INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED PROCEEDINGS

Melbourne — 23 November 2015

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Witnesses

Ms Katie Miller, President,

Ms Fiona Spencer, Barrister, Victorian Bar, Greens List, and

Ms Kate Browne, Lawyer, Administrative Law and Human Rights Section, Law Institute of Victoria.

The CHAIR — We will open the second part of our closed hearings. Welcome to the closed hearings of the Independent Broad-based Anti-corruption Commission Committee. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, provisions of reciprocal legislation in other Australian states and territories. However, it is important that you note that any comments you make outside the hearing, including effective repetition of what you have said in evidence, may not be afforded such privilege. Have you received and read the *Guide for Witnesses Presenting Evidence to Parliamentary Committees*?

Ms MILLER — I have not, but I am familiar with the restrictions applying.

The CHAIR — It is also important to note that any action which seeks to impede, hinder or threaten a witness for evidence that they would give or have given may constitute and be punishable as contempt of Parliament. We are recording the evidence and we will provide you with a proof version of the Hansard transcript at the earliest opportunity so you can correct it as appropriate. I would now like to invite you to make a verbal submission and then after you have done that we will ask some questions.

Ms MILLER — Excellent. Thank you. My name is Katie Miller. I am the president of the Law Institute of Victoria. I thank the committee for inviting the Law Institute of Victoria to attend this hearing today to assist you in your role of reviewing the performance of IBAC and the Victorian Inspectorate.

I will be appearing today with Fiona Spencer, who is a barrister and deputy chair of the LIV's Human Rights Committee. Unfortunately she has had the usual experience of a barrister in that a matter has been listed at 9.30 a.m., so she hopes to be here any minute now. I am also appearing with Kate Browne, who is the LIV's policy lawyer for the administrative law and human rights section.

As was noted in my biography, I am the president of the LIV this year. However, while undertaking this role I am on leave from the Victorian Government Solicitor's Office, and anything I say here today is said on behalf of the LIV and is not in any way associated or attributable to the VGSO or the government more broadly.

The CHAIR — We got that, have we not?

Ms MILLER — Furthermore, my comments today will be focused on the legislative framework of IBAC and suggestions for its improvement. We are not in a position to comment on the operations or performance of IBAC. To the extent that any of our members have assisted clients in respect of IBAC matters, such matters would of course be confidential because of both legal professional privilege and the confidentiality provisions in the IBAC act.

The Law Institute of Victoria has advocated for a strong integrity system in Victoria over a number of years, including for its initial establishment and its ongoing improvement and reform. Many stakeholders have noted that IBAC's ability to investigate corrupt conduct is currently limited by the high thresholds imposed by the IBAC act. It is the LIV's opinion that reducing these threshold barriers should be a priority in any legislation seeking to amend the IBAC act.

IBAC itself has noted in its special report following IBAC's first year of being fully operational that there have been corrupt conduct allegations where IBAC has not felt able to commence investigations because of those threshold restrictions and that not all of those allegations were suitable for referral elsewhere. This has possibly undermined IBAC's ability to perform and achieve its principal objects and functions. Essentially what it means is that there are matters that are falling between the cracks of the integrity infrastructure of this state.

The LIV is concerned that the IBAC act as it is currently drafted does not provide IBAC with sufficient flexibility to undertake investigations into corrupt conduct before answering difficult threshold questions relating to whether the corrupt conduct is serious and whether IBAC is reasonably satisfied that, if the facts were proven, the corrupt conduct would be a relevant offence.

The threshold definitions of 'corrupt conduct' and 'relevant offence' are also, in our opinion, unreasonably narrow and impose issues for IBAC when making a threshold decision as to whether it can investigate a particular complaint of corrupt conduct. As such, the LIV supports IBAC's call for a broader jurisdiction, which will allow it to fulfil its purpose of targeting corruption in the public sector.

The first suggested amendment is that the definition of relevant offence be broadened. Currently under the IBAC act, IBAC can only investigate corrupt conduct that would, if the facts were proven at trial, constitute a relevant offence. 'Relevant offence' is defined as an indictable offence against an act or one of three common law offences — namely, bribery of a public official, attempting to pervert, or actually perverting the course of justice.

In our view it is important that IBAC has the ability to investigate a wide range of offences where they are linked to corrupt conduct by public officials. One common law offence that we say should be included as a minimum is the offence of misconduct in public office. This offence, where it is serious in nature, is clearly relevant to investigating corrupt conduct of public officials.

