

The adequacy of the legislative framework for the Independent Broad- based Anti-corruption Commission

Submission to the Integrity and Oversight Committee,
Parliament of Victoria

15 July 2025

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

Endorsement

Liberty Victoria has endorsed the following submission from the Australian Lawyers Alliance to Victoria Parliament's Integrity and Oversight Committee.

**LIBERTY
VICTORIA**

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Integrity and Oversight Committee ('Committee') on the adequacy of the legislative framework for the Independent Broad-based Anti-corruption Commission (IBAC).
2. We acknowledge the important role of IBAC within Victoria's integrity system, and our members want to see public sector misconduct and corrupt conduct – especially within Victoria Police – comprehensively investigated.
3. ALA members have identified multiple issues with the legislative framework underpinning IBAC, a framework which includes the *Independent Broad-based Anti-corruption Commission Act 2011* ('IBAC Act').
4. Our submission will address:
 - a. IBAC's jurisdiction and activities;
 - b. legislative definitions in the IBAC Act;
 - c. matters regarding transparency, namely public examinations criteria and Freedom of Information exemptions; and
 - d. the ALA's recommendations for reform.

IBAC's jurisdiction and activities

5. The ALA notes that IBAC's jurisdiction is broad and IBAC's activities are wide-ranging. Its resources are spread across an expansive remit – IBAC aims to strengthen integrity within Victoria by:²
 - assessing complaints and notifications about public sector bodies including Victoria Police
 - identifying, investigating and exposing public sector corruption and police misconduct
 - educating the public sector, police and community about the harm caused by corruption and police misconduct
 - assisting in improving public sector and police capability to prevent corruption and police misconduct.

² Independent Broad-based Anti-corruption Commission, *Annual Report 2023/24* (October 2024) 2.

6. The ALA notes the following description that IBAC has provided of its jurisdiction:³

IBAC's jurisdiction covers the entire Victorian public sector, including state and local government departments and agencies, Victoria Police, schools, hospitals, Victorian Parliament and the judiciary.

...

We are also responsible for the application of the PID Act and operate in accordance with legislation on a range of matters, including the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

7. The ALA contends that IBAC's ability to investigate police misconduct, including police corruption, is being undermined by the breadth of IBAC's jurisdiction and the volume of activities IBAC is tasked with undertaking.
8. We note that 62 per cent of complaints made to IBAC in 2023/24 related to Victoria Police.⁴ However, IBAC simply cannot (and does not) investigate that large amount of police misconduct complaints – instead referring the vast majority of complaints to Victoria Police.⁵
9. IBAC has even acknowledged that it often refers matters to Victoria Police due to resource constraints,⁶ despite also acknowledging deficiencies in Victoria Police's complaints-handling systems.⁷ The Parliament of Victoria's Independent Broad-based Anti-corruption Commission Committee has found that Victoria Police has not readily published data about its own complaints-handling processes,⁸ and that the complaints data that was published "lacked reliability".⁹
10. This is of great concern to ALA members and illustrates that it is contrary to the public interest to be relying on Victoria Police to investigate police misconduct or corruption complaints.
11. Further, we submit that is not appropriate in most instances – and in many instances is a clear conflict of interest – for police personnel to be investigating other police personnel. To facilitate meaningful complaint outcomes (which are free from bias) and to ensure public

³ Independent Broad-based Anti-corruption Commission, *Annual Report 2023/24* (October 2024) 2.

⁴ Ibid 10.

⁵ Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (Final Report, September 2018) 211.

⁶ Ibid 216.

⁷ Ibid.

⁸ Ibid 117.

⁹ Ibid 118.

confidence in Victoria's integrity processes, the ALA submits that an independent body should investigate complaints made about Victoria Police.

12. Such a broad remit for IBAC also promotes delays in investigations. The delays are twofold:
 - a. The majority (52 per cent) of complaints and notifications about police misconduct are not assessed within IBAC's target of 45 days,¹⁰ so there are delays before IBAC's investigations can even commence; and
 - b. IBAC's investigations into police misconduct take up to 270 days to complete.¹¹
13. ALA members report with concern that these delays negatively impact complainants. We refer the Committee to best practice guides about the importance of addressing complaints promptly,¹² and emphasise in particular that delays can be deeply traumatising for complainants, prejudice a complainant's ability to initiate civil proceedings, and that matters generally become harder to manage the longer they remain unresolved.
14. The ALA contends that IBAC is not currently equipped to properly investigate police misconduct (including police corruption) due to IBAC's broad jurisdiction, the breadth of its activities, and resource constraints.

