

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 8 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

Donna Cooper, General Manager, Policy, Advocacy, and Professional Standards, and

Luke Janeczko, Principal Legal Policy Officer, Law Institute of Victoria.

The CHAIR: We resume our Inquiry into the Legislative Framework for IBAC, and I would like to welcome Donna Cooper and Luke Janeczko from the Law Institute of Victoria.

Before you give your evidence, just bear with me. 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 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 recorded by Hansard, and you will be provided with a version of the transcript to check once available. Verified transcripts will be placed on the Committee's website.

Thank you both for coming in, and do you have any introductory comments before we go to questions?

Donna COOPER: We do, thank you, Chair.

The CHAIR: Please go ahead.

Donna COOPER: Thank you very much, and thank you to the Committee for inviting the Law Institute of Victoria to attend this hearing today and for reading through the copious number of submissions put to the Committee, including that of the LIV. The Law Institute of Victoria would firstly like to acknowledge the traditional owners of the lands on which we are meeting and pay our respects to elders past and present.

The work of this Committee and this inquiry is extremely important, and the time taken by the Committee to look at all of these things, probably often in your own private hours, cannot be understated, so the law institute extends its gratitude to the Committee for its work to date. The Law Institute of Victoria is a membership body for lawyers and those who work in the legal profession. The Law Institute represents over 21,500 members, which is not an insignificant number, and we have a broad church with a diverse range of views across our membership.

The Law Institute has a long history of contributing to law reform, particularly when it touches on rule of law, administration of justice and access to justice issues. The Law Institute is over 160 years old. We have just gone back through the last 10 years of law reform issues in relation to IBAC to which the law institute has contributed its voice, which has helped inform our submission to you. Without traversing over our submission, which we take as read, and before I briefly summarise our three main points, I would just like to take a step back and survey the environment in which we are at the moment and why it is important to look at the IBAC legislation.

It is not controversial to say that trust in institutions is low; other people appearing before the Committee have said similar things. In fact only 46 per cent of Australians expressed any trust in government in an OECD survey from 2023. That is less than half the population. So the general mood in society is that there is a lot of distrust in the media, in government, in NGOs and in business, and so this means that every morning when people wake up, there is that default feeling of not trusting anything that they are reading. With this there comes an enormous responsibility on government to maintain and build on those pockets of trust that do exist in the system and in the administration of justice.

Our system of responsible government requires accountability by those who are carrying out executive function. Parliament has created these anti-corruption commissions in an effort to ensure that there is transparency over the actions of public administration and uncovering of corrupt behaviour to ensure we maintain a good rule of law and a good system of law in our state of Victoria. Public officials have a fundamental fiduciary duty, and the public needs to be satisfied that government is exercising its power properly through these officials.

The true value in an integrity agency is in uncovering soft or grey corruption, because in uncovering soft or grey corruption, we find the failures in the fiduciary duties owed by government. And the community's expectations of what is corrupt conduct appears now to perhaps differ from what is in the Act. You only have to look at the last 15 or so Royal Commissions and Boards of Inquiry that we have had across Australia and Victoria over the last decade to see they tell us that the standard of conduct expected by the public from public officials is falling short or often falls short. The community's expectations are higher. So it is important to bring into sharp focus whether legislation, and in particular the IBAC legislation, is fit to pick up and have sufficient power to be able to determine matters when the public expects it should be able to uncover those matters, and in this sense we are talking about soft and grey corruption.

With this in mind, there are three main points that the Law Institute would like to raise. The first is that we are submitting that there be an expansion of the jurisdiction of IBAC for it to be free to determine whether it wishes to investigate grey corruption, and that is by removing the relevant offence threshold, the indictable offence threshold, and allowing investigation of conduct that is either serious and systemic or conduct that is capable of being a disciplinary offence capable of amounting to termination of a person's employment. And of course with this expansion of the scope, it would require sufficient resources and funding to broaden that scope.