Furthermore, the LIV feels that IBAC's jurisdiction should in fact be expanded to include all indictable common law offences. IBAC's jurisdiction currently includes all statutory offences. In our view, to carve out some common-law offences means that prior to commencing an investigation IBAC has to delineate what type of offence it is and what is its source. The rationale for excluding common-law offences is, in our view, unclear, especially where those offences are clearly relevant to the sort of conduct the integrity framework seeks to address. Some examples of indictable common-law offences that we say should be included but currently cannot be investigated by IBAC include conspiracy to cheat and defraud, false imprisonment and common assault.

I note that the New South Wales ICAC has a much broader jurisdiction and can investigate corrupt conduct that would constitute either criminal offences or disciplinary offences. At this stage the LIV is not suggesting that disciplinary events should be included in IBAC's jurisdiction, but we do think that IBAC should have the full suite of criminal offences as part of its jurisdiction.

Secondly, the LIV recommends removing the requirement for IBAC to determine that corrupt conduct is serious before undertaking an investigation. Under the current act IBAC can only undertake an investigation where it is reasonably satisfied that the corrupt conduct is serious. Whether corrupt conduct is serious may only reveal itself during an investigation. The facts contained in a complaint may or may not be serious depending on their context and intention, which may only be discoverable upon investigation. Requiring IBAC to be satisfied that corrupt conduct is serious before it begins investigating means that IBAC must make an assessment of whether to investigate or not based on limited information.

When considering IBAC's power to conduct an investigation, in our view it is important to remember the meaning and purpose of an investigation. An investigation by its nature investigates and explores that which may not be known. In a true investigation the outcome will not be known at the outset. The purpose of an investigation is to find that outcome, which may be that upon closer examination the facts do not constitute serious corrupt conduct at all.

Limiting IBAC's powers to conduct an investigation until it has a fairly good sense of what the outcome will be undermines the true nature of the investigation. As such, the LIV suggests that the word 'serious' should be removed from section 60(2) of the act. This sort of recommendation is supported by the New South Wales independent panel report into ICAC, which determined that ICAC's investigatory powers should not be restricted only to circumstances where objectively there has been serious or systemic conduct. However, it did recommend that ICAC's powers to make findings of corrupt conduct should be limited to serious or systemic conduct.

Our third recommendation is to broaden IBAC's jurisdiction to expand the definition of corrupt conduct to include specified criminal acts of any person that could impair public confidence in public administration. Again, this is in line with the New South Wales independent panel's recommendations. Currently IBAC

can only investigate conduct of any person that adversely affects the honest performance by a public officer of his or her functions. This prevents IBAC from investigating corrupt conduct that may not involve any wrongdoing on the part of the public official but may still lead to serious outcomes for the administration of justice. The New South Wales independent panel's recommendations include a list of possible criminal acts, including fraud, dishonestly benefiting from the payment or application of public funds for private advantage.

Finally, we also recommend that a further hurdle in the jurisdictional threshold be addressed by any new legislation. Currently IBAC can only investigate corrupt conduct where it is satisfied that the conduct would, if the facts were proven beyond reasonable doubt at a trial, constitute a relevant offence, and this essentially requires IBAC to be aware of specific facts that constitute the elements of a relevant offence before it even begins an investigation. However, as IBAC has noted in its special report, corrupt conduct can be very difficult to uncover, and often requires long-term, in-depth investigation. The elements of an offence may not be apparent at the beginning of an investigation, and I refer again to my earlier comments about the very nature of an investigation.

It has also been pointed out by many, including some of our members, that if there are sufficient facts to satisfy IBAC that the conduct would, if the facts were proved beyond reasonable doubt at trial, constitute a relevant offence, then it may be more appropriate to refer the matter to police for investigation and prosecution, in which case the question must be asked: what is the role and purpose of IBAC? This threshold should be lowered so that IBAC only needs to form a suspicion on reasonable grounds that the conduct, if proven, would or may constitute corrupt conduct. This would make it easier for IBAC to at least begin investigations and gather the facts it needs in order to prove corrupt conduct.

I turn now to what might be described as our alternate position or submission. In our 2014 submission on the 2014 IBAC bill we welcomed the proposed amendments that introduced a new preliminary investigatory power for IBAC. The IBAC act currently does not expressly permit preliminary investigations. However, IBAC has noted that preliminary inquiries or investigations are often necessary for it to decide whether to investigate, refer or dismiss the complaint, and I again refer to IBAC's special report.

