

**Submission
No 11**

REVIEW OF ASPECTS OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988

Organisation: Victorian Inspectorate

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VICTORIAN INSPECTORATE

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The Hon. Leslie Williams MP
Chair
Committee on the Independent Commission Against Corruption
Parliament House
6 Macquarie Street
SYDNEY NSW 2000

Via email: icaccommittee@parliament.nsw.gov.au

Dear Chair

Review of aspects of the *Independent Commission Against Corruption Act 1988*

1. On behalf of the Victorian Inspectorate (**VI**), I am pleased to make this submission to the Committee regarding its review of whether the *Independent Commission Against Corruption Act 1988 (ICAC Act)* continues to be effective and appropriate.
2. This submission focuses primarily on the third term of reference, regarding the role and powers of the Inspector of the ICAC (**the Inspector**).
3. The VI has similar functions and powers of oversight with respect to the ICAC's counterpart in Victoria, the Independent Broad-based Anti-Corruption Commission (**IBAC**). The VI's functions and powers are provided in distinct legislation, the *Victorian Inspectorate Act 2011*.
4. This submission focuses on a key difference between the agencies, namely the requirement for IBAC to provide notifications to the VI when exercising coercive powers, and the value this requirement adds to the VI's oversight functions.
5. The ICAC Act provides the Inspector with broad general powers and incidental powers of oversight, including a complaints and investigations remit. However, compared with the Victorian regime, the New South Wales legislation provides fewer opportunities for the Inspector to oversight the conduct of the ICAC in real time or assess its conduct against specific legislated criteria, for example in respect of the rights of witnesses.

Rights and responsibilities of witnesses

6. The rights and responsibilities of those subject to the ICAC's coercive powers are less clearly set out in the ICAC Act compared with the *Independent Broad-based Anti-Corruption Commission Act 2011 (IBAC Act)*. For instance, IBAC is required to provide a written statement of rights and responsibilities with any summons, and also provide

the information orally in an examination where a witness does not understand the statement or is unrepresented.

7. This statement includes the right to legal advice and representation and to complain to the VI, as well as the penalties for non-compliance and provisions around privilege, immunity and secrecy. This requirement is in addition to provisions supporting vulnerable persons in an examination, such as providing for an interpreter and the presence of an independent person in certain circumstances.
8. Further, witnesses in New South Wales do not have the protections provided by Victoria's *Charter of Human Rights and Responsibilities Act 2006*, which requires that rights such as privacy and reputation or liberty and security are only limited to the extent demonstrably justified.
9. This context helps identify some key differences in the legislative frameworks in place between jurisdictions. In particular, the requirement of a more detailed consideration in Victoria for balancing the risks associated with the exercise of coercive powers with the rights of affected persons.
10. Given the importance of ensuring this balance, the Committee could consider whether the ICAC Act would benefit from associated reforms, in conjunction with the following points regarding the Inspector's oversight function.

Statutory notifications function

11. The most significant difference in the oversight function is that the ICAC Act does not require ICAC to notify its Inspector of the use of coercive powers, as IBAC is required to do.
12. The benefits of the notification framework to the Victorian integrity system include:

12.1. Independent assurance

Reviews of the use of coercive powers provide assurance that statutory requirements are complied with and that powers are only used where they assist the agency to achieve the purposes of its investigation.

12.2. Protection of affected persons

The review process has the capacity to provide real-time protections for directly affected persons. IBAC must provide the VI with reasons for summonses and copies of other notices promptly after they are issued. This review function is potentially most important in relation to proposed public examinations. The notifications regime in Victoria is premised on IBAC informing the VI of its reasoning for holding a public examination in advance of issuing a relevant summons. The VI then has an opportunity to test IBAC's reasoning. While the legislation does not require IBAC to act on the views of the VI, in practice the interaction makes decisions more robust.

12.3. *Supporting other functions*

Reviews of statutory notifications also provide the VI with valuable insight regarding the quality of processes and decision-making within IBAC. The findings of reviews can inform the other functions of the VI, such as assessing the effectiveness and appropriateness of the policies and procedures of IBAC or investigating and assessing the conduct of IBAC and IBAC personnel in the performance of their duties, functions and powers.

13. Reviewing statutory notices requires dedicated resources. However, given the valuable insight and quality assurance provided by this function for oversight agencies such as IBAC, the Committee could consider recommending a similar requirement for ICAC to ensure its functions and powers under the ICAC Act are exercised lawfully.

Yours sincerely

A black rectangular redaction box covering the signature of Eamonn Moran.

Eamonn Moran PSM QC
Inspector