

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

Justin Hannebery KC, President, and

Simon Thomas, Barrister, The Victorian Bar.

The CHAIR: Welcome back to the inquiry into the adequacy of the legislative framework for IBAC with the Integrity and Oversight Committee. I would like to welcome Simon Thomas, Barrister, and Justin Hannebery, President, of the Victorian Bar.

I would like to, before we commence, just cover some formalities. 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. Any 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 proof version of the transcript to check once available. Verified transcripts will be placed on the Committee's website, and broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

Thank you both for coming in and agreeing to answer some questions. If you have got any introductory remarks, please go ahead.

Justin HANNEBERY: Thank you. Thank you for the opportunity to come along today. I am coming along here as President of the Victorian Bar with my colleague Mr Thomas. From the Victorian Bar's perspective, we come here from what I might say is a different perspective, perhaps, from some other people who have come before the Committee in that our members both act for IBAC in conducting these examinations and act for witnesses who are going along there. So within our membership we have the broad scope. In addition to that, a number of our members, most recently Robert Redlich, a former president of our bar, have served as Commissioner of IBAC. Certainly between him and our other former presidents, we have had a great tradition at the Victorian Bar supporting efforts to ensure integrity in our public institutions. We certainly, from our perspective, regard that as one of our purposes as an organisation. In fact in our constitution one of our purposes is to promote democracy, and part of promoting democracy is making sure that the institutions that serve democracy are working as well as they possibly can. Stephen Charles, recently deceased, was an incredible champion of these types of commissions and certainly was very keen for these commissions to work as well as they possibly could. So we are happy to answer your questions today.

The CHAIR: Great. Thank you. I will start. I was wondering if you could expand on something you stated in your submission – that if the corrupt conduct jurisdiction for IBAC is expanded, the due process rights of those investigated by IBAC must be fully considered.

Justin HANNEBERY: The bottom line is that there will be more people who are covered by investigations of this Commission and that when you have got more people being investigated there are going to be more people whose rights need to be protected. What we have to remember here is that these commissions represent a significant implementation of the power of the state to reduce what would otherwise be a person's right not to give evidence on the basis of self-incrimination. It is also important that where you have got a body that is capable of making adverse findings the person who may be the subject of those adverse findings is given every reasonable opportunity to have their rights respected to be able to answer any potential adverse finding in advance. That might mean giving them a reasonable opportunity to understand the evidence that is being put against them, the evidence that is going to be the basis of some sort of potential criticism which, regardless of whether it is criticism that is criminal in nature or something lesser than that, would have potential reputational damage, potential damage to someone's employment status. It is fundamental when in order to achieve a broader policy purpose certain rights are being limited, namely the right to silence, we are also balancing that by ensuring that people who are going to be the subject of these types of rulings are given every opportunity to answer that fairly.

The CHAIR: Fair enough. So if the definition of ‘corrupt conduct’ is expanded to include grey corruption, how would you see that affecting the jurisdiction of the Ombudsman to deal with maladministration or for employers to deal with employee misconduct?

Justin HANNEBERY: What, in the sense you are suggesting there would be two bodies with the same legal jurisdiction?

The CHAIR: Yes.

Justin HANNEBERY: Well, that is not unique in the law. I mean, obviously not all jurisdictions are marked out perfectly where only one body can investigate. For example, there might be a crime that can be investigated by the Australian Federal Police and the Victoria Police. That would happen regularly. Whether that is an issue or not I would suspect would depend upon the specifics of the situation.

The CHAIR: Fair enough. Thank you. Paul Mercurio has got some questions.

Paul MERCURIO: Thank you, Chair. Are the current procedural safeguards for persons subject to IBAC investigations adequate, in your view?

Justin HANNEBERY: That is a policy decision that we have not offered an opinion on in our submissions. The question of adequacy is essentially a value judgement to make. Ultimately you have got to come at it from a perspective of understanding the broader principles at play here. And when somebody is the subject of an IBAC investigation, there are clearly some protections for them in the sense that the use of any coercive questioning at IBAC is limited. But the ability of that person, for example, to resist a summons or to otherwise object to any questions is extremely limited. As I said, these are compromises made from a policy perspective to say, ‘Look, we understand that this person hasn’t got the same rights that would be afforded to them, for example, in a criminal trial. But this has got a different purpose here. This is about a broader public interest, about minimising corruption.’

