

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

I n q u i r y i n t o t h e A d e q u a c y o f t h e L e g i s l a t i v e F r a m e w o r k f o r t h e I n d e p e n d e n t B r o a d - b a s e d A n t i - c o r r u p t i o n C o m m i s s i o n

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

WITNESSES

Louise Macleod, Chief Integrity Inspector,

Cathy Cato, Chief Executive Officer and General Counsel, and

Alison Lister, Director, Integrity Operations and Policy, Integrity Oversight Victoria.

The CHAIR: I will resume our hearing of the Integrity and Oversight Committee Inquiry into the Adequacy of the Legislative Framework for the IBAC.

We are welcoming some new witnesses. I have from Integrity Oversight Victoria the Chief Integrity Inspector Louise Macleod, Director of Integrity Operations and Policy Alison Lister and the CEO and General Counsel Cathy Cato. Welcome, all of you. Thank you for coming in.

Some formalities to go through before I begin: before you give your evidence, note that 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 deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence given today is being recorded by Hansard. 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.

I will just quickly go around the room to introduce us: Eden Foster, Paul Mercurio, Belinda Wilson, Ryan Batchelor and me, Tim Read. And we have Jade Benham and Rachel Payne.

Do you have any brief opening remarks you wanted to make?

Louise MACLEOD: Thank you, Chair. Integrity Oversight Victoria welcomes the opportunity to share our insights with the Committee in its Inquiry into the Adequacy of the Legislative Framework for IBAC. As you are aware, Integrity Oversight Victoria was established to oversee 15 other integrity, accountability and investigatory bodies and their offices. Currently we oversee them to varying degrees. Our oversight of IBAC in particular is very broad, and it covers both legislative compliance and improving their performance with its functions, and duties under the IBAC Act and also the PID Act.

The bodies and officers that we oversee exercise extensive and significant powers, including the power to summons and examine witnesses, whether that is privately or publicly, or require the production of documents, investigate and handle complaints about other public sector bodies and report on their findings, use various intrusive and coercive powers and enforce compliance with other legislation. Integrity Oversight Victoria plays a very crucial role in maintaining public trust that Victoria's integrity system is using those investigatory powers in such a way to make sure that they are not unreasonable or unlawful or without consideration of individuals' rights and their welfare.

Our submission focused on achieving legislative clarity in the IBAC Act to ensure that IBAC can fulfil its purpose of exposing and preventing public sector corruption, which includes police misconduct in Victoria. What IBAC can do and what the public understands and expects it to do ideally must be aligned, especially when it comes to police oversight. This is good for public trust and confidence in the integrity system. Any changes to the existing legislation should ensure that IBAC has the necessary resources so it can discharge its functions efficiently and effectively. Changes that expand the extensive coercive and intrusive powers IBAC already has will have implications on our ability to ensure these powers are used appropriately without a disproportionate impact on individual rights. Bringing greater clarity in the IBAC Act, though, will only go so far. Our submission identifies the need to consider the intersection between the IBAC Act and the PID Act and the roles that IBAC, Integrity Oversight Victoria and other bodies have in maintaining public trust and confidence in the integrity system. It is also important to note that legislative frameworks only set minimum requirements.

Decision-making about how the IBAC Act is interpreted and applied must be in response to contemporary best practice in public integrity and accountability. Best practice in decision-making includes IBAC effectively

communicating what it is doing and what it has found in its investigations and reviews. As IBAC has identified in its submission, excessive secrecy can unfairly create a perception that IBAC is not actively discharging its responsibilities to expose corrupt conduct and police misconduct. To this end we support IBAC's recommendation to hold public inquiries for education purposes, subject to appropriate safeguards, and we go further, recommending amendments that enshrine explicitly IBAC's review function, support IBAC decision-making to provide them with a clear mandate to provide complainants with review outcomes and to publicly report on a broader range of findings and recommendations within appropriate settings to promote transparency and accountability, and permit IBAC to make findings against clear standards of conduct to promote transparency and protect individuals.

