grey corruption will have and should have, is a point I added in there, the opportunity to respond in that report. The legislation – as I say, the IBAC Act I think could be updated on this basis – should have a very clear description of what exactly it is that they should be provided by the anti-corruption commission so again that we can ensure that when this type of information is reported to Parliament and the public it is not done in a way that is problematic or that is not an abuse of power of this institution but also at the same time is able to go and look into these types of conduct.

Ryan BATCHELOR: Interesting – something we will no doubt reflect on. Thanks.

The CHAIR: Great. Any other questions from anybody? Okay. Professor Partlett, thank you very much for appearing. You have given answers to all the questions, so thank you very much. We will suspend the hearing briefly to allow our next witnesses to appear.

Witness withdrew.