

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 22 September 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

Victoria Elliott, Commissioner,

Liana Buchanan, Deputy Commissioner, and

Alison Byrne, Chief Executive Officer, Independent Broad-based Anti-corruption Commission

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 would like to acknowledge my colleagues participating today: we have Rachel Payne online; at the far end on my left we have Paul Mercurio; Eden Foster; Belinda Wilson; Ryan Batchelor; me, Tim Read; Kim Wells, the Deputy Chair; and Jade Benham.

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 of the First Peoples of Victoria. I offer my respect to the elders of First Nations in Victoria and welcome any elders and members of communities who may visit or participate in the Committee's public hearing today.

To our witnesses: there are some formal things I have to cover briefly. Evidence taken by the 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 elsewhere, including on social media, those comments will not be protected by this privilege. 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 would like to remind the gallery that they are welcome to be observers today but not to participate in any way in the hearing. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

I welcome, from IBAC, Victoria Elliott, Commissioner; Liana Buchanan, Deputy Commissioner; and Alison Byrne, Chief Executive Officer. Thank you all for coming in to give evidence today. If you have got any brief opening remarks, we would love to hear them, and then we will follow up with questions.

Victoria ELLIOTT: Thank you, Chair, and good afternoon. I too would like to first acknowledge the traditional custodians of the lands on which we are meeting here today, the Wurundjeri Woi Wurrung people of the Kulin Nation, and pay respect to elders past and present. We welcome the opportunity to be here today and to contribute to the Committee's inquiry. I am joined, as you said, by IBAC CEO Alison Byrne and Deputy Commissioner Liana Buchanan, who leads our police oversight function.

The trust and confidence of the Victorian people is vital to support the effectiveness of the public sector and Victoria Police. To expose and prevent the corruption and misconduct that can dismantle that trust is crucial, and it is a role that IBAC does not take lightly. Some of the key legislative amendments we are seeking focus on two important factors that can support our work and enhance trust in it – that is, transparency and accountability. I should also add clarity as well. As an integrity agency, most of our work, including its outcomes, occurs behind closed doors. This means the Victorian people, police and public sector do not always get the benefit of learning from our findings. We seek legislative changes that will lift the lid on outcomes to create greater transparency and accountability. This can be done by giving IBAC the power to publish recommendations, outcomes of investigations and reviews into police and public sector investigations, by removing the exceptional circumstances requirement to conduct public examinations and through allowing IBAC to conduct public examinations to be conducted for prevention and education purposes.

The impact of greater public awareness of how corruption and misconduct is being addressed and prevented cannot be understated, nor can the importance of clarity. For whistleblowers, complainants, witnesses or persons of interest, being involved in an IBAC investigation can be confronting. It is therefore crucial that their obligations and protections are clear. As it stands, the confidentiality provisions in the IBAC Act and the *Public Interest Disclosures Act*, which we will refer to today as the PID Act, are unnecessarily confusing and

conflicting, causing distress in an already challenging time. We seek a holistic review of the PID Act with a focus on, amongst other things, simplifying existing confidentiality arrangements and the discretion for IBAC to authorise someone to disclose relevant information in certain circumstances, such as to another person for their wellbeing.

Before I close, I would like to note that over the course of this inquiry, we have paid close attention to each submission and the feedback provided during the hearings. I would like to acknowledge the deep impact our approach has had on some complainants, particularly those related to the management of complaints from people who have experienced trauma. We hear you. While we have implemented recommendations from our oversight agency and made other improvements to training, policy and practice, we know we have more to do, and we are committed to taking all steps necessary to rebuild trust and ensure IBAC is an integrity agency that Victorians feel confident to make a complaint to. Thank you for inviting us to participate in today's hearing, and we are happy to take any questions from the Committee.

The CHAIR: Thank you. Well, I might start. I was interested in the part of your submission where you suggest clarifying the definitions of 'public officer' and 'public body' in the IBAC Act. How would that help more efficiently investigate corruption in outsourced government projects – whether it is building projects or running an organisation like a health service that has been outsourced?

Victoria ELLIOTT: As it stands currently in our Act, 'public officer' and 'public body' are defined, but they are defined in numerous different ways. And particularly when we are talking about subcontracting arrangements, there is complexity, particularly when you are trying to define whether a body is a public body or an officer is a public officer – when you are looking at that clarity of whether they are a public body for the purposes of performing a public function, particularly when they are performing other functions that are not of a public body. The Act provides guidance and it gives elements that you can take into consideration, but then it provides that those elements are not necessarily definitive, and it may say that you can take into account provision of money, but then provision of money does not in itself account for it. So greater clarity would be definitely helpful at the start.

Yes, we do have preliminary inquiry powers that may be, would be able to help us establish at the start – if we want to talk about Big Build or things like that, when you are trying to talk about that subcontract arrangement – but that is an unnecessary use of resources, to go down that path at the very start, when you do not have enough information to work out the necessary relationship. It would be much better if there was clarity in the Act. I do note that the IBAC Committee years ago talked about having clearer definitions in relation to substantial money, or you could talk about follow-the-dollar powers. That is something that could be explained further in our legislation.