Lastly, not only when deciding whether to conduct a public examination, IBAC has an ongoing obligation to balance investigative and individual rights, assessing risk and supporting witness welfare, for it to be considered a modern world-class anti-corruption agency. As my predecessor Eamonn Moran stated in the then *Victorian Inspectorate: Special Report – Welfare of Witnesses in IBAC Investigations* in October 2018:

No matter who the witness is, or why they are being investigated, integrity agencies must demonstrate a regard for their welfare.

...

... when a person is subject to an exercise of coercive power by any agency, steps must be taken to address the real and foreseeable impacts on their mental and physical health. These steps are not complicated, expensive or disruptive to operational objectives.

My team and I are happy to answer any questions the Committee has.

The CHAIR: Thank you very much. I will start by asking: why do you think the definition of 'corrupt conduct' in the IBAC Act should take account of resources and any impact that further reduces IBAC's capacity for police oversight?

Louise MACLEOD: What we already see in terms of the way IBAC handles its own very broad jurisdiction, where it is looking at government corruption as well as what is happening in respect of the police, is that the public expectation around what IBAC can and cannot do is not aligned. It comes down to resourcing. If you broaden the definition of 'corrupt conduct', then those expectations of the public are only going to increase, and it is more than likely if you increase those expectations and do not have the resources appropriate to meet that expectation, then you are going to get a greater number of complaints that are likely to flow not only to Integrity Oversight Victoria but also to the Committee and to parliamentarians and the like. I will just check with my colleagues if there is anything they want to add.

Cathy CATO: No.

The CHAIR: Well, just following on from that then, should any amendments to section 15A – this is the bit that requires that the agency prioritise the investigation and exposure of corrupt conduct – be made?

Louise MACLEOD: I will let my colleague Cathy –

Cathy CATO: Sure. Yes, Chair, I think that that section at the moment is asking for a focus or priority to be given to serious or systemic corrupt conduct. I think there are a couple of ways you could look at that. I think if it is very clear that corrupt conduct in the definition itself also applies to the police, so where the police have engaged in corrupt conduct, if that is made clearer in the Act, then I think that you might get suitable focus on what the Act is saying – what Parliament is saying – which is looking at things that are serious and systemic no matter who engages in them. So I think that is important. If you are not making that change, then 15(1A) does have those endemic flaws.

The CHAIR: Great. All right. Thank you very much. Now, let us go to Eden Foster.

Eden FOSTER: Yes, sure. Thank you all for coming today. In your submission you have recommended that IBAC be given the express power to make findings of corrupt conduct and police personnel misconduct that do not equate to a finding of guilt. How would this support IBAC's functions, including its educative and preventative functions?

Louise MACLEOD: At the moment what we have is a situation because of that definition of ‘corrupt conduct’ or ‘police personnel conduct’. What we know, from a public report by IBAC, is that there is an association there, by reason of the definition, that there is some form of criminality involved. It goes without saying that even where you may have in a report the name of an individual and an absence of a finding, that association with criminality may still have quite a significant reputational impact on that individual, and it may not necessarily be proportionate with the narrative that supports the name of that individual in the report and what has happened and so forth. So it can lead to assumptions that the conduct that they have been associated with is a lot worse than it actually is. We have had the experience of individuals who have found that the damage to their reputation is such that they are not able to get banking, finance and the like, and they are looking to get confirmation that what they have done is actually not a finding of being associated with corrupt conduct. So it is really important that there is that clarity and that can come through actually making an explicit finding in a public report.

Eden FOSTER: Yes. Okay. I can imagine also the impact on the individual’s mental health and their wellbeing. That would be quite significant in that as well. Okay. Thank you.

The CHAIR: Thanks. Paul Mercurio.

Paul MERCURIO: Thank you. It was really good to hear the last part of your statement talking about supporting witness welfare and really understanding the real and foreseeable impacts on their mental health and indeed their physical health. I have read some submissions where people have struggled terribly, not being able to talk to their wife, their loved ones, their friends or family, and they have had to remain silent for five years even if the case was closed. So I guess my question is: when investigating corruption, management of witnesses is an incredibly important part of IBAC’s role. Your agency has been critical of IBAC in the past regarding this. Are you aware of whether these practices have improved at all, and if not, what needs to be done?