The LIV's current position is that preliminary investigatory powers may not be necessary if the jurisdictional thresholds for IBAC to undertake an investigation are lowered, as I have already set out in my early remarks. Ideally, those amendments would provide IBAC with the flexibility to begin an investigation where it thinks it is merited, and then at a later stage make a decision as to whether to continue investigating or whether to refer or dismiss the investigation elsewhere. However, if the jurisdictional threshold is not sufficiently lowered, then a preliminary investigatory power would be a useful addition to IBAC's powers.

The LIV's submission is that those preliminary investigatory powers should include appropriate coercive powers. An example of what might be an appropriate coercive power in a preliminary investigation may be the power to summon documents and in particular government documents. However, at an earlier stage the power to compel witnesses to give evidence would be unlikely to be appropriate. The reason that I make those distinctions is that it comes down to the extent to which personal liberties of individuals are being infringed. There is much less infringement with government documents than there is with having a witness come and potentially give evidence against themselves.

We also suggest that the act, or indeed the operations of IBAC, could be improved in relation to the way that complaints involving police misconduct are handled. It is the LIV's position that police misconduct needs to be investigated independently of Victoria Police. While IBAC has the ability to investigate complaints of police misconduct, it currently refers police complaints overwhelmingly to Victoria Police. According to a report by one of the deputy commissioners of Victoria Police in late 2014, around 90 per cent of complaints of police misconduct were being investigated by Victoria Police. As part of this review of IBAC, the LIV recommends that thought be given to increasing IBAC's resources so that it can investigate more complaints of police misconduct independently of Victoria Police. We note that IBAC

currently has around the same number of staff as the old Office of Police Integrity, despite the fact that IBAC has a much broader jurisdiction than the former OPI.

Another legislative amendment that we recommend is quite a specific issue, and it relates to the ability to access documents relating to police misconduct complaints. Effectively it comes about because of section 194 of the IBAC act, which essentially states that the Freedom of Information Act is not available to gain access to a document to the extent that it discloses information that relates to a complaint or investigation under the IBAC act. The broad scope of this provision, effectively, is creating inconsistencies where complaints are made to IBAC but then investigated by Victoria Police.

Our members have reported the scenario where a complaint made to IBAC and then referred to Victoria Police for investigation will be excluded from the FOI act by operation of section 194. That means that Victoria Police, upon receiving that FOI request, would not even have to process it, not even have to go through to stage of looking at, 'Are there any exemptions that are applicable?', because the act just does not apply at all. Yet if that same complaint had been made directly to Victoria Police, then the FOI act would apply. That means that even though a matter can undergo the same investigative process, the effect of section 194 means that the ability of a complainant to access the Victoria Police documents depends on whether the complaint was originally made to IBAC or to Victoria Police.

What that means is that currently our members in both private practice and in community legal centres are essentially saying to complainants that if they want to keep open that option of obtaining the documents of the investigation at a later stage, they are actually better off making the complaint to Victoria Police than to IBAC. Clearly that sort of nuanced advice will not be available to anyone who is seeking the documents on their own and are not represented.

In practice this means that section 194 is quite perversely becoming a barrier or an impediment to complaints regarding Victoria Police being lodged directly with IBAC. As such, the LIV recommends that section 194 of the IBAC act be amended to address this anomaly and ensure that complainants receive the same access to documents under the FOI act regardless of the body with which the complaint is first lodged. Picking up on the point that I made earlier, if section 194 were so amended, part IV of the FOI act would continue to apply to the relevant documents — that is, the documents would still need to be assessed to determine whether they are exempt documents under the FOI act. As such, amending section 194 would not automatically lead to the release of the relevant documents.

Other important amendments that the LIV has identified are notification by public sector heads and protected disclosures about members of Parliament. The LIV welcomed the amendment in the 2014 bill to require all public sector heads, including CEOs or mayors of local councils, to notify IBAC of any matter they suspect on reasonable grounds involves corrupt conduct. At the moment section 57 is permissive only. It states that public sector heads may notify IBAC of any matter that the person believes on reasonable grounds constitutes corrupt conduct. The LIV's position is that similar amendments to those which were contained in the 2014 bill should be introduced in any new bill to ensure that IBAC is aware of any corrupt conduct that may be occurring in the public sector.