The CHAIR: People have talked about follow-the-dollar powers, particularly the Auditor-General's powers. Can you perhaps explain how that might work for you – for IBAC, rather?

Victoria ELLIOTT: Yes, for IBAC. Obviously, at this present time, at the commencement, when you obviously get a complaint or a notification and when there is a subcontracting arrangement, for us to commence an investigation we need to have a direct relationship between the conduct and a public officer and a public body. If we cannot find that direct link, we cannot commence. At the moment there might be, say, for example – this is just –

The CHAIR: Hypothetical?

Victoria ELLIOTT: hypothetical, yes. If you have an instance where, say, there is a big government contract – so there is a significant amount of resources – they might contract with one party, but then they will then contract with others and others, and the money moves along. If the conduct relates to a body further down the track, but it is that money that started up here, it is too far removed, so who has the jurisdiction in relation to that? That is where we are talking about. Where is there a clear definition to find where IBAC fits in that mix?

The CHAIR: So should IBAC have those follow-the-dollar powers?

Victoria ELLIOTT: That is what we are thinking about. You could go down the path of what the IBAC Committee did suggest, but we would consider follow-the-dollar powers would be a cleaner fit, definitely.

The CHAIR: I was going to quickly check, just briefly, with changing and perhaps broadening the definitions of ‘public officer’ and ‘public body’, how you reconcile that with federal laws and other oversight bodies – for example, industrial relations and corporate regulation.

Victoria ELLIOTT: Well, obviously, we can only stay in our lane of the Victorian jurisdiction, so if there is any overlap, we would have to consider that. But at the end of the day, we can only look at conduct that is within the Victorian jurisdiction, not in the federal jurisdiction.

The CHAIR: All right. Thank you very much. Why don’t we go to Jade Benham? Oh, sorry – forgive me. The Deputy Chair.

Kim WELLS: Thanks, Chair. I might make a comment first and then ask a question. I was interested in your socials over the weekend, where you say:

Because of their scale and complexity, #majorprojects can present several #risks. If not managed, these can lead to poor #procurement, #fraud, cost blow outs and delayed delivery timelines. See resources for guidance ...

I am just not sure the taxpayer would be keen to hear that sort of response from IBAC, but let me ask my question. On 15 July last year, 2024, Premier Jacinta Allan publicly condemned allegations of criminal infiltration in the CFMEU’s construction division and announced an independent review of the construction sector. The same week, the Premier formally wrote to you as Commissioner, referring these allegations for investigation, and this is what she said on the 15th:

... I have referred these matters to Victoria Police and the Independent Broad-based Anti-corruption Commission (IBAC).

Victoria’s anti-corruption commission and police have the appropriate powers to investigate or refer allegations of corruption and criminal activity.

So my question is: when did you receive this referral from the Premier?

Victoria ELLIOTT: As you know, it is IBAC’s practice not to comment in relation to any notifications or complaints that it has received or has not received. But in relation to the broader question as to whether IBAC has the ability to investigate a certain notification or complaint, I will come back to the first point that the Chair raised. It will always come down to whether, regarding the conduct, IBAC does have the jurisdiction to investigate whether a person – not necessarily a public officer, but a person – adversely affects the honest performance or the effective performance of a public officer or a public body. But as I referred to in our submission, the nuance becomes: is that a public officer or is that a public body? And that sometimes is a question that we cannot answer, or it may not be within our jurisdiction because they are not within the definition of a public officer or a public body for us.

Kim WELLS: Okay, Commissioner, I am only talking about the referral. The referral was sent to you on 15 July, and that was more than 14 months ago. So you cannot tell the Committee when you received that referral from the Premier? Is there something in the framework that will prevent you from telling us when you received that referral?

Victoria ELLIOTT: IBAC does not receive referrals. IBAC receives complaints or notifications under our legislation, and IBAC has the responsibility under its legislation to dismiss, investigate or refer, and that is what we do in relation to the matters that come before us.

Kim WELLS: So in relation to the Premier’s referral, what response did you issue back to the Premier?

Victoria ELLIOTT: That is not something that IBAC would confirm. If it receives a complaint, a notification, from any person or body, IBAC would not make a public comment as to how it responds to that person or public body.

Kim WELLS: So the problem we have as this Committee is that the Premier publicly – press conference, public statement – has issued a referral to you, and under section 15 of the IBAC Act you have to assess that notification as soon as possible, and you are not able to tell us (1) whether you received it from the Premier, and (2) what response you made back to the Premier in regard to her referral of the corruption on building sites to you as Commissioner.

Victoria ELLIOTT: Correct. Would you like to say anything further?

Alison BYRNE: That is correct. IBAC does not make comment in relation to individuals who make complaints or notifications or the matter of substance in those complaints or notifications. But taking us back to the scope of this inquiry, we do want more clarity, we do want more transparency in terms of being able to share outcomes of investigations, recommendations outside of special reports, outcomes of reviews and referrals indeed. Right now, the legislation does prevent us from doing certain things in other ways. We make decisions on a case-by-case basis in terms of witness welfare of course. In the case of ongoing investigations and so forth, as you would be well aware, IBAC does not make comment.