Secondly, with private and public hearings there needs to be a better balance between community expectations in relation to transparency of public administration and witness welfare, and one of the ways to do this is to have some transparency about the criteria for deciding when a hearing will be public and when it will be private, so this needs to be looked at. And thirdly, we should look at aligning the wellbeing provisions for IBAC officers regarding disclosure. Those disclosure provisions should be consistent across all confidentiality provisions. We imagine that IBAC has trauma-informed responses for IBAC officers. The Law Institute does not have any visibility over that. We just take a bird's eye view of the legislation, and this seems to be an area which requires some attention. My colleague Luke and I would be very happy to answer any questions from the Committee.

The CHAIR: Thank you very much. I will start. You have recommended the expansion of the definition of 'corrupt conduct' in the Act. Could you elaborate on that, and particularly how you would amend the Act to implement it?

Luke JANECZKO: We provided I think two examples of corrupt conduct definitions across Australia, one being the approach taken in New South Wales, and in ACT as well, for example, by adding an additional limb to the relevant offence threshold to also include conduct that could be capable of terminating employment. We have also observed that the Commonwealth have taken a different approach, and rather than relying on any sort of additional relevant offence or termination of employment, it just requires that the conduct is either serious or systemic. So, I mean, we have offered two solutions. We would observe that the New South Wales and the ACT approach is perhaps more aligned with the existing framework under the IBAC Act, noting that the IBAC Act has that two-limbed approach. So for ease of understanding, it might be more appropriate to include that additional limb for conduct capable of terminating employment.

The CHAIR: Great. Let us go to Paul Mercurio.

Paul MERCURIO: Thank you, Chair. You say in your submission that the IBAC Act currently sets the threshold to commence an investigation too high. Can you explain further what the Institute considers would be the appropriate threshold for IBAC to undertake an investigation, and also, how would this fit in with the agency's power to conduct preliminary investigations or inquiries?

Luke JANECZKO: As we mentioned before, we think the threshold is currently too high by relying on a relevant offence, because quite often a relevant offence can be difficult to prove, and there is a lot of, pardon the pun, grey area in whether or not it meets that threshold in the first instance. We think it is important that IBAC is at least enabled and empowered to take on matters and explore whether or not there may be corruption there, regardless of whether it meets a criminal offence or not, but it does meet that 'conduct capable of terminating' offence.

To illustrate with a kind of example, and without getting into specifics, because obviously these things can be difficult to distinguish when dealing with greyness, I think it really comes into play when you are dealing with systemic issues of corrupt conduct. Say, for example, a department or an agency might have isolated instances

on the surface of perhaps procurement or recruitment practices that may not meet community expectations. In and of themselves in isolation they may not be a criminal offence, but once the IBAC or any anti-corruption commission starts to receive more of these referrals, it might start to see that it is something that is a bit more systemic within the agency itself. It might be to do with the guidelines or the practices that are adopted, and it may be worthy of taking a bird's eye view for IBAC to investigate whether or not it can provide recommendations and investigate the conduct to see whether there are these systemic issues within the public sector that do not meet the community's expectations about how the public sector should operate.

Donna COOPER: Yes, and just to expand on Luke's comment, the legislation ideally would allow IBAC the ability to decide whether to investigate things that will harm the public trust. If you look back at some of the Royal Commissions that we have had, although the two examples I am about to give did not necessarily involve public officials, and if you look at the Royal Commission into the Management of Police Informants, the central character in that saga, if I can put it that way, involved breaches of confidentiality and privilege which the general public expects would be owed in a solicitor-client relationship. Now, that is not necessarily conduct that is criminal, but it falls short of the standard that the public expects and goes to the unethical behaviour that may harm the public's trust.