Legislative definitions

15. The ALA seeks to raise two key issues regarding legislative definitions in the IBAC Act:
 - a. that there is no distinct definition of "police corrupt conduct"; and
 - b. that the definitions of "police personnel conduct", "police personnel conduct complaint" and "police personnel misconduct" in section 5 of the IBAC Act have been found to be "unnecessarily complex and confusing".¹³

¹⁰ Independent Broad-based Anti-corruption Commission, *Annual Report 2023/24* (October 2024) 15.

¹¹ Ibid 15.

¹² See, eg, Victorian Ombudsman, *Good practice guide: Complaint handling for Victorian public sector organisations* (Web Page, 7 Apr 2025) 2.9 <www.ombudsman.vic.gov.au/learn-from-us/practice-guides/guide-complaint-handling-public-sector>.

¹³ Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (Final Report, September 2018) 184.

16. These issues further undermine the ability of IBAC to progress investigations into police misconduct and corruption.
17. The ALA strongly agrees with the Parliament of Victoria's Independent Broad-based Anti-corruption Commission Committee which found that "the kinds of police wrongdoing that can be complained about, and to whom, should be clearly defined".¹⁴
18. In particular, the definition of "police personnel misconduct" in section 5 of the IBAC Act relies on an assessment of whether conduct "constitutes an offence punishable by imprisonment", "is likely to bring Victoria Police into disrepute or diminish public confidence in it", or "disgraceful or improper conduct (whether in the public officer's official capacity or otherwise)".
19. The ALA is concerned that concepts of "disrepute", "diminished public confidence" or "disgraceful or improper conduct" are not sufficiently defined in the legislation and also may constitute a threshold for IBAC investigation that is too high. We submit that more explicit reference should be made in the IBAC Act's definition to precise examples of police personnel misconduct to ensure that 'lower level' but ubiquitous police misconduct is also captured.
20. For example, it is not clear that the following examples of police conduct (the subject of IBAC thematic reviews and/or investigations) would meet the definition of 'police personnel misconduct' in respect of which an individual complaint could be made to IBAC:
 - a. Serious incidents involving the use of police dogs;¹⁵
 - b. The use of Oleoresin Capsicum spray by Victoria Police;¹⁶ and/or
 - c. Excessive use of force.¹⁷

¹⁴ Ibid.

¹⁵ Independent Broad-based Anti-corruption Commission, State of Victoria, 'Serious incidents involving the use of police dogs', *Reviews* (Web Page, 22 June 2023) <www.ibac.vic.gov.au/serious-incidents-involving-use-of-police-dogs>.

¹⁶ Independent Broad-based Anti-corruption Commission, State of Victoria, 'Investigations into the use of OC spray by Victoria Police', *Reviews* (Web Page, 23 April 2024) <www.ibac.vic.gov.au/OC-spray-use-by-Victoria-Police>.

¹⁷ Independent Broad-based Anti-corruption Commission, State of Victoria, 'Allegations of excessive use of force by police', *Reviews* (Web Page, 30 November 2016) <www.ibac.vic.gov.au/publications-and-resources/article/allegations-of-excessive-use-of-force-by-police>.

International examples

21. The ALA refers the Committee to the following international examples which we submit offer clear and specific legislative definitions relevant to police personnel misconduct:

a. Canada's *Police Act* [RSBC 1996] Chapter 367:

Defining misconduct

77 (1) In this Part, "misconduct" means

(a) conduct that constitutes a public trust offence described in subsection (2), or

(b) conduct that constitutes

- (i) an offence under section 86 [offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint] or 106 [offence to hinder, delay, obstruct or interfere with investigating officer], or
- (ii) a disciplinary breach of public trust described in subsection (3) of this section.

(2) A public trust offence is an offence under an enactment of Canada, or of any province or territory in Canada, a conviction in respect of which does or would likely

(a) render a member unfit to perform the member's duties, or

(b) discredit the reputation of the municipal police department with which the member is employed.

