



PARLIAMENT OF VICTORIA

Independent Broad-based Anti-corruption
Commission Committee

The work of the IBAC Committee of the 58th Parliament: a reflection

Parliament of Victoria
Independent Broad-based Anti-corruption Commission Committee

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Committee functions

The IBAC Committee is constituted under section 12A of the *Parliamentary Committees Act 2003*.

- (1) The functions of the Committee are—
- (a) to monitor and review the performance of the duties and functions of the IBAC;
 - (b) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament;
 - (c) to examine any reports made by the IBAC;
 - (d) to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - (e) to carry out any other function conferred on the IBAC Committee by or under this Act or the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - (f) to monitor and review the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO officers or Ombudsman officers;
 - (g) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate that require the attention of the Parliament, other than those in respect of VAGO officers or Ombudsman officers;
 - (h) to examine any reports made by the Victorian Inspectorate, other than reports in respect of VAGO officers or Ombudsman officers;
 - (i) to consider any proposed appointment of an Inspector and to exercise a power of veto in accordance with the *Victorian Inspectorate Act 2011*.
- (1A) Despite anything to the contrary in subsection (1), the IBAC Committee cannot—
- (a) investigate a matter relating to the particular conduct the subject of—
 - (i) a particular complaint or notification made to the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
 - (ii) a particular disclosure determined by the IBAC under section 26 of the *Protected Disclosure Act 2012*, to be a protected disclosure complaint;
 - (b) review any decision by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011* to investigate, not to investigate or to discontinue the investigation of a particular complaint or notification or a protected disclosure complaint within the meaning of that Act;
 - (c) review any findings, recommendations, determinations or other decisions of the IBAC in relation to—
 - (i) a particular complaint or notification made to the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
 - (ii) a particular disclosure determined by the IBAC under section 26 of the *Protected Disclosure Act 2012*, to be a protected disclosure complaint; or

- (iii) a particular investigation conducted by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - (ca) review any determination by the IBAC under section 26(3) of the *Protected Disclosure Act 2012*;
 - (d) disclose any information relating to the performance of a function or the exercise of a power by the IBAC which may—
 - (i) prejudice any criminal investigation or criminal proceedings; or
 - (ii) prejudice any investigation being conducted by the IBAC; or
 - (iii) contravene any secrecy or confidentiality provision in any relevant Act.
- (2) Despite anything to the contrary in subsection (1), the IBAC Committee cannot—
- (a) investigate a matter relating to particular conduct the subject of any report made by the Victorian Inspectorate;
 - (b) review any decision to investigate, not to investigate, or to discontinue the investigation of a particular complaint made to the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*;
 - (c) review any findings, recommendations, determinations or other decisions of the Victorian Inspectorate in relation to a particular complaint made to, or investigation conducted by, the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*;
 - (d) disclose any information relating to the performance of a function or exercise of a power by the Victorian Inspectorate which may —
 - (i) prejudice any criminal investigation or criminal proceedings; or
 - (ii) prejudice an investigation being conducted by the IBAC; or
 - (iii) contravene any secrecy or confidentiality provision in any relevant Act.

Committee membership



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Rowville



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Deputy Chair
Footscray



Mr Sam Hibbins MP
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This report is available on the Committee's website.

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Chair's foreword

I am pleased to present the seventh, and final, report of the Independent Broad-based Anti-corruption Commission Committee of the 58th Parliament. This report provides an overview of the Committee's work in fulfilling its responsibilities under the *Parliamentary Committees Act 2003* (Vic) in monitoring and reviewing the performance of the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI).

From the outset, the Committee has appreciated the significant role it plays, on behalf of the people of Victoria, in providing robust oversight of IBAC and the VI to ensure they fulfil their legislated functions and use their powers appropriately and proportionately.

The Committee has worked conscientiously to undertake a comprehensive, transparent and, in many ways, ambitious program for the ongoing monitoring and review of the performance of IBAC and the VI. This report details the oversight work of the Committee, which included reviewing IBAC's and the VI's annual and other published reports, addressing performance matters brought to the Committee's attention and developing a framework for the ongoing monitoring of the performance of IBAC.

The Committee self-referenced three Inquiries during the term. These Inquiries resulted in the following reports being tabled: *Strengthening Victoria's key anti-corruption agencies?*; *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012* (Vic); and *Inquiry into the external oversight of police corruption and misconduct*. Each report made important recommendations to improve specific aspects of the anti-corruption system. The Committee has also identified a number of areas that it recommends the committee responsible for the oversight of IBAC and the VI in the 59th Parliament should consider.

The Committee has, further, fulfilled its function, under the *Parliamentary Committees Act 2003* (Vic), to consider any proposed appointment of an IBAC Commissioner or a Victorian Inspector in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') and the *Victorian Inspectorate Act 2011* (Vic) ('*VI Act 2011* (Vic)'). Since the terms of Mr Stephen O'Bryan QC as IBAC Commissioner and Mr Robin Brett QC as Victorian Inspector expired on 31 December 2017, the Committee systematically considered, then supported, the Government's recommended candidates for the positions.

