



THE VICTORIAN BAR  
INCORPORATED

# RESPONSES TO QUESTIONS ON NOTICE

INTEGRITY AND OVERSIGHT  
COMMITTEE'S INQUIRY INTO  
THE ADEQUACY OF THE  
LEGISLATIVE FRAMEWORK FOR  
THE INDEPENDENT BROAD-  
BASED ANTI-CORRUPTION  
COMMISSION

## INTRODUCTION

1. The Victorian Bar (**the Bar**) is grateful to the Chair of the Integrity and Oversight Committee (**Committee**), Dr Tim Read MP, for inviting the Bar to appear at a public hearing of the Committee's Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission (**Inquiry**).
2. On 8 September 2025, the Bar – represented by Bar President Justin Hannebery KC and Simon Thomas – appeared before the Inquiry at the Parliament of Victoria.
3. Following the Bar's appearance before the Inquiry, on 13 October 2025 the Committee Chair wrote to Thomas McAllister, In-house Legal Counsel, copying the Bar President and Mr Thomas, seeking the Bar's written responses to four questions on notice.
4. The Bar outlines its response to each of the four questions on notice below.

## ACKNOWLEDGMENT

5. The Bar acknowledges the contribution of the Criminal Bar Association of Victoria, and in particular Shaun Ginsberg and Felicity Fox, in the preparation of this submission.
6. The Bar also acknowledges the gracious assistance afforded to the Bar by Sean Coley, Committee Manager, throughout the consultation process, including by extending further time to the Bar to finalise its response.

## COMMENTS IN RESPONSE

**Question 1: Accountability Round Table has given evidence that the current claim of privilege process under sections 146 and 147 of the IBAC Act 2011 (Vic) should be changed to place the onus for making an application to the Supreme Court on the claimant. In your view, would such a change reduce time delays resulting from claims of privilege?**

7. The Bar notes the submission of the Accountability Round Table (**ART**) about the currently prescribed procedure for dealing with a claim of privilege by a person who has been summonsed under Pt 3 Div 3A or Pt 6 Div 3. The ART points out that the current procedure enables such a person to use a claim of privilege that is entirely devoid of merit to prevent the Independent Broad-based Anti-corruption Commission (**IBAC**) from viewing a document produced by the person, or prevent an IBAC examiner from compelling the person to answer a question, unless the IBAC goes through the process of making an application to the Supreme Court for a determination of the claim of privilege which results in the dismissal of the claim.
8. The Bar agrees with the submission of the ART that the current procedure for determining claims of privilege has the unsatisfactory consequence of allowing a witness to obfuscate during a preliminary

inquiry or examination by making groundless claims which can only be avoided by IBAC initiating the costly and time-consuming process of a Supreme Court proceeding.

9. The ART proposes that the IBAC Act be amended to empower the IBAC to dismiss a claim of privilege if the IBAC determines that the claim is not reasonably arguable. In such a case, the claimant could only press the claim by applying to the Supreme Court for a determination of the claim within a prescribed, reasonable time period. The Bar accepts that this proposal would make it much more difficult for a witness to use groundless claims of privilege to obfuscate and would be likely to deter some persons from attempting to do so. This would reduce unnecessary costs and delays in the conduct of preliminary investigations and examinations.
10. The ART proposal must be considered in the context that the privileges which may be claimed by persons who are subject to compulsion under the *IBAC Act 2011 (Vic)* (**IBAC Act**) serve to protect fundamentally important rights and public interests. The wrongful refusal of these claims can cause irreparable harm to the rights and interests they seek to protect, such as in the case of claims that seek to preserve the confidentiality of information. Further, the determination of these claims can involve complex questions of law and fact. Finally, a person summonsed by the IBAC may lack the ability or means to apply to the Supreme Court to press a claim for privilege. These considerations must be balanced against the desirability of reducing unnecessary costs and delays to IBAC in the performance of its functions.
11. Taking these considerations into account, the Bar does not support the IBAC being empowered to dismiss claims of privilege in circumstances where that power can be performed by a person who is not suitably qualified. Presently, a person is only eligible for appointment as the Commissioner if the person is or has been qualified for appointment as a judge of the High Court, the Federal Court or the supreme court of a state or territory. The Bar accepts that such a person would be suitably qualified to determine whether a claim of privilege is reasonably arguable.
12. That said, the IBAC Act does not restrict the conduct of preliminary inquiries and examinations to the Commissioner. The IBAC's power to conduct preliminary inquiries and issue a summons to produce documents for that purpose may be exercised by any person to whom those powers have been delegated by the Commissioner or a Deputy Commissioner pursuant to ss 32(3) and (7) of the IBAC Act respectively. Neither a Deputy Commissioner nor any person to whom these powers are delegated are required to be qualified as lawyers. As for examinations, s 115(2) permits the IBAC to appoint a Deputy Commissioner to conduct an examination, who as mentioned need not be a lawyer (provided that the Commissioner is satisfied that the Deputy Commissioner has the appropriate skills and knowledge to perform that function: s 115(2A)).
13. The Bar considers that these provisions would be inadequate to ensure that the important and sometimes difficult task of determining claims of privilege is only undertaken by suitably qualified people, were that power to be conferred on IBAC delegates by ART's proposed amendments.