Cathy CATO: I think there is no doubt that there is a huge change between, I guess, 2018, when Eamonn talked about the importance of focusing on witnesses – that is when this whole issue first started to become part of the discussion within the integrity space. The shift between 2018 and – what are we now – 2025, seven years later, is immense. I think the various recommendations that were made then resulted in a review by IBAC of its witness welfare. You would well know that they then had a proper framework, and then you had your Committee hearings about witness welfare. They now have in place a best practice framework for protecting witness welfare as much as possible. But I think what has come up in a lot of the submissions – one of the biggest issues that is still affecting witnesses is the lack of clarity around what they can say and what they cannot say. There is just no doubt that I am sure all of us, as integrity agencies that have these powers to be able to use a confidentiality notice of our choice that we can either open and close at any time, which is a really flexible and useful power, versus the very binary requirements and restrictions that arise in the IBAC Act, really could do with looking at that. I think we very much agree with a lot of the recommendations that IBAC themselves have put into their submission about putting so much more clarity and flexibility so that at the end of an investigation that section 184 is not just ‘You can’t talk about this forever’. The PID Act really has no end to when you can talk about things. So that sort of clarity really does need to be fixed to really help protect witnesses, and I think that is the missing step at the moment.

Paul MERCURIO: So it has improved a little bit, but there is a long way to go?

Cathy CATO: Well, I think it has improved – I am not saying as far as it can, but we can always all improve a little bit more. But the legislation at the moment is the blocker to further improvement for IBAC, is my view on it.

Louise MACLEOD: I think it is important that you actually look at the IBAC Act together with the PID Act as part of a framework that is all about misconduct and setting the standard and giving the opportunity for people to come forward and raise concerns that they might have about conduct that is not meeting public expectations or legislative standards. If you are going to change definitions in one and the confidentiality and secrecy provisions in one, you probably need to have a look at how they also flow through and sit and work alongside the other, as you have seen in the submissions.

Paul MERCURIO: Great. Thank you.

The CHAIR: Thank you. Let us go to Belinda Wilson.

Belinda WILSON: Thanks, Chair. I am interested to know how effectively IOV's oversight of IBAC is covered by IBAC's legislative framework. Last week this Committee received evidence from the former IBAC Commissioner, who told us he was not familiar with the content of the then VI's report into IBAC's handling of the police perpetrated family violence document, which was tabled in October 2022, during which he was the Commissioner. Upon the current legislation framework, is it possible for Integrity Oversight Victoria to prepare a report without the knowledge of an IBAC Commissioner?

Louise MACLEOD: The report contains the response from IBAC to the report at that time, and the report and the response speak for themselves. The response was signed by senior staff, including the former Commissioner at the time.

Belinda WILSON: Right. Thank you for that. I did think it was unusual that he said he was not aware of the report. Is the IBAC Commissioner provided a copy? Well, we have just answered that question, because we have said that. And should there be legislation requirements that IBAC Commissioners are provided copies of the IOV special report? Well, I think we have answered that in saying that he actually signed it, so his signature is on the document.

Louise MACLEOD: As part of our procedural fairness requirements in our Act, we provide the draft report generally to the agency head for response.

Belinda WILSON: Before it is tabled?

Louise MACLEOD: Before it is tabled. Before it is finalised in its published version and tabled.

Belinda WILSON: Great. Thanks so much. I appreciate that.

The CHAIR: Let us go to Rachel Payne.

Rachel PAYNE: Thank you for appearing before us today and your submission. In your view, what amendments should be made to the IBAC Act regarding IBAC's referrals or reviews of investigations referred to another body such as Victoria Police?