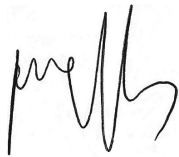
I would like to acknowledge both the former IBAC Commissioner, Mr Stephen O'Bryan QC, and the former Victorian Inspector, Mr Robin Brett QC, for their important work in establishing their organisations as essential parts of Victoria's anti-corruption and integrity system. I would also like to thank the Hon Robert Redlich QC, IBAC Commissioner, and Mr Eamonn Moran PSM QC, Victorian Inspector, for their contributions to the work of the Committee and wish them continued success. The Committee further extends its thanks to IBAC and the VI for their ongoing cooperation and assistance. Both agencies have willingly responded to the Committee's questions and requests for information, attended meetings and hearings and considered the Committee's recommendations.

The Committee also benefited greatly from the views, experience and expertise of a broad range of organisations and individuals through submissions, hearings, briefings and interstate and overseas meetings. As a result, the Committee gained valuable insights into the practical operation of Victoria's anti-corruption and police oversight system. The Committee is most appreciative of the time, effort and valuable contributions that all these individuals and organisations have made.

The Committee is also grateful to the complainants and whistleblowers who had the courage to make submissions or present to the Committee. Their contributions provided important insights into problems in the system.

I would also like to thank my Committee colleagues for their ongoing cooperative and bipartisan approach to all aspects of the Committee's Inquiry and oversight work during this Parliament: Hon Marsha Thomson MP (Deputy Chair), Mr Sam Hibbins MP, Mr Danny O'Brien MP, Mr Simon Ramsay MLC, Mr Tim Richardson MP and Ms Jaclyn Symes MLC. Finally, I would like to thank the Secretariat for their hard work: Ms Sandy Cook, Executive Officer; Dr Stephen James, Research Officer; and Ms Justine Donohue, Committee Administrative Officer.

I commend this report to Parliament.

A handwritten signature in black ink, appearing to read 'Kim Wells', is positioned above the printed name and title.

Hon Kim Wells MP
Chair

Recommendations

RECOMMENDATION 1: That the committee responsible for the oversight of IBAC in the 59th Parliament should undertake a review of follow-the-dollar powers as a matter of priority. This review should consider the experience of similar anti-corruption agencies in Australia.	13
RECOMMENDATION 2: That the committee responsible for the oversight of IBAC in the 59th Parliament use the performance-monitoring framework developed by the IBAC Committee in conducting their performance audit of IBAC in 2020.	13
RECOMMENDATION 3: That the committee responsible for the oversight of IBAC in the 59th Parliament monitor the adoption and implementation of the recommendations contained in the report <i>Inquiry into the external oversight of police corruption and misconduct in Victoria</i> and assess if the concerns raised have been adequately addressed. Further recommendations will be required if the complaints system is still seen to be falling short of best practice principles.	14

The work of the IBAC Committee of the 58th Parliament: a reflection

1.1 Introduction

This final report of the Independent Broad-based Anti-corruption Committee (the Committee) of the 58th Parliament of Victoria offers an overview of the Committee's work during this term. The Committee has worked conscientiously to undertake a comprehensive and transparent program for the ongoing monitoring and review of the performance of the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI).

In carrying out its functions, the Committee has drawn upon the views, experience and expertise of a broad range of people who have contributed to its work via public and confidential submissions, closed, in camera and public hearings, briefings, informal discussions and interstate and overseas meetings. These people have provided valuable knowledge and insights, which have fed into the various activities, Reviews and Inquiries undertaken by the Committee.

The experience and perspectives of integrity agencies, individuals who work within the current integrity framework and those with specialised knowledge of the governing legislation have been crucial. The Committee also appreciates the courage of complainants who made submissions or presented to the Committee. Their contributions provided distinctive insights into problems existing in the system.

The Committee further extends its thanks to IBAC and the VI for their ongoing cooperation and assistance. Both agencies have always responded constructively to the Committee's questions and requests for information, attended meetings and hearings and willingly considered the Committee's recommendations.

Finally, the Committee would also like to acknowledge both the former IBAC Commissioner, Mr Stephen O'Bryan QC, and the former Victorian Inspector, Mr Robin Brett QC, for their important work in establishing their organisations as essential parts of Victoria's anti-corruption and integrity system. In particular, under Commissioner O'Bryan's leadership IBAC has become a mature anti-corruption agency with a reputation for exposing corruption in ways that have led to significant reforms in the Victorian public sector. IBAC has also begun to play a leading role in informing and educating the public about corruption prevention. As the statutory terms of both Commissioner Mr Stephen O'Bryan QC and the Inspector Mr Robin Brett QC expired on 31 December 2017, the Committee would like to congratulate them and wish them well in their future endeavours.

1.2 Background

In Victoria, IBAC was formed in 2012 as the key agency responsible for combating corruption in the public sector. The VI was also established in the same year to provide oversight of Victoria’s main integrity agencies, including IBAC, the Victorian Ombudsman (VO), the Victorian Auditor-General’s Office (VAGO) and some aspects of Victoria Police.¹

For an anti-corruption agency to be effective, significant investigation powers and a high level of independence are needed. In such circumstances, accountability is both essential and a major challenge to the designers of that organisation.²

IBAC and the VI are accountable to Parliament through this Committee, which was established by the *Parliamentary Committees Act 2003* (Vic).³ The Committee is a Joint Investigatory Committee with membership across both Houses. There are currently 7 members—2 Liberal Party members, 1 National Party member, 3 Australian Labor Party members and 1 member of the Greens.