Paul MERCURIO: Okay. If the definition of ‘corrupt conduct’ is expanded and IBAC’s threshold to investigate is lowered, will they need to be bolstered? The procedural safeguards in place now, will they need to be changed, strengthened, bolstered?

Justin HANNEBERY: Well, the concept of them being bolstered should not depend on the gravity of the conduct that is being investigated. So as things stand at the moment, there is a fairly high bar for IBAC to investigate something. I would not suggest that if you lower that bar so that things can be investigated of an, I might say, objectively lower consequence, that that would materially impact what you should do to protect people in that regard. I would not have thought those two things were connected, myself.

Paul MERCURIO: Okay. In your view, should the IBAC Act be amended to allow IBAC to hold more public examinations than it presently does? Your submission suggests a simple public interest test could be considered. So, in your view, should any of the current requirements for holding a public examination be retained?

Justin HANNEBERY: Well, the position we have taken is that the current exceptional circumstances test would seem mathematically, when you compare it with New South Wales, to substantially limit the number of public hearings that occur. I think it is 42 against eight or something of that nature. That changing the test would actually result in an increased number of public hearings is a presumption you might make, but it would depend upon what the assessment of ‘in the public interest’ at that time might be. You might reasonably conclude that, all things being equal, if the test had been different over the last five years, there almost certainly would have been more public hearings. But I do not think we are calling for there to be more public hearings. I think that is ultimately a matter for the Commissioner to determine. What there should be is a basis for determining that question that I think is somewhat more permissive than the exceptional circumstances, because ‘exceptional’ infers out of the ordinary, highly unusual, and that, by definition, restricts when that is going to occur.

Paul MERCURIO: Okay. Thank you.

The CHAIR: Eden Foster.

Eden FOSTER: Thank you, Chair. Thank you, both, for coming in today. Just on public hearings, are there any risks for witnesses or those being investigated in terms of reputation, due process and welfare if IBAC can more easily hold public hearings rather than private examinations?

Justin HANNEBERY: Yes, there are, there is no doubt about that, because whilst giving evidence at IBAC means that the questions you are forced to answer that you would not be forced to answer in a criminal trial cannot be used against you directly as evidence in court, the real sting is the reputational damage that comes from that, and the reputational damage is directly connected to the number of people that know that you gave that evidence. As I said, that is part of the policy judgement you have got to make as to whether you are prepared to make those sorts of compromises in order to achieve a greater outcome. But there is no doubt it would raise the bar and have more people exposed to potential reputational damage. One would hope, first, that those who are charged with executing the functions of IBAC – and I think I can say that in the past we have been able to have pretty good confidence that we have had good people doing this – have exercised those powers responsibly. And if there were to be any sort of legislative change, it would also of course be extremely important to continue that and also to ensure that there is effective oversight of those exercising these very special powers.

Eden FOSTER: Further to that, in terms of public hearings, should IBAC be authorised to hold public examinations for purely educational or preventative purposes without any connection to an investigation?

Justin HANNEBERY: I think the key is the word ‘public interest’, and the public interest, we would submit, can encapsulate a wide variety of different things. To some extent the public interest can be in perhaps exposing a behaviour that was not otherwise exposed. It can send a message to other people that there is the prospect of being detected if you are engaging in that sort of behaviour. It can serve the purpose of drawing out more complaints of a particular kind of behaviour. All of those things are part of it now. I think just lumping them under the category of ‘It’s only educational’ or that it is not strictly speaking necessary for the purpose of achieving something in relation to the investigation is too narrowly interpreting what ‘public interest’ can mean, when the broad goal here, if IBAC is working well, is that public corruption should be reduced, and that can be achieved in a variety of different ways. Essentially I can say today we can see we have had a very public sentence being handed down in the Supreme Court, where the Supreme Court has gone out of its way to ensure that it was televised and that people could watch, and part of the whole purpose for that is that a sentence from a criminal court is meant to serve to generally deter people from committing crimes. To some extent we use the term ‘educative purpose’. That has also the effect of educating people that (a) this conduct is wrong – it is regarded as a form of corruption, even if it is not criminal corruption – and that it is capable of being detected. They are all important messages that could very well form the basis of assessing what is in the public interest.