**Question 2: What is your view on the effectiveness of the police oversight jurisdiction that IBAC currently holds?**

14. The Bar notes that the IBAC currently holds wide powers to provide oversight of police. The IBAC may investigate 'police personnel conduct' on complaint, referral or its own motion. Police personnel conduct is very broadly defined and is much wider than the definition of corrupt conduct that applies to the IBAC's powers concerning public officers outside the police.
15. The Bar is not presently aware of any particular problems with the IBAC's oversight of police. The Bar notes the IBAC's reported 15% increase in the number of complaints it received about Victoria Police between 2023 and 2024. IBAC's ability to effectively deal with these complaints is obviously dependent on it continuing to receive sufficient resources from government to perform its functions in the context of increasing demands.

**Question 3: Does parity with other commissions (e.g., NSW ICAC/CCC) on findings or opinions of guilt strike the right balance between accountability and fairness in Victoria? If not, where should the line be drawn, and why?**

16. The Bar notes that:
  - (a) the New South Wales Independent Commission Against Corruption (**NSW ICAC**) cannot make a finding or opinion of guilt; and
  - (b) the Crime and Corruption Commission Queensland (**CCC**) cannot make a finding or opinion of guilt.
17. Rather, the NSW ICAC and CCC can make findings of corrupt conduct, and make recommendations for criminal or disciplinary action
18. The Bar vehemently opposes any power to be vested in the IBAC to make any positive finding or opinion of guilt. To do so would impermissibly undermine the most fundamental principles of the criminal law.
19. The power to then make referrals to criminal investigative bodies allows for the proper processes to be followed in respect of any findings of guilt at the conclusion of the criminal trial process. Any abrogation of the right to a fair trial should be opposed.
20. The Bar notes the current difficulties and imposition that the public hearing process already places on an accused's right to a fair trial, including circumstances where a person has, in effect, been through a 'trial before media', having their right to silence and privilege against self-incrimination abrogated in a public hearing, and then having to face a jury trial, where their answers and basis for the prosecution case, may still have a lingering effect on a jury.

21. Consideration ought to be given to whether public hearings are ever appropriate in circumstances where a person is likely to become an accused in a criminal trial.

**Question 4: What are the key risks to individual rights and the administration of justice if IBAC has this power, and how should those risks be mitigated (e.g., standards, process, report framing)?**

22. The Bar opposes in the strongest terms any power to make a finding of guilt. Such a power would undermine completely the right to a fair trial. It would be an extraordinary abrogation of the very fundamental principles of a justice system to allow a body to abrogate a person's right to silence and privilege against self-incrimination, and then to allow such a body to make a finding of guilt.
23. The key risks are the erosion of a person's right to a fair trial, an incompatibility with the *Charter of Human Rights and Responsibilities Act 2006*, an undermining of hundreds of years of common law principles protecting and enshrining a person's presumption of innocence.
24. The Bar questions, in any event, the purpose of allowing the IBAC to make such a finding. In the absence of the power to sentence, and with the ability to refer to a prosecuting agency, there would be no practical impact of such a finding, except a complete ruining of a person's character at the end of a process not bound by the fundamental principles of criminal law. The finding of the IBAC would be inadmissible in any criminal trial.
25. There is a plethora of safeguards in place in a criminal trial, preventing a finding of guilt without strict adherence to, which are not present in the IBAC, including:
- (a) statutory safeguards provided under the relevant Evidence Act;
  - (b) the right of appeal;
  - (c) the right to a trial by jury;
  - (d) the privilege against self-incrimination;
  - (e) the companion principle – that an accused person cannot be required to testify;
  - (f) strict disclosure obligations; and
  - (g) the right to know the evidence presented before you, by way of pre-trial disclosure and disclosure of the prosecution's case
26. The ability to make a finding of guilt, in line with ss 24 and 25 of the *Charter of Human Rights and Responsibilities Act 2006*, should remain solely with the Courts.
27. The ability to make a finding or even opinion of guilt is so counter to any principles of law that there are simply no safeguards which could strike any balance in favour of the administration of justice. The risks simply could not be mitigated.