1.2.1 The importance of parliamentary oversight

Effective performance measurement and reporting systems are an essential component of transparent and accountable government.⁴ This is no less true for IBAC and the VI than for any other public institution. Indeed, the case for effective performance measurement and reporting is arguably greater for integrity agencies such as IBAC given their special roles in ensuring public confidence in the public sector and the considerable powers conferred on them by Parliament.⁵

Oversight provided by a committee of elected members of Parliament who can scrutinise anti-corruption agencies’ use of these special powers, such as significant investigative and coercive powers, serves to ensure that a proper balance is struck between the protection of individuals’ rights and the combating of corruption and other misconduct in the public interest. Such parliamentary oversight also creates opportunities for public debate through the holding of public hearings and calls for submissions. This increases the transparency of anti-corruption agencies’ actions and helps to reduce any tensions that may arise between the agencies and the public they serve.⁶ Further, arms-length ‘accountability to a committee, as opposed to a single person, ensures that the “watchdog” does not get too close to the agency.’⁷

1 Details of the establishment and functions of IBAC and the VI are given in Appendix 1 of this report.

2 Bruce Stone, ‘Accountability and the design of an anti-corruption agency in a parliamentary democracy’, *Policy Studies*, vol. 36, no. 2, 2015, p. 158.

3 *Parliamentary Committees Act 2003* (Vic) s 12A.

4 Parliament of Victoria, Public Accounts and Estimates Committee, *Review of the performance measurement and reporting system*, March 2014, p. 1.

5 Parliament of Victoria, IBAC Committee, *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*, November 2017, p. 2.

6 *Parliament and accountability: the role of parliamentary oversight*, apo.org.au/system/files/4411/apo-nid4411-73206.pdf, accessed 3 August 2018.

7 *Ibid.*

Minister Andrew McIntosh, in the Second Reading Speech for the Independent Broad-based Anti-corruption Commission Bill 2011, recognised the importance of this kind of strong parliamentary oversight in order to ensure, as part of a range of measures, ‘that IBAC’s use of its powers is both appropriate and proportionate’.⁸

1.2.2 Functions of the IBAC Committee

Matters may be referred to the Committee by resolution of the Legislative Council or the Legislative Assembly or by Order of the Governor in Council.⁹ The *Parliamentary Committees Act 2003* (Vic) also enables a Joint Investigatory Committee to inquire into and report to Parliament on any annual report or other document relevant to its functions that has been laid before either House of Parliament.¹⁰

Section 12A of the *Parliamentary Committees Act 2003* outlines the functions of the IBAC Committee, which relate to the IBAC and the VI:

- (1) The functions of the IBAC Committee are—
 - (a) to monitor and review the performance of the duties and functions of IBAC;
 - (b) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of IBAC that require the attention of the Parliament;
 - (c) to examine any reports made by IBAC;
 - (d) to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - (e) to carry out any other function conferred on the IBAC Committee by or under this Act or the *Independent Broad-based Anti-corruption Commission Act 2011*;
 - (f) to monitor and review the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO officers or Ombudsman officers;
 - (g) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate that require the attention of the Parliament, other than those in respect of VAGO officers or Ombudsman officers;
 - (h) to examine any reports made by the Victorian Inspectorate (VI), other than reports in respect of VAGO officers or Ombudsman officers;
 - (i) to consider any proposed appointment of an Inspector and to exercise a power of veto in accordance with the *Victorian Inspectorate Act 2011*.

However, the Committee’s exercise of these functions is subject to a number of prohibitions. It cannot, for example investigate a matter that IBAC or the VI has investigated. Further, the Committee is prohibited from reviewing IBAC or VI complaint investigations. In addition, the Committee cannot ‘review any findings,

⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2011, Volume 17, p. 4974 (Hon Andrew McIntosh, Minister Responsible for the Establishment of an Anti-corruption Commission).

⁹ *Parliamentary Committees Act 2003* (Vic) s 33(1).

¹⁰ *Parliamentary Committees Act 2003* (Vic) s 33(3).

recommendations, determinations or other decisions’ of IBAC or the VI. There are also restrictions on the kinds of information the Committee may disclose in carrying out its oversight functions.¹¹

Therefore, section 12A of the *Parliamentary Committees Act 2003* (Vic) authorises the Committee to look at the performance and duties of IBAC and the VI but not to review any decisions made by those agencies. In other words, the Committee is not an avenue of appeal.

The Committee can examine any reports made by either IBAC or the VI. Under section 162 of the *IBAC Act 2011* (Vic), IBAC may table a report in Parliament ‘on any matter relating to the performance of its duties and functions’. The VI has similar powers under section 87 of the *VI Act 2011* (Vic), and both organisations are required to table an annual report.

The Committee also has a role in the appointment of IBAC Commissioners and Victorian Inspectors, and can exercise a power of veto over any proposed appointment.

Finally, the Committee can report to the Parliament on any issue associated with the performance and duties of either organisation that it believes requires the attention of the Parliament. However, the *Parliamentary Committees Act 2003* (Vic) does not prescribe *how* the Committee might ‘monitor and review’ and ‘examine any reports’ of IBAC and the VI. The Committee must therefore determine how to carry out these functions within the bounds of the Act.

1.3 Work of the IBAC Committee in the 58th Parliament

The IBAC Committee was established in 2013 during the 57th Parliament. As IBAC was in its infancy, the Committee took the opportunity to become familiar with the work of Victorian integrity agencies and anti-corruption agencies in other Australian states. It did not table any reports in the Parliament.

During the 58th Parliament, however, the IBAC Committee has been very productive. From the commencement of the parliamentary term, the Committee has embarked on a range of activities to fulfil its Inquiry and ongoing oversight responsibilities. In all, the Committee held 52 deliberative meetings and undertook 3 inquiries, which received a combined total of 85 submissions. The Committee also heard evidence in 42 hearings in Melbourne and made 10 site visits. The Committee tabled 7 reports.

