

From the Office of the Commissioner

A summary of a speech to the National Integrity Conference, 16 – 17 March 2017, Brisbane
by Mr Stephen O’Bryan QC, IBAC Commissioner

Strengthening Australia’s National Integrity System: opportunities and imperatives

Fifth year reflections from a ‘start up’ anti-corruption agency

IMPORTANT NOTE: *This document provides a summary of the key messages from an address by IBAC Commissioner, Mr Stephen O’Bryan QC. Please note, this is not the Commissioner’s full speech.*

Exposing and investigating – strengthening IBAC’s legislative powers

- In early 2013, Victoria’s new Independent Broad-based Anti-corruption Commission (IBAC) became fully operational. IBAC’s jurisdiction involves police oversight and exposing and preventing corruption in the broader public sector, including state and local government, the judiciary, and Members of Parliament.
- IBAC’s police oversight powers were not an issue as IBAC was essentially given the same broad powers that the former Office of Police Integrity had to investigate police corruption and misconduct.
- However, IBAC’s power to investigate corrupt conduct in the broader public sector was more limited. The original definition of ‘corrupt conduct’ in our Act ¹was quite narrow. It needed to involve prescribed criminal offending, but it did not include one of the most obvious forms of serious criminal offending for a public official being Misconduct in Public Office (MIPO).

¹ Independent Broad-based Anti-corruption Commission Act 2011

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- The legislative threshold for starting investigations into public sector corruption was that conduct in question had to be *serious* corrupt conduct, but with there being no legislative definition of ‘serious’. Also, there was the requirement where IBAC needed to be reasonably satisfied, based on facts that if proven at trial beyond reasonable doubt, would establish an offence had been committed.
- IBAC did not shy away from tackling the challenges that were inherent in the Act. The organisation commenced a range of investigations into alleged serious public sector corrupt conduct, alongside police misconduct investigations.
- IBAC also collated practical examples of the limitations of the legislation to help build a strong case for change, and improve IBAC’s ability to more effectively achieve its purpose.
- In [IBAC’s Special Report of April 2014](#), the organisation published a blueprint for desired change. This included a call for the introduction of a requirement for public sector agency heads to mandatorily report suspected corrupt conduct. At that time, corrupt conduct notifications by government agencies (other than police) were merely voluntary.
- IBAC’s Act was duly amended in 2016 with changes including:
 - lowering our investigative threshold from ‘reasonable satisfaction’ to ‘reasonable suspicion’
 - deleting the need for IBAC to be satisfied of facts proven beyond reasonable doubt
 - adding MIPO as a prescribed offence, and
 - mandating the heads of public sector agencies to report suspected corrupt conduct to IBAC.
- IBAC has been successful in exposing serious and systemic corruption in some of the largest Victorian departments. Examples include: [Operations Fitzroy](#) (transport), and [Ord](#) and [Dunham](#) (education). The organisation has also exposed serious police misconduct and corruption in other state government agencies and local councils.
- So far we have held four public hearings. Public hearings are effective in terms of exposing corruption, and encouraging credible complaints of improper conduct, and can also drive speedy reform in the public sector. However, the provisions in IBAC’s Act around holding public hearings are very restrictive. The default position is one of private hearings, with public hearings only allowed if certain public interest tests are met and the circumstances are ‘exceptional’.
- IBAC’s ability to hold public hearings has been subject to legal challenges. IBAC has publicly fought out one challenge in the courts involving two members of Victoria Police who had

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been investigated as part of [Operation Ross](#). This challenge ended up in the High Court and delayed this important investigation into alleged serious police misconduct by over a year. The decisions made in Victorian's Court of Appeal validated the organisation's general approach to public hearings. The High Court ultimately confirmed IBAC's coercive examination power in situations where a person of interest is yet to be charged with a criminal offence, but is reasonably suspected of having committed one.

- Operation Ross examined alleged systemic excessive use of force by officers stationed at Ballarat police station in regional Victoria. IBAC's public report was tabled in November last year, and followed public hearings.

Preventing corruption – sharpening IBAC's strategy

- Under IBAC's legislation, the organisation has a comprehensive suite of corruption prevention and education functions commensurate with other anti-corruption agencies nationally.
- IBAC's corruption prevention strategy focuses on three priority action areas:
 - engaging with the community and the public sector to improve understanding of corruption and its harms
 - improving reporting of corruption and helping to build the public sector's capacity to address reports
 - alerting organisations to the latest information and intelligence to help them stay ahead of corruption risks and build their corruption resilience.
- IBAC's approach is founded on the core principle that public sector bodies must retain primary responsibility for ensuring their own integrity and corruption resistance. Public sector leaders have a thorough understanding of their own organisation's systems, resources, operating environments and risks. They are best placed to develop and implement appropriate integrity and corruption prevention frameworks.
- IBAC strategic communication, particularly targeting our public sector stakeholders, includes utilisation of traditional media, online and social media channels. It also includes targeted engagement with the public sector and Victoria Police.
- IBAC is currently running its first community education campaign. It involves paid government advertising, aiming to raise awareness in Victoria about the impacts of corruption and encourage reporting. The campaign video and other information is available on [IBAC website](#).

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