Kim WELLS: Okay, but we are not interested, in this particular case, in witness welfare, because we are talking about the Premier's referral about corruption on the Big Build. You are not able to give us notification or confirmation that you received the referral from the Premier or how you have responded – if any – or the status of that referral from the Premier. Am I correct in saying that?

Victoria ELLIOTT: Yes, you are.

The CHAIR: All right. Thank you, Mr Wells. Let us go to Jade Benham.

Jade BENHAM: Thank you, Chair. I just want to continue down that road, just for a minute, so we can all gain some clarity. Within your submission – I think it is the last point where you talk about providing IBAC with additional investigative powers – there are a couple of paragraphs that refer to, as you just said, being able to publish status updates. We see the reports of Big Build corruption – organised crime infiltrating public worksites and Big Build projects – in Melbourne newspapers and on the news every single day. This is well within the public interest. What is preventing IBAC now from keeping the public updated? A social media post that was posted yesterday, I think it was, talks about fraud and corruption on government worksites. The public are very, very clearly interested in this topic. What exactly is it that is preventing IBAC from updating the public? And what amendments would you make?

Alison BYRNE: Do you want to start?

Victoria ELLIOTT: You can start if you like.

Alison BYRNE: There are a couple of issues in relation to any matter. Again, taking us back to our submission, the first thing is, as the Commissioner has said, whether it is within IBAC's jurisdiction. Is there that nexus? Is there that chain between the actual conduct and the people involved? When you are dealing with subcontractor, with subcontractor, with subcontractor, there are persons five times removed, and that is not within our legislation or within our powers. That is what we are asking...

Jade BENHAM: Sorry to cut you off there; I get that. But in a practical sense you have the person who is paying for it – the government, using public funds. Then there is a contractor. Then there are subbies, and there could be five or six – there are on every building site, whether it is domestic, commercial, industrial or whatever. How does that then remove? They are still being paid with public funds. I am just trying to, again, get some clarity, because at the moment, I am sorry, it does not pass the pub test when you say it is five times removed.

Alison BYRNE: And we agree, so that is why we are asking for the legislation to be changed – so that we can follow the money.

Kim WELLS: But you received a referral 14 months ago, and nothing has happened. Or have I misread this?

Members interjecting.

The CHAIR: Sorry, we have just got to go one at a time.

Kim WELLS: I am still referring to the Premier's referral.

The CHAIR: Yes, I appreciate that, but if Jade has more questions, I want Jade to continue.

Jade BENHAM: Just on the follow-the-money clause: if those follow-the-money clauses were implemented, how would that then allow IBAC to update the public via the news? At the moment they are just

speculating on what is going on, which as far as anybody can see, as Mr Wells said, is very little. Would the follow-the-money amendments allow IBAC to give updates?

Alison BYRNE: It depends on what you mean by updates. IBAC will not comment during the course of an investigation; firstly, because it could impede our investigation. Things will be done in a covert manner. Also, it can affect witnesses and people of interest and so forth. So there might not be updates during the course of an investigation, but with this reform and other reforms that we are asking for in terms of being able to publish outcomes and referrals and the like at certain stages of the decision-making process, we will be able to share more information, and that is indeed what we want to do.

Jade BENHAM: So at the moment there cannot even be a simple status update – for example, ‘Yes, we have received the referral from the Premier. Yes, we are reviewing it, and yes, we are investigating.’ A simple status update such as that to keep the public informed is unable to be executed at this point?

Alison BYRNE: It would depend on the particular matter, but generally speaking, no.

Jade BENHAM: So for the matter that Mr Wells was referring to, the Premier’s referral regarding corruption on Big Build sites, you are not able to confirm that a referral has been received and it is being reviewed?

Alison BYRNE: No.

Jade BENHAM: Thank you.

The CHAIR: All right. Did you want to follow further?

Kim WELLS: I just find it extraordinary that 14 months later, Chair, nothing is being done. And every single day we seem to read –

Members interjecting.

Kim WELLS: No, no – we seem to read in the *Age* newspaper, ‘Where is IBAC on this matter?’ And all we are hearing is a whole heap of excuses of why they cannot do it, not how they can work with the police to do it. As a result, billions of dollars on Big Build sites –

The CHAIR: Do you have a question?

Kim WELLS: I am just making the point that we did not get an answer. We did not get an answer. We are talking billions of dollars of taxpayers’ funds –

Members interjecting.

The CHAIR: Could I ask for a little bit of order? There is plenty of time for comments after. We have got a lot of questions to get through, and I thank the witnesses for their patience. Now, I am going to ask –

Belinda WILSON: Just to clarify, that is actually not what was said. So can we clarify that, because it is not the truth.

The CHAIR: No, no. We have got a lot of questions to get through, and the time for statements is later. I am going to ask Ryan Batchelor to go to question 4.