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

(i) intentionally or recklessly making an arrest without good and sufficient cause,

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or

(B) detaining or searching any person without good and sufficient cause, or

(iii) when on duty, or off duty but in uniform, using profane, abusive, discriminatory or insulting language, jokes or gestures to any person including, without limitation, language, jokes or gestures that would likely be seen to demean or show disrespect to the person on the basis of that person's

(A) race, colour, ancestry, place of origin or Indigenous identity,

(B) political belief or religion,

(C) marital or family status,

(D) physical or mental disability,

(E) age,

(F) sex, sexual orientation or gender identity or expression, or

(G) economic or social status;

(b) "accessory to misconduct", which is knowingly being an accessory to any conduct set out in this subsection, including, without limitation, aiding, abetting, counselling or being an accessory after the fact; ...

i. The ALA submits that this definition from Canada’s legislation explicitly and helpfully references:

- force being overused or misused;
- unlawful arrests;
- offensive or discriminatory language used by police personnel; and
- actions by police that are performed “recklessly”, not only “intentionally”.

b. The Police Ombudsman of Northern Ireland:¹⁸

The Police Ombudsman’s Office provides a free, independent and impartial service for dealing with complaints about the conduct of police officers in Northern Ireland.

These include complaints that:

- officers failed to conduct proper enquiries
- officers used excessive force
- officers were rude or aggressive
- or acted inappropriately in other ways.

i. The ALA supports all of the above criterion, especially with regards to police officers failing to make proper enquiries which could address issues of police misidentifying alleged offenders.

Transparency

22. This section of the ALA’s submission will address two matters that speak to transparency issues at IBAC:

- a. public examinations criteria; and
- b. Freedom of Information exemptions.

¹⁸ Police Ombudsman for Northern Ireland, *Learn about the Police Ombudsman of Northern Ireland* (Web Page) <www.policeombudsman.org/what-we-do/about-us>.

Public examinations

23. The ALA notes that, as part of this inquiry, this Committee will examine “whether the criteria in the Act for IBAC to hold public hearings should be amended”.¹⁹
24. Public examinations, as they are known under the IBAC Act, can be held by IBAC; however, the presumption under section 117 of the IBAC Act is that examinations will be held in private.
25. The ALA submits that public examinations are important for transparency, public accountability and open justice. We consider that the ability to hold public examinations is crucial for any anti-corruption commission, including for IBAC, to be effective and to be seen to be effective.
26. Public examinations can operate as a powerful deterrent, encourage public debate, as well as increase public knowledge of the operation of anti-corruption legislation and investigative processes. Public examinations can also encourage additional witnesses to come forward, sometimes bringing forth evidence that would otherwise not be known, and enhance overall transparency in anti-corruption investigations.
27. Former Victorian IBAC Commissioner Stephen O’Byrne KC has endorsed the importance of public examinations at IBAC:²⁰

Public examinations are vital to IBAC in fulfilling its primary function of exposing public sector corruption and police misconduct. I consider them an invaluable tool for informing the public sector and the community about the detrimental impacts of corruption and police misconduct, and highlighting ways in which it can be prevented. Public examinations also help deter further wrongdoing, not only for potentially corrupt individuals, but also for public sector agencies which are prompted to examine their own processes and activities.

28. The ALA does acknowledge that a risk of public examinations is reputational damage for witnesses called to give evidence. The ALA notes there are already sufficient safeguards to reputational damage in the IBAC Act.²¹

¹⁹ Integrity and Oversight Committee, Parliament of Victoria, *Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission* (Web Page, 2025) <www.parliament.vic.gov.au/inquiryibac>.

²⁰ Independent Broad-based Anti-corruption Commission, *Annual Report 2014/15* (August 2015) 4.

²¹ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 117(1)(c) and (3b)(b).

29. IBAC's preference for private examinations is clear. For example, IBAC conducted held no public examinations in 2023/24 for investigations into Victoria Police and also no public examinations for investigations into the broader public sector.²² This indicates to the ALA that "the public interest" is not being properly considered in many or at least some matters for which IBAC holds examinations – despite section 117 requiring IBAC to consider "the public interest" – given the clear and obvious public interest in corruption inquiries and transparency in the processes involved therein.
30. Police in particular exercise wide-ranging public powers and their use or misuse should be examined in public.
31. Trust in police is reportedly in decline,²³ and the failure to publicly examine Victoria Police personnel involved in police misconduct only contributes to that decreasing public confidence in police.
32. The ALA is concerned that, even though the IBAC Act envisages circumstances where public examinations are appropriate, IBAC is not holding public examinations. This, in the ALA's view, raises transparency and public accountability concerns – especially when private examinations are proceeding in all instances for investigations into Victoria Police, an agency which interacts closely with the general public every day and whose personnel can wield certain powers over the general public (including the use of force).

Freedom of Information

33. The ALA remains concerned that there is still no legislative clarity on whether section 194(1)(b) of the IBAC Act means that the exemption from the *Freedom of Information Act 1982* (Vic) ('FOI Act') applies when a matter concerning police conduct has come to IBAC but has been referred (under section 73 of the IBAC Act) to Victoria Police to investigate.