Eden FOSTER: Thank you.

The CHAIR: Thank you. I am just going to ask if you think that the procedural fairness protections and processes under the current IBAC Act are sufficient for those people who are adversely named in an IBAC special report.

Justin HANNEBERY: Perhaps I will let Simon take this if he likes; I have been talking a little bit long.

Simon THOMAS: Sure. The processes that are outlined in section 162 do have important safeguards within them, and they apply to both people against whom an adverse finding is potentially going to be made and those against whom the adverse finding is not going to be made. They do encapsulate the fundamental requirements of what you need to do in those circumstances, which is to give someone notice of the material that you are considering where that material is going to be important in relation to the decision that you make and then to give them an opportunity to respond. The way that that framework works is replicated in some of the other legislation around the country as well, and it seems to be an appropriate procedural safeguard. As Justin was saying earlier, if you are going to potentially capture more conduct with a ‘could’ versus a ‘would’ test, for example, or expanding what the definition now in section 4 is about what corrupt conduct is – reducing the thresholds, whatever – then it is important to ensure that the existing procedural safeguards within the current legislation, which are significant, remain, that they not be diluted.

The CHAIR: Thank you. Just on that, we have heard from other witnesses that currently the courts can be used to delay the publication of special reports for a very long time. Do you have any comments about that state of affairs and whether that should be changed?

Justin HANNEBERY: I am aware at the moment that there have been a number of reports that have been delayed for a long time for that reason. Now, I cannot comment on the specifics as to why any individual one of those might have been. They may well have been for very good reasons. I am unsure, so it is a little bit hard to make a broad statement about the involvement of the courts or the correctness of that. I would say one thing, though, just generally: I think everyone can agree that delay in concluding these inquiries is a difficulty for everyone involved in it. And a number of the witnesses and people that have been subject to these inquiries – a number of the difficulties that have emerged for them have been because of the length of time that these things have taken. Now, it is incredibly difficult to anticipate in advance, even when you make any sort of legislative change, what potential litigation about that legislative change might be. It is difficult to do that, but certainly ensuring that delays in concluding these matters are kept to a minimum, to the extent that court proceedings that delay these matters can be kept to a minimum, is certainly in the interest of anyone drafting this legislation.

The CHAIR: Thank you. Let us go to Rachel Payne.

Rachel PAYNE: Thank you, Chair. Thank you both for appearing before us today. Just to continue on the line of questioning the Chair has followed, should there be any time limit on the period within which persons can respond to draft sections of IBAC reports that refer to them?

Justin HANNEBERY: Have you got any particular time limit in mind?

Rachel PAYNE: No, I think that what we are hearing from some of the other stakeholders is that, as you just mentioned previously, it can then limit access points or time of publication and such. So I would be interested to know if you had any further thoughts on that.

Justin HANNEBERY: Do you have any thoughts on this?

Simon THOMAS: The legislation uses the words ‘reasonable opportunity to respond’, and of course that can be a bit of a how long is a piece of string type question, but it is designed to give flexibility because, as Justin mentioned, there are going to be specific circumstances that apply to specific cases. So you can take that very flexible type approach by using those kind of words; you can take something in the middle by using words like ‘as soon as practicable’ or ‘as soon as reasonably practicable’ or something like that; or, at the other end of it, you could give 30 days, 60 days, 90 days, which is entirely inflexible and can lead to challenges of a different nature. So I suppose as a policy matter it depends on where you want to land in terms of that flexibility. But there is something in between hard deadlines and what the current test is. That might be something that could be considered.

Justin HANNEBERY: I think that one of the difficulties with hard deadlines is that inevitably, when you have a hard deadline in the legislation, you are then compelled to put in some sort of criteria whereby that hard deadline does not apply, because you would never want somebody to be denied their rights unjustly just because of a hard deadline. So to some extent we all end up going back to the same place, even when we have got a deadline in place, because the criteria for some form of reasonable opportunity is always going to play out.