Ryan BATCHELOR: Thanks, Chair. I wanted to go to the 2016 changes, the last sort of substantial change that was made to some of the definitions in the Act. One of them, as you reference in your submission, enabled IBAC to investigate corrupt conduct involving misconduct in public office. Your submission raises some concerns about the application of the common-law principles and makes some suggestions about statutory reform that could clarify a few of those key issues to, in effect, give better effect to the changes that were made in 2016. Could you expand a little bit on what some of the issues are with the interaction between the common-law provisions there and the amendments that were passed in 2016.

Victoria ELLIOTT: The amendments in 2016 did allow misconduct in public office and also, in relation to that, reasonable suspicion as well. But with misconduct in public office, it uses the term ‘public official’. Our Act uses the term ‘public officer’, so there is a nuance and a difference in that.

Ryan BATCHELOR: Practically, what are those differences?

Victoria ELLIOTT: Public official is a higher threshold, and some people that are within our jurisdiction of a public officer would not fit within a definition of ‘public official’. Now, in that instance –

Ryan BATCHELOR: Such as?

Victoria ELLIOTT: I would not know, sorry, off the top of my head. But what can often happen if we do not sometimes fit within that, there will be alternate offences such as obtaining property by deception and so forth that the conduct would still fit within, but others will not. There will be a gap, and you will miss it. The threshold became a bit easier with the 2016 amendments, but for misconduct in public office the fifth element is requiring a level of imprisonment or gravity of the offence. So it requires you at the start of the investigation to almost think, ‘What’s the gravity? What’s the sentence requirement of that offence in relation to MIPO?’

MIPO does carry – sorry, I should not use acronyms –

Ryan BATCHELOR: It is okay. I was about to use it before and then I caught myself.

Victoria ELLIOTT: Misconduct in public office does carry a serious penalty, so it is a relevant offence. However, without getting too technical, to still fit within misconduct in public office, to hit that threshold, it does have to have serious consequences, so it is sort of the cart before the horse. And also it does not allow you to have, which a lot of offences do, a course of conduct, and that is really important in corruption-type cases, because it is often a course of conduct that leads you to where you are today. But misconduct in public office is a single offence. It does not allow you that course of conduct. Other jurisdictions have actually codified it, whereas Victoria and a couple of others have not. Codifying it would maybe make it a little bit easier for us.

Ryan BATCHELOR: In the process of codification that has occurred in other jurisdictions, what are some of the elements that you would want codified to overcome the shortcomings in common law?

Victoria ELLIOTT: If I refer to my submission, because I cannot actually remember it straight off my head, we actually refer to the UK model, which details the elements of it. It sets out the elements, which do actually make it clear what the elements of the offence would be, and it would then make it clear at the start, when we commence an investigation, to identify what type of conduct we are talking about. So the UK model is a good model to consider as well.

Ryan BATCHELOR: Are there are other Australian jurisdictions which have undertaken the process of codification that you think would serve as a useful model for Victoria to examine and possibly adopt?

Victoria ELLIOTT: We do nominate in our submission the other jurisdictions that have codified it, so equally we could go with those jurisdictions. The Commonwealth has codified it. We could go with that, or we could do the UK model – either.

Ryan BATCHELOR: Right. So the Commonwealth is slightly different to the UK model. Is that –

Victoria ELLIOTT: As I understand it, yes.

Ryan BATCHELOR: Okay. All right. Thanks, Chair.

The CHAIR: Great. All right. Could we go to Paul Mercurio.

Belinda WILSON: Oh, we have jumped.

Paul MERCURIO: A big jump. Thank you, Chair. And thank you so much for coming in today. We do appreciate it. In your submission you have sought for the exceptional circumstances test for IBAC to hold a public examination to be removed. You do say that other criteria under section 117 of the Act would provide

sufficient protections. I am just wondering: if it was removed, how would the legislation sufficiently protect the civil liberties of witnesses in public examinations?

Victoria ELLIOTT: Certainly. Exceptional circumstances, we do consider, provide the additional and we would say unnecessary requirement because of the existing safeguards, both legal and procedural, that already do exist. The test as it stands already does require us to consider the public interest, whether the conduct is serious and systemic and also whether the examination could be conducted without causing unreasonable damage to a person's safety, welfare, reputation and wellbeing. The public interest would cover what you were talking about as well – civil liberties and so forth. There is also the oversight by Integrity Oversight Victoria, there is the ability to conduct part in private and there are non-publication orders that can be granted. There are a number of other procedural functions or obligations that arise that we can use as well. The exceptional circumstances is an extra layer that, as Integrity Oversight Victoria has also raised, does not seem to add anything extra that would add any additional safeguards to the witness coming before it. I do not know if Alison has anything further to add to it.

Alison BYRNE: It would bring us in line with other jurisdictions. There is only one other jurisdiction with the exceptional circumstances, and that is the National Anti-Corruption Commission. So it would bring us on par with the other jurisdictions. As the Commissioner said, there are legislative and procedural frameworks, and of course we have done a lot over the last couple of years in terms of our internal processes and procedures around welfare and wellbeing as well.

Paul MERCURIO: Okay. Thank you.

