

Response to the Integrity and Oversight Committee's questions on notice from its Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission

1. If the definition of corruption under the IBAC Act 2011 (Vic) was expanded, does IOV have a view on how the legislation should be drafted to provided legal clarity on the limits of the new definition?

To provide clarity, the definition of corrupt conduct in section 4 of the IBAC Act should:

- Remove the relevant offence requirement. IOV supports this based on IBAC's submission that the relevant offence requirement prevents the investigation of a wide range of unethical or integrity compromising behaviours, even where serious or systemic, which restricts IBAC's ability to address underlying integrity risks for corrupt conduct.
- Align with the non-exhaustive list of behaviours and limitations under sections 8 and 9 of the *Independent Commission against Corruption Act 1988 (NSW)*.
- Be incorporated into the definition of police personnel misconduct in section 5 of the IBAC Act. This will clarify that corrupt conduct also captures police.
- Apply to third parties engaged by public bodies and public officers, and their subcontractors. An alternative to expanding the definition of public body is to use the *Audit Act 1994 (Vic)* definitions of 'associated entity' and 'third party contractor' as a starting point. Corrupt conduct could be expanded to include conduct engaged in by an associated entity or third party.

To support these changes, the following legislative changes are also recommended:

- Include follow the dollar powers like that for the Victorian Auditor-General's Office (VAGO), enabling IBAC to oversee the use of public funds whether expended through public or private entities. For example, subsection 6(3) of the IBAC Act could be expanded to ensure a public function covers a function undertaken by an associated entity or third party publicly funded to perform the function. The definition of public officer may also need clarifying to address the issues raised in IBAC's submission.
- Codify the common law offence of misconduct in public office.

For the reasons set out in IOV's submission, resourcing for IBAC is a necessary consideration if IBAC's remit is expanded, as well as aligning the threshold for investigation.

2. Submissions by the Police Oversight Working Group and Australian Lawyers Alliance suggest that the definitions of ‘police misconduct’ and ‘police conduct’ in the IBAC Act 2011 (Vic) lack clarity and could be expanded. Do you think the current definitions of ‘police misconduct’ and police conduct’ should be amended, and if so, what amendments do you suggest?

There is merit in achieving consistency in the definitions in the IBAC Act, the *Victoria Police Act 2013* and the *Public Interest Disclosures Act 2012* (PID Act) to provide clarity and reduce complexity.

The Australian Lawyers Alliance (ALA) notes there is no distinct definition of ‘police corrupt conduct’. As suggested in our response to Question on Notice 1, IOV proposes clarifying in the definition of ‘police personnel misconduct’ in section 5 of the IBAC Act that corrupt conduct captures police.

The ALA also notes the former IBAC Committee’s findings that the definitions of ‘police personnel conduct’, ‘police personnel conduct complaint’ and ‘police personnel misconduct’ in section 5 of the IBAC Act are ‘unnecessarily complex and confusing’. They include concepts that are not clearly defined, such as ‘disrepute’¹, ‘diminish public confidence’² and ‘disgraceful or improper conduct’³.

IOV particularly notes that ‘improper conduct’ is not defined in the IBAC Act, requiring principles of statutory interpretation to be used in assessing whether the meaning aligns with the definition of improper conduct in section 4 of the PID Act.

IOV supports any amendments to definitions that clarify and simplify understanding of IBAC and Victoria Police’s jurisdiction in managing police complaints.

3. IBAC has submitted that the definitions of ‘public officer’ and ‘public body’ should be amended to capture entities that are not typically public bodies. Does IOV have a view on this recommendation?

As set out in our response to Question on Notice 1, IOV supports amendments that enable IBAC to investigate corrupt conduct in the use of public funds whether expended through public or private entities.

This could be achieved by expanding the definition of public body or public officer, or expanding the definition of corrupt conduct to persons engaged via public expenditure.

VAGO can ‘follow the money’ by auditing an ‘associated entity’ and a ‘third party contractor’. IBAC could do the same if:

- corrupt conduct is expanded to include conduct engaged in by an associated entity or third party; and
- the criteria for a public function are also expanded.

¹ In section 5 of the IBAC Act, see the definition of police personnel misconduct at (a)(ii)

² Ibid

³ In section 5 of the IBAC Act, see the definition of police personnel misconduct at (a)(iii)

4. **Accountability Round Table has submitted that the abrogation of self-incrimination in the IBAC Act 2011 (Vic) should be extended to include preliminary inquiries. In your view, is this necessary, or is the current balance between preliminary inquiries and investigations appropriate?**

We do not have a specific view on this issue. However, any amendments that aid an effective and proportionate preliminary inquiry and/or investigation, and reduce the risk of evidence being destroyed, may be beneficial for IBAC.