Rachel PAYNE: Thank you. With respect to IBAC’s conduct of preliminary inquiries, should the agency be authorised to use the full range of its covert and coercive investigation powers and restrict the disclosure of information by persons subject to these inquiries?

Justin HANNEBERY: Any thoughts on this, Simon?

Simon THOMAS: I have read criticisms of IBAC not being entitled to use the full range of its powers. I suppose that if it does have those powers, then it is for IBAC and for the Commissioner to decide whether and when they are to be appropriately used.

Justin HANNEBERY: I think it is a very hard question to answer broadly. It probably depends on the individual circumstances. There are some inquiries that are ongoing because there is an ongoing issue that

IBAC is dealing with and there are some inquiries that are historic, and the operational implementation of various tactics is a matter for the investigators, and that will depend on the individual case, I suspect.

Rachel PAYNE: Thank you. Thanks, Chair.

The CHAIR: Thank you. Ryan Batchelor might have a question.

Ryan BATCHELOR: Thank you. On that point, you would accept that it is important that there are safeguards put in place on what are some really extraordinary – and not that they should not have those powers but that they are extraordinary – powers?

Justin HANNEBERRY: They are. They are a very significant use of the powers of the state, absolutely no doubt about that.

Ryan BATCHELOR: And that by expanding the remit, the range, the jurisdiction of IBAC's investigation you would expand the circumstances under which those extraordinary powers could be utilised?

Justin HANNEBERRY: Yes. More people would potentially be subject to the use of coercive powers than are currently the subject of it.

Ryan BATCHELOR: Do you think that there are sufficient adequate oversight mechanisms in place for the use of those powers currently?

Justin HANNEBERRY: Well, this Committee is one of those things, I would have thought. There is of course, as we touched on earlier, the fact that these are powers to be used subject to legislation that can be challenged in court if it is alleged that the powers are being used outside of the limits of the legislation. So that is a very significant matter, the opportunity to have redress. At a broader policy oversight position, that is probably more a matter for this place than anywhere else.

Ryan BATCHELOR: Another aspect of IBAC's jurisdiction that has come up repeatedly throughout the course of our inquiry is the extent to which its police oversight jurisdiction is functioning effectively. Obviously there is quite a lot in your submission and in the hearing today about the public corruption elements of IBAC's jurisdiction. On the police oversight side, are there any comments you have got about the Victorian Bar's view on the effectiveness of the police oversight jurisdiction that IBAC currently holds?

Justin HANNEBERRY: Can I take that question on notice? I would not like to just offer an opinion on that without some careful thought about it because it is obviously a very, very big area.

Ryan BATCHELOR: That is fine. That is all I have got, Chair.

The CHAIR: Great. Any further questions from the Committee? And any final comments you might have for us? I am particularly thinking about things that have come up in your experience, perhaps where people's rights have been infringed.

Justin HANNEBERRY: Look, there is no doubt that whenever you have a body like this that has these powers, to some extent, in order to achieve its legislative purpose, it is infringing and compromising the rights of people who would otherwise not be required and compelled to turn up and give evidence. There is absolutely no doubt about that. They are powers that should not be lightly used. Whilst there is a very, very strong interest in minimising public corruption, it is very important that the bar is not set so low that effectively the confidence in IBAC as an organisation itself would be diminished by investigating matters that are below what you might think is the threshold for the implementation of these types of powers.

Now, can I say, to come up with the exact form of words that matches that is probably something that is extremely difficult. I think what we have tried to do is see where there are some obvious limitations in the wording as it is at the moment that limit IBAC's ability to function as well as it could and achieve what its legislative purpose is. But these are very difficult things to judge, and from the perspective of the Victorian Bar, whilst of course we are very much in favour of strengthening public institutions and ensuring they are free of corruption, because that is an economic asset of this state, we are also champions of individual rights and ensuring that they are not lightly trampled, if I can put it that way.

The CHAIR: All right. Well, thank you very much. Thanks for coming in and answering all those questions.

We conclude today's public hearing for the IOC inquiry into the legislative framework of IBAC.

Committee adjourned.