

**Authorised Version No. 035**  
**Independent Broad-based Anti-corruption  
Commission Act 2011**

**No. 66 of 2011**

Authorised Version incorporating amendments as at  
26 April 2021

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**Authorised Version No. 035**  
**Independent Broad-based Anti-corruption  
Commission Act 2011**

**No. 66 of 2011**

Authorised Version incorporating amendments as at  
26 April 2021

**The Parliament of Victoria enacts:**

**Part 1—Preliminary<sup>1</sup>**

**1 Purpose**

- (1) The main purpose of this Act is to establish the Independent Broad-based Anti-corruption Commission.
- (2) This Act also amends the **Parliamentary Committees Act 2003** to constitute a Joint House Committee of the Parliament of Victoria to oversee the Independent Broad-based Anti-corruption Commission.

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2012, it comes into operation on that day.

**3 Definitions**

- (1) In this Act—

*aircraft* means a machine or structure used or intended to be used for navigation of the air;

S. 3  
amended by  
No. 13/2012  
s. 3(3) (ILA  
s. 39B(1)).

S. 3(1) def. of  
*aircraft*  
inserted by  
No. 13/2012  
s. 3(1).

S. 3(1) def. of *approved health professional* inserted by No. 13/2012 s. 3(1).

*approved health professional* means—

- (a) a person registered under the Health Practitioner Regulation National Law—
  - (i) to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student); and
  - (ii) in the registered nurses division of that profession;
- (b) a person approved under subsection (2) to take a blood sample for the purposes of Division 1 of Part 9;

S. 3(1) def. of *arrest warrant* inserted by No. 28/2012 s. 3(1), substituted by No. 22/2020 s. 7A(a).

*arrest warrant* means a warrant to arrest a person issued under—

- (a) section 139(2); or
- (b) section 141A(2); or
- (c) section 141B(2); or
- (d) section 141C(2); or
- (e) section 153(1);

S. 3(1) def. of *assessable disclosure* inserted by No. 85/2012 s. 84(1), amended by No. 2/2019 s. 49(2)(a).

*assessable disclosure* has the same meaning as in the **Public Interest Disclosures Act 2012**;

S. 3(1) def. of *audio visual link* inserted by No. 22/2020 s. 7A(b), repealed by No. 11/2021 s. 198.

\* \* \* \* \*

<p><b><i>Auditor-General</i></b> means the Auditor-General appointed under section 94A of the <b>Constitution Act 1975</b>;</p>	<p>S. 3(1) def. of <b><i>Auditor-General</i></b> inserted by No. 2/2019 s. 179.</p>
<p><b><i>authorised legal representative</i></b> of a person means an Australian legal practitioner who has been instructed by a person to receive documents on the person's behalf;</p>	<p>S. 3(1) def. of <b><i>authorised legal representative</i></b> inserted by No. 11/2021 s. 126.</p>
<p><b><i>authorised officer</i></b> means a sworn IBAC Officer appointed as an authorised officer under section 81;</p>	<p>S. 3(1) def. of <b><i>authorised officer</i></b> inserted by No. 13/2012 s. 3(1).</p>
<p>* * * * *</p>	<p>S. 3(1) def. of <b><i>Australian legal practitioner</i></b> repealed by No. 17/2014 s. 160(Sch. 2 item 49).</p>
<p><b><i>breach of discipline</i></b>, in relation to a police officer or protective services officer, has the same meaning as it has in the <b>Victoria Police Act 2013</b>;</p>	<p>S. 3(1) def. of <b><i>breach of discipline</i></b> inserted by No. 13/2012 s. 3(1), substituted by No. 37/2014 s. 10(Sch. item 85.1(b)).</p>
<p><b><i>category A longarm</i></b> has the same meaning as it has in section 3(1) of the <b>Firearms Act 1996</b>;</p>	<p>S. 3(1) def. of <b><i>category A longarm</i></b> inserted by No. 13/2012 s. 3(1).</p>
<p><b><i>category B longarm</i></b> has the same meaning as it has in section 3(1) of the <b>Firearms Act 1996</b>;</p>	<p>S. 3(1) def. of <b><i>category B longarm</i></b> inserted by No. 13/2012 s. 3(1).</p>

S. 3(1) def. of  
*category C  
longarm*  
inserted by  
No. 13/2012  
s. 3(1).

*category C longarm* has the same meaning as it  
has in section 3(1) of the **Firearms  
Act 1996**;

S. 3(1) def. of  
*category D  
longarm*  
inserted by  
No. 13/2012  
s. 3(1).

*category D longarm* has the same meaning as it  
has in section 3(1) of the **Firearms  
Act 1996**;

S. 3(1) def. of  
*certificate of  
charge*  
inserted by  
No. 28/2012  
s. 3(1).

*certificate of charge* means a certificate issued  
under section 153(1);

S. 3(1) def. of  
*Chief  
Commis-  
sioner of  
Police*  
inserted by  
No. 13/2012  
s. 3(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.1(c)).

*Chief Commissioner of Police* means the Chief  
Commissioner of Police appointed under  
section 17 of the **Victoria Police Act 2013**;

*Commissioner* means the person appointed under  
section 20;

S. 3(1) def. of  
*complaint*  
inserted by  
No. 28/2012  
s. 3(1).

*complaint* means—

- (a) a complaint under section 51;
- (b) a police personnel conduct complaint;

S. 3(1) def. of  
*confidentiality  
notice*  
inserted by  
No. 28/2012  
s. 3(1),  
amended by  
No. 2/2019  
s. 112(a).

*confidentiality notice* means a notice issued by  
the IBAC under section 42(1) or (1A);

*corrupt conduct* has the meaning given by section 4;

S. 3(1) def. of *corrupt conduct* inserted by No. 13/2012 s. 3(1).

*Council* has the same meaning as it has in section 3(1) of the **Local Government Act 2020**;

S. 3(1) def. of *Council* inserted by No. 13/2012 s. 3(1), amended by No. 9/2020 s. 390(Sch. 1 item 56.1(a)).

*critical incident* means an incident involving an IBAC Officer, other than the Commissioner, while the IBAC Officer was performing a function or exercising a power under this Act which—

S. 3(1) def. of *critical incident* inserted by No. 13/2012 s. 3(1).

- (a) resulted in the death of, or serious injury to, a person; and
- (b) also involved any one or more of the following—
  - (i) the discharge of a firearm by the IBAC Officer;
  - (ii) the use of force by the IBAC Officer;
  - (iii) the use of a motor vehicle by the IBAC Officer (including as a passenger) in the course of performing the IBAC Officer's duties or exercising the IBAC Officer's powers;
  - (iv) the death of, or serious injury to, the person while the person was in the custody of the IBAC Officer;

S. 3(1) def. of  
*defensive  
equipment*  
inserted by  
No. 13/2012  
s. 3(1).

*defensive equipment* means one or more of the following—

- (a) an article designed or adapted to discharge oleoresin capsicum spray;
- (b) body armour within the meaning of the **Control of Weapons Act 1990**;
- (c) an extendable baton designed or adapted so that the length of the baton extends by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the baton;
- (d) handcuffs or cable ties;

*Deputy Commissioner* means a person appointed under section 23;

S. 3(1) def. of  
*detained  
person*  
inserted by  
No. 13/2012  
s. 3(1),  
amended by  
Nos 70/2013  
s. 3(Sch. 1  
item 23.1),  
30/2016  
s. 3(a), 2/2019  
s. 112(b),  
19/2019 s. 265.

*detained person* means—

- (a) a person in prison in the legal custody of the Secretary to the Department of Justice in accordance with the **Corrections Act 1986**; or
- (b) a person in a police gaol in the legal custody of the Chief Commissioner of Police in accordance with the **Corrections Act 1986**; or
- (c) a person in a remand centre, youth justice centre or youth residential centre in the legal custody of the Secretary to the Department of Justice and Community Safety in accordance with the **Children, Youth and Families Act 2005**; or
- (d) a patient detained in a designated mental health service within the meaning of the **Mental Health Act 2014**; or

- (e) a person detained in a residential service, residential treatment facility or SDA enrolled dwelling under Part 8 of the **Disability Act 2006**; or
- (f) a person detained at a treatment centre under a detention and treatment order made under section 20 of the **Severe Substance Dependence Treatment Act 2010**;

*detrimental action* has the same meaning as in the **Public Interest Disclosures Act 2012**;

S. 3(1) def. of *detrimental action* inserted by No. 85/2012 s. 84(1), amended by No. 2/2019 s. 49(2)(b).

*disciplinary process or action* means in relation to a person's employment as a public sector employee within the meaning of section 4(1) of the **Public Administration Act 2004** or police personnel—

S. 3(1) def. of *disciplinary process or action* inserted by No. 28/2012 s. 3(1).

- (a) any process undertaken for the purposes of determining what, if any, disciplinary action is warranted in relation to a breach or possible breach of the person's terms and conditions of employment;
- (b) any action taken following a process specified in paragraph (a) that is permitted under legislation or the person's terms and conditions of employment;
- (c) any review process or proceeding, including an appeal process or proceeding, in relation to a process specified in paragraph (a) or an action specified in paragraph (b);

- (d) any administrative or judicial process or proceeding involving a claim for any remedy in relation to a process specified in paragraph (a) or an action specified in paragraph (b);

S. 3(1) def. of *domestic partner* inserted by No. 28/2012 s. 3(1).

*domestic partner* of a person means—

- (a) a person who is in a registered relationship with a person; or

**Note**

A *registered relationship* is defined in subsection (4).

- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *drug of dependence* inserted by No. 13/2012 s. 3(1).

*drug of dependence* has the same meaning as it has in the **Drugs, Poisons and Controlled Substances Act 1981**;

S. 3(1) def. of *examination* inserted by No. 28/2012 s. 3(1).

*examination* means an examination under Part 6;

S. 3(1) def. of *firearm* inserted by No. 13/2012 s. 3(1).

*firearm* has the same meaning as it has in section 3(1) of the **Firearms Act 1996**;

S. 3(1) def. of *general category handgun* inserted by No. 13/2012 s. 3(1).

*general category handgun* has the same meaning as it has in section 3(1) of the **Firearms Act 1996**;

**IBAC** means the Independent Broad-based Anti-corruption Commission established under section 12;

Independent Broad-based Anti-corruption Commission Act 2011  
No. 66 of 2011  
Part 1—Preliminary0F

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\* \* \* \* \*

S. 3(1) def. of *IBAC Committee* repealed by No. 2/2019 s. 196(1)(a).

*IBAC Officer* means—

S. 3(1) def. of *IBAC Officer* substituted by No. 13/2012 s. 3(2).

- (a) the Commissioner;
- (b) a Deputy Commissioner;
- (c) the Chief Executive Officer appointed under section 33;
- (d) a person employed under section 35(1);
- (e) a person employed or engaged by the IBAC under section 35(2);
- (f) a person engaged as a consultant under section 36;

*Integrity and Oversight Committee* means the Integrity and Oversight Committee established by section 5(a) of the **Parliamentary Committees Act 2003**;

S. 3(1) def. of *Integrity and Oversight Committee* inserted by No. 2/2019 s. 196(1)(b).

*integrity body* means—

- (a) the Auditor-General appointed under section 94A of the **Constitution Act 1975**;
- (b) the Information Commissioner appointed under the **Freedom of Information Act 1982** in the Information Commissioner's capacity under the **Privacy and Data Protection Act 2014**;
- (ba) the Judicial Commission;

S. 3(1) def. of *integrity body* inserted by No. 28/2012 s. 3(1), amended by Nos 82/2012 s. 253, 60/2014 s. 140(Sch. 3 item 28), 30/2016 s. 3(b), 16/2016 s. 161(1)(a), 20/2017 s. 128, 9/2020 s. 390(Sch. 1 item 56.1(b)(c)).

(c) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;

\* \* \* \* \*

(e) the Victorian Inspectorate;

(f) the Integrity Commissioner appointed under section 175 of the Law Enforcement Integrity Commissioner Act 2006 of the Commonwealth;

(g) the Australian Crime Commission established under section 7 of the Australian Crime Commission Act 2002 of the Commonwealth;

(h) the Independent Commission Against Corruption established under section 4 of the Independent Commission Against Corruption Act 1988 of New South Wales;

(i) the Police Integrity Commission established under section 6 of the Police Integrity Commission Act 1996 of New South Wales;

(j) the Crime and Corruption Commission established under section 220 of the Crime and Corruption Act 2001 of Queensland;

(k) the Integrity Commission established under section 7 of the Integrity Commission Act 2009 of Tasmania;

(l) the Corruption and Crime Commission established under section 6 of the Corruption and Crime Commission Act 2003 of Western Australia;

- (m) the Commonwealth Ombudsman established under section 4 of the Ombudsman Act 1976 of the Commonwealth;
- (n) an Ombudsman of another State or a Territory established under an Act of that jurisdiction corresponding to the **Ombudsman Act 1973**;
- (na) the Chief Municipal Inspector appointed under section 182 of the **Local Government Act 2020**;
- (nb) a Municipal Monitor appointed under section 179 of the **Local Government Act 2020**;
- (nc) the Racing Integrity Commissioner established under the **Racing Act 1958**;
- (o) any other prescribed person or body which has an integrity function;

*investigating panel* has the same meaning as it has in Part IIIAA of the **Constitution Act 1975**;

S. 3(1) def. of *investigating panel* inserted by No. 16/2016 s. 161(1)(c).

*Judicial Commission* has the same meaning as it has in Part IIIAA of the **Constitution Act 1975**;

S. 3(1) def. of *Judicial Commission* inserted by No. 16/2016 s. 161(1)(c).

*judicial officer* means—

- (a) a Judge of the Supreme Court;
- (ab) a reserve Judge of the Supreme Court;
- (b) an Associate Judge of the Supreme Court;
- (ba) a reserve Associate Judge of the Supreme Court;

S. 3(1) def. of *judicial officer* inserted by No. 13/2012 s. 3(1), amended by Nos 5/2013 s. 62, 63/2013 s. 86.

- (c) a judicial registrar of the Supreme Court;
- (d) a judge of the County Court;
- (da) a reserve judge of the County Court;
- (e) an associate judge of the County Court;
- (ea) a reserve associate judge of the County Court;
- (f) a magistrate;
- (fa) a reserve magistrate;

S. 3(1) def. of *law enforcement agency* inserted by No. 28/2012 s. 3(1), amended by Nos 67/2013 s. 649(Sch. 9 item 19(1)(a)), 37/2014 s. 10(Sch. item 85.1(d)).

*law enforcement agency* means—

- (a) Victoria Police;
- (b) the Victorian WorkCover Authority within the meaning of the **Workplace Injury Rehabilitation and Compensation Act 2013**;
- (c) the Environment Protection Authority established under section 5 of the **Environment Protection Act 1970**;
- (d) the Australian Federal Police constituted under section 6 of the Australian Federal Police Act 1979 of the Commonwealth;
- (e) the police force or police service (however described) of another State or a Territory;
- (f) any other prescribed person or body which has a law enforcement function;

*mandatory notification provision* means any of the following—

- (a) section 57;
- (b) section 66 of the **Audit Act 1994**;
- (c) section 61 of the **Commission for Children and Young People Act 2012**;
- (d) section 19A of the **Electoral Act 2002**;
- (e) section 54C of the **Environment Protection Act 1970**;
- (ea) section 25 of the **Judicial Commission of Victoria Act 2016**;
- (f) section 16E of the **Ombudsman Act 1973**;
- (g) section 73 of the **Public Administration Act 2004**;
- (h) section 37G of the **Racing Act 1958**;
- (i) section 613(1) of the **Workplace Injury Rehabilitation and Compensation Act 2013**.

S. 3(1) def. of *mandatory notification provision* inserted by No. 30/2016 s. 3(c), amended by Nos 16/2016 s. 161(2), 12/2019 s. 21(a).

*member of Victoria Police personnel* has the same meaning as it has in the **Victoria Police Act 2013**;

S. 3(1) def. of *member of Victoria Police personnel* inserted by No. 37/2014 s. 10(Sch. item 85.1(a)).

S. 3(1) def. of *notification to the IBAC* inserted by No. 13/2012 s. 3(1), amended by Nos 82/2012 s. 3(a), 67/2013 s. 649(Sch. 9 item 19(1)(b)(c)), 30/2016 s. 3(d), 16/2016 s. 161(1)(b), 12/2019 s. 21(b).

*notification to the IBAC* means—

- (a) in relation to corrupt conduct, a notification under section 57(1);
- (b) in relation to police personnel conduct, a notification under section 57(2), (4) or (6);
- \* \* \* \* \*
- (d) a notification under section 66 of the **Audit Act 1994**;
- (e) a notification under section 19A of the **Electoral Act 2002**;
- (f) a notification under section 54C of the **Environment Protection Act 1970**;
- (fa) a notification under section 25 or 48 of the **Judicial Commission of Victoria Act 2016**;
- (g) a notification under section 16E of the **Ombudsman Act 1973**;
- (h) a notification under section 73 of the **Public Administration Act 2004**;
- (i) a notification under section 37G of the **Racing Act 1958**;
- (j) a notification under section 613 of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 3(1) def. of *Parliamentary Committee* inserted by No. 2/2019 s. 179.

*Parliamentary Committee* means the Integrity and Oversight Committee established under section 5(a) of the **Parliamentary Committees Act 2003**;

S. 3(1) def. of *person* inserted by No. 13/2012 s. 3(1).

*person* includes an unincorporated association, a firm and a partnership;

*person in charge*, for the purposes of Division 1 of Part 3, means the person who is in charge of the place or institution where the person who wishes to make a complaint is a detained person;

S. 3(1) def. of *person in charge* inserted by No. 13/2012 s. 3(1).

\* \* \* \* \*

S. 3(1) def. of *police force* inserted by No. 13/2012 s. 3(1), repealed by No. 37/2014 s. 10(Sch. item 85.1(e)).

*police gaol* has the same meaning as it has in the **Corrections Act 1986**;

S. 3(1) def. of *police gaol* inserted by No. 13/2012 s. 3(1).

*police officer* has the same meaning as it has in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 85.1(a)).

**Note**

Police officers include police reservists (see section 45(v) of the **Victoria Police Act 2013**) and special constables (see section 193(1) of that Act).

\* \* \* \* \*

S. 3(1) def. of *police personnel* inserted by No. 13/2012 s. 3(1), repealed by No. 37/2014 s. 10(Sch. item 85.1(e)).

*police personnel conduct* has the meaning given by section 5;

S. 3(1) def. of *police personnel conduct* inserted by No. 13/2012 s. 3(1).

S. 3(1) def. of  
*police  
personnel  
conduct  
complaint*  
inserted by  
No. 13/2012  
s. 3(1).

*police personnel conduct complaint* has the  
meaning given by section 5;

S. 3(1) def. of  
*police  
personnel  
misconduct*  
inserted by  
No. 13/2012  
s. 3(1).

*police personnel misconduct* has the meaning  
given by section 5;

S. 3(1) def. of  
*police  
personnel  
premises*  
inserted by  
No. 13/2012  
s. 3(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.1(f)).

*police personnel premises* means any premises, or  
the part of any premises, occupied by  
Victoria Police or members of Victoria  
Police personnel for the purposes of use as  
an office, a police station, a police gaol, a  
locker room, a command and control centre,  
an educational and training complex, a  
forensic laboratory, a storage facility or a  
special purpose facility, whether or not  
occupied by any other person or body, but  
does not include any residential premises;

S. 3(1) def. of  
*police recruit*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 85.1(a)).

*police recruit* has the same meaning as it has in  
the **Victoria Police Act 2013**;

S. 3(1) def. of  
*preliminary  
inquiry*  
inserted by  
No. 30/2016  
s. 3(e).

*preliminary inquiry* means a preliminary inquiry  
under section 59A or 59B;

S. 3(1) def. of  
*prescribed*  
inserted by  
No. 13/2012  
s. 3(1).

*prescribed* means prescribed by regulations made  
under this Act;

*prison* has the same meaning as it has in the  
**Corrections Act 1986**;

S. 3(1) def. of  
*prison*  
inserted by  
No. 13/2012  
s. 3(1).

*prisoner* has the same meaning as it has in the  
**Corrections Act 1986**;

S. 3(1) def. of  
*prisoner*  
inserted by  
No. 13/2012  
s. 3(1).

*prison officer* has the same meaning as it has in  
the **Corrections Act 1986**;

S. 3(1) def. of  
*prison officer*  
inserted by  
No. 13/2012  
s. 3(1).

*privilege* means—

- (a) any privilege that a person is entitled to claim in any proceedings before a court or tribunal, other than the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**; and
- (b) public interest immunity;

S. 3(1) def. of  
*privilege*  
inserted by  
No. 13/2012  
s. 3(1),  
amended by  
No. 52/2012  
s. 17.

*prosecutorial body* means—

- (a) the Director of Public Prosecutions appointed under section 87AB of the **Constitution Act 1975**;
- (b) the Victorian WorkCover Authority within the meaning of the **Workplace Injury Rehabilitation and Compensation Act 2013**;
- (c) the Director of Public Prosecutions of the Commonwealth appointed under section 18 of the Director of Public Prosecutions Act 1983 of the Commonwealth;
- (d) the Director of Public Prosecutions of another State or a Territory;

S. 3(1) def. of  
*prosecutorial  
body*  
inserted by  
No. 28/2012  
s. 3(1),  
amended by  
No. 67/2013  
s. 649(Sch. 9  
item 19(1)(d)).