Cathy CATO: I think there is no question that having a special review function, as IBAC have requested, is a good idea. I think that we have explored that throughout these submissions. The Committee has been talking today about some of the limitations – or certainly the last witness, anyway – in having one body do a broad range of things. But one of the good things about IBAC's review function is its ability to refer things off for investigation but then look at the investigation to make sure that it has been done to a certain standard. So I think to have a review function written into the IBAC Act would be good. With respect to that, I think it needs another element to it as well, and that is that it is already able to refer matters and it can haul them back at any time and it can say, 'No, I'm going to take over this investigation.' But generally what it is doing is at the end of the investigation it is asking for the investigation report – say, let us use Victoria Police as the example – and then they are doing the review of that. Then they might make recommendations to Victoria Police of things that they should do. I think there needs to be clarity in section 163 about whether or not they are able to give detail to the complainant. So it is important that complainants are able to be given outcomes of the review; otherwise they are left hanging. And they need to be able to trust the system. They need to be able to trust that the whole system has worked together and that any inadequacies from Victoria Police have been picked up and fixed, essentially, or at least identified by IBAC and passed back to Victoria Police. So that is a really important stage as well.

I think something else that IBAC had asked for was being able to make some recommendations that it has made to police public, and we can see merit in that being done as well, as long as there is appropriate natural justice within that process.

Rachel PAYNE: So in your view, should that include amendments relating to notice to complainants, and what are your thoughts around conflicts of interests and disclosures or amendments made to the Act to include a requirement of disclosure there?

Cathy CATO: Sorry, I am not sure I understand.

Rachel PAYNE: Would that include an amendment that would relate to conflicts of interest or the notice that you referred to – giving notice to complainants?

Cathy CATO: Yes, the important thing is that complainants are given the outcomes of whatever has happened. So yes, if it was, for example, that they had identified that there was a conflict of interest during the investigation, sorry –

Rachel PAYNE: That would be included, yes.

Cathy CATO: Yes, if they have picked that up, then it is really important that that is shared with the complainant. It might be something that they have identified that they have brought to the police, and it is important that that loop gets closed so that everyone feels reassured that the investigation has been appropriate.

Rachel PAYNE: Got you, yes. Thank you.

Cathy CATO: Sometimes what will happen is they might reinvestigate part of it or fix something, and if the complainant does not know that all of that has been fixed, then there is a big piece of work that IBAC is doing that is not being seen. Having that transparency on issues like that is important.

Rachel PAYNE: Thank you.

The CHAIR: Great. We will go to Jade Benham.

Jade BENHAM: Thank you, Chair. I have got a couple of quick questions, just in the interests of clarity, which has been a real theme that comes up time and time again. Cathy may have already answered this, but what is the biggest barrier stopping IBAC from being more effective in doing its job at the moment?

Louise MACLEOD: It is to do with its inability to communicate outcomes from the reviews and be more transparent about what it is actually doing within the resources it has got. I think as well, it is all around that definition of ‘corrupt conduct’ and the fact that it also includes police misconduct. The definitions and the way the IBAC Act works – you would have to be an expert in legislative interpretation to understand them. It really should be clear on the face of the legislation. The definitions should be doing the heavy lifting to make clear what is the scope and jurisdiction of IBAC, and then it should be appropriately resourced so that it is quite clear what it can and cannot do and it is communicating that.

Jade BENHAM: In effect IBAC is an Independent Broad-based Anti-corruption Commission, but the definition of ‘corruption’ is so narrow. Isn’t that an oxymoron in and of itself?

Louise MACLEOD: Quite possibly.

Jade BENHAM: In your view does IBAC have enough independence from government?

Louise MACLEOD: I do not think we would have any cause to think otherwise.

Jade BENHAM: What does IBAC not do currently that perhaps the public assumes that it does in your view? We heard earlier that there is a list of things that it can do. It is not a complaints department, it is an anti-corruption commission. The website illustrates a list of things that you could perhaps come to IBAC with, but then there are issues within the legislative framework that prevent IBAC from investigating that. What do you think the biggest issue is that the public might assume IBAC can look into?

Cathy CATO: I think, again, as Louise started with in her opening statement, it is about the disparity between the expectation of how much will be able to be investigated and the reality. I think every anti-corruption body around the country only investigates a small portion, but because IBAC has that jurisdiction that is broad-based – it is police misconduct as well as general corruption that it is trying to fight – it has got a lot of jobs to do. As long as it is holding itself out to and required by the legislation to do both of those things, then people are going to expect that when they make a complaint they will get something back and something will be done, and that is difficult. I think something we have noted as well in our submission is that they also have this third function, which is the public interest disclosure element. It is like a centralised clearing house, so to speak, for every single public interest disclosure. It takes a long time for things. They go to IBAC, they have to go through their process and then there are only a limited number of bodies that they can send those back to.