Another example is the banking and financial services Royal Commission, in which the Commission uncovered fees for no service – again not criminal conduct, but it falls short of the standard of conduct that the public expects. Although these are not examples, certainly not with the banking and financial services Royal Commission, that involved public officials, but it is to give a bit of a flavour for the type of conduct that we think the IBAC should be able to decide whether it will investigate. So we do not have a laundry list of the types of grey conduct or soft grey corruption or soft corruption necessarily, but more so it is about giving IBAC that power to determine, rather than cutting it off at the knees and not allowing it to be able to make that decision.

Paul MERCURIO: Good. Thank you.

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

Belinda WILSON: Thank you, Chair. I am interested if you could explain the Institute's view on how, in its view, it would be inappropriate for IBAC to investigate low-level fraud and that it is more appropriately suited to a workplace misconduct investigation?

Luke JANECKO: Sure. When you are lowering the threshold to include conduct capable of terminating an offence, I guess it implicitly draws people to the idea that IBAC is going to investigate matters that deal with terminating employment, for example, like misconduct in the workplace. The IBAC Act grants the IBAC quite strong covert and coercive powers, which I think are really not appropriate for those sorts of low-level workplace misconduct matters. For example, just to draw an example out of thin air perhaps, fraudulently putting time in, time out on a flex sheet arguably is something that does not warrant abrogating the privilege against self-incrimination, but perhaps is more akin to a workplace misconduct investigation. So I think it is important that should the threshold be lowered, there are understandings and processes in place that the public sector and the IBAC are communicating with each other appropriately to ensure that IBAC is taking on those matters that do meet the serious threshold and that warrant covert and coercive investigative powers.

Belinda WILSON: Thank you.

The CHAIR: Eden Foster.

Eden FOSTER: Thank you, Chair. Thank you both. Why, in your view, must any change to the jurisdictional threshold for IBAC ensure that IBAC only report on investigations that confirm allegations of serious or systemic corrupt conduct – from page 1 of your submission? Could this have an adverse effect on individuals investigated by IBAC, where serious or systemic corrupt conduct is not proven?

Luke JANECKO: I may have to refer back to the submission there into what we have communicated. From my understanding that may be a miscommunication in the submission, if we have said that they should only report on matters where it is confirmed to be serious or systemic corrupt conduct. It is very important that the IBAC is able to report on matters where it has concluded an investigation. Importantly, it can serve to

confirm corrupt conduct. But perhaps even more importantly, it can confirm there is no corrupt conduct. So we may have to revisit our submission if it comes across that way, if that is what we have said.

Eden FOSTER: Okay. All right. Thank you.

The CHAIR: Great. Jade Benham.

Jade BENHAM: Thank you. Can you elaborate on the Institute's view that the Act should be amended so that IBAC officers can disclose information to mental health practitioners, medical practitioners, psychologists et cetera?

Luke JANECKO: As Donna mentioned in our introductory statement, we took a bird's eye view of approach and looked at all the sorts of confidentiality requirements under the IBAC Act and compared them with other jurisdictions as well. We observed that section 40, which deals with information disclosure by the IBAC and IBAC officers, does appear to be quite limited. Now, as Donna mentioned, we do not have visibility of what trauma-informed practices IBAC itself may adopt if it has psychologists employed that IBAC officers may be able to speak to for their own personal wellbeing, but from just observing the Act, it does appear inherently narrowed. We have heard evidence from other witnesses who have appeared before this inquiry about the impact on witnesses, and we are not disputing that as well. But obviously, IBAC deals with very sensitive matters that can obviously impact IBAC officers as well. We want to make sure that not only for section 40 with IBAC officers, but any sort of confidentiality or any clause within the IBAC Act which would impose confidentiality has the same sorts of permitted disclosures as are allowed under the confidentiality notice framework under the permitted disclosures. So it is important, we think, that there is a consistent approach across the IBAC Act.

Jade BENHAM: Yes. Thank you.

The CHAIR: Thanks. Rachel Payne.