(e) any other prescribed person or body  
which has a prosecutorial function;

S. 3(1) def. of  
*protected  
disclosure  
complaint*  
inserted by  
No. 85/2012  
s. 84(1),  
repealed by  
No. 2/2019  
s. 49(3).

\* \* \* \* \*

S. 3(1) def. of  
*protective  
services  
officer*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 85.1(a)).

*protective services officer* has the same meaning  
as it has in the **Victoria Police Act 2013**;

S. 3(1) def. of  
*public body*  
inserted by  
No. 13/2012  
s. 3(1).

*public body* has the meaning given by section 6;

S. 3(1) def. of  
*public interest  
complaint*  
inserted by  
No. 2/2019  
s. 49(1).

*public interest complaint* means a disclosure that  
the IBAC has determined under section 26 of  
the **Public Interest Disclosures Act 2012** to  
be a public interest complaint;

S. 3(1) def. of  
*Public Interest  
Monitor*  
inserted by  
No. 13/2012  
s. 3(1).

*Public Interest Monitor* has the same meaning as  
it has in section 4 of the **Public Interest  
Monitor Act 2011**;

S. 3(1) def. of  
*public officer*  
inserted by  
No. 13/2012  
s. 3(1).

*public officer* has the meaning given by section 6;

S. 3(1) def. of  
*public sector*  
inserted by  
No. 13/2012  
s. 3(1).

*public sector* has the meaning given by section 6;

***registered medical practitioner*** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *registered medical practitioner* inserted by No. 13/2012 s. 3(1).

***referral*** means a referral under Division 5 of Part 3;

S. 3(1) def. of *referral* inserted by No. 28/2012 s. 3(1).

***relevant head of jurisdiction*** means—

S. 3(1) def. of *relevant head of jurisdiction* inserted by No. 13/2012 s. 3(1), amended by No. 3/2016 s. 58.

- (a) in relation to the Supreme Court, a Judge of the Supreme Court, an Associate Judge of the Supreme Court or a judicial registrar of the Supreme Court—
  - (i) the Chief Justice; or
  - (ii) if the Chief Justice is the person whose conduct is being investigated, the President of the Court of Appeal; or
- (b) in relation to the County Court, a judge of the County Court or an associate judge of the County Court—
  - (i) the Chief Judge of the County Court; or
  - (ii) if the Chief Judge is the person whose conduct is being investigated—
    - (A) if the Chief Judge is a dual commission holder, the Chief Justice; or
    - (B) otherwise, the next most senior judge of the County Court;

- (c) in relation to the Magistrates' Court or a magistrate—
  - (i) the Chief Magistrate; or
  - (ii) if the Chief Magistrate is the person whose conduct is being investigated—
    - (A) if the Chief Magistrate is a dual commission holder, the Chief Judge; or
    - (B) otherwise, the most senior Deputy Chief Magistrate;

S. 3(1) def. of *relevant offence* inserted by No. 13/2012 s. 3(1), amended by No. 30/2016 s. 3(f).

*relevant offence* means—

- (a) an indictable offence against an Act; or
- (b) any of the following common law offences committed in Victoria—
  - (i) attempt to pervert the course of justice;
  - (ii) bribery of a public official;
  - (iii) perverting the course of justice;
  - (iv) misconduct in public office;

S. 3(1) def. of *relevant principal officer* inserted by No. 13/2012 s. 3(1), amended by Nos 37/2014 s. 10(Sch. item 85.1(g)), 25/2015 s. 9.

*relevant principal officer* means—

- (a) the public sector body Head within the meaning of section 4(1) of the **Public Administration Act 2004**, in relation to—
  - (i) the public body of which he or she is the public sector body Head; and
  - (ii) the public officers employed by that public body;

- (b) the Chief Commissioner of Police, in relation to members of Victoria Police personnel;
- (c) the Chief Executive Officer of a Council, in relation to members of Council staff employed by that Council;
- (d) the Chief Executive Officer, within the meaning of the **Court Services Victoria Act 2014**, in relation to Court Services Victoria established under that Act and the members of the staff of Court Services Victoria;

*report of the Chief Commissioner of Police*  
means—

- (a) a report on an investigation completed by the Chief Commissioner of Police under Part 9 or 10 of the **Victoria Police Act 2013**;
- (b) a report to the IBAC under section 57(3);

S. 3(1) def. of *report of the Chief Commissioner of Police* inserted by No. 28/2012 s. 3(1), amended by Nos 85/2012 s. 84(2), 37/2014 s. 10(Sch. item 85.1(h))(as amended by No. 21/2015 s. 3(Sch. 1 item 62.3)).

*restricted matter* means—

- (a) any evidence or information given to, or obtained by, the IBAC;
- (b) the contents of any document, or a description of any thing, produced to, or obtained by, the IBAC;
- (c) the contents of any document, or a description of any thing, which the IBAC has made a copy of or seized

S. 3(1) def. of *restricted matter* inserted by No. 28/2012 s. 3(1), amended by Nos 30/2016 s. 3(g), 2/2019 s. 49(2)(c).

under Division 3 or Division 4 of Part 4;

- (d) the existence of, or any information about, a confidentiality notice or a witness summons;
- (e) the subject matter of an investigation in relation to which a witness summons has been issued;
- (f) any information that could enable a person who has been, or is proposed to be, examined by, or who has produced, or may produce, any document or thing to, the IBAC, to be identified or located;
- (g) the fact that a person has been, or is proposed to be, examined by, or has produced, or may produce, any document or thing to, the IBAC;
- (h) the fact that a disclosure or related disclosure has been notified to an appropriate entity for assessment under Part 3 of the **Public Interest Disclosures Act 2012**;
- (i) the fact that a disclosure or related disclosure has been determined under Part 3 of the **Public Interest Disclosures Act 2012** to be a public interest complaint;

S. 3(1) def. of *search warrant* inserted by No. 13/2012 s. 3(1).

*search warrant* means a warrant issued under section 91;

*senior IBAC Officer* means a sworn IBAC Officer who is the holder of a prescribed office or position or is the holder of an office or position of a prescribed class of offices or positions;

S. 3(1) def. of *senior IBAC Officer* inserted by No. 13/2012 s. 3(1).

*serious injury* includes an injury that—

S. 3(1) def. of *serious injury* inserted by No. 13/2012 s. 3(1).

- (a) is life threatening; or
- (b) is likely to result in permanent impairment; or
- (c) is likely to require long-term rehabilitation; or
- (d) is, in the opinion of the IBAC, of such nature, or occurred in such circumstances, that the infliction of it is likely to bring the IBAC into disrepute or diminish public confidence in it;

*spouse* of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 28/2012 s. 3(1).

*sworn IBAC Officer* means an IBAC Officer who has taken an oath or made an affirmation under this Act;

S. 3(1) def. of *sworn IBAC Officer* inserted by No. 13/2012 s. 3(1).

*vehicle* has the same meaning as it has in the **Road Safety Act 1986**;

S. 3(1) def. of *vehicle* inserted by No. 13/2012 s. 3(1).

*vessel* has the same meaning as it has in the **Marine Safety Act 2010**;

S. 3(1) def. of *vessel* inserted by No. 13/2012 s. 3(1), amended by No. 82/2012 s. 3(b).

S. 3(1) def. of  
*Victoria Police*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 85.1(a)).

*Victoria Police* has the same meaning as it has in  
the **Victoria Police Act 2013**;

S. 3(1) def. of  
*Victoria Police  
employee*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 85.1(a)).

*Victoria Police employee* has the same meaning  
as it has in the **Victoria Police Act 2013**;

S. 3(1) def of  
*Victorian  
Inspectorate*  
inserted by  
No. 13/2012  
s. 3(1).

*Victorian Inspectorate* has the same meaning as it  
has in section 3 of the **Victorian  
Inspectorate Act 2011**;

S. 3(1) def. of  
*Victorian  
Inspectorate  
Officer*  
inserted by  
No. 28/2012  
s. 3(1).

*Victorian Inspectorate Officer* has the same  
meaning as it has in section 3 of the  
**Victorian Inspectorate Act 2011**;

S. 3(1) def. of  
*witness  
summons*  
inserted by  
No. 28/2012  
s. 3(1),  
amended by  
No. 30/2016  
s. 3(h).

*witness summons* means a witness summons  
issued under section 59E(1) or 120(1).

S. 3(2)  
inserted by  
No. 13/2012  
s. 3(3).

- (2) For the purposes of paragraph (b) of the definition  
of *approved health professional*, the Director  
within the meaning of the **Victorian Institute of  
Forensic Medicine Act 1985**, in writing, may  
approve a person to take blood samples for the  
purposes of Division 1 of Part 9 if the Director is  
of the opinion that the person has the appropriate  
qualifications, training and experience to take  
those samples.

- (3) A reference in this Act to the investigative functions of the IBAC—
- (a) in respect of corrupt conduct, is a reference to the functions specified in section 15(2)(a), (3)(a) and (3)(c);
- (b) in respect of police personnel conduct, is a reference to the functions specified in section 15(2)(b), (2)(c), (3)(b) and (3)(c).
- (4) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as it has in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

S. 3(3)  
inserted by  
No. 13/2012  
s. 3(3).

S. 3(3)(a)  
amended by  
No. 28/2012  
s. 3(2)(a).

S. 3(3)(b)  
amended by  
No. 28/2012  
s. 3(2)(b).

S. 3(4)  
inserted by  
No. 28/2012  
s. 3(3).

#### 4 *Corrupt conduct*

S. 4  
inserted by  
No. 13/2012  
s. 4 (as  
amended by  
No. 82/2012  
s. 148(1)),  
amended by  
No. 28/2012  
s. 4.

- (1) For the purposes of this Act, *corrupt conduct* means conduct—
- (a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or

S. 4(1)  
amended by  
No. 30/2016  
s. 4(1).

S. 4(1)(da)  
inserted by  
No. 30/2016  
s. 4(2).

- (b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
- (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
- (d) of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
- (da) of a person (the *first person*) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining—
  - (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - (ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - (iii) a financial benefit or real or personal property; or
  - (iv) any other direct or indirect monetary or proprietary gain—that they would not have otherwise obtained; or

- (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da)—  
being conduct that would constitute a relevant offence.
- (1A) For the purposes of this Act, in determining whether conduct would constitute a relevant offence, the IBAC may assume that the required state of mind to commit the relevant offence can be proven.
- (2) Conduct may be *corrupt conduct* for the purposes of this Act if—
- (a) all or any part of the conduct occurs outside Victoria, including outside Australia; and
- (b) the conduct would be corrupt conduct if it occurred in Victoria.
- (2A) For the purposes of section 4(1)(da), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.
- (2B) For the purposes of section 4(1)(da), an *associate* of a first person is—
- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person;
- (b) if the first person is a natural person, a person who is a relative of the first person;
- S. 4(1)(e) amended by No. 30/2016 s. 4(3).
- S. 4(1A) inserted by No. 30/2016 s. 4(4).
- S. 4(2A) inserted by No. 30/2016 s. 4(5).
- S. 4(2B) inserted by No. 30/2016 s. 4(5).

- (c) if the first person is a body corporate—
- (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or
  - (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.

S. 4(2C)  
inserted by  
No. 30/2016  
s. 4(5).

(2C) For the purposes of subsection (2B)—

*relative* means—

- (a) the spouse or domestic partner of the first person;
- (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the first person;
- (c) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person;
- (d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person;
- (e) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person;

*relevant financial interest* includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.

- (3) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the **Electoral Act 2002**.

**5 Meaning of *police personnel conduct*, *police personnel conduct complaint* and *police personnel misconduct***

For the purposes of this Act—

*police personnel conduct* means—

- (a) in relation to a public officer who is a police officer or protective services officer—
- (i) an act or decision or the failure or refusal by the public officer to act or make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the public officer has as, or by virtue of being, a police officer or protective services officer; or
  - (ii) conduct which constitutes an offence punishable by imprisonment; or
  - (iii) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or

S. 5  
inserted by  
No. 13/2012  
s. 4 (as  
amended by  
No. 82/2012  
s. 148(1)),  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 85.2).

- (iv) disgraceful or improper conduct (whether in the public officer's official capacity or otherwise);
- (b) in relation to a public officer who is a Victoria Police employee or police recruit—
  - (i) an act or decision or the failure or refusal by the public officer to act or make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the public officer has as, or by virtue of being, a Victoria Police employee or police recruit; or
  - (ii) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it;

***police personnel conduct complaint*** means—

- (a) a complaint made to the IBAC under section 167 of the **Victoria Police Act 2013**; or
- (b) a complaint made to the IBAC in relation to the police personnel conduct of a member of Victoria Police personnel other than a police officer or protective services officer;

***police personnel misconduct*** means—

- (a) in relation to a public officer who is a police officer or protective services officer—

- (i) conduct which constitutes an offence punishable by imprisonment; or
  - (ii) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
  - (iii) disgraceful or improper conduct (whether in the public officer's official capacity or otherwise);
- (b) in relation to a public officer who is a Victoria Police employee or police recruit, conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it.

**6 Definitions of *public body*, *public officer* and *public sector***

(1) For the purposes of this Act—

*public body* means, subject to this section—

- (a) a public sector body within the meaning of section 4(1) of the **Public Administration Act 2004**;
- (b) a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university;
- (c) the Electoral Boundaries Commission constituted under the **Electoral Boundaries Commission Act 1982**;
- (d) a Council;
- (e) a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise);

S. 6  
inserted by  
No. 13/2012  
s. 4 (as  
amended by  
No. 82/2012  
s. 148(1)).

S. 6(1) def. of  
*public officer*  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.3),  
16/2016  
s. 162(1),  
27/2017 s. 58,  
9/2020  
s. 390(Sch. 1  
item 56.2).

- (f) any other body or entity prescribed for the purposes of this definition;

*public officer* means, subject to this section—

- (a) a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the **Public Administration Act 2004**;
- (b) a person to whom a provision of the **Public Administration Act 2004** applies as a result of the application of Part 7 of that Act;
- (c) an ongoing employee or temporary employee in the teaching service under the **Education and Training Reform Act 2006**;
- (d) a judicial employee employed under Division 3 of Part 6 of the **Public Administration Act 2004**;
- (e) a Ministerial officer employed under Division 1 of Part 6 of the **Public Administration Act 2004**;
- (f) an electorate officer within the meaning of the **Parliamentary Administration Act 2005**;
- (g) a Parliamentary adviser employed under Division 2 of Part 6 of the **Public Administration Act 2004**;
- (h) a Parliamentary officer within the meaning of the **Parliamentary Administration Act 2005**;
- (i) a member of Victoria Police personnel;
- (j) a responsible Minister of the Crown;
- (k) a member of the Legislative Assembly or the Legislative Council;

- (l) a Councillor within the meaning of section 3(1) of the **Local Government Act 2020**;
- (m) a member of Council staff employed under the **Local Government Act 2020**;
- (n) a judge, a reserve judge, a magistrate, a reserve magistrate, a coroner or a member of VCAT;
- (o) an associate judge or a judicial registrar;
- (p) a Crown Prosecutor;
- (q) the Chief Crown Prosecutor;
- (r) the Director of Public Prosecutions;
- (s) the Governor, the Lieutenant-Governor or the Administrator of the State;
- (t) the Auditor-General;
- (u) the Ombudsman;
- (v) the Electoral Commissioner;
- (va) the Parliamentary Budget Officer;
- (w) the holder of any other statutory office or any other prerogative office;
- (x) any other person in the service of the Crown or a public body;
- (y) a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);
- (z) a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public

office for the purposes of this definition;

- (za) an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer;

*public sector* means the sector comprising all public bodies and public officers.

- (2) The following are not a *public body* or a *public officer* for the purposes of this Act—
  - (a) the IBAC;
  - (b) an IBAC Officer;
  - (c) a Public Interest Monitor;
  - (d) the Office of the Special Investigations Monitor;
  - (e) the Special Investigations Monitor appointed under section 5 of the **Major Crime (Special Investigations Monitor) Act 2004**;
  - (f) the Victorian Inspectorate;
  - (g) a Victorian Inspectorate Officer within the meaning of section 3 of the **Victorian Inspectorate Act 2011**;
  - (h) a judicial member of the Courts Council within the meaning of the **Court Services Victoria Act 2014**;
  - (i) a court;

S. 6(2)(h)  
substituted by  
No. 1/2014  
s. 68.

S. 6(2)(i)  
inserted by  
No. 1/2014  
s. 68,  
substituted by  
No. 16/2016  
s. 162(2).

- (j) an investigating panel; **S. 6(2)(j)  
inserted by  
No. 16/2016  
s. 162(2).**
- (k) a member of an investigating panel. **S. 6(2)(k)  
inserted by  
No. 16/2016  
s. 162(2).**
- (3) In determining if a function is a public function the factors that may be taken into account include—
- (a) that the function is conferred on the body or person by or under a statutory provision;
- (b) that the function is of a regulatory nature;
- (c) that the body that performs the function is a company (within the meaning of the Corporations Act) all of the shares in which are held by or on behalf of the State; **S. 6(3)(c)  
amended by  
No. 2/2019  
s. 113(a).**
- (d) that the body is publicly funded to perform the function. **S. 6(3)(d)  
inserted by  
No. 2/2019  
s. 113(b).**
- (4) To avoid doubt—
- (a) the factors listed in subsection (3) are not exhaustive of the factors that may be taken into account in determining if a function is a public function; and
- (b) the fact that one or more of the factors set out in subsection (3) are present in relation to a function does not necessarily result in the function being a public function.
- (5) The fact that a body or person receives public funds does not of itself make that body or person a public body or public officer for the purposes of this Act.

S. 7 (Heading)  
amended by  
No. 2/2019  
s. 50(1).

## 7 Public interest complaint taken to be complaint

(1) For the purposes of this Act, other than  
Divisions 1 and 2 of Part 3—

S. 7  
inserted by  
No. 85/2012  
s. 85.

S. 7(1)(a)  
amended by  
No. 2/2019  
s. 50(2).

(a) a public interest complaint that would not  
otherwise constitute a complaint is taken to  
be—

S. 7(1)(a)(ii)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.4).

- (i) a complaint made to the IBAC under  
section 51; or
- (ii) if the disclosure relates to the conduct  
of a member of Victoria Police  
personnel—a police personnel conduct  
complaint made to the IBAC under  
section 52; and

S. 7(1)(b)  
amended by  
No. 2/2019  
s. 50(2).

(b) the person who made the public interest  
complaint is taken to be the complainant in  
relation to the complaint.

S. 7(2)  
amended by  
No. 2/2019  
s. 50(2).

(2) To avoid doubt, a public interest complaint that  
would otherwise constitute a notification under  
this Act is taken to be a complaint not a  
notification.

S. 8  
substituted by  
No. 13/2012  
s. 5.

## 8 Objects of Act

The objects of this Act are to—

S. 8(a)(i)  
substituted by  
No. 30/2016  
s. 5(1).

(a) provide for the identification, investigation  
and exposure of—

S. 8(aa)  
inserted by  
No. 30/2016  
s. 5(2).

- (i) corrupt conduct; and
  - (ii) police personnel misconduct;
- (aa) provide for the IBAC to prioritise the  
investigation and exposure of serious corrupt  
conduct or systemic corrupt conduct;

- (b) assist in the prevention of—
  - (i) corrupt conduct; and
  - (ii) police personnel misconduct;
- (c) facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct and police personnel misconduct on public administration and the community and the ways in which corrupt conduct and police personnel misconduct can be prevented;
- (d) assist in improving the capacity of the public sector to prevent corrupt conduct and police personnel misconduct;
- (e) provide for the IBAC to assess police personnel conduct.

## **9 Act binds the Crown**

- (1) This Act binds the Crown—
  - (a) in right of the State of Victoria; and
  - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

## **10 Application of Act**

This Act does not apply to the Victorian Inspectorate or any Victorian Inspectorate Officer within the meaning of the **Victorian Inspectorate Act 2011**.

**S. 10  
inserted by  
No. 70/2011  
s. 43.**

S. 11  
(Heading)  
amended by  
No. 30/2016  
s. 6(1).

## 11 Conduct occurring before the commencement of this section

S. 11  
inserted by  
No. 28/2012  
s. 5,  
amended by  
No. 30/2016  
s. 6(2).

This Act as amended by the **Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016** applies to and in respect of conduct all or part of which occurred before the commencement of this section if the conduct—

S. 11(a)  
amended by  
No. 30/2016  
s. 6(2).

(a) is the conduct of, or in relation to, a person or body (whether or not still in existence) who or which would have been a public officer or public body within the meaning of this Act as amended by the **Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016** had this section been in force at the time the conduct occurred; and

S. 11(b)  
amended by  
No. 30/2016  
s. 6(2).

(b) would have been corrupt conduct or police personnel conduct within the meaning of this Act as amended by the **Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016** had this section been in force at the time the conduct occurred.