The CHAIR: Thanks. Let us go to Belinda Wilson.

Belinda WILSON: Eden, we are bypassing you. Thanks so much for being here today. My question is: section 184 of the IBAC Act outlines non-disclosure requirements for complainants and witnesses and provides for exceptions. What amendments to these provisions do you propose to allow for disclosure for welfare purposes, and should similar amendments be made to section 40 for the welfare of IBAC officers?

Victoria ELLIOTT: As I refer to in the submission too, there are a number of confidentiality obligations that sit both within the *Public Interest Disclosures Act* and the IBAC Act, and they are conflicting and confusing in what is already a challenging time. In section 184, unlike when IBAC issues a confidentiality notice or in the PID Act, there is no ability for IBAC to authorise the complainant to be able to talk to other persons, and in this instance, you know, it might be appropriate to talk to somebody for their wellbeing. That would be I think a very easy fix. And it should be done to bring it in line, to enable that to occur.

We would also seek for the whole PID Act to be looked at to make it much easier for complainants and witnesses and other people to clearly understand what their confidentiality obligations are but also to be able to know that they can actually talk to people, because although IBAC does try to explain the layers of confidentiality obligations that do apply, we see that often people will not do it because of fear of breaching, and that is just not good. So if we could get that direction in – that we could allow people to have that, that I could or the Deputy Commissioners could issue that authorisation – that would be extremely beneficial.

Belinda WILSON: Thank you for your acknowledgement as well at the beginning of your statement that you have been listening. I think that is important for many people that have been involved in this hearing. Sometimes that is just the first step.

Victoria ELLIOTT: We all have been watching. I have watched every single hearing.

Belinda WILSON: Thank you.

The CHAIR: Eden Foster.

Eden FOSTER: Thanks, Chair, and thank you for coming in today. My question, I guess, has a couple of layers to it. Firstly, your submission recommends that IBAC be able to hold public examinations for purely educative and preventative purposes. Given the welfare risks to witnesses in public examinations highlighted in reports by IOV and this Committee, how would such examinations balance public transparency with the welfare, privacy and reputational interests of those examined?

Alison BYRNE: We have discussed a number of models in Australia in relation to being able to hold public examinations for prevention and education, and there are a number of different ways to do it. What we would suggest at least is that such examinations would still be in relation to serious and systemic corruption, and the precursors to corruption as well, and that there would be an assessment that it is in the public interest to hold that public examination, whilst balancing IBAC's obligations as an integrity agency to prevent and expose with the wellbeing and safety and reputation of people involved. There of course have been, in other jurisdictions, public examinations that do not necessarily involve someone who might be in the position of a complainant or a person of interest but are purely for more educational reasons. Again, it would be about serious and systemic corruption or police misconduct, but in those cases there would be less of an impact on certain people as well.

Eden FOSTER: Can you elaborate further on that, on how you would determine that there would be less of an impact?

Alison BYRNE: If it was more of an academic exercise – people who are subject matter experts and academics giving evidence and giving evidence from other jurisdictions, say, from other integrity bodies, rather than people who are in the position of complainant or people who have been subject to complaints giving evidence. There is that form of public examination. But indeed you have seen in other jurisdictions public examinations that do either require compulsory evidence from persons – we have suggested that that could be the case in this jurisdiction, or it could be non-compulsory and by invitation. They are all things that could be considered and examined in terms of providing IBAC with the power to conduct public examinations for prevention purposes.

Eden FOSTER: Could you clarify whether you would recommend compelling people to be a witness or –

Alison BYRNE: I think there is a place for both, and it would depend –

Eden FOSTER: For educative purposes.

Alison BYRNE: For educative and preventive purposes, or prevention purposes. There is a place for both, but I think the discussion is at a very early stage in Victoria, and the model would be all the better for further discussion on that with other integrity agencies, oversight agencies and the like.

Eden FOSTER: Would these witnesses be informed that it was for educative and preventative purposes? Would that be made clear to them?

Alison BYRNE: Oh, definitely. It would be a very different, as we have said in our submission, framework to the current model. But in anything like this, there would be information on websites, there would be guides and processes and procedures. We would obviously be managing, if it was the case of a witness, the witness's welfare and capability with our witness liaison team. That team has the ability to create tailored management strategies and plans, either with a witness's own healthcare practitioner or with Carfi, which is a service we provide through IBAC. All of those things that we currently do we could implement in the new public examination format, but also materials and information and support that is fit for the particular type of examination, being prevention and education. But they would always be provided with that information and support.

Ryan BATCHELOR: Could I just clarify. We have had it come up a couple of times, these public examinations for preventative or educative purposes. Do you need your suite of coercive powers, including being able to compel witnesses, to apply in these types of examinations as proposed?

Alison BYRNE: I would say not all, but some.