Rachel PAYNE: Thank you, Chair. And thank you to you both for your submission and presenting before us today. Your submission was quite extensive, but are there any other changes the Institute would recommend that you have not raised today to the legislative framework for IBAC?

Donna COOPER: Thank you for the question. Whilst it does not form a feature of the submission itself – and the answer to this is not in terms of changes to the legislation – I think it could be very helpful for the public and in fact the lawyers representing witnesses who are going before IBAC in various hearings if there are probably some expanded guidelines around what witnesses can expect when they are appearing in a public hearing and what determination factors the Commissioner might make in terms of deciding a public hearing versus a private hearing which expands on what is in the nuts and bolts that are in the Act, because that also helps people to work out what it is they need to do in terms of a submission to the Commissioner to explain whether or not there may be unreasonable harm or damage to their reputation, wellbeing or safety, that sort of thing. There does not appear to be a lot out there for us to look to in that regard. So it may not necessarily sit in the legislation itself but potentially other guidelines and things.

Luke JANECKO: Just building on what Donna said as well, that is not necessarily unheard of in the anti-corruption commission landscape. For example, I am aware the ACT under its legislation provides that its integrity commission must prepare examination guidelines which go into conduct and determinations under the Act and elaborate on what the Act provides that have to be considered when determining whether a public examination is warranted, and that sits as a legislative instrument under the Act itself.

Rachel PAYNE: Yes, makes sense. Thank you to you both.

The CHAIR: Great. Ryan Batchelor has a question.

Ryan BATCHELOR: Thanks, Chair. Thanks both of you for coming in today. The nub of your submission is that we should expand IBAC's jurisdiction, and with that comes a pretty significant expansion of the types of conduct and individuals that would be subject to some pretty significant coercive powers. IBAC, to do its job properly, has a range of coercive powers that I think if we went and spoke to the ordinary person on the street they would find quite significant, if not alarming, in terms of what IBAC can do in the conduct of its

investigations. How do you think we balance out that concern that essentially with great power there needs to come some great responsibility? And if we are expanding the scope of the matters that IBAC has the potential to go and look at and retain the suite of very significant coercive powers that IBAC has, how do we balance that? How do we get that right? Are there any extra safeguards that we would need to put into place, and how would they operate?

Donna COOPER: That is sort of the central question, isn't it – how do we get the balance right? And certainly when expanding the scope of IBAC, it does not necessarily mean that IBAC will investigate every single complaint or matter that comes to its attention. In fact we are advocating that IBAC continues to focus on the most serious and systemic when expanding the jurisdiction. I presume that as part of that decision of IBAC in determining whether to make an investigation or commence an investigation it will have in its mind its very serious coercive powers of compulsion to give evidence and produce documents. In the absence of the privilege against self-incrimination existing and those sorts of things, it will make the determination to commence an investigation knowing all of those things do exist, and part of the trust in providing a body like IBAC with those powers is that it will make those determinations with that in mind.

Luke JANECKO: Building on what Donna is saying, I think the Act already goes somewhat there with section 8, 'Objects of the Act', which requires IBAC to prioritise investigating serious and systemic corrupt conduct, or the most serious and systemic corrupt conduct. It places some discretion on IBAC to determine, on the matters that are coming in – to put things on a scale to determine what things might be more serious than others. Looking to other jurisdictions, I am aware the ACT recently had a review of its *Integrity Commission Act*, which has recommended placing an additional safeguard on top of the definition of 'corrupt conduct' that would require the integrity commission to – it can only investigate serious and systemic corrupt conduct, so it takes it a step further from that section 8 requirement that it is prioritised to elevating it to a 'must'.

Ryan BATCHELOR: Just to clarify that: section 8 here is a prioritisation clause.

Luke JANECKO: 'To prioritise', correct.

Ryan BATCHELOR: Whereas the ACT review has recommended that it be a restricting clause.

Luke JANECKO: Correct.