¹¹ *Parliamentary Committees Act 2003* (Vic) s 12A.

Table 1.1 Activities of the IBAC Committee during the 58th Parliament

Activity	2015/16	2016/17	2017/18	2018 to end of Parliament
Deliberative meetings	17	16	17	2
Public and closed hearings in Melbourne	16	5	14	-
Site visits in Melbourne	7	-	3	-
Hearings, site visits and meetings held interstate	16	-	-	-
Meetings and site visits overseas	-	28	9	-
Reports tabled	1	2	2	2

The following discussion outlines the ongoing oversight and Inquiry work undertaken by the Committee. It also provides an overview of the additional work the Committee undertook to keep abreast of current developments in the field within Australia and overseas.

1.3.1 Preparatory work and ongoing research

The Committee commenced its work in the 58th Parliament by furthering its understanding of the duties and functions of IBAC, the VI and other bodies within Victoria's integrity system and how these agencies work in relation to each other. The Committee was briefed by key stakeholders, undertook site visits and observed public examinations conducted by IBAC into Operation Dunham. The Committee travelled to Brisbane and Sydney to see how anti-corruption agencies and equivalent parliamentary oversight bodies operate and to learn from their experience. Whilst in Brisbane, the Committee also attended the 2015 Australian Public Sector Anti-Corruption Conference (APSACC). Throughout its term, the Committee believed it was important to keep abreast of best practice in the field and to learn from the experience of other anti-corruption agencies in Australia and overseas.

As well as regularly reviewing the relevant literature, the Committee travelled to the United Kingdom, Europe, Hong Kong and New Zealand in order to broaden members' knowledge of best practice. The major areas of interest were how countries responded to corruption, what frameworks had been developed to measure the performance of anti-corruption agencies, how whistleblowing regimes operated and the oversight of complaints about police. The Committee visited the Police Ombudsman for Northern Ireland (PONI) because it is generally seen as an exemplar with respect to the independent handling and investigation of complaints about police.

To further its knowledge of the issues and best practice, the Committee also attended the following conferences and seminars:

- Australian Public Sector Anti-Corruption Conference (APSACC) from 18–19 November 2015 in Brisbane and 14–16 November 2017 in Sydney
- Police Accountability Roundtable, hosted by the Law Institute of Victoria, Melbourne, 25 July 2017
- Annual National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference: Civilian Oversight in a Changing Landscape, Spokane, Washington, 10–14 September 2017
- The IBAC Corruption Prevention and Integrity Conference, Melbourne, 3–4 October 2017.

In addition, the Committee met with the following visitors and delegations to inform them of the Committee's work and learn from their experience:

- Select Committee on an Independent Integrity Commission, Australian Capital Territory, 4 May 2017
- Senator Torres, 20 June 2017. Senator Torres is a Federal Senator from the Mexican State of Queretaro. She is the Secretary of the Mexican Parliament's Anticorruption Commission and visited Australia as part of the Department of Foreign Affairs and Trade (DFAT) Special Visitors Program.
- Mr John Hyde, Chair of the Global Organisation of Parliamentarians Against Corruption (GOPAC) Oceania region, 22 June 2017
- Mr José Ugaz, Global Chair of Transparency International, and Ms Serena Lilywhite, Chief Executive Officer, Transparency International Australia, 10 August 2017.

1.3.2 Ongoing oversight work

The Committee's regular oversight work included reviewing IBAC's and the VI's annual reports, addressing performance matters brought to the Committee's attention, examining reports of IBAC and the VI and developing a framework for more systematic monitoring of IBAC's performance on an ongoing basis.

It is important to note the complexity of the legislative framework governing IBAC, the VI, the protected disclosure ('whistleblowing') regime and the police complaints system. This complexity has wideranging implications, not only for integrity agencies but other stakeholders, including complainants. Indeed, this complexity has presented challenges for the IBAC Committee itself in its ongoing oversight work and in the conduct of Inquiries.

Annual reports

Under the *Parliamentary Committees Act 2003* (Vic), the Committee is required to 'monitor and review the performance of the duties and functions' of IBAC and the VI and examine their reports. Exercising this function, the Committee examined IBAC's annual reports for 2015/2016 and 2016/2017. It also reviewed (with respect to IBAC) the VI's 2015/16 and 2016/2017 annual reports. This oversight work gave the Committee a better understanding of the work of IBAC and the VI throughout each financial year and enabled it to make a general assessment of their performance. It also informed the Inquiry work undertaken by the Committee.

In undertaking this work, the Committee sought and examined written responses to questions regarding the reports from the IBAC Commissioner, Mr Stephen O'Bryan QC, and the Inspector, Mr Robin Brett QC, in closed hearings. In closed hearings, the Committee also heard evidence from the IBAC Commissioner and senior staff and the Victoria Inspector regarding their annual reports. In addition, the Committee read a number of key reports and other material referred to in the IBAC and the VI annual reports for 2015/16 and 2016/2017.