S. 11A  
inserted by  
No. 30/2016  
s. 7.

### 11A Determination of matter previously considered by the IBAC

The IBAC may determine to investigate any complaint or notification to the IBAC that the IBAC has before the commencement of section 7 of the **Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016**—

- (a) dismissed under section 58(a); or
- (b) referred to a person or body (other than the Ombudsman) under section 73; or

- (c) referred to the Ombudsman under section 73 and the Ombudsman has dismissed it or has determined not to investigate it.

## Part 2—The IBAC

### Division 1—Constitution and staff

Pt 2 Div. 1  
(Heading)  
inserted by  
No. 28/2012  
s. 6.

#### 12 Establishment of the IBAC

- (1) The Independent Broad-based Anti-corruption Commission is established.
- (2) The IBAC does not represent the Crown.

#### 13 The IBAC is a body corporate

- (1) The IBAC—
  - (a) is a body corporate with perpetual succession;
  - (b) has an official seal;
  - (c) may sue and be sued;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (2) All courts must take judicial notice of the official seal of the IBAC affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (3) The official seal of the IBAC must—
  - (a) be kept in such custody as the IBAC determines; and
  - (b) not be used except as authorised by the IBAC.

#### Note

The IBAC is a special body under section 6(1) of the **Public Administration Act 2004**.

#### **14 Constitution of the IBAC**

The IBAC consists of one Commissioner appointed by the Governor in Council in accordance with section 20.

#### **15 Functions of the IBAC**

(1) The IBAC has the functions conferred on the IBAC under this Act or any other Act.

S. 15 substituted by No. 13/2012 s. 6, amended by Nos 28/2012 s. 7, 82/2012 s. 254, 85/2012 s. 86.

(1A) In performing its functions, the IBAC must prioritise its attention to the investigation and exposure of corrupt conduct which the IBAC considers may constitute serious corrupt conduct or systemic corrupt conduct.

S. 15(1A) inserted by No. 30/2016 s. 8(1).

(1B) Subsection (1A) does not restrict the IBAC's discretion to determine to investigate any matter that the IBAC considers may constitute corrupt conduct.

S. 15(1B) inserted by No. 30/2016 s. 8(1).

(2) Without limiting the generality of subsection (1), the IBAC has the following functions—

(a) to identify, expose and investigate corrupt conduct;

S. 15(2)(a) substituted by No. 30/2016 s. 8(2).

(b) to identify, expose and investigate police personnel misconduct;

(c) to assess police personnel conduct.

(3) Without limiting the generality of subsection (2), the IBAC has the following functions under subsection (2)—

(a) to receive complaints and notifications to the IBAC in relation to corrupt conduct;

- (b) in relation to police personnel conduct—
- (i) to receive police personnel conduct complaints and notifications to the IBAC;
  - (ii) to ensure that the highest ethical and professional standards are maintained by police officers and protective services officers;
  - (iii) to ensure that police officers and protective services officers have regard to the human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**;
- (ba) to conduct preliminary inquiries;
- (c) to hold examinations;
- (d) to make referrals to other persons or bodies.
- (4) Without limiting subsections (2) and (3), the IBAC has the following functions in relation to public interest complaints—
- (a) to investigate any of those complaints that it may investigate in accordance with—
    - (i) its corrupt conduct investigative functions; or
    - (ii) its police personnel conduct investigative functions;
  - (b) to refer the complaints to other persons or bodies to investigate;
  - (c) to dismiss the complaints.
- (5) The IBAC has education and prevention functions for the purpose of achieving the objects of this Act.

S. 15(3)(b)(ii)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.5).

S. 15(3)(b)(iii)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.5).

S. 15(3)(ba)  
inserted by  
No. 30/2016  
s. 8(3).

S. 15(4)  
amended by  
No. 2/2019  
s. 51(1).

- (6) Without limiting the generality of subsection (5), the IBAC has the following functions under subsection (5)—
- (a) to examine systems and practices in the public sector and public sector legislation;
  - (b) to provide information to, consult with and make recommendations to, the public sector;
  - (c) to assist the public sector to increase capacity to prevent corrupt conduct and police personnel misconduct by providing advice, training and education services;
  - (d) to provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct;
  - (e) to provide information and education services to members of police personnel and the community about police personnel conduct, including the detrimental effects of police personnel misconduct and ways in which to assist in preventing police personnel misconduct;
  - (f) to publish information on ways to prevent corrupt conduct and police personnel misconduct.
- (7) For the purpose of achieving the objects of this Act, the IBAC has the following functions—
- (a) to receive information, conduct research and collect intelligence, and to use that information, research and intelligence in support of investigations;
  - (b) to report on, and make recommendations as a result of, the performance of its duties and functions.

S. 15(8)  
repealed by  
No. 70/2016  
s. 47.

\* \* \* \* \*

Note to s. 15  
amended by  
No. 2/2019  
s. 51(2).

**Note**

See also Part 8 of the **Public Interest Disclosures Act 2012** which sets out the functions of the IBAC under that Act.

**16 Powers of the IBAC**

The IBAC has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of this Act and the performance of its duties and functions.

S. 17  
amended by  
Nos 13/2012  
s. 7, 28/2012  
s. 8 (as  
amended by  
No. 82/2012  
s. 151(1)),  
repealed by  
No. 30/2016  
s. 9.

\* \* \* \* \*

**18 IBAC not subject to direction or control**

The IBAC is not subject to the direction or control of the Minister in respect of the performance of its duties and functions and the exercise of its powers.

**19 Independence of the Commissioner**

- (1) The Commissioner is an independent officer of the Parliament.
- (2) The functions, powers, immunities and obligations of the Commissioner are as specified in this Act and other laws of the State.
- (3) There are no implied functions, powers, rights, immunities or obligations arising from the Commissioner being an independent officer of the Parliament.

- (4) The powers of the Parliament to act in relation to the Commissioner are as specified in or applying under this Act, the **Constitution Act 1975** and other laws of the State.
- (5) There are no implied powers of the Parliament arising from the Commissioner being an independent officer of the Parliament.
- (6) Subject to this Act and other laws of the State, the Commissioner has complete discretion in the performance or exercise of his or her duties, functions or powers.
- (7) In particular and without limiting subsection (6), the Commissioner is not subject to the direction or control of the Minister in respect of the performance or exercise of his or her duties, functions or powers.

## **20 Appointment of the Commissioner**

- (1) Subject to section 21, the Governor in Council on the recommendation of the Minister may by instrument appoint an eligible person to be the Commissioner.
- (2) A person is an eligible person if he or she—
  - (a) is or has been, or is qualified for appointment as, a judge of—
    - (i) the High Court; or
    - (ii) the Federal Court; or
    - (iii) the Supreme Court of Victoria or another State or a Territory;
  - (b) is not a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory.

- (3) A person holding a judicial office immediately before being appointed to be the Commissioner must cease to hold that judicial office upon being appointed to be the Commissioner.

## **21 Veto of proposed Commissioner**

- (1) Subject to subsection (4), the Minister must not make a recommendation under section 20 unless—

S. 21(1)(a)  
amended by  
No. 2/2019  
s. 196(2).

- (a) the Minister has submitted details of the proposed recommendation to the Integrity and Oversight Committee; and

- (b) either—

S. 21(1)(b)(i)  
amended by  
No. 2/2019  
s. 196(2).

- (i) within the time specified in subsection (2) the Integrity and Oversight Committee has informed the Minister that it has decided not to veto the recommendation; or

S. 21(1)(b)(ii)  
amended by  
No. 2/2019  
s. 196(2).

- (ii) the time specified in subsection (2) has elapsed and the Integrity and Oversight Committee has not vetoed the recommendation.

S. 21(2)  
amended by  
No. 2/2019  
s. 196(2).

- (2) The Integrity and Oversight Committee must make a decision under this section within 30 days after the Minister has submitted details of the proposed recommendation to the Integrity and Oversight Committee.

S. 21(3)  
amended by  
No. 2/2019  
s. 196(2).

- (3) The Integrity and Oversight Committee—
- (a) may decide to veto or not to veto the proposed recommendation;
- (b) must notify the Minister in writing of its decision within the period specified in subsection (2).

- (4) Subsections (1) to (3) do not apply to the appointment of the first Commissioner under this Act and the Minister may make the recommendation for the appointment of the first Commissioner after the Premier has consulted in relation to the proposed recommendation with the member of the Legislative Assembly who is for the time being the Leader of Her Majesty's Opposition.

## **22 Duties, functions and powers of the Commissioner**

The Commissioner—

- (a) constitutes the IBAC under section 14;
- (b) is responsible for undertaking the strategic leadership of the IBAC for the purpose of achieving the objects of this Act;
- (c) has the duties, functions and powers delegated to the Commissioner by the IBAC;
- (d) has any other duties, functions and powers conferred on the Commissioner under this Act or any other Act.

## **23 Deputy Commissioners**

- (1) Subject to subsections (2) and (3), the Governor in Council on the recommendation of the Minister may by instrument appoint one or more persons as Deputy Commissioners being persons whom the Minister considers have the experience and qualifications necessary to enable the IBAC to achieve the objects of this Act and perform its duties and functions.
- (2) The Minister must, in making a recommendation, ensure that at least one Deputy Commissioner is an Australian lawyer.
- (3) Before making a recommendation under this section, the Minister must obtain the concurrence of the Commissioner.

S. 23  
amended by  
No. 28/2012  
s. 9.

S. 23(2)  
amended by  
No. 30/2016  
s. 49(1).

- (4) A person holding a judicial office immediately before being appointed to be a Deputy Commissioner must cease to hold that judicial office upon being appointed to be a Deputy Commissioner.

## **24 Terms and conditions**

- (1) The Commissioner or a Deputy Commissioner holds office for the period not exceeding 5 years as is specified in the instrument of appointment.
- (2) The Commissioner is not eligible to be re-appointed.
- (3) A Deputy Commissioner is eligible to be re-appointed.
- (4) Subject to this section, the Commissioner or a Deputy Commissioner is appointed on the terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment.
- (5) The remuneration of the Commissioner or a Deputy Commissioner cannot be reduced during his or her term of office unless he or she consents to the reduction.
- (6) If a person who has been a judge of the Supreme Court or the County Court or has been the Chief Magistrate is appointed as the Commissioner or a Deputy Commissioner, the appointment does not affect any pension or other rights or privileges the person has as a former judge or Chief Magistrate.
- (7) If the Commissioner or a Deputy Commissioner was immediately before his or her appointment a judge of the Supreme Court, his or her service as a Commissioner or Deputy Commissioner shall count as service in the office of judge of the Supreme Court for the purposes of entitlement to a pension under section 83 of the **Constitution Act 1975**.

- (8) If the Commissioner or a Deputy Commissioner was immediately before his or her appointment a judge of the County Court, his or her service as a Commissioner or Deputy Commissioner shall count as service in the office of judge of the County Court for the purposes of entitlement to a pension under section 14 of the **County Court Act 1958**.
- (9) If the Commissioner or a Deputy Commissioner was immediately before his or her appointment as the Chief Magistrate, his or her service as a Commissioner or Deputy Commissioner shall count as service in the office of Chief Magistrate for the purposes of entitlement to a pension under section 10A of the **Magistrates' Court Act 1989**.
- (10) If the Commissioner or a Deputy Commissioner was immediately before his or her appointment an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer during his or her term of office as the Commissioner or a Deputy Commissioner.
- (11) The Commissioner or a Deputy Commissioner must not engage in any employment, business or community activity outside the office of Commissioner or Deputy Commissioner that may create an actual or perceived conflict of interest with his or her role as the Commissioner or a Deputy Commissioner.
- (12) Without limiting the generality of subsection (11), the Commissioner or a Deputy Commissioner must not enter into a contract by which he or she is to provide services or provide services under any contract if the provision of services may create an actual or perceived conflict of interest with his or her role as the Commissioner or a Deputy Commissioner.

(13) In addition to subsection (11), the Commissioner or a Deputy Commissioner must not, without the approval of the Governor in Council—

(a) apply for, or hold, a licence or permit to conduct any trade, business or profession; or

**Note**

This includes a legal practising certificate under the Legal Profession Uniform Law (Victoria).

(b) conduct any trade, business or profession; or

(c) accept any other employment.

(14) The **Public Administration Act 2004** does not apply to the Commissioner or a Deputy Commissioner in respect of the office of Commissioner or Deputy Commissioner.

Note to  
s. 24(13)(a)  
amended by  
No. 30/2016  
s. 49(2).

S. 24A  
inserted by  
No. 28/2013  
s. 3.

**24A Pension entitlements of Commissioner, partner and eligible children**

(1) Subject to this section, the Commissioner, and the partner and children of the Commissioner, are entitled to pensions in the circumstances set out in this section and otherwise in the same circumstances and at the same rates and on the same terms and conditions as—

(a) a Judge of the Supreme Court (other than the Chief Justice, the President of the Court of Appeal or a Judge of Appeal) under Part III of the **Constitution Act 1975**; and

(b) the partner and children of such a Judge under Part III of the **Constitution Act 1975**.

(2) Upon retirement or resignation, the Commissioner is entitled to a pension under this section if the Commissioner has attained the age of 65 years and—

- (a) the Commissioner has served in the office of Commissioner for not less than 5 years; or
  - (b) having been appointed, the Commissioner is unable to serve as Commissioner for not less than 5 years, because he or she has become afflicted with a permanent incapacity disabling him or her from the due execution of that office.
- (3) Upon the death of the Commissioner or any person who was formerly the Commissioner and entitled to a pension under this section, the partner of the Commissioner or former Commissioner is entitled to a pension payable fortnightly at the rate of three-eighths of the salary referred to in subsection (8)(e) until—
- (a) the partner's death; or
  - (b) the partner becomes the domestic partner or spouse of another person.
- (4) If there are eligible children of a deceased Commissioner and no pension is otherwise payable under this section to or in respect of that Commissioner, there is to be paid to any person or persons that the Attorney-General directs a pension in respect of each eligible child at the rate of pension applicable to the child under subsection (5).
- (5) The pension applicable to each eligible child is the amount of the pension that would be payable to the partner of the Commissioner if the partner was entitled to a pension under this section divided by 4 or the number of eligible children (whichever is the greater).
- (6) ***Eligible child*** in relation to a Commissioner means a child, adopted child or stepchild of the Commissioner or his or her partner—
- (a) who is under the age of 16 years; or
-

- (b) who—
- (i) has attained the age of 16 years but is under the age of 25 years; and
  - (ii) is receiving full-time education at a school, college or university.
- (7) Despite subsection (3), no pension is payable to the partner of any former Commissioner if that partner became the domestic partner or spouse of the former Commissioner after that Commissioner's resignation or retirement, unless in the case of marriage, the spouse was the domestic partner of the Commissioner immediately prior to that Commissioner's resignation or retirement.
- (8) For the purposes of this section—
- (a) section 83 of the **Constitution Act 1975** is to be construed as if a reference to—
    - (i) service in the office of a Judge of the Court for not less than 10 years is a reference to service in the office of Commissioner for not less than 5 years; and
    - (ii) "Judge" or "Judge of the Court" were a reference to the Commissioner; and
    - (iii) "retirement" or "resignation" includes the expiry of a term of office as Commissioner; and
  - (b) sections 83(1)(a)(ii), (a)(iii) and (aa), (1A), (1B), (6)(aa), (a), (ab), (ac), (b) and (ba), (6A) and (7) of that Act do not apply; and
  - (c) sections 83AA to 83AI of that Act do not apply; and

- (d) section 5A of the **Constitution Act 1975** (other than subsection (2A)) applies and is to be construed as if a reference to "Judge" or "Judge of the Court" in that section of that Act were a reference to the Commissioner; and
  - (e) the annual salary on which a pension under this section is calculated is the annual salary for the time being applicable to the office of a Judge of the Supreme Court (other than the Chief Justice, the President of the Court of Appeal or a Judge of Appeal).
- (9) If, on the expiration of his or her term of office as Commissioner, a person who served as Commissioner for not less than 5 years is not under subsection (1) entitled to a pension only because he or she has not attained the age of 65 years—
- (a) on that person attaining the age of 65 years he or she, and his or her partner and children, become entitled to pensions under that subsection in the circumstances, at the rates and on the terms and conditions set out in this section as if he or she had only retired from the office of Commissioner on attaining that age; and
  - (b) any such pension is liable to be suspended or determined in the circumstances and to the extent set out in this section.
- (10) A pension under this section is otherwise liable to be suspended or determined in the same circumstances and to the same extent as pensions under Part III of the **Constitution Act 1975** are liable to be suspended or determined.

**Example**

Accepting a judicial appointment, holding any office or place of profit under the Crown in right of the Commonwealth or of a State or engaging in legal practice: see section 83(4) of the **Constitution Act 1975**.

- (11) The Commissioner and his or her partner and children are not entitled to a pension under this section if—
- (a) the Commissioner has held office as a judge of the Supreme Court, an Associate Judge of the Supreme Court, a judge of the County Court, an associate judge of the County Court or the Chief Magistrate; and
  - (b) that person, his or her partner or children are entitled to a pension under—
    - (i) section 83 of the **Constitution Act 1975**; or
    - (ii) section 104A of the **Supreme Court Act 1986**; or
    - (iii) section 14 or 17B of the **County Court Act 1958**; or
    - (iv) section 10A of the **Magistrates' Court Act 1989**.
- (12) This section is taken to have effect on and from 1 January 2013.

S. 24B  
inserted by  
No. 28/2013  
s. 3.

**24B Salary sacrifice**

- (1) The Commissioner, by notice in writing to the Attorney-General, may enter into an arrangement under which the Commissioner agrees to receive the whole or part of his or her total amount of future salary as non-salary benefits of an equivalent value.
  - (2) A notice under subsection (1) must specify a date from which the arrangement is to take effect which must be—
-

- (a) the date on which the notice is given; or
  - (b) a later date.
- (3) The Commissioner may vary or revoke a notice he or she has given under subsection (1) by notice in writing to the Attorney-General.
- (4) A notice of variation or revocation under subsection (3) must specify a date from which the variation or revocation is to take effect which must be—
- (a) the date on which the notice is given; or
  - (b) a later date.
- (5) In this section *non-salary benefits* has the same meaning as it has in clauses 3(5) and 3(6) of Schedule 1A to the **Public Administration Act 2004**.
- (6) This section is taken to have effect on and from 1 January 2013.

#### **24C Appropriation of Consolidated Fund**

All pensions under section 24A and any payments in connection with those pensions are payable out of the Consolidated Fund which is to the necessary extent appropriated accordingly.

S. 24C  
inserted by  
No. 28/2013  
s. 3.

#### **25 Vacancy and resignation—office of the Commissioner**

- (1) The Commissioner ceases to hold office if he or she—
- (a) resigns by writing delivered to the Governor;  
or
  - (b) becomes an insolvent under administration;  
or
  - (c) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or

S. 25(1)(f)  
amended by  
No. 13/2019  
s. 221(Sch. 1  
item 23).

- (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
- (e) is appointed to a judicial office; or
- (f) becomes a represented person within the meaning of the **Guardianship and Administration Act 2019**.

- (2) The Commissioner ceases to hold office if he or she is removed from office under section 26.

## **26 Suspension and removal from office of the Commissioner**

- (1) The Governor in Council may suspend the Commissioner from office on any of the following grounds—
  - (a) misconduct;
  - (b) neglect of duty;
  - (c) inability to perform the duties of the office;
  - (d) any other ground on which the Governor in Council is satisfied that the Commissioner is unfit to hold office.
- (2) The Minister must cause a full statement of the grounds of suspension to be presented to each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the suspension.
- (3) The Governor in Council must remove the Commissioner from office if each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the statement of the grounds of suspension is presented to it, declares by resolution that the Commissioner ought to be removed from office.

- (4) The Governor in Council must remove the suspension and restore the Commissioner to office unless each House of the Parliament makes a declaration of the kind specified in subsection (3) within the time specified in that subsection.
- (5) The Commissioner can only be removed from office in accordance with this section.

**27 Vacancy and resignation—office of Deputy Commissioner**

- (1) A Deputy Commissioner ceases to hold office if he or she—
  - (a) resigns by writing delivered to the Governor; or
  - (b) becomes an insolvent under administration; or
  - (c) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
  - (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
  - (e) is appointed to a judicial office; or
  - (f) becomes a represented person within the meaning of the **Guardianship and Administration Act 2019**.

S. 27(1)(f)  
amended by  
No. 13/2019  
s. 221(Sch. 1  
item 23).

- (2) A Deputy Commissioner ceases to hold office if he or she is removed from office under section 28.