Ryan BATCHELOR: Would that be a fair –

Luke JANECKO: That is correct in that the ACT Integrity Commission can conduct a preliminary inquiry, and then if it considers it is serious and systemic, based on the powers available to it under the preliminary inquiry it can then proceed to investigation – if the Integrity Commission considers it serious or systemic. That could be another safeguard that the Committee may wish to consider.

Ryan BATCHELOR: Yes, because it seems to me – and I think, Ms Cooper, you got at this in your answer – that we would be placing a great deal of discretion in the hands of IBAC to make determinations about what bits, of the vastly expanded jurisdiction that they would have, they would prioritise. Do you think that should all be in the hands of the IBAC Commissioners, to be making determinations in an expanded jurisdiction, or should there be some other mechanism – and what might that mechanism be – to ensure that the prioritisation that is occurring in the expanded jurisdiction is appropriate to the objects of the organisation?

Donna COOPER: That is a very good question. It might be one we need to take on notice, and we would be very happy to look into that and come back to the committee with a further submission if that would be of benefit.

Ryan BATCHELOR: Yes. One of the things – we are getting this a lot in these inquiries, if the Chair will indulge my pontification – is that a lot of people are coming to us and saying we need to massively expand the jurisdiction of IBAC. That would come with a commensurate increase in resources, although no-one comes to us and says how big an IBAC should be, which is a question that someone has got to grapple with at some point when thinking about all of these things. To me the next question then is: how is that operationalised? If we are making these types of significant changes, widening the scope of the matters to which quite significant coercive powers can be exercised by IBAC against members of the community, particularly public officials, how should the prioritisation and oversight regime that goes with that be operationalised? To my mind we have heard a lot

of the former and not a lot of the latter. There has not been a lot of consideration given to how we would think about the increased oversight or the increased accountability that would need to come from having a substantial increase in jurisdiction. It is something that we need to turn our minds to.

Luke JANECKO: Just to clarify the question as well, to help guide us in our response, are you asking whether IBAC should determine if it takes something on or about looking at establishing an independent body which can act as air traffic control?

Ryan BATCHELOR: Well, I do not know. How do they do this in other jurisdictions? Because a witness from the Aboriginal legal service gave us pretty compelling evidence that IBAC, in its police oversight jurisdiction, at the moment gives one-sentence answers as to whether or not it has agreed to take up a police oversight complaint, which they and other witnesses, in the police oversight jurisdiction, have found incredibly wanting in terms of the transparency of IBAC operating to make decisions about what it decides to investigate or not. Because on each matter that comes before it IBAC is making a decision, whether it is in its public sector corruption jurisdiction or in its police oversight jurisdiction, as to whether it will decide to investigate it or not. Currently we see, with at least the police oversight jurisdiction, evidence from a number of entities that says to us that they are just not transparent. They provide no metrics as to how they determine whether things should be investigated or not, and the level of information and accountability that they have over their internal decision-making is wanting. So I am trying to drill down on those who think we should expand on the other side. How do we avoid the mistakes that we currently have if we go down the path of expanding the public sector corruption jurisdiction?

Luke JANECKO: That is useful. Thanks for that clarification. We can take that on notice.

Ryan BATCHELOR: Sorry, that was a long question.

The CHAIR: A soliloquy. No, it is all good. Thank you. That is very helpful. Just on that, I do not think there was anything in your submission – forgive me if I missed it – on police oversight, but we have been hearing, as Ryan Batchelor said, other witnesses often bemoaning the state of police oversight by IBAC. I wonder if the Law Institute would have any comment or thoughts on that, and particularly on the appropriateness of an anti-corruption commission also performing police oversight.