Victoria ELLIOTT: Not all. Maybe if I could also clarify that compelling evidence is probably a better way of explaining it. People are not always in a position to provide the actual evidence unless it is through compulsion through a summons. For example, if you would like to have all the statistics – say, if it was use of force and we wanted to look at use of force, to have all that data provided to us from Victoria Police or from another agency, what is their ability to provide all of that information to us or from another agency, if they are not under compulsion to do that, to protect themselves? Are they in breach of their own legislation? They may not be able to provide that unless it is in accordance with a law to provide that. Sometimes a summons is provided because it is the only way that that information can be provided. So it is necessarily that we are talking

about compelling the evidence, for the person to be able to answer the question. It enables them to be able to answer the question. It is not necessarily that we are wanting to compel to interrogate them on their conduct; it is to obtain the information.

Ryan BATCHELOR: I would just be concerned that, given the other elements of your jurisdiction and functions, that distinction might be lost on some who perceive these public hearings. I think it is a challenging area for us to navigate through. Anyway, I will leave it there.

Eden FOSTER: Can I also just add in terms of confidentiality as well and the conflict there with having such public examinations for preventative or educative purposes: how would you suggest balancing that conflict with confidentiality?

Victoria ELLIOTT: Generally confidentiality in public examinations – when it is an investigative-type public examination, confidentiality would only obviously apply to certain witnesses so that they are not tainted by evidence that goes before them. That is how it applies, and then once you give your evidence, it is out. It is a different form of how confidentiality applies when you are in a public examination as opposed to a private examination.

Eden FOSTER: Okay. Thank you.

The CHAIR: I want to ask a question about police oversight. You have recommended in your submission that IBAC have the power to make findings of corrupt conduct and police personnel misconduct that do not equal findings of guilt. How does that help IBAC's functions, and how would the definition of 'corrupt conduct' need to be stated in the IBAC Act?

Victoria ELLIOTT: Currently, as it stands, IBAC, unlike other jurisdictions, when it makes its special report, makes findings of fact, but it does not state in its report that it has found corrupt conduct. There is sometimes a lot of confusion when people read our public reports, because they say, 'What's in it? What did you find? Can't find anything in there,' and that is because of the way the Act says you cannot make any comment that includes that a person has committed or may have committed or is guilty of an **offence**. Because our corrupt conduct jurisdiction requires a relevant offence, it means that if you find corrupt conduct, there is an element of criminal offence that has occurred, therefore you cannot make a finding of corrupt conduct, even though a public report is on the balance of probabilities, not a court of law – sorry, that is really boring and legalistic.

Most jurisdictions have the ability to make a finding of corrupt conduct on what they find, but then they have an express provision that states that any finding does not equate to a finding of commission of an offence, to clarify. That is what we are seeking, so that it makes clear to the public and to the public sector agencies that we are oversighting what we have actually found. It is transparent and it is accountable. It enables us to really not only make clear the conduct that was under investigation and the outcome, whether we have found it or we have not found it, but it also then enables you to identify clearly what the recommendations are trying to achieve and then for them, obviously, hopefully, to be implemented. It can be seen why they have been made and can be implemented.

Liana BUCHANAN: If I could just add – earlier you asked particularly about police oversight, and I think the Committee has heard a lot from different stakeholders who want more transparency and who want to know more about what IBAC does and what we find in our police oversight activity. The recommendation that you are referencing and some of the other recommendations that we have made in our submission, including that when we investigate and we make a recommendation to Victoria Police, we can publish that or the recommendation that we have made in our submission that when we review police investigations, we can publish and make transparent the outcomes of those reviews. We think all of those will help, over time, to rebuild some of the confidence in IBAC's police oversight jurisdiction, which clearly the Committee has heard a lot about.

The CHAIR: Okay, great.

Jade BENHAM: Can I just ask one follow-up question?

The CHAIR: I think we have got a couple of people who want to ask extra questions, so briefly, yes.

Jade BENHAM: Just very quickly: is it IBAC's position that police oversight and investigations into misconduct and corruption should be a separate independent body?

Victoria ELLIOTT: I am going to start from this perspective. IBAC currently undertakes and has been, since its inception, investigating, exposing and preventing both corrupt conduct and police misconduct. Both jurisdictions may have unique challenges, but there are also significant similar aspects to both jurisdictions. We are able to learn from those and apply the learnings from both of those and apply our resources effectively across both jurisdictions. We have three Deputy Commissioners that are allocated across the jurisdictions. We have teams that are focused on individual jurisdictions, teams that are separate to jurisdictions and teams that are across both jurisdictions. Each year between 40 and 60 per cent of our work is split between both, but I would say in last year's work the majority of our investigations were in the police space. Of course it is a matter for government, but IBAC is doing a significant amount of work in the police space. That is why we are here today: to seek legislative reform so that the public and the public sector can actually learn from the work that we are doing. We make significant recommendations privately. We review over 200 police investigations a year and make recommendations, but nobody sees that work. We would like to be able to communicate with complainants about the outcomes of those reviews. Subject to natural justice, we would like to publish the outcomes of those investigations and reviews so people can see the work that we are doing.

Jade BENHAM: In the interest of time – I do not disagree with that – given that timeliness has been a real issue that a number of witnesses have testified to, would separating the police oversight out of IBAC free up resources to investigate other things, such as the Premier's referral et cetera and other matters?