**28 Removal from office of a Deputy Commissioner**

The Governor in Council may remove a Deputy Commissioner from office on any of the following grounds—

- (a) misconduct;

- (b) neglect of duty;
- (c) inability to perform the duties of the office;
- (d) any other ground on which the Governor in Council is satisfied that the Deputy Commissioner is unfit to hold office.

### **29 Declaration of inability to act**

The Commissioner or a Deputy Commissioner may declare himself or herself unable to act in respect of a particular matter by reason of an actual or perceived conflict of interest.

### **30 Acting appointment**

- (1) The Governor in Council may on the recommendation of the Minister appoint a person to act in the office of Commissioner or a Deputy Commissioner during—
  - (a) any vacancy (including an initial vacancy) in the office of the Commissioner or Deputy Commissioner; or
  - (b) any period when the person holding the office—
    - (i) is absent from duty; or
    - (ii) is for any other reason unable to perform the duties of the office.
- (2) Subject to this section, a person appointed under subsection (1) can be appointed for a period not exceeding 6 months.
- (3) Subject to subsection (4), an acting appointment or acting appointments in respect of each vacancy referred to in subsection (1)(a) or each period referred to in subsection (1)(b) must not exceed a total of 6 months in duration.

S. 30  
amended by  
No. 28/2012  
s. 10.

- (4) An acting appointment or acting appointments in respect of each vacancy referred to in subsection (1)(a) or each period referred to in subsection (1)(b) must not exceed a total of 12 months in duration, if—
- (a) a Deputy Commissioner or Deputy Commissioners are appointed to act; or
  - (b) the person appointed to act is a person who is eligible for appointment as the Commissioner under section 20; or
  - (c) the person appointed to act is a person who, in the opinion of the Minister—
    - (i) has the experience and qualifications necessary to enable the IBAC to achieve the objects of this Act and perform its duties and functions; and
    - (ii) has prior experience in a senior role in a body with investigative functions, intelligence gathering functions or substantially similar functions.
- (5) A vacancy in the office of the Commissioner must be filled by a person appointed in accordance with section 20 within the period of 12 months after the vacancy occurred.
- (6) The Governor in Council may at any time remove a person acting in the office of the Commissioner or a Deputy Commissioner from the office.
- (7) While a person is acting in the office of Commissioner or Deputy Commissioner the person—
- (a) has and may exercise all the powers, and must perform all the functions and duties, of that office; and

S. 30(7)(b)  
substituted by  
No. 30/2016  
s. 10(1).

(b) is entitled to be paid the remuneration and allowances specified in the instrument of appointment of that person as acting Commissioner or acting Deputy Commissioner.

S. 30(8)  
repealed by  
No. 30/2016  
s. 10(2).

\* \* \* \* \*

### 31 Oath or affirmation of office

- (1) Before a person appointed to be the Commissioner or a Deputy Commissioner or to act in the office of the Commissioner or a Deputy Commissioner assumes the office, he or she must have taken an oath or made an affirmation that he or she—
  - (a) will faithfully and impartially perform the duties and functions and exercise the powers of the office; and
  - (b) will not disclose, except as authorised or required by law, any information received in the performance of the duties and functions or the exercise of the powers of the office.
- (2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.

S. 32  
substituted by  
No. 13/2012  
s. 8 (as  
amended by  
No. 82/2012  
s. 148(2)),  
amended by  
No. 28/2012  
s. 11 (as  
amended by  
No. 82/2012  
s. 151(2)),  
substituted by  
No. 30/2016  
s. 11.

### 32 Delegations

- (1) Subject to subsection (2), the IBAC, by instrument, may delegate to—
  - (a) the Commissioner;
  - (b) a Deputy Commissioner—  
any duty, function or power of the IBAC under this Act or any other Act.
- (2) The IBAC can only delegate any duty, function or power of the IBAC under section 117(1), 141, 153(1), 156(1), 162 or 165 to the Commissioner.

- (3) Subject to subsections (4), (5) and (6), the Commissioner, by instrument, may delegate to—
- (a) a Deputy Commissioner;
  - (b) the Chief Executive Officer;
  - (c) a senior IBAC officer;
  - (d) a person appointed under section 36—  
any duty, function or power of the Commissioner, including any duty, function or power delegated to the Commissioner under subsection (1) but excluding those specified in subsection (2).
- (4) The Commissioner can only delegate any duty, function or power of the Commissioner under section 115 to a Deputy Commissioner.
- (5) The Commissioner can only delegate any duty, function or power of the Commissioner under sections 42(1), 42(3), 42(4), 42(5), 42(7), 47(2), 50(2), 73, 74, 75, 79(2), 81, 84, 85, 91, 119, 127(2), 127(8), 139(1), 141A(1), 141B(1) and 141C(1) to—
- (a) a Deputy Commissioner;
  - (b) the Chief Executive Officer.
- (6) Despite subsection (5), the Commissioner, by instrument, may delegate to a Deputy Commissioner or the Chief Executive Officer the power of the Commissioner under section 85 on the condition that it is only to be exercised by the delegate if—
- (a) the Commissioner is absent or unavailable;  
and
  - (b) the delegate reasonably believes that a delay in the exercise of the power would significantly limit the effectiveness of the powers conferred by Division 3 of Part 4.

**S. 32(5)  
amended by  
No. 22/2020  
s. 7B.**

- (7) A Deputy Commissioner, by instrument, may delegate to—
- (a) a senior IBAC Officer;
  - (b) a person appointed under section 36—  
any duty, function or power of the Deputy Commissioner, including any duty, function or power delegated to the Deputy Commissioner under subsection (1) or (3) but excluding those specified in subsection (4) or (5).
- (8) The Chief Executive Officer, by instrument, may delegate to—
- (a) a senior IBAC Officer;
  - (b) a person appointed under section 36—  
any duty, function or power of the Chief Executive Officer, including any duty, function or power delegated to the Chief Executive Officer under subsection (3) but excluding those specified in subsection (5).
- (9) Despite subsection (3), if the Commissioner has made a declaration of inability to act in respect of a particular matter under section 29, the Commissioner, by instrument, may delegate to a sworn IBAC Officer who would be qualified to be appointed under section 20 to be the Commissioner, any duty, function or power of the Commissioner, including any duty, function or power delegated to the Commissioner under subsection (1), which the Commissioner considers is necessary to enable that sworn IBAC Officer to act in respect of that particular matter.
- (10) Despite subsection (3), if a sworn IBAC Officer to whom section 61(1) applies is conducting an investigation referred to in section 61, the Commissioner, by instrument, may delegate to that sworn IBAC Officer any duty, function or

power of the Commissioner, including any duty, function or power delegated to the Commissioner under subsection (1), which the Commissioner considers is necessary to enable that sworn IBAC Officer to act in respect of that particular investigation.

- (11) A delegation under this section to a former judge of the Supreme Court or the County Court or a former Chief Magistrate does not affect any pension or other rights or privileges that the person has as a former judge or Chief Magistrate.
- (12) A delegation given under section 17 or 32 as in force before the commencement of sections 9 and 11 of the **Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016** which if given after that commencement would not be valid, continues in force until—
- (a) the expiry of the period of 6 months after that commencement; or
  - (b) it is revoked—
- whichever first occurs.
- (13) For the avoidance of doubt, a reference in this section to the Commissioner includes a reference to a person who is acting in the office of the Commissioner.

**Note**

See sections 42 and 42A of the **Interpretation of Legislation Act 1984**.

**33 Chief Executive Officer**

- (1) The IBAC must appoint a person as the Chief Executive Officer of the IBAC.

- (2) The Chief Executive Officer holds office, subject to this Act, on a full-time basis and on such terms and conditions as are determined by the IBAC and specified in the instrument of appointment.
- (3) The IBAC may at any time remove or suspend the Chief Executive Officer from office.
- (4) The Chief Executive Officer may resign from the office in writing signed by the Chief Executive Officer and delivered to the IBAC.
- (5) If the Chief Executive Officer is unable, whether because of illness, suspension, absence or otherwise to perform the duties of the office of the Chief Executive Officer, the IBAC may appoint another person to act in the place of the Chief Executive Officer during the period of inability.
- (6) A person appointed under this section to act in the place of the Chief Executive Officer while so acting—
  - (a) has all the rights and powers, and must perform the duties, of the Chief Executive Officer; and
  - (b) is entitled to be paid the remuneration and allowances which the Chief Executive Officer would have been entitled to.
- (7) If the Chief Executive Officer was immediately before his or her appointment an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer while serving with the IBAC.
- (8) The Chief Executive Officer is the public service body Head of the IBAC for the purposes of section 16 of the **Public Administration Act 2004**.

### **34 Oath or affirmation of office by Chief Executive Officer or acting Chief Executive Officer**

- (1) Before a person appointed to be the Chief Executive Officer or to act in the office of the Chief Executive Officer assumes the office, he or she must have taken an oath or made an affirmation that he or she—
  - (a) will faithfully and impartially perform the duties and functions and exercise the powers of the office; and
  - (b) will not disclose, except as authorised or required by law, any information received in the performance of the duties and functions or the exercise of the powers of the office.
- (2) The oath or affirmation is to be administered by the Commissioner.

### **35 Staff**

- (1) Any employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The IBAC may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

### **36 Consultants**

- (1) The IBAC may engage persons with suitable qualifications and experience as consultants.
- (2) Without limiting the generality of subsection (1), the IBAC may appoint an Australian legal practitioner to assist the IBAC as counsel, either generally or in reference to a particular matter.
- (3) An engagement under this section may be on any terms and conditions the IBAC considers appropriate.

### **37 Oath or affirmation by staff and consultants**

- (1) Before commencing employment with the IBAC, a person referred to in section 35 must take an oath or make an affirmation that he or she—
  - (a) will faithfully and impartially perform their duties and functions and exercise their powers; and
  - (b) will not disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of their powers.
- (2) The IBAC may require a person engaged under section 35(2) or 36 or an officer, sub-contractor, agent or employee of a person engaged under section 36 or a person who is to be appointed as an examiner under section 115 to take an oath or make an affirmation that he or she—
  - (a) will faithfully and impartially perform their duties and functions and exercise their powers in the course of the engagement; and
  - (b) will not disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of their powers in the course of the engagement.
- (3) The oath or affirmation is to be administered by the Commissioner.

S. 37(2)  
amended by  
No. 30/2016  
s. 12.

### **38 Obligation on staff employed or engaged under section 35 or persons engaged under section 36 not to make public comment**

A person employed or engaged under section 35 or engaged under section 36 must not publicly comment on—

- (a) the administration of this Act; or

S. 38  
substituted by  
No. 28/2012  
s. 12,  
amended by  
No. 82/2012  
s. 4.

- (b) the performance of duties and functions or the exercise of powers by the IBAC.

**39 Obligation to avoid actual or perceived conflicts of interest**

An IBAC Officer must ensure that any actual or perceived conflicts of interest are avoided in the performance of their duties and functions and in the exercise of their powers as an IBAC Officer.

**Division 2—Disclosure by the IBAC**

Pt 2 Div. 2  
(Heading and  
ss 40, 41)  
inserted by  
No. 28/2012  
s. 13.

**40 Unauthorised disclosures or provision of information**

S. 40  
inserted by  
No. 28/2012  
s. 13,  
amended by  
Nos 82/2012  
s. 5, 85/2012  
s. 87.

A person who is, or was, an IBAC Officer must not, directly or indirectly, provide or disclose any information acquired by the person or the IBAC by reason of, or in the course of, the performance of the duties and functions or the exercise of powers of the person or the IBAC under this Act or any other Act except—

- (a) for the performance of the duties and functions or the exercise of the powers of the person or the IBAC in accordance with this Act or any other Act; or
- (b) for the purposes of—
- (i) proceedings for an offence; or
  - (ii) a disciplinary process or action—  
brought as a result of an investigation conducted by the IBAC or by the Victorian Inspectorate; or

S. 40(c)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 1).

(c) for the purposes of proceedings for an offence against this Act or the **Public Interest Disclosures Act 2012**; or

S. 40(d)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 1).

(d) as is otherwise authorised or required to be made by or under this Act or the **Public Interest Disclosures Act 2012**.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note to s. 40  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 2).

**Note**

The person may be subject to further confidentiality obligations under Part 7 of the **Public Interest Disclosures Act 2012**.

S. 41  
inserted by  
No. 28/2012  
s. 13,  
amended by  
Nos 82/2012  
s. 6, 85/2012  
s. 88.

**41 Disclosure or provision of information by the IBAC**

(1) If the IBAC considers it appropriate, the IBAC, at any time, may provide or disclose any information acquired by reason of, or in the course of, the performance of its duties and functions or the exercise of its powers under this Act or any other Act to any of the following persons or bodies if the IBAC considers that the information is relevant to the performance of the duties and functions or the exercise of powers of that person or body—

- (a) an integrity body;
- (b) a law enforcement agency;
- (c) a prosecutorial body;
- (d) the relevant principal officer or any other appropriate senior officer;

S. 41(1)(d)  
amended by  
Nos 67/2014  
s. 134(1)(a),  
30/2016  
s. 13(1).

Independent Broad-based Anti-corruption Commission Act 2011  
No. 66 of 2011  
Part 2—The IBAC

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- |                                                                                                                                                                                           |                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| (e) a Public Interest Monitor;                                                                                                                                                            | S. 41(1)(e)<br>inserted by<br>No. 67/2014<br>s. 134(1)(b). |
| (f) a Coroner;                                                                                                                                                                            | S. 41(1)(f)<br>inserted by<br>No. 67/2014<br>s. 134(1)(b). |
| (g) a Royal Commission, Board of Inquiry or<br>Formal Review;                                                                                                                             | S. 41(1)(g)<br>inserted by<br>No. 67/2014<br>s. 134(1)(b). |
| (h) a body established under a law of the<br>Commonwealth or of another State or of a<br>Territory that is the equivalent of a Royal<br>Commission, Board of Inquiry or Formal<br>Review; | S. 41(1)(h)<br>inserted by<br>No. 67/2014<br>s. 134(1)(b). |
| (i) a body having a similar function to a Royal<br>Commission, Board of Inquiry or Formal<br>Review that is prescribed by the regulations<br>for the purpose of this subsection.          | S. 41(1)(i)<br>inserted by<br>No. 67/2014<br>s. 134(1)(b). |
| (2) Subsection (1) applies subject to any restriction<br>on the provision or disclosure of information<br>under this Act or any other Act (including any<br>Commonwealth Act).            |                                                            |
| (3) The IBAC must not provide or disclose<br>information under subsection (1) that is likely to<br>lead to the identification of a person who has<br>made an assessable disclosure to—    |                                                            |
| (a) an entity specified in subsection (1)(a), (b),<br>(c), (e), (f), (g), (h) or (i), if the entity is—                                                                                   | S. 41(3)(a)<br>amended by<br>No. 67/2014<br>s. 134(2).     |
| (i) the subject of the assessable disclosure;<br>or                                                                                                                                       |                                                            |
| (ii) the employer of the person who is the<br>subject of the assessable disclosure; or                                                                                                    |                                                            |

(b) an entity specified in subsection (1)(d) in any circumstances.

S. 41(4)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 3).

(4) However, the IBAC may provide or disclose under subsection (1) information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

S. 41(4A)  
inserted by  
No. 30/2016  
s. 13(2).

(4A) Subject to subsections (2) and (4), if—

(a) a House of the Parliament has by resolution referred a report made by the IBAC to a Parliamentary Committee of that House to determine whether there has been a breach of parliamentary privilege or contempt of Parliament; and

(b) the Parliamentary Committee requests the IBAC to provide or disclose any information acquired by reason of, or in the course of, preparing the report which the Parliamentary Committee considers may be necessary to determine whether there has been a breach of parliamentary privilege or contempt of Parliament—

the IBAC may at its discretion comply with the request.

S. 41(4B)  
inserted by  
No. 30/2016  
s. 13(2).

(4B) The IBAC must not provide or disclose information under subsection (4A) that is likely to lead to the identification of a person who has made an assessable disclosure.

S. 41(5)  
inserted by  
No. 67/2014  
s. 134(3).

(5) In this section—

***Board of Inquiry*** has the same meaning as in the **Inquiries Act 2014**;

***Formal Review*** has the same meaning as in the **Inquiries Act 2014**;

**Royal Commission** means—

- (a) a Royal Commission established under the **Inquiries Act 2014**; or
- (b) a Royal Commission established under the prerogative of the Crown;

S. 41(5) def. of **Royal Commission** amended by No. 30/2016 s. 13(3)(a).

**senior officer** means a person who holds a position or is a member of a class of positions that is prescribed for the purposes of this section;

S. 41(5) def. of **senior officer** inserted by No. 30/2016 s. 13(3)(b).

### **Division 3—Confidentiality notices**

Pt 2 Div. 3 (Heading and ss 42–44) inserted by No. 28/2012 s. 13.

#### **42 Confidentiality notice**

- (1) If during an investigation the IBAC considers on reasonable grounds that the disclosure of one or more restricted matters would be likely to prejudice—
  - (a) that investigation; or
  - (b) the safety or reputation of a person; or
  - (c) the fair trial of a person who has been, or may be, charged with an offence—

S. 42 inserted by No. 28/2012 s. 13, amended by No. 85/2012 s. 89.

the IBAC may issue a confidentiality notice in respect of that investigation to a person (other than an IBAC Officer or a Victorian Inspectorate Officer) specifying the restricted matter or restricted matters in accordance with this section.

- (1A) If during a preliminary inquiry the IBAC—
  - (a) has issued a witness summons to a person; and

S. 42(1A) inserted by No. 30/2016 s. 14(1).

- (b) considers on reasonable grounds that the disclosure of one or more restricted matters would be likely to prejudice the preliminary inquiry—

the IBAC may issue a confidentiality notice to the person (other than an IBAC Officer or a Victorian Inspectorate Officer) specifying the restricted matter or restricted matters in accordance with this section.

- (2) A confidentiality notice must—
  - (a) be in the prescribed form;
  - (b) specify the restricted matter or restricted matters in respect of which the confidentiality notice is issued;
  - (c) include a copy of the provisions of subsections (3) to (8) and section 44 and an explanation of the effect of those provisions;
  - (d) include a statement—
    - (i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Public Interest Disclosures Act 2012** relating to confidentiality may apply to the person; and
    - (ii) directing the person to the provisions of that Act which impose those obligations.

S. 42(2)(d)(i)  
amended by  
No. 2/2019  
s. 52(a).

S. 42(2)(d)(ii)  
amended by  
No. 2/2019  
s. 52(b).

S. 42(2)(e)  
repealed by  
No. 2/2019  
s. 52(c).

S. 42(3)  
amended by  
No. 30/2016  
s. 14(2)(a).

- (3) If at any time the IBAC considers on reasonable grounds that it is necessary to restrict disclosure of a different restricted matter from any of those specified in a confidentiality notice in respect of a particular investigation to ensure that the matters

specified in subsection (1), or in respect of a preliminary inquiry to ensure that the matters specified in subsection (1A), are not likely to be prejudiced, the IBAC must issue to the person to whom the confidentiality notice was issued—

(a) a notice cancelling the previous confidentiality notice; and

(b) a new confidentiality notice in respect of that investigation under subsection (1) or (1A).

**S. 42(3)(b)**  
amended by  
**No. 30/2016**  
s. 14(2)(b).

(4) If at any time the IBAC considers on reasonable grounds that it is no longer necessary to restrict disclosure of a particular restricted matter specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1), or in respect of a preliminary inquiry to ensure that the matters specified in subsection (1A), are not likely to be prejudiced, the IBAC must issue to the person to whom the confidentiality notice was issued—

**S. 42(4)**  
amended by  
**No. 30/2016**  
s. 14(2)(a).

(a) a notice cancelling the previous confidentiality notice; and

(b) a new confidentiality notice in respect of that investigation under subsection (1) or (1A).

**S. 42(4)(b)**  
amended by  
**No. 30/2016**  
s. 14(2)(b).

(5) If at any time the IBAC considers on reasonable grounds that it is no longer necessary to restrict disclosure of the restricted matter or restricted matters specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1), or in respect of a preliminary inquiry to ensure that the matters specified in subsection (1A), are not likely to be prejudiced, the IBAC must issue to the person to whom the confidentiality notice was

**S. 42(5)**  
amended by  
**No. 30/2016**  
s. 14(2)(a).

issued a notice cancelling the confidentiality notice.

- (6) A confidentiality notice in respect of a particular investigation ceases to have effect on whichever of the following occurs first—
- (a) the date on which the IBAC issues a notice cancelling the confidentiality notice under subsection (3), (4) or (5);
  - (b) the date which is the expiry of the period of 5 years from the date on which the first confidentiality notice in respect of that investigation was issued to that person or, if an extension is granted under subsection (8), the date on which the period of extension expires.
- (7) If the IBAC considers on reasonable grounds that it is necessary to extend the period of 5 years specified in subsection (6)(b) on any of the grounds specified in subsection (8), the IBAC may apply to the Supreme Court for an extension of the period.
- (8) The Supreme Court, on the application of the IBAC, may, by order, extend the period of 5 years specified in subsection (6)(b), if the Supreme Court is satisfied that an extension is necessary to avoid prejudice to—
- (a) the investigation being conducted by the IBAC; or
  - (b) the safety or reputation of a person; or
  - (c) the fair trial of a person who has been, or may be, charged with an offence; or
  - (d) any proceedings that are proposed to be commenced or which have not been finally determined.