Donna COOPER: Thank you for that question. Yes, our submission did not touch on the possibility of whether or not it is a good idea to have effectively a separate police integrity body of some description. But whilst it has not been a feature of this particular submission, the Law Institute of Victoria has previously advocated for a separate police oversight body, and in saying this, we make no comment on necessarily the adequacy or the success of Victoria Police investigating itself. It is more that when you look at the inherent nature of having a potential conflict of interest with a body investigating itself, that does not lend itself necessarily to public trust in that situation. What we often say is that a perception of a conflict can sometimes be as damaging as an actual conflict. So just on the basis of police investigating police – and I am not talking here about your lower level, what you might term, for want of a better word, ‘consumer complaints’ but more serious complaints – it would be the Law Institute’s position that a separate police integrity body be established in order to deal with those sorts of complaints. Is there something you wanted to add to that, Luke?

Luke JANECKO: Yes. As Donna mentioned, the LIV has historically advocated for a separate police oversight body. I think we put in submissions in 2015, 16 and 17. It was even in our call to parties in 2022, for an independent police oversight body that is separated out from IBAC. I think if you could take a step back and observe, perhaps one of the perceived synergies of combining the two functions when IBAC was first created was that there might have been some sort of co-learning, co-synergy, between learning lessons about what might facilitate police corrupt conduct or police misconduct and public sector corrupt conduct. But I think if you were to observe, the police and the public sector have two very distinct and separate roles. The police uphold law and order, whereas the public sector implement the will of the executive. And perhaps learnings from one may not necessarily assist the other in a body like IBAC to provide education and assist in that preventative function. I think the two are quite separate and distinct.

The CHAIR: Thank you. Any further questions from the Committee?

Paul MERCURIO: Just a quick one.

The CHAIR: Please.

Paul MERCURIO: You have submitted that the threshold for holding a public examination should be lowered, but you also note the potential harm that a public examination may cause to an individual's health and mental health and wellbeing. Do you consider the existing safeguards are adequate in the event that the threshold for conducting a public examination is lowered?

Luke JANECKO: Yes. I think what we touched on was that, as you mentioned, we think the bar is probably a bit too high with that requirement of 117(1)(a) for exceptional circumstances. We think the IBAC Act would enable and in fact require the IBAC to, if you were to remove that, adequately consider the rights of the individual against the rights of the public to see transparency and see what sorts of matters the IBAC is investigating. We think if you were to remove that exceptional circumstances requirement, then the Act would still require IBAC to consider the individual's safety, their wellbeing and their reputation and weigh that against the public's interest to hear what is going on, and in addition, provide a report to Integrity Oversight Victoria about why it has made that decision so there is some independent oversight and accountability for IBAC to ensure that it is acting adequately within the bounds of section 117.

Paul MERCURIO: Okay. I was just going to say, so is that a no?

Luke JANECKO: Oh, that is a yes. Sorry. I should have been clearer.

Paul MERCURIO: Oh, it is a yes. But you are still saying something needs to change?

Luke JANECKO: No, no. Yes.

Donna COOPER: So the exceptional circumstances bit is complex and it is not well understood. And so we say that if you remove that out of the Act, you have still got the default being a private hearing. But the IBAC still needs to consider unreasonable harm to reputation, wellbeing and safety, so they are still there, and it would help facilitate a better understanding and transparency around public and private hearings. I think a previous person appearing before the Committee might have said it is a very bad day for someone who is appearing in a public hearing before IBAC, and we completely appreciate that that is the case. That is where I think some of the guidelines around being able to make a submission to help the Commissioner make a decision about whether or not it should be a private or public hearing would be of some assistance, which sit outside the scope of the Act.

Luke JANECKO: I think in addition to that, the position under the IBAC Act would still be that private examination is the default assumption and unless those other requirements under section 117 are met; then it can become public. Sorry for the longwinded answer.

Paul MERCURIO: No, that is all right. Good. I think we got there.

The CHAIR: All right. Thank you very much for coming in and answering our questions.

We will suspend the hearing now and have a short break before our next witness.

Witnesses withdrew.

WITNESS (*via videoconference*)