Any new legislation should also address the issue that currently protected disclosures about members of Parliament may not be referred to IBAC. Currently under the Protected Disclosure Act 2012 disclosures about members of Parliament are made to either the Speaker of the Legislative Assembly or the President of the Legislative Council. These Presiding Officers can then decide at their discretion whether to refer the disclosures to IBAC to determine whether it is a protected disclosure complaint, and again this is different to the mandatory notification requirements for other organisations. In practice this means that protected disclosure complaints about improper conduct by members of Parliament are only handled by Parliament rather than IBAC, and, again, our submission is that amendments should be introduced to address this anomaly.

Finally, we also encourage the committee to consider the recommendations made by IBAC in its special report, and that report includes a wide range of practical amendments that would make it easier for IBAC

to fulfil its function of investigating corrupt conduct. Once again, thank you to the committee for inviting us to provide this presentation, and we are prepared and ready and willing to answer any questions you may have.

The CHAIR — Thank you very much for that presentation. It was very clear, so we really appreciate that. I guess the premise of what you are putting forward is that we need to lower the threshold so that there are more investigations. How do we not then allow IBAC to get bogged down into dealing with a much lower threshold of corruption and dealing with vexatious or malicious-grudge sorts of reports? What is the mechanism that LIV would be suggesting in order to be able to sort that out so IBAC is performing a role that it is there for?

Ms MILLER — Absolutely. The first thing I should say is that the LIV absolutely understands and agrees with the objective of saying that IBAC's attention really should be focused on the most serious sorts of corrupt conduct and that there are a number of other integrity bodies that can deal with the more low-level sorts of matters. In particular the Ombudsman can deal with things that are not as serious as matters that might be investigated by IBAC.

In terms of legislative amendments, the LIV disagrees that the way of achieving that objective is to have to have a hard line — effectively to put the 'serious' requirement into the jurisdiction — because what that does is that it creates a very hard line that IBAC cannot move beyond. Another way of achieving that could be to essentially include in the legislation a guidance or, I suppose, a signal to IBAC saying that IBAC in discharging its functions should focus on the more serious types of matters. That way it is sending that message to IBAC that we do want you to be focusing your attention on serious things, without essentially creating a bind for IBAC if it proceeds on something that it thinks is serious but that is later challenged in court by the subject, who says, 'Actually you never even met the jurisdictional threshold'.

Outside of legislation there are probably two primary means of ensuring that IBAC is focusing its attentions on the serious things. The first is of course that there is always a natural impediment created by resource restrictions. IBAC is never going to have the resources to investigate each and every complaint that is put forward to it. So that creates a natural limit, and combined with the legislative guidance or direction that it should be focusing on more serious matters, those two can combine to ensure that the serious matters are in fact what it investigates. The third way is by ensuring that IBAC and the Ombudsman have a very good working relationship and have, I suppose, good referral networks between the two. That of course also then comes back to ensuring that you have very good people in those two roles who will be able to work together. My personal view at the moment is that those people do exist in those roles.

IBAC also has its existing powers to refer or dismiss complaints that are vexatious or unfounded, so again there is already some existing infrastructure that allows IBAC to focus on serious matters without providing that very hardline jurisdictional limit.

Mr D. O'BRIEN — Thank you for that. I guess the first thing is: have we got what you have read out, basically, just then? Has that come to us, or is that effectively your submission to the bill last year?

Ms MILLER — These are some notes I have, and I would be happy to share them. I will warn you that I do tend to ad lib at times, so those matters will not be in here, but the bulk of it is in here.

Mr D. O'BRIEN — No, that is all right. If it is in effect your submission, then we can always look that up from last year, I am sure.

Ms MILLER — I am happy to share these notes, and also we have been developing an issues paper that captures a lot of these issues as well. Effectively the issues paper brings together all of the submissions we have made in the past.

Mr D. O'BRIEN — My question, though, is on the threshold. Is it as simple as taking the word 'serious' out?

Ms MILLER — In our view, it is.

Mr D. O'BRIEN — So you can pretty much leave the rest and potentially put back in the directions you were talking about — literally take the word 'serious' out and leave it as 'reasonably satisfied' and 'corrupt conduct'?

Ms MILLER — That would address the 'serious' threshold. There are the other thresholds, though, that we mentioned about 'relevant offence' and the level of satisfaction required.

Mr D. O'BRIEN — Yes. That is good.

Ms SYMES — Thank you so much for your evidence. I was interested in what you had to say about the preliminary investigation or lower threshold. Can you go through that again?