- (9) A confidentiality notice under subsection (1) or (1A) or a notice cancelling a confidentiality notice under subsection (3), (4) or (5) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served under section 59I, 59J, 124(3), 124(4), 124(5), 125 or 191(1) or (2).

S. 42(9)  
amended by  
Nos 30/2016  
s. 14(3),  
11/2021 s. 127.

#### **43 IBAC to provide Victorian Inspectorate with copies**

The IBAC, as soon as reasonably practicable, must provide the Victorian Inspectorate with a copy of—

S. 43  
inserted by  
No. 28/2012  
s. 13.

- (a) each confidentiality notice issued by the IBAC;
- (b) each notice cancelling a confidentiality notice issued by the IBAC under section 42(3), (4) or (5);
- (c) each application to the Supreme Court under section 42(7) to extend the period of a confidentiality notice;
- (d) each order made under section 42(8) by the Supreme Court extending the period of a confidentiality notice.

#### **44 Disclosure subject to confidentiality notice**

- (1) Subject to subsections (2), (2A), (2B), (3), (4) and (5), a person who—
- (a) is duly served with a confidentiality notice by the IBAC under section 42(9), and if applicable, any order extending the confidentiality notice; or

S. 44  
inserted by  
No. 28/2012  
s. 13,  
amended by  
Nos 82/2012  
s. 7, 85/2012  
s. 90.

S. 44(1)  
amended by  
No. 2/2019  
s. 53(1).

(b) receives a copy of a confidentiality notice under subsection (6) or (7) and, if applicable, a copy of any order extending the confidentiality notice—

must not disclose a restricted matter specified in the confidentiality notice while it has effect.

Penalty: 120 penalty units or imprisonment for 12 months or both.

**Note to s. 44(1) amended by No. 2/2019 s. 53(2).**

**Note 2 to s. 44(1) inserted by No. 30/2016 s. 46(1).**

**Note**

A person who is served with or receives a confidentiality notice may be subject to further confidentiality obligations under Part 7 of the **Public Interest Disclosures Act 2012**.

**Note 2**

Section 185 applies to an offence against this subsection.

- (2) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made in any of the following circumstances—
- (a) in accordance with a direction or authorisation given by the IBAC;
  - (b) to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42, including if the person—
    - (i) does not have a sufficient knowledge of the English language to understand the nature of the witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42, to an interpreter;

- (ii) is a person under the age of 18 years, to a parent, guardian or independent person;
- (iii) is a person who is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42 without assistance, to an independent person;
- (c) subject to section 127(2) and (8), for the purposes of obtaining legal advice or representation in relation to—
  - (i) a witness summons, a confidentiality notice or an order extending a confidentiality notice under section 42;
  - (ii) the person's rights, liabilities, obligations and privileges under this Act or a relevant Act;
- (ca) for the purposes of a proceeding for an offence against, or a disciplinary process or action instituted in respect of conduct that could constitute an offence against, the **Judicial Commission of Victoria Act 2016** or Part IIIAA of the **Constitution Act 1975**;
- (d) by an Australian legal practitioner who receives a disclosure in the circumstances specified in paragraph (c), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;

S. 44(2)(c)(ii)  
substituted by  
No. 2/2019  
s. 53(3)(a).

S. 44(2)(ca)  
inserted by  
No. 2/2019  
s. 53(3)(b).

S. 44(2)(e)  
substituted by  
No. 2/2019  
s. 53(3)(c).

(e) to any of the following persons, unless the IBAC directs that the restricted matter must not be disclosed to that person—

- (i) the spouse or domestic partner of the person served with the confidentiality notice;
- (ii) the employer or manager of the person served with the confidentiality notice, or both;

S. 44(2)(f)  
inserted by  
No. 2/2019  
s. 53(3)(c).

(f) in any of the following circumstances, unless the IBAC directs that the restricted matter must not be disclosed in that circumstance—

(i) to any of the following for the purpose of assisting the person to seek advice or support in relation to the investigation in respect of which the confidentiality notice has been issued—

- (A) a registered health practitioner;
- (B) a trade union, within the meaning of the Workplace Relations Act 1996 of the Commonwealth, of which the person is a member;
- (C) an employee assistance program;

- (ii) to the Victorian WorkCover Authority for the purpose of a workers' compensation claim;
- (iii) to a prescribed service for a purpose prescribed for that service;
- (iv) for the purpose of an application to the Fair Work Commission, including any related proceeding;

S. 44(2)(g)  
inserted by  
No. 2/2019  
s. 53(3)(c).

(g) as is otherwise authorised or required to be made by or under this Act.

- (2A) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed to an investigating entity to which the IBAC has referred the relevant matter under section 73. S. 44(2A)  
inserted by  
No. 2/2019  
s. 53(4).
- (2B) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed to Victoria Police if— S. 44(2B)  
inserted by  
No. 2/2019  
s. 53(4).
- (a) the IBAC has disclosed information to the Chief Commissioner of Police under section 41 relating to actual or potential criminal conduct; and
- (b) the restricted matter is relevant to an investigation by Victoria Police of the actual or potential criminal conduct.
- (3) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of making a complaint to the Victorian Inspectorate about the conduct of the IBAC or of an IBAC Officer.
- (4) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of complying with a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (5) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure made is of information that has been published by the IBAC, another investigating entity or the Integrity and Oversight Committee in a report or has otherwise been made public in accordance with this or any other Act. S. 44(5)  
amended by  
No. 2/2019  
s. 53(5).

- (6) A person who makes a disclosure of information permitted by subsection (2) must, when making the disclosure, provide the person to whom the disclosure is made with a copy of the confidentiality notice and of any order extending the confidentiality notice under section 42, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note to  
s. 44(6)  
inserted by  
No. 30/2016  
s. 46(2).

**Note**

Section 185 applies to an offence against this subsection.

S. 44(7)  
amended by  
No. 30/2016  
s. 15.

- (7) If in respect of a particular investigation or preliminary inquiry a person who makes a disclosure of information permitted by subsection (2) receives a new confidentiality notice, a notice cancelling the confidentiality notice or an order extending the confidentiality notice under section 42, the person must as soon as reasonably practicable provide a copy of the new confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice to each person to whom the disclosure has been made, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note to  
s. 44(7)  
inserted by  
No. 30/2016  
s. 46(3).

**Note**

Section 185 applies to an offence against this subsection.

S. 44(8)  
inserted by  
No. 2/2019  
s. 53(6).

- (8) In this section—

***Fair Work Commission*** means the body established under section 575 of the Fair Work Act 2009 of the Commonwealth;

*investigating entity* has the same meaning as in section 3 of the **Public Interest Disclosures Act 2012**;

*registered health practitioner* means a person registered under the Health Practitioner National Law to practise a health profession (other than as a student);

*relevant Act* means—

- (a) the **Public Interest Disclosures Act 2012**; or
- (b) the **Ombudsman Act 1973**; or
- (c) the **Victorian Inspectorate Act 2011**; or
- (d) Part 10 of the **Victoria Police Act 2013**; or
- (e) the Fair Work Act 2009 of the Commonwealth; or
- (f) the **Judicial Commission of Victoria Act 2016**; or
- (g) Part IIIAA of the **Constitution Act 1975**; or
- (h) the **Local Government Act 2020**; or
- (i) the **Racing Act 1958**; or
- (j) the **Freedom of Information Act 1982**;

S. 44(8) def. of *relevant Act* amended by No. 9/2020 s. 390(Sch. 1 item 56.3).

*Victorian WorkCover Authority* has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**.

Pt 2 Div. 4  
(Heading and  
ss 45–50)  
inserted by  
No. 28/2012  
s. 13.

## **Division 4—Protection of persons and documents**

S. 45  
inserted by  
No. 28/2012  
s. 13.

### **45 Who is a protected person?**

For the purposes of this Division, a *protected person* means a person who is or was at any time—

- (a) an IBAC Officer; or
- (b) a person other than a natural person engaged under section 36, if any officer or employee of the person has taken an oath or made an affirmation under section 37; or
- (c) the members of a body engaged under section 36, if any member, officer or employee of the body has taken an oath or made an affirmation under section 37.

S. 46  
inserted by  
No. 28/2012  
s. 13.

### **46 What is a protected document or other thing?**

For the purposes of this Division, a *protected document or other thing* is a document or other thing the production or inspection of which—

- (a) is likely to—
  - (i) reveal the identity of an informer or put an informer's safety at risk; or
  - (ii) reveal the identity of a person who has been summoned, or who has appeared, as a witness in an examination, or put that person's safety at risk; or
  - (iii) reveal the identity of a person who has provided the IBAC with information relating to an investigation, or put that person's safety at risk; or

- (iv) reveal the identity of a person whose name appears in any evidence given or information provided to the IBAC relating to an investigation, or put that person's safety at risk; or
- (v) reveal the identity of a person who is, or has been, the subject of an investigation, or put that person's safety at risk; or
- (b) is likely to place at risk—
  - (i) an investigation under this Act; or
  - (ii) any other investigation by the Victorian Inspectorate, a law enforcement agency or an integrity body; or
- (c) is likely to risk the disclosure of any secret investigative method used by the IBAC, the Victorian Inspectorate, a law enforcement agency or an integrity body; or
- (d) is otherwise not in the public interest.

**47 Protected documents and other things in proceedings, processes or actions other than criminal proceedings**

S. 47  
inserted by  
No. 28/2012  
s. 13.

- (1) This section applies to—
  - (a) any legal proceeding other than a criminal proceeding;
  - (b) any proceeding, other than a criminal proceeding, of any tribunal, authority or person having power to require the production of documents or the answering of questions, other than the Victorian Inspectorate;
  - (c) any disciplinary process or action.

S. 47(2)  
amended by  
No. 30/2016  
s. 16.

- (2) In any proceeding, process or action to which this section applies, a protected person is not compellable to produce, or permit inspection of, any document or other thing that the protected person has created or that has come into his or her possession or control in the performance of the duties and functions or the exercise of the powers of the person or the IBAC under this Act or any other Act, if the IBAC certifies in writing that in the IBAC's opinion the document or thing is a protected document or other thing.

S. 48  
inserted by  
No. 28/2012  
s. 13.

#### **48 Production and inspection of protected documents and things in criminal proceedings**

S. 48(1)(a)  
amended by  
No. 30/2016  
s. 17.

- (1) This section applies if, in a criminal proceeding—
- (a) a subpoena is issued for a protected person to produce any document or other thing that the protected person has created or that has come into his or her possession or control in the performance of the duties and functions or the exercise of the powers of the person or the IBAC under this Act or any other Act; and
  - (b) the protected person objects, on the basis that the document or other thing is a protected document or other thing, to—
    - (i) the production of the document or other thing in the criminal proceeding; or
    - (ii) the inspection of the document or other thing by one or more parties to the criminal proceeding.
- (2) The protected person must—
- (a) give notice of the objection to each party to the criminal proceeding, indicating the category of the document or other thing; and

- (b) apply to the court hearing the criminal proceeding to determine the application—
  - (i) by confidential affidavit that is not disclosed to one or more of the parties or any representative of those parties; or
  - (ii) at a hearing held in closed court in which the protected person and each party to the proceeding has a right to be heard by the court regarding the objection; or
  - (iii) at a hearing held without notice to, and without the presence of, one or more of the parties or any representative of those parties; or
  - (iv) by any combination of the methods set out in subparagraphs (i) to (iii).
- (3) If the court is satisfied that it is not in the public interest to determine the application under subsection (2) by the method elected by the protected person, the court may determine the application by any other method set out in subsection (2)(b) that it thinks fit.
- (4) In deciding which method to use to determine the application, the court must take into account—
  - (a) the public interest in protecting the confidentiality of any secret investigative method used by the IBAC, the Victorian Inspectorate, a law enforcement agency or an integrity body and documents and other things in the possession or control of the IBAC; and
  - (b) the extent to which the method of determining the objection which is the subject of the application may disclose information that—

- (i) reveals the identity of an informer or puts an informer's safety at risk; or
  - (ii) reveals the identity of a person who has been summoned, or who has appeared, as a witness in an examination, or puts that person's safety at risk; or
  - (iii) reveals the identity of a person who has provided the IBAC with information relating to an investigation, or puts that person's safety at risk; or
  - (iv) reveals the identity of a person whose name appears in any evidence given or information provided to the IBAC relating to an investigation, or puts that person's safety at risk; or
  - (v) reveals the identity of a person who is or has been the subject of an investigation, or puts that person's safety at risk; or
  - (vi) places at risk an ongoing investigation under this Act or by the Victorian Inspectorate, a law enforcement agency or an integrity body; or
  - (vii) places at risk the disclosure of any secret investigative method used by the IBAC, the Victorian Inspectorate, a law enforcement agency or an integrity body; or
  - (viii) it would otherwise not be in the public interest to disclose.
- (5) If the court determines the objection by the method of confidential affidavit set out in subsection (2)(b)(i), the court may require the protected person to provide the court with any further confidential affidavits the court requires to determine the objection.
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- (6) Without limiting any other basis on which the court may refuse to require production of the document or other thing, or to allow a party to the criminal proceeding to inspect the document or other thing, the court must refuse to so require or allow if the court determines that the document or other thing is a protected document or other thing.
- (7) Subsection (6) does not apply if the party seeking production or inspection of the document or other thing satisfies the court that exceptional circumstances exist that require the production or inspection of the document or other thing.

**49 Court may appoint special counsel to represent party**

S. 49  
inserted by  
No. 28/2012  
s. 13.

- (1) If a court decides to determine an objection referred to in section 48, the court may appoint a special counsel to represent the interests of a party to the proceeding at the hearing.
- (2) A special counsel must be a barrister within the meaning of the Legal Profession Uniform Law (Victoria) who, in the opinion of the court, has the appropriate skills and ability to represent the interests of the party at the hearing.
- (3) At any time before the special counsel attends the hearing or obtains any confidential affidavit in relation to the objection, the special counsel may communicate with the party whose interests he or she is representing, or any representative of that party, for the purpose of obtaining information from the party or representative in relation to the criminal proceeding.
- (4) At any time after the special counsel commences to attend the hearing or obtains any confidential affidavit in relation to the objection, the special counsel—

S. 49(2)  
amended by  
No. 30/2016  
s. 49(3).

- (a) must not take instructions from the party whose interests he or she is representing, or from any representative of that party; and
- (b) may communicate to that party or a representative of that party any order made by the court at or in relation to the hearing; and
- (c) must not communicate any other information in relation to the hearing to that party or a representative of that party without leave of the court.

S. 50  
inserted by  
No. 28/2012  
s. 13.

## **50 Compellability of protected persons as witnesses**

- (1) This section applies to—
  - (a) any legal proceeding;
  - (b) any proceeding of any tribunal, authority or person having power to require the production of documents or the answering of questions, other than the Victorian Inspectorate;
  - (c) any disciplinary process or action.
- (2) In any proceeding, process or action to which this section applies, a protected person is not compellable to disclose any matter or thing of which the person has knowledge as a result of the performance of the duties and functions or the exercise of powers of the person or the IBAC under this Act or any other Act, unless the IBAC certifies in writing that in the IBAC's opinion the giving of evidence by the protected person is in the public interest.

## Part 3—Investigations

### Division 1—Complaints to the IBAC

Pt 3 (Heading and ss 34, 35) substituted as Pt 3 (Headings and ss 51–70) by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

#### 51 Complaints to the IBAC about corrupt conduct

A person may make a complaint to the IBAC about conduct the person believes may be corrupt conduct.

S. 51 substituted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

#### 52 Police personnel conduct complaints to the IBAC

A person may make a police personnel conduct complaint to the IBAC.

S. 52 substituted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

#### 53 Complaint to be in writing

A complaint to the IBAC must be made in writing unless the IBAC determines that there are exceptional circumstances for a complaint to be made otherwise than in writing.

S. 53 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

#### 54 Complaint from detained person

(1) This section applies if a detained person wishes to—

(a) provide information or make a complaint to the IBAC under this Act; or

(b) make a disclosure to the IBAC under Part 2 of the **Public Interest Disclosures Act 2012**.

S. 54 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)), amended by No. 85/2012 s. 91.

S. 54(1)(b) amended by No. 2/2019 s. 57(Sch. 1 Pt A item 4).

- (2) The detained person may inform the person in charge that he or she wishes to communicate with the IBAC.
- (3) The detained person is not required to inform the person in charge of the content or purpose of that communication.
- (4) On being informed by the detained person of his or her wish to communicate with the IBAC, the person in charge must—
  - (a) take all reasonable steps to facilitate that communication; and
  - (b) subject to subsection (6), immediately forward, unopened, to the IBAC any letter addressed to the IBAC by the detained person.
- (5) Subject to subsection (6), if a letter from the IBAC is addressed to the detained person, the person in charge must ensure that it is immediately forwarded, unopened, to the detained person.
- (6) If a letter referred to in subsection (4)(b) or (5) is suspected by the person in charge to contain drugs, weapons or other contraband, the letter may be opened by the person in charge, or his or her delegate, in the presence of—
  - (a) in the case of a letter addressed to the IBAC, the person who wrote the letter and an IBAC Officer; or
  - (b) in the case of a letter from the IBAC to the detained person, the person to whom the letter is addressed and an IBAC Officer.

(7) Subject to subsection (6), a person, including a person in charge, must not prevent or hinder the forwarding, unopened, of a letter—

(a) addressed to the IBAC from a detained person; or

(b) to a detained person from the IBAC.

Penalty: 120 penalty units or imprisonment for 12 months or both.

**Note**

Section 185 applies to an offence against this subsection.

**Note to s. 54(7) inserted by No. 30/2016 s. 46(4).**

**55 Withdrawal of complaint**

(1) Subject to subsection (4), a person who makes a complaint may withdraw the complaint at any time after making it.

(2) If a complaint is withdrawn, the IBAC may continue to investigate the matter that is the subject of the complaint.

(3) If a complaint is withdrawn and the IBAC continues to investigate the matter that is the subject of the complaint the investigation is taken to be an investigation conducted by the IBAC on its own motion.

(4) A complaint that is a public interest complaint may not be withdrawn.

**S. 55 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)), amended by No. 85/2012 s. 92.**

**S. 55(4) amended by No. 2/2019 s. 57(Sch. 1 Pt A item 5).**

## **Division 2—Information and notifications to the IBAC**

### **56 The IBAC may receive information**

S. 56  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 56(1)  
amended by  
No. 30/2016  
s. 18(1).

- (1) The IBAC may receive from any body or person information relevant to the carrying out of the IBAC's investigative functions or the IBAC's functions under section 15(7)(a) or conducting a preliminary inquiry under Division 3A.
- (2) The IBAC may receive information under subsection (1) even if that information does not form part of, or is not related to, a complaint.

S. 56(2A)  
inserted by  
No. 2/2019  
s. 114.

- (2A) The IBAC may receive from any person or body information relevant to a decision by the IBAC to defer taking action under section 58 in relation to a complaint or notification.

S. 56(3)  
amended by  
No. 30/2016  
s. 18(2).

- (3) The IBAC may use information received under this section in carrying out its investigative functions or conducting a preliminary inquiry under Division 3A.

### **57 Notifications to the IBAC**

S. 57  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 57(1)  
substituted by  
No. 30/2016  
s. 19.

- (1) Subject to any exemption notices issued under section 57B, the relevant principal officer must notify the IBAC of any matter which the person suspects on reasonable grounds involves corrupt conduct occurring or having occurred.

(1A) Subsection (1) does not apply to—

(a) the Chief Commissioner of Police; or

(b) any person who is subject to a mandatory notification provision specified in paragraphs (b), (c), (d), (e), (f), (g), (h) or (i) of the definition of *mandatory notification provision*; or

(c) any matter involving corrupt conduct of the IBAC or IBAC personnel.

(2) The Chief Commissioner of Police must notify the IBAC of any complaint received by the Chief Commissioner of Police about corrupt conduct or police personnel misconduct by a Victoria Police employee or police recruit.

(3) If the Chief Commissioner of Police investigates a complaint about police personnel misconduct by a Victoria Police employee or police recruit, after completing that investigation, the Chief Commissioner of Police must in writing report to the IBAC on—

(a) the results of the investigation; and

(b) the action (if any) taken or proposed to be taken.

**Note**

Under sections 169 and 170 of the **Victoria Police Act 2013**, the Chief Commissioner of Police must provide the IBAC with certain details relating to complaints about police officers or protective services officers.