The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate 2015/16

In November 2016, the Committee tabled its report *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate 2015/16*.¹²

This report gives an overview of IBAC's and the VI's activities during 2015/16, their achievements and the challenges of identifying, investigating, exposing and preventing corruption and other misconduct. The report also reviews their compliance with relevant laws. While the report did not make any formal recommendations, it did suggest ways in which IBAC and the VI might enhance their performance. For example, the Committee noted:

- the importance of increasing Victorians' understanding of how, and where, to safely report corruption and other misconduct
- the need to improve the quality of public information on making complaints about corruption and misconduct
- the essential role of IBAC's independent oversight of the handling of complaints about police.

The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate 2016/17

In December 2017, the Committee tabled its report *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate 2016/17*.¹³

This report also provided an overview of the achievements of IBAC and the VI during the year, as well as the challenges they faced in identifying, investigating, exposing and preventing corruption and misconduct in Victoria, and in ensuring compliance with the law.

The Committee found that during 2016/17 the VI experienced a number of challenges with regard to the effective and efficient operation of its office, especially in relation to the timely completion of investigations and its communication with complainants. The Committee is pleased to see that the VI has since taken some steps towards improving its processes and looks forward to further progress in the coming year.

The report made four recommendations:

- That IBAC include in its annual report a dedicated chapter on its work in relation to police, including investigation and oversight work.
- That IBAC provide comprehensive and detailed statistical information in its annual report, including an analysis of complaints about police and how they were handled over preceding financial years.

The Committee is pleased to note that IBAC has subsequently undertaken to implement these recommendations in its 2017/2018 annual report.¹⁴

- That the Victorian Inspectorate undertake a systematic review of the design and content of its website.

¹² Parliament of Victoria, IBAC Committee, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2015/16*, November 2016.

¹³ Parliament of Victoria, IBAC Committee, *The performance of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate, 2016/17*, December 2017.

¹⁴ Hon Robert Redlich QC, Commissioner, IBAC, tabled document, closed hearing, Melbourne, 5 February 2018, p. 13.

- That the Victorian Inspectorate and IBAC collaborate, where appropriate, to produce accessible, accurate and consistent plain-language information about how to make complaints and disclosures about improper conduct in Victoria.

The Committee is also pleased to acknowledge the changes that the current Victorian Inspector, Mr Eamonn Moran PSM QC, has made to the VI's website.

In addition to these recommendations, the report also identified a number of areas that the Committee would investigate further in its Inquiry into the external oversight of police corruption and misconduct.

Developing a framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission

The importance of the effective monitoring and review of the performance of anti-corruption agencies is well established. Leading organisations such as the Organisation for Economic Co-operation and Development (OECD), Transparency International (TI), the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and the European Partners Against Corruption (EPAC) have not only called for this kind of oversight but have developed best practice principles to inform and guide it.

Towards the end of 2016, the IBAC Committee, having been in operation for almost five years, acknowledged that the time was right to develop a more systematic approach to the oversight of the performance of IBAC. Until then, the Committee had fulfilled its functions under the *Parliamentary Committees Act 2003* (Vic) by reviewing IBAC's annual, and other, reports; conducting hearings on its performance using reported outcomes; and undertaking relevant research and inquiries (including in-depth reviews of relevant legislation). This is comparable to the oversight and monitoring activities undertaken in other Australian jurisdictions.

With the assistance of Professor A J Brown of Griffith University, the Committee developed a framework, and in November 2017 tabled a report entitled *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*.¹⁵ This was a first for a parliamentary oversight committee in Australia.

The proposed framework, which draws on international best practice, provides rigorous criteria for assessing IBAC's performance in the following main areas:

- Investigating, exposing and addressing corrupt conduct and police misconduct
- Preventing corruption and informing the public sector and Victorians about corruption
- Impacting positively on levels of integrity and public trust in the public sector
- Ensuring IBAC's accountability and integrity
- Ensuring that IBAC has effective governance
- Monitoring IBAC's legal and financial capacity.

This framework will enhance the Committee's oversight role by setting out systematic criteria for assessing IBAC's performance against its legislative functions, and will include a comprehensive review every four years. The Committee appreciates that such a review needs to take account of IBAC's own systems for performance monitoring and be sufficiently flexible.

¹⁵ Parliament of Victoria, IBAC Committee, *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*, November 2017.

Complaints about the performance of IBAC or the VI made by members of the public

During this Parliament, the Committee has received a number of complaints regarding IBAC and the VI. Whilst most of them fell outside the jurisdiction of the Committee, some have related to the performance of either IBAC or the VI. In these cases, the Committee has written to the agency and sought an explanation and a course of action to address the matter where that was appropriate. In order to protect the anonymity of the complainants, the Committee does not comment further on these matters.

Examination of reports published by IBAC and VI

As mentioned previously, the Committee also has the responsibility to examine any reports of IBAC or the VI. During this Parliament, the Committee has reviewed the reports published by IBAC and the VI. A list of the reports can be found in Appendix 2. The Committee recognises the excellent research, audit and preventive work that IBAC has undertaken for its reports and has drawn on many of the reports in its Inquiry and performance-monitoring work.

1.3.3 Reviews and Inquiries

The Committee self-referenced three inquiries during this Parliament.

Strengthening Victoria's key anti-corruption agencies?

In February 2016, the Committee tabled its first report, *Strengthening Victoria's key anti-corruption agencies?*¹⁶ This report followed the introduction of the Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015 (Vic) into Parliament by the Victorian Government in December 2015. The Bill proposed a number of reforms to anti-corruption and integrity agencies within Victoria, including IBAC and the VI.