Ms MILLER — Absolutely. Essentially at the moment the IBAC act really sets up an all-or-nothing approach to investigations. IBAC either is satisfied of various thresholds — so 'serious' and 'relevant offence' that is a statutory offence and has all the elements of the offence and would be proved at a trial and all that sort of stuff — or it cannot do anything. What we are saying is that things are rarely that simple or that apparent on the face of a complaint and that sometimes you need to actually do a little bit of investigating up-front to see whether this complaint is something that indicates that there is some serious corruption happening or whether it is, as the Chair was pointing out, something that is vexatious or something that when you look at it in all of the context actually turns out to be not a big deal after all. It might just be a disciplinary matter that can be referred to the Ombudsman, so there sometimes need to be this preliminary investigation.

In some ways the label of 'preliminary investigation' is a bit of a furphy because, of course, all investigations are investigations. What that really signals is that a different level of power may be appropriate at different stages in an investigation. At the beginning, when you do not have a lot of information, it may be that you allow some powers to be exercised, but there will not be as many, say, compulsive powers in the early stages compared to when you are getting further down the track. It also means that the threshold for satisfaction might be lower. So it may be that a reasonable suspicion is all that is needed to start an investigation, but then to continue an investigation and engage the compulsive powers you may need to go up to something like a reasonable belief. That sort of stepped approach to an investigation and the powers that are available at different stages of an investigation is a common approach, I think, across a lot of bodies that have inquiry powers in Victoria — not just the integrity bodies but also your disciplinary bodies or your regulatory bodies.

There is a third dimension that needs to be included in this. You have the levels of suspicion, and you have the points at which the compulsive powers are being engaged. The third element needs to be what you can do with the information, and again, the earlier in the investigation the less certain you are that there is actually something here. We would say that that therefore means that you need more restrictions on what the information can be used for later down the track. It may be that early in the investigation you have limited coercive powers, possibly just restricted to government documents, you have a lower threshold of, say, reasonable suspicion and you have a prohibition on using the information for any purpose other than the investigation, at least until — —

There would be issues around that. There would be some refinements. I am not going to go into it now. But it would essentially be saying that you are very restricted in the use of the information early on. As you go through the investigation and you get more information and you become more satisfied that actually, yes, there is something here, it may then be appropriate that you engage higher or more coercive powers so that you can actually start bringing people in and saying, 'All right, we actually need to know the information that only you know, because you are the person that we think was involved in the corrupt conduct'. At that point you may then start to relax the further uses that the information can be put to, because by that stage of the investigation you are probably looking at making findings, maybe referring off

to police for further investigation, charging and prosecution and things like that. Does that provide a snapshot?

Ms SYMES — Yes, it does, but effectively you are saying that you need a coercive power trigger in terms of your preliminary investigations. We did not have that in the previous Ombudsman Act either, did we? They would have coercive powers right from the get-go.

Ms MILLER — I would need to take that one on notice, and I would need to check that, but I do not believe the Ombudsman has preliminary investigative powers.

Ms SYMES — But they have a lower threshold, so it did not matter so much.

Ms MILLER — That is right.

Ms SYMES — I am just curious about this trigger. You think it is common in other jurisdictions, but it is not. Is it common in any other environment in Victoria that you are aware of?

Ms MILLER — What I would say is common is not so much something that is called a preliminary investigation, but this idea that you do not get all of your really powerful compulsive powers right from the word go. You kind of have to earn them. We could certainly go back and find some examples of legislation where the different — —

Ms SYMES — I guess, likewise, going to a court to obtain a warrant. A telephone intercept, for example, you cannot just do that without justifying to a court why you need to do it. That is a similar kind of philosophy.

Ms MILLER — That is right.

Mr D. O'BRIEN — Just following up on that, ideally you want the threshold lowered, but would allowing preliminary investigations and then keeping the serious threshold — would that work, do you think?

Ms MILLER — That is one way of achieving it.

Mr D. O'BRIEN — Sort of a fallback, perhaps.

Ms MILLER — So essentially saying that you can conduct a preliminary investigation with limited powers so that you can form a view about whether the threshold of serious is met. That would be one way of achieving it.

Mr D. O'BRIEN — Is it your preferred way, though, or not? You would prefer that it would be better to remove serious presumably?

Ms MILLER — Our preferred position is to remove the word 'serious', and the reason for that is that it is not defined in the act, so there is really no-one able to say what is 'serious'. That was one of the concerns that was raised before the act commenced and afterwards. The approach taken by this commissioner, and I think it is a very clever approach, is to essentially say that what is serious is effectively determined by the commissioner. It effectively becomes that filtering tool of the commissioner being able to manage the commission's workload to ensure that he is only focusing on the serious things and does not need to be compelled to investigate every sort of frivolous little complaint that comes along.