(4) The Chief Commissioner of Police must notify the IBAC of any complaint made to a police officer or protective services officer under section 167 of the **Victoria Police Act 2013** about conduct of—

(a) the Chief Commissioner of Police; or

S. 57(1A)  
inserted by  
No. 30/2016  
s. 19.

S. 57(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.6(a)).

S. 57(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.6(a)).

Note to  
s. 57(3)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 85.6(b)).

S. 57(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.6(c)).

S. 57(6)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.6(d)).

- (b) a Deputy Commissioner of Police; or
  - (c) an Assistant Commissioner of Police.
- (5) A notification under subsection (2) or (4) must be made as soon as practicable after the Chief Commissioner of Police receives the complaint.
- (6) The Chief Commissioner of Police may notify the IBAC about police personnel conduct of a member of Victoria Police personnel.
- (7) This section has effect despite any duty of secrecy or other restriction on disclosure.

S. 57A  
inserted by  
No. 30/2016  
s. 20.

#### **57A Directions**

- (1) The IBAC may issue Directions for or with respect to notifications to the IBAC that are made in accordance with a mandatory notification provision.
- (2) Without limiting the generality of subsection (1), Directions may—
- (a) specify the types of matters that must be notified;
  - (b) relate to a specified mandatory notification provision or the obligations of a specified person under a mandatory notification provision;
  - (c) provide for the form, content and method of notification;
  - (d) be of general or limited application;
  - (e) specify any other matter or thing which the IBAC considers is necessary.
- (3) Directions must be published in the Government Gazette and on the IBAC's Internet website as soon as is practicable after they are made.

- (4) Directions take effect—
- (a) on the day after the Directions are published in the Government Gazette; or
  - (b) on any later day specified in the Directions.
- (5) A relevant principal officer, other than a person specified in subsection (6), must comply with Directions made under this section.
- (6) Directions made under this section do not apply to—
- (a) the Auditor-General;
  - (b) a Department Head of a Department of the Parliament;
  - (c) the Electoral Commissioner;
  - (ca) the Judicial Commission;
  - (d) the Ombudsman.

S. 57A(6)(ca)  
inserted by  
No. 16/2016  
s. 163.

**57B Exemption notice**

- (1) The IBAC may issue an exemption notice for or with respect to a mandatory notification provision.
- (2) An exemption notice may specify the types of matters that are not required to be notified to the IBAC.
- (3) An exemption notice must be published in the Government Gazette and on the IBAC's Internet website as soon as is practicable after it is made.
- (4) An exemption notice takes effect—
  - (a) on the day after the exemption notice is published in the Government Gazette; or
  - (b) on any later day specified in the exemption notice.

S. 57B  
inserted by  
No. 30/2016  
s. 20.

Pt 3 Div. 3  
(Heading and  
ss 58, 59)  
inserted by  
No. 28/2012  
s. 14.

### **Division 3—IBAC obligations in relation to complaints and notifications to the IBAC**

S. 58  
inserted by  
No. 28/2012  
s. 14.

#### **58 IBAC must dismiss, investigate or make referral**

In relation to any complaint or notification to the IBAC, the IBAC must, in accordance with this Act—

- (a) dismiss the complaint or notification if there are grounds to do so; or
- (b) investigate the complaint or notification; or
- (c) make a referral of the complaint or notification.

S. 58A  
inserted by  
No. 2/2019  
s. 115.

#### **58A IBAC may defer decision pending investigation by other person or body**

- (1) The IBAC may defer taking action under section 58 in relation to a complaint or notification, other than a public interest complaint, if—
  - (a) the subject matter of the complaint or notification—
    - (i) is being investigated by a person or body specified in section 73(2); and
    - (ii) is relevant to the duties, functions or powers of that person or body; and
  - (b) the IBAC considers—
    - (i) it more appropriate that the person or body investigate the complaint or notification; and
    - (ii) it is otherwise appropriate for the person or body to continue that investigation.

- (2) In deciding whether to defer taking action under section 58, the IBAC may consult with the person or body conducting the investigation.
- (3) The IBAC must not defer taking action under section 58 any later than—
  - (a) the completion of the investigation by the person or body; or
  - (b) 90 days after receiving the complaint or notification—whichever occurs first.
- (4) Nothing in subsection (3) prevents the IBAC from taking action under section 58 or conducting a preliminary inquiry under section 59A at any time before the investigation by the person or body has been completed or before the period specified in subsection (3)(b) has elapsed.
- (5) If the IBAC defers taking action under section 58, the IBAC may do one or both of the following—
  - (a) provide to the person or body conducting the investigation any information that the IBAC has in relation to the complaint or notification;
  - (b) require the person or body to provide to the IBAC, within a reasonable time, information regarding the investigation and any action taken in respect of the investigation.

S. 59  
inserted by  
No. 28/2012  
s. 14,  
amended by  
Nos 82/2012  
s. 8, 85/2012  
s. 93.

## **59 Notice of dismissal, investigation or referral of complaint or notification**

S. 59(1)  
amended by  
No. 30/2016  
s. 21(1),  
substituted by  
No. 2/2019  
s. 116(1).

- (1) Subject to subsections (2) and (4), the IBAC may notify the person who made a complaint to the IBAC—
- (a) of the action referred to in section 58 that the IBAC has taken; or
  - (b) if applicable, that the IBAC has deferred taking that action while the subject matter of the complaint is being investigated by another person or body.

S. 59(2)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 6).

- (2) Subject to subsection (4), the IBAC must notify the person who made a public interest complaint of—
- (a) the action referred to in section 58 which the IBAC has taken; and
  - (b) in the case of a decision by the IBAC to dismiss the public interest complaint—the reasons for the decision.

S. 59(2)(b)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 6).

S. 59(3)  
amended by  
No. 70/2013  
s. 3(Sch. 1  
item 23.2).

- (3) A notification under subsection (2) must be given within a reasonable time after the action has been taken or the investigation has commenced.

S. 59(3A)  
inserted by  
No. 30/2016  
s. 21(2),  
substituted by  
No. 2/2019  
s. 116(2).

- (3A) Subject to subsection (4), the IBAC may notify the person who made a notification to the IBAC—
- (a) of the action referred to in section 58 that the IBAC has taken; or

- (b) if applicable, that the IBAC has deferred taking that action while the subject matter of the notification is being investigated by another person or body.
- (4) The IBAC must not notify a person under subsection (1), (2) or (3A) if the IBAC considers that notifying that person would—
- (a) not be in the public interest or in the interests of justice; or
  - (b) put a person's safety at risk; or
  - (c) cause unreasonable damage to a person's reputation; or
  - (d) prejudice an investigation under this Act or an investigation by Victoria Police or the person or body to which the referral was made; or
  - (e) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.
- (5) A notification under subsection (1) or (2), other than a notification relating to the dismissal of a complaint under section 58(a), must include a written statement advising the recipient that it is an offence under section 184 to disclose the content of the notification.

S. 59(4)  
amended by  
No. 30/2016  
s. 21(3).

S. 59(4)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.7).

S. 59(5)  
substituted by  
No. 2/2019  
s. 116(3).

## **Division 3A—Preliminary inquiries**

Pt 3 Div. 3A  
(Heading and  
ss 59A–59P)  
inserted by  
No. 30/2016  
s. 22.

S. 59A  
inserted by  
No. 30/2016  
s. 22.

### **59A IBAC may conduct preliminary inquiry**

The IBAC may conduct a preliminary inquiry for the purpose of determining whether to dismiss, refer or investigate a complaint or notification under this Act.

S. 59B  
inserted by  
No. 30/2016  
s. 22.

### **59B IBAC may conduct a preliminary inquiry as to own motion investigation**

The IBAC may conduct a preliminary inquiry for the purpose of determining whether to conduct an own motion investigation.

S. 59C  
inserted by  
No. 30/2016  
s. 22.

### **59C Parts 3 and 4 do not apply**

- (1) Parts 3 and 4 do not apply to, or in respect of, a preliminary inquiry.
- (2) For the avoidance of doubt, a preliminary inquiry is not an investigation for the purposes of the definition of prescribed investigation within the meaning of the Telecommunications (interception and Access) Act 1979 of the Commonwealth in so far as it relates to the IBAC.

S. 59D  
inserted by  
No. 30/2016  
s. 22.

### **59D Power to request information**

- (1) For the purposes of a preliminary inquiry, the IBAC may request the relevant principal officer of a public body to provide any information that the IBAC requests that is relevant to the preliminary inquiry.
- (2) A relevant principal officer who receives a request under subsection (1)—
  - (a) must comply with the request within a reasonable time, being not less than 7 days after receiving the request; and

(b) subject to subsection (3), is not required to comply with the request if the relevant principal officer advises the IBAC of a reasonable excuse for not doing so.

(3) A relevant principal officer who complies with a request under this section and any person who assists a relevant principal officer in complying with this section has the same protection and immunity as a person appearing as a witness at an examination has under section 149(2).

**59E Power to issue witness summons**

(1) For the purposes of a preliminary inquiry, the IBAC may issue a witness summons to any person requiring the person to attend at a specified time and place on a specified date to produce documents or other things to the IBAC.

S. 59E  
inserted by  
No. 30/2016  
s. 22.

(1A) A witness summons under subsection (1) may specify that attendance required under the summons is to be by means of audio visual link or audio link and in a specified manner.

S. 59E(1A)  
inserted by  
No. 11/2021  
s. 128.

(1B) A witness summons under subsection (1) that provides for attendance as described in subsection (1A)—

S. 59E(1B)  
inserted by  
No. 11/2021  
s. 128.

- (a) need not specify a place for attendance; and
- (b) may specify, if any documents are to be produced, that those documents are to be produced by secure electronic means and in a specified manner.

(1C) The IBAC may vary the means of attendance required under a witness summons under subsection (1) without reissuing the witness summons if the consent of the person attending or that person's legal representative is given to that variation.

S. 59E(1C)  
inserted by  
No. 11/2021  
s. 128.

- (2) The IBAC may, under subsection (1), issue a witness summons directed to a person if satisfied that it is reasonable to do so, having regard to—
  - (a) whether the production of the document or thing is necessary to determine whether to conduct an investigation on its own motion, dismiss, refer or investigate a complaint or notification; and
  - (b) whether it is reasonably practicable to obtain the information in the document or thing by any other means; and
  - (c) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
  - (d) the age of the person and any mental impairment to which the person is known or believed to be subject.
- (3) The IBAC must not issue a witness summons to a person who is under the age of 18 years unless the IBAC considers on reasonable grounds that—
  - (a) the information, document or thing that the person could provide may be compelling and probative evidence; and
  - (b) it is not practicable to obtain the information, document or thing by any other means.
- (4) If a person is issued with a witness summons referred to in subsection (1), the IBAC may excuse that person from attendance if the person produces the required documents or things to the IBAC before the time and date for production specified in the witness summons in accordance with any directions given by the IBAC.

**59F Content and form of witness summons**

S. 59F  
inserted by  
No. 30/2016  
s. 22.

- (1) Subject to section 59E(1A), (1B) and (1C), a witness summons must require the person to whom it is directed to attend at a specified time and place on a specified date to produce to the IBAC any documents or other things described in the witness summons that are in the person's possession or control.
- (2) A witness summons must—
- (a) be in the prescribed form; and
  - (b) be accompanied by a copy of any relevant confidentiality notice; and
  - (c) be accompanied by a statement setting out the matters specified in subsection (3).
- (3) A statement referred to in subsection (2)(c) must include the following—
- (a) that failure to comply with the witness summons may be an offence and penalties may apply;
  - (b) that if the person summoned is under the age of 16 years at the date of issue of the witness summons, the person need not comply with the witness summons, subject to the requirements of section 59H;
  - (c) that the person is entitled to seek legal advice in relation to the witness summons;
  - (d) that a person may claim a privilege;
  - (e) that the person has a right to complain to the Victorian Inspectorate;
  - (f) any other prescribed matter.

S. 59F(1)  
amended by  
No. 11/2021  
s. 129.

S. 59G  
inserted by  
No. 30/2016  
s. 22.

**59G IBAC to report to Victorian Inspectorate on issue of witness summonses**

Within 3 days after the issue of a witness summons, the IBAC must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person summoned;
- (b) the reasons why the witness summons was issued.

S. 59H  
inserted by  
No. 30/2016  
s. 22.

**59H Witness summons directed to person under 16 years**

- (1) A witness summons directed to a person under the age of 16 years at the date of issue of the witness summons has no effect.
- (2) A person who claims to be under the age of 16 years at the date of issue of a witness summons directed to the person must provide proof of age in accordance with the regulations to the IBAC.

S. 59I  
inserted by  
No. 30/2016  
s. 22.

**59I Service of witness summonses**

S. 59I(1)  
amended by  
No. 11/2021  
s. 130(1).

- (1) Subject to subsection (2) or (2A), a witness summons must be served at a reasonable time, being not less than 7 days, before the date on which the person is required to attend or otherwise comply with the witness summons.
- (2) The IBAC may issue a witness summons requiring immediate attendance by a person before the IBAC if the IBAC considers on reasonable grounds that a delay in the person's attendance is likely to result in—
  - (a) evidence being lost or destroyed; or
  - (b) the commission of an offence; or
  - (c) the escape of the person who is summoned;or

(d) serious prejudice to the conduct of the preliminary inquiry to which the witness summons relates.

(2A) If a witness summons is varied by consent under section 59E(1C), the 7 day period for service under subsection (1) does not apply and the summons is not required to be reissued.

S. 59I(2A)  
inserted by  
No. 11/2021  
s. 130(2).

(3) A witness summons directed to a natural person must be served by serving a copy of the witness summons to the person personally or in accordance with section 191(1).

S. 59I(3)  
amended by  
No. 11/2021  
s. 130(3)(a).

(4) A witness summons directed to a body corporate must be served by sending a copy of the witness summons by registered post to the head office, a registered office, a principal office or a principal place of business of the body corporate or to a postal address of the body corporate or in accordance with section 191(2).

S. 59I(4)  
amended by  
No. 11/2021  
s. 130(3)(b).

(5) Subsection (4) is in addition to, and not in derogation of, sections 109X and 601CX of the Corporations Act.

#### **59J Supreme Court may order service by other means**

S. 59J  
inserted by  
No. 30/2016  
s. 22.

(1) If it appears that it is not reasonably practicable to serve a witness summons in accordance with section 59I, the IBAC may apply to the Supreme Court for an order that the witness summons be served by another means.

(2) On an application under subsection (1), if the Supreme Court is satisfied that it is not reasonably practicable to serve a witness summons in accordance with section 59I, the Court may—

(a) order that the witness summons be served by any other means the Court considers appropriate; or

(b) make an order for substituted service.

S. 59K  
inserted by  
No. 30/2016  
s. 22.

**59K Actions to be taken before requiring production of a document or other thing**

Before a witness summoned to attend a preliminary inquiry is required to produce a document or other thing, the IBAC must—

- (a) confirm the age of a witness if the IBAC considers that a witness may be under the age of 18 years;
- (b) release any witness under the age of 16 years from compliance with any witness summons;
- (c) inform the witness orally and in writing of the person's rights and obligations as specified in section 59F(3) unless the witness informs the IBAC that—
  - (i) an Australian legal practitioner has explained the statement referred to in section 59F(2)(c) to the witness before the examination; and
  - (ii) the witness does not wish to be informed of the statement referred to in section 59F(2)(c) again;
- (d) inform an Australian legal practitioner who is representing a witness or other person at the examination of any non-disclosure requirements that apply under the Act and, in the case of an investigation of a public interest complaint, the confidentiality requirements under the **Public Interest Disclosures Act 2012**;
- (e) take any other actions prescribed for the purposes of this subsection.

S. 59(K)(d)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 7).

**59L Procedure for determining claims of privilege or claims of a secrecy requirement**

S. 59L  
inserted by  
No. 30/2016  
s. 22.

- (1) This section applies if a person claims on production of a document or other thing, before the IBAC that—
  - (a) the document or other thing is the subject of privilege; or
  - (b) the document or other thing cannot be disclosed due to a secrecy requirement of any enactment or other law that applies to the person.
- (2) A person making a claim to which this section applies must attend before the IBAC in accordance with the witness summons.
- (3) The IBAC must consider the claim of privilege or application of the secrecy requirement and either—
  - (a) withdraw the requirement to produce the document or other thing over which the claim is made; or
  - (b) not withdraw the requirement and require the claimant to immediately seal the document or other thing in an envelope, or otherwise secure it if it cannot be sealed in an envelope, and give it to the IBAC.
- (4) The IBAC must not inspect the document or other thing in considering the claim.
- (5) If the IBAC does not withdraw the requirement to produce the document or other thing the IBAC must—
  - (a) apply to the Supreme Court in accordance with section 59M for determination of the claim of privilege or application of the secrecy requirement; and

(b) if the IBAC requires the claimant to give the document or other thing to the IBAC under subsection (3)(b), the IBAC must immediately give the sealed envelope or the document or other thing otherwise secured to the proper court officer of the Supreme Court to be held in safe custody.

(6) Subject to section 59N, a person must not open a sealed envelope or interfere with a document or other thing secured otherwise than in an envelope before delivery to the proper officer of the Supreme Court.

S. 59M  
inserted by  
No. 30/2016  
s. 22.

**59M Application to Supreme Court to determine privilege or application of secrecy requirement**

- (1) Within 7 days after the IBAC gives the sealed envelope or the document or other thing secured otherwise than in an envelope to the proper officer under section 59L, the IBAC may apply to the Supreme Court for a determination of—
  - (a) a claim of privilege under this Division;
  - (b) the application of a secrecy requirement under any enactment or other law.
- (2) If no application is made under subsection (1) within the period of 7 days, the proper officer of the Supreme Court must return the document or other thing to the claimant.
- (3) The IBAC must give notice of the application to the claimant within a reasonable time before the hearing of the application.
- (4) Notice under subsection (3) must be in the prescribed form.
- (5) The claimant is entitled to appear and be heard on the hearing of the application.

**59N Determination of claim**

- (1) On an application under section 59M, the Supreme Court must determine whether or not the document or other thing in the sealed envelope or secured otherwise than in an envelope is the subject of—
  - (a) privilege; or
  - (b) any secrecy requirement under an enactment or other law.
- (2) For the purposes of making a determination under subsection (1), the Judge constituting the Supreme Court and any other person authorised by the Court may—
  - (a) open the sealed envelope or access the document or other thing secured otherwise than in an envelope; and
  - (b) inspect the document or other thing.
- (3) If the Court determines that the document or other thing is the subject of privilege or a secrecy requirement under an enactment or other law—
  - (a) the Court must order that the document or other thing be returned to the claimant; and
  - (b) the proper officer must return the document or other thing to the claimant.
- (4) If the Court determines that the document or other thing is not the subject of privilege or a secrecy requirement under an enactment or other law—
  - (a) the Court must order that the document or other thing be given to the IBAC; and
  - (b) the proper officer must release the document or other thing accordingly.

S. 59N  
inserted by  
No. 30/2016  
s. 22.

- (5) Subject to subsection (2), a person must not open a sealed envelope or otherwise have access to the document or other thing contained in the sealed envelope before—
- (a) the Court determines the claim of privilege or the application of a secrecy requirement to it; or
  - (b) the document or other thing is returned to the claimant.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (6) Subject to subsection (2), a person must not open or otherwise have access to a document or other thing secured otherwise than in an envelope before—
- (a) the Court determines the claim of privilege or the application of a secrecy requirement to it; or
  - (b) the document or other thing is returned to the claimant.

Penalty: 120 penalty units or imprisonment for 12 months or both.

S. 590  
inserted by  
No. 30/2016  
s. 22.

**590 Offence for summoned witness to fail to produce document or other thing**

- (1) A person who is duly served with a witness summons to attend and produce a document or other thing must not, without reasonable excuse, refuse or fail to produce a document or other thing that he or she was required to produce by the witness summons.

**Penalty:** In the case of a natural person,  
60 penalty units or imprisonment for  
6 months or both;  
In the case of a body corporate,  
300 penalty units.

**Note**

Section 185 applies to an offence against this subsection.

- (2) For the purposes of the application of subsection (1)—
- (a) a claim of privilege; or
  - (b) a claim that the document or other thing cannot be disclosed due to a secrecy requirement of any enactment or other law that applies to the person—

is a reasonable excuse for not complying with a witness summons issued under this Division.

**59P Prohibitions applying to the IBAC**

The IBAC must not for the purposes of conducting a preliminary inquiry—

- (a) make an application for the issue of a surveillance device warrant under section 15 of the **Surveillance Devices Act 1999**; or
- (b) authorise or conduct a controlled operation under the **Crimes (Controlled Operations) Act 2004**.