5. **The Committee has heard evidence that IBAC should not have the power to prosecute matters under section 190 of the IBAC Act 2011 (Vic). In your view, should IBAC be able to prosecute matters, or should it strictly be a public trust body? If IBAC were not able to prosecute matters, would it need to refer matters to another prosecuting body aside from the Office of Public Prosecution?**

IOV does not propose removing IBAC's ability to prosecute matters under section 190 of the IBAC Act, as there are many examples of agencies having the power to prosecute.⁴ If IBAC is no longer able to prosecute matters under section 190 of the IBAC Act, it would need to refer matters to Victoria Police to file a charge to commence a prosecution as this is not the Director of Public Prosecution's role.

6. **IBAC has submitted that additional offences should be included in the IBAC Act 2011 (Vic) such as**
- **The offence of destroying or concealing evidence required in connection with an IBAC investigation**
 - **The offence of engaging in conduct to undermine an IBAC investigation**

In your view, should these offences be included in the Act?

We do not have a specific view on whether these offences are necessary. However, anything that aids an effective and proportionate investigation may be beneficial for IBAC.

If these offences were created and further powers were required to investigate them, IOV would need a commensurate level of oversight to apply to provide the necessary assurance.

⁴ Examples include WorkSafe Victoria which may issue charges for breaches of the *Occupational Health and Safety Act 2004*, the *Dangerous Goods Act 1985* and the *Equipment (Public Safety) Act 1994*; Environmental Protection Agency which can commence criminal prosecutions for serious breaches of the *Environmental Protection Act 2017*; Energy Safe Victoria which can conduct prosecutions for breaches of offences under the *Electricity Safety Act 1998*, *Gas Safety Act 1997*, and the *Pipelines Act 2005* (their policy states they will request advice from the DPP prior to commencing a criminal prosecution for an indictable offence); and the Building and Plumbing Commission (now includes VBA) which may issue charges against a person or body corporate for breaches of the *Building Act 1993* and the *Domestic Building Contracts Act 1995*

7. **In other jurisdictions, such as NSW and the ACT, anti-corruption agencies are required to publish guidelines for holding public examinations, including guidelines of what should be considered when deciding whether to hold a public examination, and guidelines for procedural fairness processed. In your view, would it improve public trust if IBAC were required to publish guidelines regarding public examinations?**

IOV considers the guidelines published in other jurisdictions such as NSW and the ACT help with transparency and procedural fairness.

IOV supports a requirement that IBAC publish guidelines for holding public examinations, whilst noting IOV is currently reviewing draft guidelines prepared by IBAC for witnesses at public examinations.

The guidelines to be published under section 31B of the *Independent Commission against Corruption Act 1988* (NSW) are a helpful model, providing important transparency to witnesses about what to expect during an investigation. These are the current guidelines published by the NSW Independent Commission Against Corruption (ICAC) - [Section 31B Guidelines - October 2025.pdf](#).

The guidelines ensure ICAC has a process for approaching important issues in a public investigation, including how ICAC will deal with exculpatory evidence, and how the affected person can seek to place exculpatory evidence before the Commission. A process for witnesses to put exculpatory evidence before ICAC may simplify the procedural fairness process when a draft report is provided to affected persons and reduce the risk of litigation and delay.

The guidelines also explain the circumstances in which a witness will be given access to relevant documents prior to their examination.

8. **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?**

Legislative consistency/harmony with other anti-corruption body legislation/boards of inquiry/royal commissions is desirable. IOV also considers achieving efficient conduct of investigations, examinations etc is better for witness welfare, meets public expectations, saves public money and ensures procedural fairness.

As noted by the Accountability Round Table's submission, placing the onus on the claimant for an application to the Supreme Court could reduce any risk of unmeritorious claims delaying the investigation process.

The process for a Board of Inquiry under section 65 of the *Inquiries Act 2014* (Vic) could be considered.

9. In evidence to the Committee you have stated that you support IBAC's recommendation that it be able to hold public inquiries for educative and preventative functions. In your view, if this were permitted should IBAC be able to use its coercive powers in the conduct of such public inquiries?

Providing IBAC with coercive powers in conducting public inquiries where an issue is in the public interest could reflect the powers given to the Australian Competition and Consumer Commission (ACCC). For example, Division 3 of the *Competition and Consumer Act 2010* (Cth) enables the ACCC to hold public inquiries, take evidence from witnesses under oath or affirmation and call for public submissions and publish a public report. Witnesses who are summonsed are protected and have the same liabilities as witnesses in proceedings in the High Court. These inquiries are at the direction of the Treasurer but the powers and procedure to be followed are pertinent here. The ACCC has many of the same coercive powers as anti-corruption commissions.

If IBAC was given the power to conduct public inquiries IOV would need to have commensurate oversight powers and resourcing to provide assurance.

If education and prevention inquiries were permitted, with associated coercive powers, IOV recommends ensuring there are mitigating provisions to prevent the public perception that those giving evidence have engaged in corrupt conduct. For example, to ensure reputations aren't damaged, IBAC could be required to make public statements about the educative nature of the inquiry. Procedural fairness should also apply to any report arising from the inquiry.