The problem with that is that it has the appearance of being a limit on jurisdiction but then gives the discretion of determining where that limit sits to the commissioner, so in some ways the commissioner is policing his own jurisdiction. That always is a bit awkward. It also means that the commissioner may think that something is serious, but then the person who is being investigated may have a very different view of that and they take it off to court for that to be resolved.

Often those court proceedings will not be commenced at the beginning of an investigation. It will, of course, be at the end of an investigation when findings have been made and reputations have been affected, and everyone is in court trying to fix up a problem that really had its genesis right at the beginning of the investigation. Effectively it creates the potential for reversing investigations on technical grounds at a later stage without necessarily assisting the commissioner, or anyone who might be subject to the commissioner's powers, to know whether a matter truly is within the jurisdiction or not.

The CHAIR — As part of your presentation you mentioned about investigation into complaints of Victoria Police and you spoke about the resources — maybe more resources for IBAC. Are you saying that all complaints against Victoria Police should be investigated by an external body, or are you saying that there is a level above that should be investigated by Victoria Police? The reason I ask is because we spent last week in Queensland and there were obviously conflicting views about how much or how little should be investigated by an external body of the police force.

Ms MILLER — This is actually probably an excellent time to formally acknowledge Fiona Spencer.

The CHAIR — The committee welcomes Fiona Spencer.

Ms SPENCER — Thank you. The LIV's position is that all complaints against police should be investigated by an independent body. That is LIV's first position. In addition, the LIV's position is that the current situation is highly unsatisfactory for a number of reasons, and that is, as we understand it, from information that has been provided, for example, by the deputy chair of IBAC in a recent forum, the majority of complaints against police, the vast majority, are investigated by police and not by an independent body.

Indeed it is not even that they investigated by the ESD department of Victoria Police; the majority are actually investigated by police officers from the same region as the police officers who have been implicated in the complaint. We do not even have the division within Victoria Police of an ESD department that is looking after the majority of complaints against Victoria Police. In fact the majority of complaints against Victoria Police are being investigated by ordinary police officers seconded from the same region as the police office, sometimes the same office as the police officers who are implicated in the complaint.

LIV says that that is a highly unsatisfactory situation for obvious reasons; that there is a want of independence and appearance of impartiality of independence of the investigation. That is of great concern not only to complainants but to the public in terms of the integrity of those investigations. Even if the position ultimately is not that all complaints go to IBAC, which would be the LIV's preferred position, or an independent body, we say that there are real problems with the current system alone, wherein the inadequacy of resourcing, both at Victoria Police level in terms of the ESD department and also in terms of resourcing IBAC to look into Victoria Police complaints, means that the majority of complaints are being investigated by police officers often in the same region.

The CHAIR — I guess the obvious question is — and we spoke about this filtering issue before with a previous question — how do you, under your suggestion, then deal with the malicious, the vexatious claims? Or are you saying that even those should be put forward to at least the ESD?

Ms SPENCER — I guess it is very difficult to determine on the face of a complaint, at the beginning, whether a claim is wholly malicious, without merit and so on. It will take some time at any level for that to be ascertained. Certainly it is not a matter that we have had discussions of it, I think, at LIV in terms of whether or not there could be a sort of filtering process at Victoria Police level for those types of complaints before a decision was made where they went. That is not currently, as I understand it, something that is in place either at IBAC or at Victoria Police level. The complaint is accepted, and then if it is sent to IBAC, the vast majority is sent back to Victoria Police because of resources. If it is sent directly to Victoria Police, as I mentioned some go to ESD — the more serious of them tend to be — but the vast majority again are investigated by the regions.

Mr HIBBINS — Does the LIV have an opinion either way about whether the police investigation function should sit within IBAC or it should be its own stand-alone body?

Ms SPENCER — I do not think there is any concern about it going to IBAC as an independent body per se. The issue is around the resourcing of IBAC and the fact that IBAC, as we understand it, currently has, I think, only two investigators of its investigators who can potentially take on some police matters, and that capacity is limited. You might be familiar with the Bare case. A serious complaint of police misconduct alleged against police officers was sent to IBAC, and IBAC did not have the resources to even investigate a serious complaint of that nature. That is where the LIV's concern lies.

The CHAIR — We thank you very much. It was a very good and well-thought-out presentation. We really appreciate your time here today, so thank you.

Ms MILLER — Thank you very much.

Committee adjourned.