S. 59P  
inserted by  
No. 30/2016  
s. 22.

## **Division 4—Carrying out investigations**

### **60 Conducting investigations about corrupt conduct**

S. 60  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
Nos 28/2012  
s. 15, 82/2012  
s. 9(1)(2).

S. 60(2)  
substituted by  
No. 30/2016  
s. 23(1).

- (1) Subject to subsection (2), the IBAC may conduct an investigation in accordance with its corrupt conduct investigative functions—
  - (a) on a complaint made to it under section 51;  
or
  - (b) on a notification to it under section 57(1); or
  - (c) on its own motion.
- (2) The IBAC must not conduct an investigation under subsection (1) unless the IBAC suspects on reasonable grounds that the conduct constitutes corrupt conduct.
- (3) The IBAC may conduct an investigation under subsection (1) in relation to conduct of, or in relation to—
  - (a) a person who was a public officer at the time of the conduct even if that person is no longer a public officer;
  - (b) a body that was a public body at the time of the conduct even if that body is no longer a public body or has ceased to exist as a body or as a public body;
  - (c) a person referred to in section 4(1)(a) which is, or was, a corporation even if that corporation has been deregistered under the Corporations Act.
- (4) The IBAC must not conduct an investigation under subsection (1) in relation to conduct which occurred entirely before the commencement of section 11 if the IBAC considers that—
  - (a) the conduct is trivial or unrelated to the functions of the IBAC; or

- (b) the complaint or notification is frivolous or vexatious; or
  - (c) the complaint or notification lacks substance or credibility; or
  - (d) the conduct occurred at too remote a time to justify investigation; or
  - (e) the complaint or notification was not made genuinely or was made primarily for a mischievous purpose.
- (5) The IBAC must not conduct an investigation under subsection (1) in relation to conduct which occurred entirely before the commencement of section 11 unless the IBAC is reasonably satisfied that—
- (a) it is in the public interest for the IBAC to investigate that conduct; and
  - (b) subject to subsection (4), in all the circumstances it is appropriate for the IBAC to investigate that conduct, having regard to the IBAC's functions of identifying and exposing corrupt conduct; and
  - (c) in the case of conduct that another investigatory body has already investigated or decided not to investigate—
    - (i) there is reliable, substantial and highly probative evidence that was not considered by the investigatory body; or
    - (ii) there is reliable, substantial and highly probative evidence that the investigation or decision not to investigate was materially affected by error.

S. 60(5)(b)  
amended by  
No. 30/2016  
s. 23(2).

(6) In this section—

*investigatory body* means—

- (a) an integrity body; or
- (b) any other person or body (whether or not still in existence) with the power to require the production of documents or the answering of questions.

## **61 Conducting investigations about conduct of judicial officers**

- (1) An investigation by the IBAC in accordance with its corrupt conduct investigative functions into the conduct of a judicial officer must be conducted by a sworn IBAC Officer who is—
  - (a) a former judge or former magistrate—
    - (i) of a court of a higher level than the person whose conduct is being investigated; or
    - (ii) of the same level but not of the same court as the person whose conduct is being investigated; and
  - (b) not an Australian legal practitioner.
- (2) In performing its corrupt conduct investigative functions in relation to a judicial officer, the IBAC—
  - (a) must have proper regard for the preservation of the independence of judicial officers; and
  - (b) must notify, and may consult, the relevant head of jurisdiction unless doing so would prejudice an IBAC investigation.

S. 61  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**62 Findings about judicial officers not to be included in special or annual reports**

The IBAC must not include any finding of corrupt conduct of a judicial officer or any other adverse finding in relation to a judicial officer arising from an investigation in—

- (a) a special report under section 162; or
- (b) an annual report under section 165.

S. 62  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**63 The IBAC must dismiss certain complaints or notifications to the IBAC about judicial officers**

The IBAC must dismiss a complaint or a notification to the IBAC about the conduct of a judicial officer if the complaint or notification directly relates to the merits of a decision made, an order made or a judgment given by the judicial officer.

S. 63  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 28/2012  
s. 16.

**64 Conducting investigations about police personnel conduct**

- (1) The IBAC may conduct an investigation in accordance with its police personnel conduct investigative functions—
  - (a) on a police personnel conduct complaint made to it under section 52;
  - (b) on a notification to the IBAC under section 57(2), (4) or (6) or information provided under section 169 of the **Victoria Police Act 2013**;
  - (c) on its own motion.
- (2) The IBAC may attempt to resolve a police personnel conduct complaint under section 52 in relation to police personnel conduct by conciliation.

S. 64  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 64(1)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.8(a)).

- (3) The IBAC must notify the Chief Commissioner of Police of the proposal to attempt conciliation under subsection (2) before commencing a conciliation.
- (4) The IBAC must notify the Chief Commissioner of Police of the results of the attempted conciliation under subsection (2).
- (5) The IBAC may conduct an investigation under subsection (1) in relation to police personnel conduct of, or in relation to, a person who was a member of Victoria Police personnel at the time of the conduct even if that person is no longer a member of Victoria Police personnel.

S. 64(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.8(b)).

**65 Conduct of Chief Commissioner of Police, Deputy Commissioner of Police or Assistant Commissioner of Police**

S. 65  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (1) Subject to subsection (2), the IBAC must investigate a complaint or a notification to the IBAC or a complaint under section 167 of the **Victoria Police Act 2013** in accordance with this Act if that complaint or notification is of conduct of—
  - (a) the Chief Commissioner of Police; or
  - (b) a Deputy Commissioner of Police; or
  - (c) an Assistant Commissioner of Police.
- (2) The IBAC may determine that a complaint or a notification referred to in subsection (1) does not warrant investigation if it considers on reasonable grounds that any of the following criteria apply—

S. 65(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.9).

- (a) the subject matter of the complaint or notification is trivial or unrelated to the functions of the IBAC; or
  - (b) the complaint or notification is frivolous or vexatious; or
  - (c) the complaint or notification lacks substance or credibility; or
  - (d) the matter has already been the subject of a complaint or notification which has been investigated or otherwise dealt with; or
  - (e) the complaint or notification relates to conduct that occurred at too remote a time to justify investigation; or
  - (f) the complaint or notification was not made genuinely or was made primarily for a mischievous purpose; or
  - (g) in all of the circumstances, the conduct does not warrant investigation.
- (3) The IBAC may notify a person who made a complaint or notification referred to in subsection (1) of the IBAC's determination that the complaint or notification does not warrant investigation.

**66 Conducting investigations into public interest complaints about detrimental action**

- (1) This section applies if—

- (a) a public interest complaint (the *original public interest complaint*) is made that the IBAC may investigate in accordance with its investigative functions under this Act; and

S. 66  
(Heading)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 8).

S. 66  
inserted by  
No. 85/2012  
s. 94.

S. 66(1)(a)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 9(a)).

S. 66(1)(b)  
amended by  
Nos 70/2013  
s. 3(Sch. 1  
item 23.3),  
2/2019  
s. 57(Sch. 1  
Pt A  
item 9(b)).

(b) a further public interest complaint is made (whether by the person who made the original public interest complaint or by anyone else) alleging that a public officer or public body has taken, or proposes to take, detrimental action in reprisal for the original public interest complaint in contravention of section 45 of the **Public Interest Disclosures Act 2012**.

S. 66(2)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 9(c)).

(2) If the original public interest complaint is a complaint that the IBAC may investigate under section 60, then for the purposes of that section, the IBAC may conduct an investigation, in accordance with its corrupt conduct investigative functions, on the further public interest complaint.

S. 66(3)  
amended by  
Nos 30/2016  
s. 24, 2/2019  
s. 57(Sch. 1  
Pt A item 9(c)).

(3) Subsection (2) applies whether or not the IBAC suspects on reasonable grounds that the conduct that is the subject of the further public interest complaint is corrupt conduct.

S. 66(4)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 9(c)).

(4) If the original public interest complaint is a complaint that the IBAC may investigate under section 64, then for the purposes of that section, the IBAC may conduct an investigation, in accordance with its police personnel conduct investigative functions, on the further public interest complaint.

S. 67  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
Nos 28/2012  
s. 17, 82/2012  
s. 9(3).

## **67 Complaints or notifications to the IBAC that do not warrant investigation**

(1) Subject to sections 60(2), 60(4), 60(5), 63 and 65, the IBAC, in its absolute discretion, may determine that a complaint or a notification to the IBAC does not warrant investigation.

- (2) Without limiting subsection (1), the IBAC may determine under that subsection that a complaint or a notification to the IBAC does not warrant investigation if, in the opinion of the IBAC—
- (a) the subject matter of the complaint or notification is trivial or unrelated to the functions of the IBAC; or
  - (b) the complaint or notification is frivolous or vexatious; or
  - (c) the complaint or notification lacks substance or credibility; or
  - (d) the matter has already been the subject of a complaint or notification which has been investigated or otherwise dealt with; or
  - (e) the complaint or notification relates to conduct that occurred at too remote a time to justify investigation; or
  - (f) the complaint or notification was not made genuinely or was made primarily for a mischievous purpose; or
  - (g) in all of the circumstances, the conduct does not warrant investigation.
- (3) If a person who makes a complaint, other than a complaint referred to in section 65, has delayed making the complaint by more than a year after becoming aware of the conduct which is the subject of the complaint, the IBAC—
- (a) may require the person to give an explanation for the delay; and
  - (b) if not satisfied with the explanation, in its absolute discretion, may decide not to investigate the complaint.

\* \* \* \* \*

**68 When certain complaints or notifications to the IBAC are dismissed**

S. 68  
inserted by  
No. 28/2012  
s. 18,  
amended by  
No. 85/2012  
s. 95 (ILA  
s. 39B(1)),  
amended by  
No. 85/2012  
s. 95(2).

S. 68(1)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 10).

S. 68(2)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 10).

S. 68(2)(d)  
amended by  
No. 30/2016  
s. 25(a).

S. 68(2)(e)  
repealed by  
No. 30/2016  
s. 25(b).

- (1) A complaint or notification to the IBAC other than a public interest complaint is dismissed if the IBAC—
- (a) determines under section 65(2) or section 67(1) that the complaint or notification does not warrant investigation; or
  - (b) decides not to investigate the complaint or notification in accordance with section 67(3).
- (2) A public interest complaint is dismissed if—
- (a) the IBAC has determined under section 65(2)(b), (c), (d), (e) or (f) that the complaint does not warrant investigation; or
  - (b) the IBAC has determined under section 67(1) that the complaint does not warrant investigation because any of the criteria specified in section 67(2)(b), (c), (d), (e) or (f) apply; or
  - (c) the IBAC decides not to investigate the complaint in accordance with section 67(3); or
  - (d) the IBAC determines that the complaint does not warrant investigation because the IBAC considers on reasonable grounds that the subject matter of the complaint is trivial.

\* \* \* \* \*

(3) The IBAC must dismiss a public interest complaint if the matter disclosed is a matter that neither the IBAC nor a body specified in section 73(3) may investigate.

S. 68(3)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 10).

(4) The IBAC may dismiss a public interest complaint if the IBAC considers that referring the disclosure to any other body would prejudice criminal proceedings, a criminal investigation or an investigation by the IBAC or the Victorian Inspectorate.

S. 68(4)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 10).

#### **69 Discontinuance of investigation**

The IBAC may discontinue an investigation at any time.

S. 69  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### **70 Investigation when other proceedings on foot**

(1) The IBAC may commence or continue to investigate a matter despite the fact that any proceedings (whether civil or criminal) are on foot, or are commenced, in any court or tribunal that relate to, or are otherwise connected with, the subject matter of the investigation.

S. 70  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

(2) If the IBAC is or becomes aware that such proceedings are on foot, or have been commenced, the IBAC must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

#### **71 The IBAC to disclose to Victorian Inspectorate complaint or notification involving conduct of the IBAC or IBAC Officers**

S. 71  
inserted by  
No. 28/2012  
s. 19.

The IBAC must notify the Victorian Inspectorate of any complaint or notification to the IBAC if that complaint or notification involves conduct of—

(a) the IBAC; or

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- (b) any person who is, or was at the time of the conduct, an IBAC Officer.

S. 72  
inserted by  
No. 28/2012  
s. 19.

**72 The IBAC may conduct coordinated investigations**

- (1) For the purposes of, or in connection with, its investigative functions under this Act, the IBAC may conduct an investigation under this Division in coordination with any integrity body or law enforcement agency.
- (2) An investigation conducted in coordination with an integrity body or a law enforcement agency—
- (a) must be conducted by the IBAC as an exercise of the duties, functions and powers of the IBAC; and
  - (b) may otherwise be conducted in any way the IBAC sees fit.
- (3) Without limiting subsection (2), for the purposes of an investigation conducted in coordination with an integrity body or a law enforcement agency, the IBAC may—
- (a) consult, coordinate and cooperate with any integrity body or law enforcement agency which is, in accordance with that body's or agency's own duties, functions and powers, conducting an investigation in respect of the same matter or similar or related subject matter;
  - (b) in accordance with section 41, provide or disclose information to an integrity body or a law enforcement agency with which the IBAC is conducting a coordinated investigation;
  - (c) in accordance with Part 3, receive information from an integrity body or a law enforcement agency with which the IBAC is conducting a coordinated investigation;

- (d) enter into a memorandum of understanding or an agreement with any integrity body or law enforcement agency in relation to the conduct of coordinated investigations with that integrity body or law enforcement agency.
- (4) Without limiting subsection (3)(d), a memorandum of understanding or an agreement under that subsection may be in relation to—
  - (a) coordinated investigations generally; or
  - (b) specific coordinated investigations or classes of coordinated investigation.
- (5) Nothing in this section permits a duty or function of the IBAC to be performed or a power of the IBAC to be exercised other than—
  - (a) by a person authorised to perform that duty or function, or exercise that power, under this Act; and
  - (b) in a manner required or authorised under this Act.

## **Division 5—Referrals**

### **73 Referral of complaint or notification for investigation by another person or body**

- (1) The IBAC must refer to a person or body specified in subsection (2) a complaint or notification to the IBAC if, at any time, the IBAC considers that—
  - (a) the subject matter of the complaint or notification is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and

Pt 3 Div. 5  
(Heading and  
ss 73–80)  
inserted by  
No. 28/2012  
s. 20.

S. 73  
inserted by  
No. 28/2012  
s. 20,  
amended by  
Nos 82/2012  
ss 10, 255,  
85/2012 s. 96.

(b) it would be more appropriate for the complaint or notification to be investigated by that person or body rather than by the IBAC.

(2) For the purposes of subsection (1) and subject to subsection (3), the following persons and bodies are specified—

(a) the Chief Commissioner of Police;

(b) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;

(c) the Auditor-General appointed under section 94A of the **Constitution Act 1975**;

(d) the Victorian Inspectorate;

(da) the Judicial Commission;

S. 73(2)(da)  
inserted by  
No. 16/2016  
s. 164(1).

(e) the Victorian WorkCover Authority within the meaning of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 73(2)(e)  
amended by  
No. 67/2013  
s. 649(Sch. 9  
item 19(2)).

\* \* \* \* \*

S. 73(2)(ea)  
inserted by  
No. 79/2012  
s. 81,  
repealed by  
No. 30/2016  
s. 26(a).

(f) the Racing Integrity Commissioner appointed under section 37A of the **Racing Act 1958**;

(g) the Environment Protection Authority established under section 5 of the **Environment Protection Act 1970**;

- (h) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**;
- (ha) the Chief Municipal Inspector appointed under section 182 of the **Local Government Act 2020**;
- (hb) a Municipal Monitor appointed under section 179 of the **Local Government Act 2020**;
- (i) the relevant principal officer;
- (j) any other prescribed person or body which has a law enforcement function or an integrity function.
- (3) The IBAC may only refer a public interest complaint to—
- (a) in the case of a public interest complaint relating to the conduct of a member of Victoria Police personnel—the Chief Commissioner of Police; or
- (b) in any other case—
- (i) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**; or
- (ii) the Victorian Inspectorate; or
- (iii) another entity in accordance with section 73A.

S. 73(2)(ha) inserted by No. 30/2016 s. 26(b), amended by No. 9/2020 s. 390(Sch. 1 item 56.4(a)).

S. 73(2)(hb) inserted by No. 30/2016 s. 26(b), amended by No. 9/2020 s. 390(Sch. 1 item 56.4(b)).

S. 73(3) amended by Nos 37/2014 s. 10(Sch. item 85.10(a)), 16/2016 s. 164(2), substituted by No. 2/2019 s. 54(1).

- (4) Despite subsection (1), the IBAC must not refer to the Chief Commissioner of Police any complaint or notification to the IBAC to the extent that the complaint or notification relates to conduct of—
- (a) the Chief Commissioner of Police; or
  - (b) a Deputy Commissioner of Police; or
  - (c) an Assistant Commissioner of Police.
- (5) If, in accordance with this section, the IBAC refers a complaint or notification to the Chief Commissioner of Police, the Chief Commissioner must—

S. 73(5)(a)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.10(b)),  
2/2019  
s. 54(2).

- (a) in the case of a complaint or notification that is not a public interest complaint—  
investigate the complaint or notification under Division 2 of Part 9 of the **Victoria Police Act 2013**; or

S. 73(5)(b)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.10(c)),  
2/2019  
s. 54(2).

- (b) in the case of a public interest complaint—  
investigate the public interest complaint under Part 10 of the **Victoria Police Act 2013**.

S. 73A  
inserted by  
No. 2/2019  
s. 55.

### **73A Referral of public interest complaints to other investigating entities**

- (1) Subject to subsections (2) and (3), the IBAC may refer a public interest complaint to any of the following persons or bodies—

S. 73A(1)(a)  
amended by  
No. 9/2020  
s. 390(Sch. 1  
item 56.5).

- (a) the Chief Municipal Inspector appointed under section 182 of the **Local Government Act 2020**;
- (b) the Racing Integrity Commissioner appointed under section 37A of the **Racing Act 1958**;

- (c) the Information Commissioner within the meaning of section 5(1) of the **Freedom of Information Act 1982**.
- (2) The IBAC must not refer a public interest complaint to a person or body referred to in subsection (1)(b) or (c) if the IBAC suspects on reasonable grounds that the conduct that is the subject of the complaint is corrupt conduct.
- (3) The IBAC may refer a public interest complaint to a person or body referred to in subsection (1) only if—
- (a) the subject matter of the complaint is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and
  - (b) the complaint does not relate to the conduct of the person or body or the conduct of an employee, member or officer of the person or body; and
  - (c) the IBAC considers that—
    - (i) it is more appropriate for the complaint to be investigated by that person or body than by the IBAC or any other investigating entity; and
    - (ii) the referral would not increase the risk to any person's health, safety or welfare; and
  - (d) the IBAC has consulted with the person and body before the public interest complaint is referred to the person or body.

#### **74 Referrals to prosecutorial bodies**

- (1) If the IBAC considers it appropriate, the IBAC, at any time, may refer to a prosecutorial body any matter that the IBAC considers is relevant to the performance of the prosecutorial duties and

S. 74  
inserted by  
No. 28/2012  
s. 20.

functions or the exercise of prosecutorial powers of that prosecutorial body.

- (2) Without limiting any matter which may be referred under this section, the IBAC may refer—
  - (a) any matter under investigation by the IBAC;
  - (b) any matter raised in a report of the Chief Commissioner of Police.

S. 74A  
inserted by  
No. 16/2016  
s. 165.

#### **74A Referrals to the Judicial Commission**

If the IBAC considers it appropriate, the IBAC, at any time, may refer to the Judicial Commission any matter that the IBAC considers is relevant to the performance of the Judicial Commission's functions.

S. 75  
inserted by  
No. 28/2012  
s. 20.

#### **75 Referrals to prosecutorial bodies for advice**

- (1) After receiving a report of the Chief Commissioner of Police, the IBAC may refer to a prosecutorial body for advice any matter that the IBAC considers is relevant to the performance of the prosecutorial duties and functions or the exercise of prosecutorial powers of that prosecutorial body.
- (2) If the IBAC refers a matter to a prosecutorial body for advice under subsection (1) the IBAC must notify in writing the Chief Commissioner of Police—
  - (a) of the referral; and
  - (b) of the advice received by the IBAC from the prosecutorial body in respect of the referral.
- (3) The Chief Commissioner of Police must not conduct any disciplinary process or action against the person who is the subject of a referral under subsection (1) until the Chief Commissioner of Police has received the notification from the IBAC under subsection (2)(b).

**76 Consultation prior to referral**

For the purposes of deciding whether to make a referral under this Division to a person or body, the IBAC may consult with the relevant person or body.

S. 76  
inserted by  
No. 28/2012  
s. 20.

**77 Information to be provided with referral**

- (1) In accordance with section 41, the IBAC may provide or disclose to a person or body to which a referral is made under this Division any information that the IBAC has in relation to the matter referred.
- (2) Despite subsection (1), the IBAC may disclose to the Chief Commissioner of Police information that is likely to lead to the identification of a person who has made an assessable disclosure if—
  - (a) the IBAC has determined that the assessable disclosure is a public interest complaint; and
  - (b) the public interest complaint has been referred to the Chief Commissioner of Police for investigation; and
  - (c) the person has consented to the disclosure of the information.
- (3) Before making a disclosure referred to in subsection (2), the IBAC must consult with the person who made the public interest complaint.