When people make a public interest disclosure they might have an expectation that that will be investigated, and that might not be the case – to answer your question about what the expectation is and what might not be getting done. That is a bigger question and something that would require another consultation and inquiry.

Jade BENHAM: No doubt. Just quickly, again, where is the legislative framework most outdated? Is it the investigations or is it resourcing or is it public hearings? What needs the most attention?

Louise MACLEOD: We would not say that the public hearings need any amendment. You could remove the exceptional circumstances, but within the rest of 117 you have still got adequate safeguards there that include a role for our office. I personally think it is the definitions – they really, as I said before, need to do that sort of heavy lifting to make sure it is clear that when you go to those you can see what is in and what is out. That should then enable IBAC in terms of its decision-making to exercise discretion if it is being flooded with complaints to, in response to its resources, decide what it is going to focus on. But in doing so, communicate; all the time – communicate.

The CHAIR: Terrific. Thank you. Let us go to Ryan Batchelor.

Ryan BATCHELOR: Thanks, Chair. I was going to ask you about 117, but I think you might have just answered the question that I was going to ask in the context of that last bit of the last answer. I was going to ask, effectively, how you think that provision operates and do you think it needs any reform, but –

Louise MACLEOD: We do. At the moment the way the provision works is IBAC need to notify our office if they are intending to conduct a public hearing involving an individual, and we would prefer that they notify us – there is a time frame attached to that, I think it is 10 days, but we would prefer that they are notifying us at the point at which they are deciding whether or not to issue a summons, just so we can go through that exercise.

Ryan BATCHELOR: Can they issue a summons and then wait until they hit the 10-day mark and then tell you? Is that right?

Louise MACLEOD: Technically, yes.

Ryan BATCHELOR: Technically. Right. And you would prefer the notification to be at the time of the summons?

Cathy CATO: Yes. The idea of the change is to protect the person being summonsed. If you are going to receive a summons to a public hearing, it is going to be a pretty stressful day.

Ryan BATCHELOR: Yes.

Cathy CATO: It is not ideal.

Ryan BATCHELOR: Yes.

Cathy CATO: Now, if they are notifying us –

Ryan BATCHELOR: At the same time.

Cathy CATO: Yes. Or if they have already issued the notice or at the same time, even if the process through which we provide feedback gets to the point where they might withdraw that notice, that person has still suffered for that period of time. So we are trying to take away any period of time where a person might think they are going to be summonsed if they are not.

Ryan BATCHELOR: To reduce the possibility or the amount of time that your effective review of IBAC's decision to hold public examinations results in them effectively changing their mind.

Cathy CATO: Yes.

Ryan BATCHELOR: That makes sense.

Cathy CATO: You would rather all of that is done before the person hears anything.

Ryan BATCHELOR: Yes. That makes sense. I just want to touch on one other thing. Your submission makes the point about having an alternative publication, or trying to avoid the situation where issues that are clearly the experience about individuals, ensuring they have got procedural fairness, delaying the publication of special reports – not to disrupt that element of it but to have a sort of power to separately publish recommendations to address systemic risk, that do not, if my understanding is correct, go to the individual investigations but go to the systemic policy questions that might prevent the risk of that corruption occurring in the first place or again. How would that work? What sort of recommendations do you think the Committee should consider to deal with those issues?

Cathy CATO: It would be something along the lines of saying that you cannot publish a report that talks about an individual until such time as the procedural fairness process has completed. That may be held up by a court delay, but general issues about perhaps the organisation they are from, say –

Louise MACLEOD: Issues with process, procedure, decision-making.

Cathy CATO: Anything that goes beyond the individual – that can still be published.

Ryan BATCHELOR: Do you think that the report, in the absence of findings about the conduct of individuals, would be able to be comprehended sufficiently?