The Committee's report considered issues raised by stakeholders in closed hearings, submissions and reports about the Victorian integrity system and whether these issues had been addressed by the proposed legislation. The Committee identified some unresolved issues and made 13 recommendations to the Victorian Government to consider or further investigate as part of its ongoing review process of Victoria's integrity system. The Committee also identified a number of issues it intended to investigate further during its term.

Review of the *Protected Disclosure Act 2012 (Vic)*

Whistleblowers make a valuable contribution to democracy by helping to ensure honest, accountable and efficient public administration. Specifically, they play a crucial role in the identification, investigation and prevention of corruption and other forms of improper conduct. However, evidence has shown that, unfortunately, a substantial proportion of whistleblowers suffer mistreatment as the result of making

16 Parliament of Victoria, IBAC Committee, *Strengthening Victoria's key anti-corruption agencies?*, February 2016.

a disclosure. The Committee recognised that protecting disclosers is vital, both to prevent harm and loss, and to help to ensure that people have the confidence to report wrongdoing in the public sector in the first place.¹⁷

In December 2015, the Committee's *Strengthening Victoria's Key Anti-corruption Agencies?* report identified concerns raised by key stakeholders regarding the nature and operation of the protected disclosure regime. The Committee decided to review the whistleblowing regime, and, in particular, the *Protected Disclosure Act 2012* (Vic) ('*PD Act 2012* (Vic)').

The Committee tabled its resulting report in July 2017. The report reviewed the nature and operation of the *PD Act 2012* (Vic), drawing on wideranging research and evidence, including from whistleblowers themselves, and applying best practice principles to assess the legislation. The Committee also examined interstate and international experience.

In undertaking its work, the Committee found that the *PD Act 2012* (Vic) conforms in many respects to best-practice principles. However, in other respects best practice principles are not being met at all, or there is at least room for improvement in how they are recognised or implemented within the whistleblowing regime.

While the Committee did not believe the Act should be repealed, it considered that it should be fine-tuned through selected amendments. To this end, the Committee made a number of recommendations covering the law and processes on making, assessing and investigating disclosures; the protection of whistleblowers from reprisals; and the provision of compensation, information and other assistance to whistleblowers.

The Committee recognised, however, that legal improvements are only part of the answer to addressing concerns over Victoria's whistleblowing regime. Many Victorians depend more on information and education explaining the legislation than on the Act itself. While some excellent resources for the public and the public sector already exist, there is scope for further improvements, especially with respect to online information that explains the legislation.

Inquiry into the external oversight of police corruption and misconduct

In July 2017, the Committee commenced important work for a self-referenced Inquiry into the external oversight of police corruption and misconduct. The last significant Inquiry examining the police complaints system in Victoria, the Beach Inquiry, published its report more than forty years ago.

The terms of reference for the new Inquiry included the Committee's examination of the current system of oversight, an assessment of the best practice models, a review of the main challenges to the effective oversight and investigation of complaints about police and consideration of strategies to improve the system.

The Committee called for submissions, conducted briefings, undertook site visits and held in camera, closed and public hearings. The Committee also travelled to Europe and New Zealand to gain an understanding of their integrity and police oversight systems, with a focus on the handling and oversight of complaints about police. This Inquiry has proved to be extremely challenging, given the overlapping legal

¹⁷ Parliament of Victoria, IBAC Committee, *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012* (Vic), June 2017.

complexities and uncertainties of the legislation governing the systems for handling police complaints in Victoria and the lack of secondary literature on its nature and operation.

The report, tabled in September 2018, contains 69 recommendations to improve the transparency, impartiality, effectiveness and efficiency of the system.¹⁸ While the Committee did not recommend the creation of a new body to exclusively handle and investigate complaints along the lines of PONI to replace the present role of IBAC and Victoria Police, it recognised the need for significant improvements. The Committee made recommendations across a wide range of functions and activities, including the receipt, handling, assessment, referral, investigation, review and oversight of complaints and disclosures about police.

The Committee considered that IBAC needs to give greater priority to its functions of handling, investigating and oversighting complaints about police. For example, IBAC investigates only approximately 2% of the allegations it determines warrant investigation, referring the rest to Victoria Police, including a range of serious police misconduct matters. In order to enhance the attention IBAC gives to serious police misconduct, and police oversight generally, the Committee recommended the establishment of an adequately staffed and empowered Police Corruption and Misconduct Division within IBAC. Further, the Committee recommended that, unless there are exceptional circumstances, IBAC, rather than Victoria Police, investigate serious police misconduct. In order to assist IBAC in carrying out these important functions, the Committee recommended the conferral of selected additional investigative and oversight powers on it.

The Committee also made recommendations, from a complainant-centred perspective, to improve the public information available about the complaints system (including high quality data on the operation of the system). Further, it made recommendations to ensure that complainants, especially vulnerable complainants, are better communicated with and supported throughout the process. The Committee also identified a range of measures to ensure the impartiality and thoroughness of Victoria Police complaint investigations (particularly at the regional level). They included better management of issues such as officer complaint histories and conflicts of interest. Finally, the Committee recommended that Victoria Police and IBAC make more use of conciliation as an effective option for resolving complaints in appropriate cases.

1.3.4 Appointment of the IBAC Commissioner and the Victorian Inspector

Under the *Parliamentary Committees Act 2003* (Vic), the Committee has the function of considering any proposed appointment of an IBAC Commissioner or a Victorian Inspector, and to exercise a power of veto in accordance with the *IBAC Act 2011* (Vic) and the *VI Act 2011* (Vic) should it choose to do so.