10. IBAC has submitted to the Committee that the definition of a 'restricted matter' in the IBAC Act 2011 (Vic) should be expanded to include the subject matter of a preliminary inquiry, and the subject matter under investigation regardless of whether a witness summons has been issued. In your view, would there be any disadvantages of the proposed change?

IOV does not consider there are any disadvantages in including the subject matter of a preliminary inquiry in the definition of a 'restricted matter'.

11. **The Police Oversight Working Group has submitted that the exemption from Freedom of Information requirements under section 194 of the IBAC Act 2011 (Vic) should be repealed to ensure transparency for complainants.⁹ In most jurisdictions across Australia, anti-corruption agencies do not have the same exemption. Queensland's Crime and Corruption Commission has an exemption under the Right to Information Act 2009 (Qld); however, the exemption does not apply to applicants requesting information about their own complaint.¹⁰ In your view, could section 194 of the Act be repealed, or could other changes be created to provide transparency for complainants?**

IOV recommends clarifying that section 194 applies to documents held by IBAC and does not apply to documents of the body to whom the investigation is referred.

Greater transparency and accountability for complainants can be created through other provisions as suggested in IOV's submission. Examples include:

- clarifying section 163 of the IBAC Act to provide complainants with outcomes of reviews of referred investigations
- requiring findings in reports against clear standards.

12. **What should be the minimum standard of procedural fairness (content of notice, disclosure of adverse material, opportunity to respond), and at what point in the process should it always occur (draft stage, end-of-evidence, or both)? Please explain how late-arising adverse material will be handled without re-running the entire process or diluting fairness.**

Guidance for procedural fairness is currently found in section 162 of the IBAC Act and in the High Court's decision in *AB (a pseudonym) v Independent Broad-based Anti-corruption Commission* [2024] HCA 10.

Providing procedural fairness is complex and no matter what procedural fairness process is undertaken at the end of evidence gathering, fairness will be diluted if further evidence comes to light during that procedural fairness process and the affected persons are not given a further opportunity to respond.

As noted in IOV's response to Question on Notice 7, the guidelines published in other jurisdictions such as NSW help with transparency and procedural fairness and may simplify the procedural fairness process when a draft report is provided to affected persons, reducing the risk of litigation and delay.

Another example of a procedural fairness process is contained in section 69B of the *Crime and Corruption Act 2001 (Qld)* which provides that a person must be provided any related evidence, or a summary of the substance or significant part of any related evidence, that is not contained in the draft report or the extract of the draft report. Subsection 69B(8) clarifies that the commission is not required to give a person a copy of evidence and other information or material in its possession if the commission considers the confidentiality of the evidence, information or material should be strictly maintained.

13. What is your opinion about default time limits for each procedural-fairness stage (with narrow exceptions)?

IOV considers statutory timeframes are procedurally fair for everyone if the settings are reasonable. Timeframes give certainty and remove doubt about what is to be done and by when.

By way of example, section 69B of the *Crime and Corruption Act 2001* (Qld) provides a timeframe to respond of 30 days after a person is given written notice inviting them to make a submission to the commission on the draft report or an extract. Section 69B also contains an extension of time procedure – within 14 days after receiving the notice, the person may apply to the commission for an extension of time of no more than 60 days unless there are exceptional circumstances. If the commission proposes to include further adverse comment, the process must be repeated.

14. What metrics and documents should IBAC provide regularly to IOV (and what, if anything, should be publicly reported) to demonstrate procedural-fairness compliance without compromising investigations or individual rights? Please include how systemic delay or non-compliance would be identified and escalated.

IBAC is not required to notify IOV about its procedural fairness process during the drafting of a private or a public report. However, IOV can receive complaints about procedural fairness and monitor IBAC's compliance with the IBAC Act and other laws. IOV can engage with IBAC as required on any areas of risk it identifies.

The procedural fairness obligations IBAC must comply with are contained in section 162 of the IBAC Act for a public report. IBAC must also comply with common law procedural fairness obligations for public reports and private reports. IOV has access to IBAC's policies and procedures and can monitor those to ensure IBAC has appropriate settings to ensure compliance with these statutory and common law requirements.

These current settings appropriately enable us to oversee IBAC's natural justice processes. Legislating provision of metrics could add a regulatory burden at an already complex stage of an investigation.

15. The Victorian Aboriginal Legal Service has suggested an Aboriginal Engagement Unit. How would an Aboriginal Engagement Unit assist IBAC with its engagement with Victoria's First Nations community?

The Victorian Aboriginal Legal Service recommends an Aboriginal Engagement Unit in IBAC to support the identification and investigation of corrupt conduct against Aboriginal people.

IOV supports an approach that will:

- assist in developing culturally sensitive, safe and trauma informed practices
- have First Nations persons at various levels of the organisation, including key decision-making positions
- raise awareness of IBAC's complaints process with First Nations community including via outreach.