Alison BYRNE: Yes and no, because if we are looking at it from a systems perspective – and again, I am at pains to say it is a matter for government – we do have those economies of scale and we do have that understanding from across the broad integrity work that we do. To split the work between two agencies, you would lose that. So there would be a question then, I would think, about timeliness and having one agency do this and one agency do that and losing the efficiencies between the two. I would also imagine that funding would follow as well, so that would impact then the resources in each agency and the timeliness and response of each agency.

But if I can just pick up on the timeliness point, I would have to say that IBAC has done a lot of work over the last couple of years, particularly in the last year, about our response rates to complaints and notifications. What we have seen is an increase, up to the last financial year, of about 30 per cent in complaints – sorry, the 2024 financial year, a 30 per cent increase. In the last financial year – our annual report is about to come out – we had another 15 per cent. So, complaints are increasing and the complexity of our assessment process and the complexity of the people that we are dealing with are increasing as well. That remains no matter who is assessing those complaints. But what is important is that there are trauma-informed, complainant-centred approaches so that complainants' welfare and wellbeing are assessed, so that more information can be shared with them and is understood – and yes, timeliness as well. But that complexity remains regardless of who is doing the work, and we have done a lot of work to try to be more responsive and timely.

The CHAIR: I am just conscious of the time, so I am hoping to get through a few things fairly concisely. I would just be after a brief comment on – because a lot of this inquiry has looked at potentially expanding the definition of 'corrupt conduct' – and I am interested in what you think might be the impact of expanding the definition of 'corrupt conduct' in the IBAC Act on IBAC's capacity to conduct more investigations, for example, of police oversight.

Victoria ELLIOTT: Two things. We will talk about resources maybe.

Alison BYRNE: In terms of if the jurisdiction was expanded to include offences that we would say currently fall into the precursor range, or what other people have referred to as grey corruption, yes, we would need more resources. Saying that, we would still be looking at matters that are serious and systemic in their nature, and we would still assess all complaints that are referred up to Deputy Commissioners and the Commissioner in terms of the seriousness, in terms of risk and in terms of impact across the sector and work with our integrity agency partners in terms of what information has come before them, are we the right agency to investigate certain matters and is it being looked at by someone else.

The CHAIR: Great. Thank you. Kim Wells has another, hopefully brief, question.

Kim WELLS: A brief question. Commissioner, based on what you have said today, who should investigate corruption of public money on Big Build sites?

Victoria ELLIOTT: Well, it depends on the offence – and Victoria Police do have a role in this area.

Kim WELLS: So is the answer Victoria Police?

Victoria ELLIOTT: It depends if it fits in our jurisdiction or if it is Victoria Police's jurisdiction. If it is straight criminal offending, it is Victoria Police; if it is corruption, then it is IBAC. It could be both.

Kim WELLS: So what discussions have you had with Victoria Police about the Big Build site?

The CHAIR: Can you fit that into the terms of reference of the inquiry?

Kim WELLS: Well, I want to know if there is something within the current IBAC legislation that is preventing the IBAC Commissioner from discussing corruption issues with Victoria Police, to work out who does what – pretty straightforward.

Victoria ELLIOTT: Sorry, there is nothing preventing me having discussions with Victoria Police. At the end of the day, if a matter comes in to IBAC, IBAC will consider it if it is in our jurisdiction. If it is a complaint or a notification – I come back to the Act – we will either dismiss, investigate, refer. We go through our process each time a matter comes in for us to consider.

Kim WELLS: So the Premier's referral – did you refer that to Victoria Police?

The CHAIR: I am going to just intervene because I think IBAC have made it clear what they will and will not answer.

Kim WELLS: Well, I have not done anything.

The CHAIR: You have asked the question, but I do not think it takes us any further down the terms of reference of the inquiry, and we can predict what the answer will be. There are a couple of questions that have not been asked, and I am going to ask Ryan Batchelor to ask one briefly.

Ryan BATCHELOR: Yes, just very quickly. Section 117 of the Act goes to public examinations and determinations about whether an examination would cause unreasonable damage to a person's reputation, safety or wellbeing. Do you have any guidelines on the meaning, scope and application of the 'unreasonableness' criterion? So do you have them? If not, should you have them?

Victoria ELLIOTT: IBAC is developing, or has developed, guidelines.

Alison BYRNE: Like any government agency, we do have a lot of guidelines and processes and procedures. What the Commissioner is referring to is that we have drafted a document for witnesses appearing at public hearings – to assist them.

Victoria ELLIOTT: That is right. Thank you.

Ryan BATCHELOR: Right, but not in making a determination as to whether the hearings themselves –

Alison BYRNE: We have internal policies and procedures in relation to our determinations that involve different aspects of the matter, whether it is through our investigators, whether it is through the Deputy Commissioners or Commissioner or our legal team.

Ryan BATCHELOR: So that is a no.

Alison BYRNE: No, no, we do.

Ryan BATCHELOR: You do have them?

Alison BYRNE: Yes.

Ryan BATCHELOR: Okay. That is good then. Thanks.