Since the terms of Mr Stephen O’Bryan QC as IBAC Commissioner and Mr Robin Brett QC as Victorian Inspector expired on 31 December 2017, the Committee systematically considered the Government’s recommended candidates for the positions. The Committee was pleased to support the Government’s recommendation of the Hon Robert Redlich QC as IBAC Commissioner and Mr Eamonn Moran PSM QC as Victorian Inspector and wishes them continued success in their roles.

¹⁸ Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, September 2018.

1.4 Concluding remarks

The 58th Parliament has proved to be an extremely productive and challenging time, not only for IBAC and the VI but also for the IBAC Committee. This report has highlighted the work the Committee has undertaken in fulfilling its responsibilities under the *Parliamentary Committees Act 2003* (Vic). The following section offers recommendations to the next committee.

1.4.1 Recommendations for the committee responsible for the oversight of IBAC and the VI in the 59th Parliament

Amendments to the *Parliamentary Committees Act 2003* (Vic): establishment of an Integrity and Oversight Committee

At the time of writing, there is currently an amendment to the *Parliamentary Committees Act 2003* (Vic) before the Legislative Council, which merges the IBAC Committee and the Accountability and Oversight Committee (AOC) and names the new committee the Integrity and Oversight Committee. It will have the functions presently performed by the IBAC Committee and the AOC Committee, as well as some new ones.

In the Government's view, this merger will:

- create a specialist committee with expertise on the IBAC, Ombudsman, Information Commissioner and the Victorian Inspectorate, which will allow the Committee to bring a more holistic approach to oversight of the integrity system;
- create clearer lines of accountability to Parliament;
- allow for more efficient parliamentary oversight, and help avoid double handling of matters and fragmentation of oversight responsibilities; and
- ensure that workloads between committees are better distributed.¹⁹

Whether or not the Bill is passed, the Committee believes that there are matters that the committee responsible for the oversight of IBAC and VI in the 59th Parliament should address as a matter of priority.

'Follow-the-dollar' powers

On 14 December 2015, the then IBAC Commissioner, Mr Stephen O'Bryan QC, suggested to the Committee that further consideration should be given to the conferral of follow-the-dollar powers on IBAC as they have been on VAGO.²⁰ Follow-the-dollar powers expressly permit oversight and anti-corruption agencies to access the documentation of private organisations and individuals that are providing services or carrying out functions funded by government.²¹

The Commissioner argued that the conferral of these powers on IBAC would allow IBAC to investigate corruption even more effectively:

¹⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 7 February 2018, Volume 1, p. 90 (Hon Martin Pakula, Attorney-General).

²⁰ Mr Stephen O'Bryan QC, Commissioner, IBAC, closed hearing, Melbourne, 14 December 2015.

²¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 December 2015, Volume 19, p. 5532 (Hon Jacinta Allan, Minister for Public Transport).

[B]eing able to follow the dollar wherever it may lead, including beyond the public sector, means that normally you can get the whole of the story and that is important in terms of getting to the bottom of matters of serious corrupt conduct.²²

Since that time, the IBAC Commissioner has continued to raise the need for these powers. In his final report²³ to the Parliament, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years* (December 2017) Commissioner O'Bryan again called for IBAC to be given follow-the-dollar powers. As he explained:

For IBAC to continue to be effective in investigating and exposing public sector corruption whenever it occurs, we need to ensure our legislative framework keeps pace with contemporary public sector practice and associated corruption risks.

Corruption often goes hand-in-hand with some financial benefit and often involves complex and well-disguised financial arrangements. As the public sector increasingly outsources or commissions third-party service providers, the interface between public and private entities becomes increasingly important from a corruption prevention perspective. I have for some time now advocated for IBAC to be given explicit 'follow-the-dollar' powers, similar to those available to the Victorian Auditor-General. These powers would enhance our ability to more thoroughly investigate public sector corruption by following where the money goes.²⁴

The Committee considers that this issue requires further investigation and consideration, which should include a review of the experiences of similar anti-corruption agencies in Australia.

RECOMMENDATION 1: That the committee responsible for the oversight of IBAC in the 59th Parliament should undertake a review of follow-the-dollar powers as a matter of priority. This review should consider the experience of similar anti-corruption agencies in Australia.

Using the framework for monitoring the performance of IBAC

As mentioned previously, the Committee developed a framework for monitoring the performance of IBAC.²⁵ The framework is a first for a parliamentary oversight committee in Australia. It draws on international best practice to develop a range of measures to assess IBAC's performance across its legislative functions. It also takes into account IBAC's own performance measures, which are set out in its Corporate Plan 2015–18. The Committee recognised that the framework needs to support rather than hinder IBAC's commitment to improve its performance on an ongoing basis.

RECOMMENDATION 2: That the committee responsible for the oversight of IBAC in the 59th Parliament use the performance-monitoring framework developed by the IBAC Committee in conducting their performance audit of IBAC in 2020.

²² Mr Stephen O'Bryan QC, Commissioner, IBAC, closed hearing, Melbourne, 14 December 2015.

²³ The report coincided with Mr O'Bryan completing his non-renewable five-year term.

²⁴ IBAC, *Exposing and preventing corruption in Victoria. Special report: IBAC's first five years*, Melbourne, 2017, p. 6.

²⁵ See Parliament of Victoria, IBAC Committee, *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*, November 2017.