Cathy CATO: It is quite frequent I think for a report to decide not to name individuals at all and to just go along the lines of what Louise was saying, at that higher level. The idea would be that you would perhaps do it in two parts. So the first report would be that high-level report, and later, once the procedural fairness process has concluded, you might then decide, yes, we – not ‘we’, but IBAC might then decide it is going to issue a second report that might name individuals.

Ryan BATCHELOR: That is all I wanted to ask, Chair.

The CHAIR: Great. Thank you. I might just come in with one more question, which is: how do you think the public interest disclosure scheme might be improved? And married to that is: what concerns do you have regarding confidentiality requirements for disclosures across both the PID and the IBAC Acts, and thinking about the confidentiality notices?

Louise MACLEOD: As I mentioned before, if I start with the last thing first, which is around the confidentiality notices, I think there needs to be an alignment between how confidentiality notices work in the IBAC Act as well as how the provisions work in the PID Act, and a simplifying of the section 184 exemptions, particularly because at the moment you have got that situation – and I think it was articulated beautifully in one of the submissions – where you have this uncertainty at an individual level about who you can talk to and when a confidentiality notice ends, depending on which Act it was issued under and what provisions of what legislation a matter is being investigated under and the like.

Having looked at and tried to get my head around the PID Act here in Victoria, having had experience of using a PID Act in other jurisdictions, I still have a very long way to go in understanding how it works. I will look to my experts on either side of me for guidance here, because it is a really complicated piece of legislation. So I think simplifying it and making it clear how it works is the way to go. Alison.

Alison LISTER: I think that one of the things that is not widely known is for a discloser under the PID Act, the confidentiality obligations do not apply to the actual discloser. They have more issues if there is a confidentiality notice or if there is that section 184 of the IBAC Act, which I think was articulated in that submission 5. I think that really then constrains a person from getting, perhaps, the support that they need throughout the process. I do not know if you want to add anything to that, Cathy.

Cathy CATO: I think it is helpful to look at it through the lens that there are three key ways that you can be asked to not speak about something. Is it helpful to hear about those?

The CHAIR: Yes, it is.

Cathy CATO: Through section 184 of the IBAC Act, the discloser, for example, that Alison talked about – the person who has made that disclosure – will be told, ‘Yes, IBAC is going to investigate,’ and they will get one of those letters from IBAC saying, ‘You are now not allowed to tell anyone that we are investigating, full

stop’ – just the way the legislation is written, that lasts infinitely. You can then be issued with a confidentiality notice. They are much more flexible. They can be cancelled at any time. They can last up to five years or be cancelled, so they are a much more flexible tool. So they are a useful tool. And then – what was the third one?

Alison LISTER: The PID Act, maybe as it relates to other –

Cathy CATO: Then the PID Act of course says the discloser themselves can talk about it, which is really helpful, but any other witness cannot. So any other witness that receives a summons to appear is told the PID Act may apply to this matter – that is what we have to say: ‘The PID Act may apply to your matter, and you can’t talk about it except in very limited circumstances.’ So they have got three different pieces of legislation, all competing, all slightly different. Even for those of us that are working in this area, it is not straightforward. Trying to line those up in a way that gets the right balance between protecting the people being investigated and ensuring that the person that is being told they cannot talk about it can get the welfare help that they need and to talk to their families et cetera is really important. One of the recommendations we are making is that section 184 is made quite explicit as to the authorisation that you can give a person to talk. There is an exception that says – it is just not clear enough as to when you can use it. There needs to be a really, really broad discretion for IBAC to be able to say to a person, ‘Okay, I’ve told you that you can’t talk about this investigation, but you can tell your doctor, you can tell your husband, you can tell your wife, you can tell your partner, you can tell your children’, you know, whoever they think they need to talk to in order to cope through that situation. They need to be able to ask IBAC for that authority and IBAC needs to be free to give it, and at the moment they are not. That is the legislation, not IBAC, being the problem.

Louise MACLEOD: So enabling that trauma-informed response by IBAC.

The CHAIR: Yes. Good. All right. Any other questions? Thank you all very much. It has been a good discussion. Thanks for coming. We will suspend the hearing so we have got time for our next witnesses.

Witnesses withdrew.