The CHAIR: All right. Thank you very much. I feel that we have covered a lot of material, but I want to now move the hearing in camera to give people the opportunity to raise any matters that might be confidential. So for that reason we are going to end the broadcast and ask the gallery to leave. We will just wait a few minutes for that to be organised. I ask any observers in the gallery to leave. Thank you very much for coming in and for your interest in the proceedings today.

In camera evidence follows.

IN CAMERA EVIDENCE

WITNESSES

Victoria Elliott, Commissioner,

Liana Buchanan, Deputy Commissioner, and

Alison Byrne, Chief Executive Officer, Independent Broad-based Anti-corruption Commission.

The CHAIR: I think we have got a couple of questions, but this is also an opportunity for you to add any matters that you wanted to that perhaps you felt uncomfortable saying previously. Why don't we go to Ryan Batchelor first.

Ryan BATCHELOR: Thank you, Chair. This should be relatively straightforward and quick. It was raised in prior hearings about the removal of the Operation Sardon report from IBAC's website, and also subsequently it has been removed the Parliament's website, although it is still available on request. For clarity for us, I assume that is because of the charges that have been laid and is an attempt not to interfere in the court process, if you could confirm that for us.

Victoria ELLIOTT: Yes, that is why we did it. It was a good pick-up when you raised it in the last hearing – that you noticed it was still on the public website. We had not got it down yet from there.

Ryan BATCHELOR: Does this happen a lot? Does it happen frequently, that you need to protect the criminal proceedings that arise out of the publication of your reports? Is this an issue which you think is going to come up in the future? Do you need either guidance or a legislative framework to deal with these sorts of circumstances, or are you comfortable with the way it works at the moment?

Victoria ELLIOTT: Well, we can take things off our own website, and we asked Parliament to have it removed from their website. They asked the reason why, and we shared in confidence the reason why, and they removed it. So if we can do it without legislative reform, and they seemed okay with that – and obviously, when the process goes through the courts, it could go back up. If Parliament needs that comfort, then that would be a matter for Parliament, but they just asked why and seemed to be satisfied with the answer that we just did not want to interfere with any criminal proceedings.

Ryan BATCHELOR: That is fine.

The CHAIR: Thank you. Kim Wells.

Kim WELLS: A standard question: Commissioner, Operation Richmond – when will that be finalised? When will it be published? When will we hear anything about Operation Richmond?

Victoria ELLIOTT: I can confirm that Operation Richmond is in the process of natural justice. I cannot confirm anything further than that because it is in natural justice processes.

The CHAIR: I thought the High Court had ruled that it could be published.

Victoria ELLIOTT: I think you might be referring to a case that had a non-publication order on it.

The CHAIR: Right. Okay. I am confused.

Victoria ELLIOTT: Sorry.

Kim WELLS: No, I thought so.

Victoria ELLIOTT: Richmond – we have published reports. We published Turton and we published Leo. In relation to Richmond, Richmond is undergoing natural justice.

The CHAIR: Yes. Okay.

Victoria ELLIOTT: We will wait for that natural justice process to be finished.

Jade BENHAM: Is there something within the current framework that holds it up for so long? It has been, what, six years – 2019 it was started, wasn't it? Is there something that blocks it that could move these things along? Because, again, this is something that is very high on the list of public interests.

The CHAIR: And these are the whole procedural fairness requirements and whether they are, for want of a better phrase, too generous in the existing legislation and whether there is something that could be done to enable reports to be published in a more timely way.

Victoria ELLIOTT: Yes, I appreciate that.

Jade BENHAM: Which also goes to, as you were saying before, helping the reputation of IBAC, I suppose, because at the moment nothing gets reported – and we know all that and we have covered that. But is there something that we could change? Are there one or two levers that could be pulled that can help these things along?

Victoria ELLIOTT: I do not know in relation to this particular – it is a hard question for me to answer, because there have been non-publication orders made.

The CHAIR: I was thinking more in a general sense, if you wanted to comment on it.

Victoria ELLIOTT: In a general sense, investigations can be complex and there can be – there is a natural justice process. At the end of the day, people have their right to go to court. There are also the other avenues in relation to other claims that people can make in relation to privileges. Obviously, when we come to an examination and a person can claim privilege, IBAC cannot rule on that – that must go to the Supreme Court. So that would obviously delay in relation to the running of an investigation. Whether Parliament would want to consider that the IBAC Commissioner can make those determinations and then if the party was not happy with that answer, they went to court under that – that might be something to consider. It is not a part of our submission; I am just talking here at this point in time. That is something that could be considered.

In relation to natural justice, there is a process clearly outlined in the Act – how to undertake that process. You will see that the decision that was published – though there is a non-publication order as to the parties – did go all the way to the High Court. So that does take time, but that is also a party's right. I do not know how, with the common law, you can prevent that. I do not actually know how you could legislate against that. That is an academic discussion. I really do not know how you could legislate against that.

The CHAIR: All right. Thank you, everybody. Thank you very much. Let us close the hearing now. Thank you very much for your time and patience and for coming along.

Committee adjourned.