²² Independent Broad-based Anti-corruption Commission, *Annual Report 2023/24* (October 2024) 40, 43.

²³ Olivia Jenkins, 'Trust in Victoria Police dwindles amid machete mayhem, deadly tobacco wars', *Herald Sun* (online, 21 May 2025) <www.heraldsun.com.au/news/victoria/trust-in-victoria-police-dwindles-amid-machete-mayhem-deadly-tobacco-wars/news-story/f33f14af63704c86182007e809f818cc>; Nell Geraets, 'Public satisfaction with Victoria Police slumps to five-year low', *The Age* (online, 1 February 2023) <www.theage.com.au/national/victoria/public-satisfaction-with-victoria-police-slumps-to-five-year-low-20230201-p5ch1a.html>.

34. In the final report for this Committee’s 2023-2024 inquiry into the operation of the *Freedom of Information Act 1982 (Vic)*, the following was noted:²⁴

This is in a context in which the overwhelming majority of such matters coming to IBAC are referred back to Victoria Police for investigation—in 2018, for example, the parliamentary IBAC Committee found that IBAC only investigates around 2% of complaints about police.

If the current FOI Act does not apply to Victoria Police investigations of complaints about police, on referral from IBAC, then a large field of its activity would not be subject to FOI, even though Victoria Police *is* subject to the Act, and complainants, for example, would not be able to make an FOI application for a document.

35. This Committee heard evidence during that inquiry that Victoria Police does rely on the exemption in section 194(1)(b) of the IBAC Act.²⁵

36. The ALA strongly supports amending section 194 of the IBAC Act to provide clarification on Freedom of Information, in the interests of ensuring transparency for complainants and accountability of Victoria Police to the general public.

Recommendations

37. **The ALA recommends that a robust, independent and well-resourced oversight body be established to investigate police misconduct, including police corruption, which:**

- a. **would address the issues we have raised in our submission about Victoria Police and IBAC investigating matters pertaining to police misconduct, especially police corruption;**
- b. **could address the conflict between IBAC needing confidentiality and secrecy for investigating corruption matters generally, and the public interest in having a police oversight system which is transparent and accountable to the public;**

²⁴ Integrity and Oversight Committee, Parliament of Victoria, *Inquiry into the operation of the Freedom of Information Act 1982 (Vic)* (Final Report, September 2024) 93.

²⁵ *Ibid.*

- c. would be able to shed light on and assess more closely some of the broader issues within Victoria Police, including any systemic and cultural issues affecting Victoria Police;
- d. could improve public confidence in Victoria Police and Victoria's integrity system more generally, especially if more complaints about and investigations into police corruption are progressed and then tangible changes are made to how Victoria Police personnel engage with the public as a result; and
- e. would allow IBAC to focus on its significant functions of preventing corruption, assessing complaints about corruption and investigating corruption in the rest of Victoria's public sector.

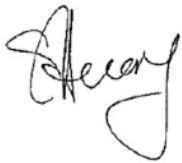
38. If the current model of IBAC is preserved, however, the ALA recommends that:

- a. there should be more specific resources and structure dedicated to investigating police corrupt conduct, including to address the delays in IBAC's assessment of complaints and notifications and the delays in IBAC's investigative processes;
- b. a specific definition of "police corrupt conduct" should be added to the IBAC Act;
- c. the definitions of "police personnel conduct", "police personnel conduct complaint" and "police personnel misconduct" in section 5 of the IBAC Act must be redrafted to provide greater clarity;
- d. the legislative criteria regarding public examinations must be amended to compel IBAC to have much more regard to the public interest considerations in section 117 of the IBAC Act and to hold more public examinations during its investigations, especially investigations into police corrupt conduct; and
- e. section 194 of the IBAC Act be amended to clarify that an investigation conducted by Victoria Police into a matter which was referred to Victoria Police by IBAC is not considered an investigation conducted under the IBAC Act, and so any documents collected by Victoria Police during such an investigation are not exempt from the operation of the *Freedom of Information Act 1982 (Vic)*.

Conclusion

39. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Integrity and Oversight Committee on the adequacy of the legislative framework for the Independent Broad-based Anti-corruption Commission.

40. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.

A handwritten signature in black ink, appearing to read 'Susan Accary', written in a cursive style.

Susan Accary

President, Victoria Branch Committee

Australian Lawyers Alliance