Review of the external oversight of police misconduct and corruption

As discussed, the Committee has recently tabled its report on the Inquiry into the external oversight of police misconduct and corruption. This extensive report reviews a broad range of concerns regarding the assessment, referral and investigation of complaints against police by IBAC and Victoria Police. The Committee has not recommended that a new independent body be established with the sole purpose of addressing all complaints against police. Rather, the Committee has made 69 recommendations that it believes will substantially improve the current system. However, it is important that the committee responsible for the oversight of IBAC in the 59th Parliament monitor the adoption of the recommendations and assess if they have adequately addressed the concerns raised in the report. If community confidence in the police complaints and oversight system is to be maintained, it is crucial that the problems identified are addressed.

RECOMMENDATION 3: That the committee responsible for the oversight of IBAC in the 59th Parliament monitor the adoption and implementation of the recommendations contained in the report *Inquiry into the external oversight of police corruption and misconduct in Victoria* and assess if the concerns raised have been adequately addressed. Further recommendations will be required if the complaints system is still seen to be falling short of best practice principles.

Finally, the Committee takes this opportunity to reinforce the important role that parliamentary committees can play in scrutinising the work of agencies such as IBAC and the VI on behalf of the people of Victoria. The Committee trusts that the next committee responsible for the oversight of the IBAC and the VI will build on the groundwork laid during the 58th Parliament.

**Adopted by the Independent Broad-based Anti-corruption Commission
Committee
55 St Andrews Place, East Melbourne
6 August 2018**

Appendix 1

Functions of the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate (VI)

IBAC, which became fully operational from 10 February 2013, has a series of functions under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), including:

- identifying, exposing and investigating serious corrupt conduct and police personnel misconduct
- assessing police personnel conduct
- receiving complaints and notifications in relation to corrupt conduct
- investigating, referring or dismissing protected disclosure complaints, as well as
- an education and prevention function.

As part of the same body of legislation, the VI was also established. The VI's functions under the *Victorian Inspectorate Act 2011* (Vic) include:

- monitoring the compliance of IBAC and IBAC personnel with the *IBAC Act 2011* (Vic) and other laws
- overseeing the performance by IBAC of its functions under the *Protected Disclosure Act 2012* (Vic)
- assessing the effectiveness and appropriateness of the policies and procedures of IBAC
- receiving complaints about the conduct of IBAC and IBAC personnel
- investigating and assessing the conduct of IBAC and IBAC personnel in the performance and exercise of duties, functions and powers
- monitoring the interaction between IBAC and other integrity bodies.

For further information, see IBAC, *Safeguarding integrity: a guide to the integrity system in Victoria*, Melbourne, December 2016.

Appendix 2

IBAC reports reviewed by the IBAC Committee

A2.1 Special reports

Special report concerning police oversight, Melbourne, August 2015.

Operation Ord: an investigation into the conduct of officers of the Department of Education and Training, in connection with the use of 'banker schools' and related activities, Melbourne, April 2016.

Operation Darby: an investigation of a person's complaint against Victoria Police, Melbourne, May 2016.

Operation Exmouth: an investigation into the conduct of a former Victorian public servant, Melbourne, October 2016.

Operation Ross: an investigation into police conduct in the Ballarat Police Service Area, Melbourne, November 2016.

Special report concerning illicit drug use by Victoria Police officers, Melbourne, December 2016.

Operation Dunham: an investigation into the conduct of officers of the Department of Education and Training, in connection with the Ultraset project and related matters, Melbourne, January 2017.

Operation Liverpool: an investigation into the conduct of two officers of Bendigo Health, Melbourne, March 2017.

Operation Nepean: an investigation into the conduct of a former employee of Dame Phyllis Frost Centre, Melbourne, April 2017.

Operation Tone: special report concerning drug use and associated corrupt conduct involving Ambulance Victoria paramedics, Melbourne, September 2017.

Operation Lansdowne: an investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors, Melbourne, December 2017.

Exposing and preventing corruption in Victoria. Special report: IBAC's first five years, Melbourne, December 2017.

A2.2 Research reports

A review of integrity frameworks in six Victorian councils, Melbourne, March 2015.

Local Government: review of council works depots, Melbourne, May 2015.

Organised crime group cultivation of public sector employees, Melbourne, September 2015.

Predatory behaviour by Victoria Police officers against vulnerable persons, Melbourne, December 2015.

Review of protected disclosure procedures—progress report, Melbourne, January 2016.

Perceptions of corruption: survey of Victorian Government suppliers, Melbourne, June 2016.

Audit of Victoria Police complaints handling systems at regional level, Melbourne, September 2016.

Drink driving detections of Victoria Police officers: analysis of trends from 2000–2015, Melbourne, December 2016.

Transit Protective Services Officers: an exploration of corruption and misconduct risks, Melbourne, December 2016.

Perceptions of corruption: survey of Victorian state government employees, Melbourne, September 2017.

Perceptions of corruption: survey of Victorian local government employees, Melbourne, October 2017.

Corruption risks associated with the public health sector, Melbourne, October 2017.

Corruption risks associated with the corrections sector, Melbourne, November 2017.

Perceptions of corruption: survey of Victoria Police employees, Melbourne, December 2017.

Audit of Victoria Police's oversight of serious incidents, Melbourne, March 2018.

Perceptions of corruption: survey of the Victorian community, Melbourne, April 2018.

Corruption risks associated with public regulatory authorities, Melbourne, July 2018.

Audit of complaints investigated by Professional Standards Command, Victoria Police, Melbourne, June 2018.