S. 77  
inserted by  
No. 28/2012  
s. 20,  
amended by  
No. 2/2019  
s. 56 (LA  
s. 39B(1)).

S. 77(2)  
inserted by  
No. 2/2019  
s. 56.

S. 77(3)  
inserted by  
No. 2/2019  
s. 56.

S. 78  
inserted by  
No. 28/2012  
s. 20,  
amended by  
No. 82/2012  
s. 256.

## **78 Provision to the IBAC of information about referred complaint or notification**

(1) This section applies to a referral under section 73 other than—

S. 78(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.11).

(a) a referral to the Chief Commissioner of Police in relation to conduct of a person who is not a member of Victoria Police personnel;  
or

(b) a referral to the Victorian Inspectorate.

(2) If the IBAC has made a referral to which this section applies, the IBAC, at any time, may require the person or body to which the referral is made to provide to the IBAC, within a reasonable time specified by the IBAC, information regarding—

(a) any investigation of the referred matter;

(b) any action taken in respect of the referred matter.

(3) A person or body to which a requirement is made under this section must provide the required information to the IBAC within the time specified by the IBAC under subsection (2).

S. 79  
inserted by  
No. 28/2012  
s. 20,  
amended by  
82/2012 s. 257.

## **79 Withdrawal of referred complaint or notification**

(1) This section applies to a referral under section 73 other than—

S. 79(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.11).

(a) a referral to the Chief Commissioner of Police in relation to conduct of a person who is not a member of Victoria Police personnel;  
or

S. 79(1)(b)  
amended by  
No. 16/2016  
s. 166(a).

(b) a referral to the Victorian Inspectorate; or

(c) a referral to the Judicial Commission.

**Note**

See also section 18 of the **Judicial Commission of Victoria Act 2016** for circumstances where the IBAC may require the Judicial Commission to adjourn the investigation.

S. 79(1)(c)  
inserted by  
No. 16/2016  
s. 166(b).

- (2) At any time after the IBAC has made a referral to which this section applies of a complaint or notification to the IBAC, the IBAC may—
- (a) determine to investigate that complaint or notification under Division 4; and
  - (b) withdraw that referral by providing written notice to the person or body to which the complaint or notification was referred.
- (3) A person or body which receives a notice from the IBAC withdrawing a referral under subsection (2) must—
- (a) cease its investigation of the referred complaint or notification; and
  - (b) provide the IBAC with any evidence that the person or body has in its possession or control in relation to that referred complaint or notification; and
  - (c) cooperate with the IBAC and ensure that its officers provide all reasonable assistance requested by the IBAC in relation to that complaint or notification.
- (4) The IBAC, as soon as reasonably practicable, must notify the Victorian Inspectorate in writing of the withdrawal under this section of any referral.

S. 80  
inserted by  
No. 28/2012  
s. 20,  
amended by  
No. 82/2012  
s. 11.

## 80 Notice of withdrawal of referral

- (1) Subject to subsection (2), if the IBAC withdraws a complaint or notification to the IBAC referred to a person or body under section 79, the IBAC may notify the person or body who made the complaint or notification of that withdrawal of the referral and that the IBAC is to investigate the complaint or notification.
- (2) The IBAC must not notify a person or a body under subsection (1) if the IBAC considers that notifying that person would—
  - (a) not be in the public interest or in the interests of justice; or
  - (b) put a person's safety at risk; or
  - (c) cause unreasonable damage to a person's reputation; or
  - (d) prejudice an investigation under this Act or an investigation by Victoria Police or the person or body to which the referral was made; or
  - (e) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.

S. 80(2)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.12).

## **Part 4—Investigative powers**

### **Division 1—Authorised officers**

Pt 4  
(Headings  
and ss 36–45)  
substituted as  
Pt 4  
(Headings  
and ss 81–  
101) by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### **81 Appointment of authorised officers**

- (1) Subject to subsection (2), the IBAC, by instrument, may appoint a sworn IBAC Officer to be an authorised officer for the purposes of this Act.
- (2) The IBAC must not appoint a sworn IBAC Officer to be an authorised officer unless the IBAC is satisfied that the sworn IBAC Officer is suitably qualified or trained to perform the functions and exercise the powers of an authorised officer for the purposes of this Act.
- (3) An appointment of a sworn IBAC Officer as an authorised officer—
  - (a) may, generally or in a particular case, specify the functions, duties or powers under this Act or the regulations in respect of which that person is an authorised officer; and
  - (b) may be made subject to any conditions that the IBAC considers appropriate.

S. 81  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### **82 Identity cards**

- (1) The IBAC must issue an identity card to each authorised officer.

S. 82  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (2) An identity card issued to an authorised officer must—
- (a) contain a photograph of the authorised officer; and
  - (b) contain the signature of the authorised officer; and
  - (c) be signed by the Commissioner.

S. 83  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### **83 Production of identity card**

- (1) An authorised officer must produce his or her identity card for inspection before exercising a power under Division 3 or 4 of this Part unless it is not practicable to do so.
- (2) An authorised officer must produce his or her identity card for inspection if requested to do so by any person at the premises during the exercise of a power under Division 3 or 4 of this Part unless to do so would endanger safety or frustrate an investigation.
- (3) If an authorised officer does not comply with a request under subsection (2), the authorised officer must immediately cease exercising the power under Division 3 or 4 of this Part unless the reason for not complying is that to comply would endanger safety or frustrate an investigation.
- (4) An authorised officer exercising a power under Division 2 of this Part must produce his or her identity card for inspection if requested to do so by the person subject to the exercise of that power unless it is not practicable to do so.

## **Division 2—Additional powers—conduct of police**

### **84 Power to require police to give information and documents and answer questions**

- (1) This section applies to the investigation by the IBAC in respect of a possible breach of discipline involving—
  - (a) corrupt conduct of a police officer or protective services officer; or
  - (b) police personnel conduct of a police officer or protective services officer.
- (2) For the purposes of an investigation to which this section applies, the IBAC may direct any police officer or protective services officer to—
  - (a) give the IBAC any relevant information; or
  - (b) produce any relevant document to the IBAC; or
  - (c) answer any relevant question.

#### **Note**

Failure to comply with a direction of the IBAC under this section is a breach of discipline. See section 125(1)(b) of the **Victoria Police Act 2013**.

- (3) Any information, document or answer given or produced in accordance with a direction under subsection (2) is not admissible in evidence before any court or person acting judicially, except in proceedings for—
  - (a) perjury or giving false information; or

S. 84  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 84(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.13(a)).

S. 84(1)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.13(a)).

S. 84(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.13(a)).

Note to  
s. 84(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.13(b)).

S. 84(3)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.13(c)).

(b) a breach of discipline by a police officer or  
protective services officer; or

S. 84(3)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.13(d)).

(c) an offence under this Act concerning failure  
to comply with a direction of the IBAC.

S. 84(3)(d)  
repealed by  
No. 37/2014  
s. 10(Sch.  
item 85.13(e)).

\* \* \* \* \*

### **Division 3—Entry, search and seizure— police personnel premises**

S. 85  
(Heading)  
amended by  
No. 30/2016  
s. 27(1).

#### **85 The Commissioner must authorise use of powers under this Division**

A power under this Division must not be  
exercised by an authorised officer without express  
written authority from the Commissioner.

S. 85  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

Note to s. 85  
repealed by  
No. 30/2016  
s. 27(2).

\* \* \* \* \*

S. 86  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### **86 Power to enter police personnel premises**

(1) If an authorised officer reasonably believes there  
are documents or other things that are relevant to  
an investigation which are on police personnel  
premises, the authorised officer may—

(a) enter those premises at any time; and

- (b) enter any vehicle, vessel or aircraft on those premises; and
  - (c) search those premises or any vehicle, vessel or aircraft on those premises for documents or other things that are relevant to an investigation; and
  - (d) inspect or copy any document or other thing found at those premises or in any vehicle, vessel or aircraft on those premises; and
  - (e) do anything that it is necessary or convenient to do to enable a search and an inspection to be carried out under this section.
- (2) On exercising a power of entry under this section, the authorised officer must—
- (a) identify himself or herself to a person at the police personnel premises who is apparently in charge of those premises; and
  - (b) inform the person apparently in charge that the authorised officer is authorised to enter the police personnel premises or any vehicle, vessel or aircraft on those premises.
- (3) The Chief Commissioner of Police must ensure that each member of Victoria Police personnel at police personnel premises gives the authorised officer any assistance the authorised officer reasonably requires to enable the authorised officer to exercise powers under this section.
- (4) For the avoidance of doubt, an authorised officer does not have authority under this section to enter any part of police personnel premises that is used for residential purposes.

**S. 86(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.14).**

S. 87  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### **87 Power to seize documents or things at police personnel premises**

- (1) An authorised officer who exercises a power of entry under section 86 may seize a document or other thing at the police personnel premises or in any vehicle, vessel or aircraft on those premises if the authorised officer reasonably suspects that—
  - (a) the document or other thing is relevant to an investigation; and
  - (b) if the document or other thing is not immediately seized—
    - (i) it may be concealed or destroyed; or
    - (ii) its forensic value may be diminished.
- (2) The Chief Commissioner of Police must ensure that each member of Victoria Police personnel at police personnel premises makes available to the authorised officer any facilities or equipment that are reasonably necessary for the authorised officer to seize a document or other thing under this section.

S. 87(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.14).

### **88 Copies of, access to or receipt for documents or other things seized**

- (1) If an authorised officer seizes under section 87—
  - (a) a document, disk or tape or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied—

the authorised officer, on request by a person at the police personnel premises, must give a copy of the document, thing or information to the person as soon as practicable after the seizure.

S. 88  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (2) An authorised officer may refuse a request under subsection (1) if the authorised officer has consulted the IBAC and—
- (a) the IBAC is satisfied that the work involved in copying the document, thing or information would substantially and unreasonably interfere with the performance of the IBAC's functions; or
  - (b) the IBAC considers that it is in the public interest to do so.
- (3) An authorised officer must not refuse a request under subsection (1) unless the authorised officer has—
- (a) given the person who made the request a written notice stating an intention to refuse the request; and
  - (b) given the person a reasonable opportunity to make a further request for a copy of the document, thing or information in a form that would remove the ground for refusal; and
  - (c) as far as is reasonably practicable, provided the person with any information that would assist the making of the further request for access in such a form.
- (4) An authorised officer is not required to provide any information under subsection (3)(c) if the IBAC considers that it is not in the public interest for the document, thing or information to be provided.
- (5) If an authorised officer refuses a request under subsection (1)—
- (a) the authorised officer must provide a receipt for the document, thing or information seized; and

- (b) on request by the Chief Commissioner of Police, the IBAC must permit the Chief Commissioner of Police to have access to the document, thing or information seized unless the IBAC is of the opinion that it is not in the public interest for the Chief Commissioner of Police to have access.
- (6) The IBAC must not refuse a request for access under subsection (5)(b), unless the IBAC has—
  - (a) given the Chief Commissioner of Police a written notice stating an intention to refuse to give access; and
  - (b) given the Chief Commissioner of Police a reasonable opportunity to make a further request for access in a form that would remove the ground for refusal; and
  - (c) as far as is reasonably practicable, provided the Chief Commissioner of Police with any information that would assist the making of the further request for access in such a form.
- (7) The IBAC is not required to provide any information under subsection (6)(c) if the IBAC is of the opinion that it is not in the public interest for the information to be provided.
- (8) For the avoidance of doubt, an authorised officer or the IBAC is not required to give reasons for refusing a request under this section.

S. 89  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

## **89 Application for return of things seized**

- (1) Within 7 days after a document or other thing is seized by an authorised officer under section 87, an interested person may apply to the Supreme Court for an order—
  - (a) setting aside the seizure; and
  - (b) requiring the IBAC to deliver the document or other thing to the interested person.

- (2) On an application under subsection (1), the Supreme Court may make an order setting aside the seizure and requiring the IBAC to deliver the document or other thing to the interested person if the Court is satisfied that the grounds for the seizure—
- (a) did not exist; or
  - (b) no longer exist.
- (3) In this section, *interested person* in relation to a document or other thing means—
- (a) the Chief Commissioner of Police; or
  - (b) a person authorised by the Chief Commissioner of Police to apply under this section on behalf of the Chief Commissioner of Police; or
  - (c) any other person who claims to have a legal or equitable interest in the document or other thing.

**90 Return of things seized from police personnel premises**

- (1) The IBAC must take all reasonable steps to return a document or other thing seized under section 87 to the Chief Commissioner of Police if the document or other thing is required as evidence relating to a legal proceeding.
- (2) The IBAC must immediately take all reasonable steps to return a document or other thing seized under section 87 to the Chief Commissioner of Police if the IBAC is no longer satisfied that its retention is necessary for the purposes of—
- (a) an investigation; or
  - (b) a report on an investigation; or
  - (c) a legal proceeding arising out of, or connected with, an investigation.

S. 90  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 82/2012  
s. 12.

- (3) This section is subject to any order of the Supreme Court made under section 89.

## Division 4—Search warrant powers

### 91 Search warrant

S. 91  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 91(1)  
amended by  
No. 30/2016  
s. 28(1)(a)(b).

- (1) Subject to subsections (2) and (8), an authorised officer may apply to a Judge of the Supreme Court or a magistrate for a search warrant in relation to either or both of the following—
- (a) particular premises, if the authorised officer believes on reasonable grounds that entry to the premises (including any vehicle, vessel or aircraft on or in those premises) is necessary for the purpose of an investigation;
  - (b) a particular vehicle, vessel or aircraft located in a public place if the authorised officer believes on reasonable grounds that entry to the vehicle, vessel or aircraft is necessary for the purpose of an investigation.
- (2) An application must not be made without the written authorisation, in the prescribed form, of the Commissioner.

Note to  
s. 91(2)  
repealed by  
No. 30/2016  
s. 28(2).

\* \* \* \* \*

S. 91(3)  
amended by  
Nos 30/2016  
s. 28(1)(b)(c),  
6/2018  
s. 68(Sch. 2  
item 69.1).

- (3) If a Judge of the Supreme Court or a magistrate is satisfied by evidence on oath or by affirmation, whether oral or by affidavit, that there are reasonable grounds for the belief under subsection (1)(a) or (b), the Judge or the magistrate may issue

a search warrant authorising any person named in the warrant—

- (a) to enter and search the premises or vehicle, vessel or aircraft named or described in the search warrant and inspect any document or thing at those premises or on or in that vehicle, vessel or aircraft; and
  - (b) to make a copy of any document relevant, or that the person reasonably considers may be relevant, to the investigation; and
  - (c) to take possession of any document or other thing that the person considers relevant to the investigation.
- (4) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
  - (b) any conditions to which the search warrant is subject; and
  - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (d) a day, not later than 28 days after the issue of the search warrant, on which the search warrant ceases to have effect.
- (5) A search warrant must be in the prescribed form.
- (6) Except as otherwise provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
- (7) If a search warrant is issued in relation to court premises, the IBAC must notify, and may consult, the head or heads of jurisdiction about the issuing

of the search warrant, unless to do so would prejudice the investigation.

S. 91(8)  
inserted by  
No. 30/2016  
s. 28(3).

- (8) An authorised officer must apply to a Judge of the Supreme Court for a search warrant if—
- (a) it relates to an investigation of a judicial officer; or
  - (b) it is to enter and search—
    - (i) court premises; or
    - (ii) any vehicle on court premises.

S. 91(9)  
inserted by  
No. 30/2016  
s. 28(3).

- (9) In this section, *court premises* has the same meaning as it has in the **Court Security Act 1980**.

S. 92  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

## 92 Procedure for executing search warrant

- (1) On executing a search warrant, the person executing it—
- (a) must announce that he or she is authorised by the search warrant to enter the premises, vehicle, vessel or aircraft, as the case requires, unless, in the case of a vehicle, vessel or aircraft it is in a public place; and
  - (b) if the person has been unable to obtain unforced entry, must give any person at the premises or in control of the vehicle, vessel or aircraft an opportunity to allow entry to the premises, vehicle, vessel or aircraft, as the case requires.
- (2) A person executing a search warrant need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises, vehicle vessel or aircraft is required to ensure—
- (a) the safety of any person; or

- (b) that the effective execution of the search warrant is not frustrated.
- (3) If the occupier is present at premises where a search warrant is being executed, the person executing the warrant must—
  - (a) identify himself or herself to the occupier; and
  - (b) give the occupier a copy of the search warrant.
- (4) If the occupier is not present at premises where a search warrant is being executed, the person executing the warrant must—
  - (a) identify himself or herself to a person at the premises who is apparently over the age of 18 years; and
  - (b) give that person a copy of the warrant.
- (5) If there is no person apparently over the age of 18 years present at premises where a search warrant is being executed, the person executing the warrant must leave a copy of the warrant in a conspicuous place at the premises unless the IBAC has given a direction under subsection (6).
- (6) The IBAC may direct that a copy of a search warrant not be left at premises where no person apparently over the age of 18 years is present if the IBAC is satisfied that it would be contrary to the public interest for the copy to be left at the premises.

**93 Copies or receipts to be given for documents or other things**

- (1) If under a search warrant a person takes possession of—
  - (a) a document, disk or tape or other thing that can be readily copied; or

S. 93  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

(b) a storage device the information in which  
can be readily copied—

the person, on request by the occupier, must give  
a copy of the document, thing or information to  
the occupier as soon as practicable after taking  
possession of it, unless it would be contrary to the  
public interest to do so.

- (2) If a person takes possession of a document or  
thing under a search warrant and has not provided  
a copy of the document, thing or information  
under subsection (1) the person must provide a  
receipt in the prescribed form for that document or  
thing as soon as practicable after taking  
possession of it.

S. 94  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### **94 Return of documents and other things**

- (1) The IBAC must take all reasonable steps to return  
a document or other thing seized under a search  
warrant to the person from whom it was seized if  
the document or other thing is required as  
evidence relating to a legal proceeding.
- (2) The IBAC must immediately take all reasonable  
steps to return a document or other thing seized  
under a search warrant to the person from whom it  
was seized if the IBAC is no longer satisfied that  
its retention is necessary for the purposes of—
- (a) an investigation; or
  - (b) a report on an investigation; or
  - (c) a legal proceeding arising out of, or  
connected with, an investigation.

## 95 Assistance in executing search warrants

- (1) A person executing a search warrant may—
  - (a) seek the assistance of another person (an *assistant*) over the age of 18 years who possesses specialised skills or technical knowledge necessary for exercising a power authorised by the search warrant; or
  - (b) take onto the premises any equipment, vehicle, animal or material that the person reasonably requires for exercising a power authorised by the search warrant.
- (2) The person may authorise the assistant—
  - (a) to take stated action at the premises, vehicle, vessel or aircraft; and
  - (b) to exercise stated powers the person is authorised by the search warrant to exercise.
- (3) For the purposes of subsection (2), the person—
  - (a) is only permitted to authorise the assistant to take stated action or exercise stated powers that are consistent with the specialist skills or technical knowledge of the assistant; and
  - (b) cannot authorise the assistant to arrest a person.
- (4) The person must inform the assistant of—
  - (a) action the assistant is authorised to take; and
  - (b) the assistant's powers under this section.
- (5) Without limiting subsection (1), the IBAC may seek assistance from the Chief Commissioner of Police when executing a search warrant.
- (6) Subsection (1) applies, in relation to animals, despite any other Act or law, other than the **Charter of Human Rights and Responsibilities Act 2006**.

S. 95  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 96  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 37/2014  
s. 10 (Sch.  
item 85.15).

## 96 Police must provide reasonable assistance

The Chief Commissioner of Police must ensure that police officers give a person executing a search warrant any assistance that the person reasonably requires to enable that person, or an assistant authorised under section 95, to exercise the powers authorised by the search warrant.

S. 97  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

## 97 Privilege claims in relation to search warrants

- (1) This section applies if—
  - (a) a person executing a search warrant (the *searcher*) wishes to inspect, copy or seize a document or other thing under the search warrant; and
  - (b) a person who is entitled to claim the privilege (the *claimant*) claims that the document or other thing is the subject of privilege.
- (2) The searcher must consider the claim of privilege and either—
  - (a) cease exercising the power under the search warrant in relation to the document or other thing over which the claim of privilege is made; or
  - (b) require the claimant to immediately seal the document or other thing in an envelope, or otherwise secure it if it cannot be sealed in an envelope, and give it to the searcher.
- (3) The searcher must not inspect the document or other thing in considering the claim of privilege.
- (4) If the searcher requires the claimant to give the document or other thing to the searcher under subsection (2)(b), the searcher must—

- (a) notify the Commissioner as soon as practicable; and
  - (b) immediately give the document or other thing to the proper officer of the Supreme Court to be held in safe custody.
- (5) Subject to section 101, a person must not open a sealed envelope or interfere with a document or thing secured otherwise than in an envelope before delivery to the proper officer of the Supreme Court.

### **Division 5—Privilege**

#### **98 Certain privileges abrogated in relation to police personnel and other public officers**

- (1) If the IBAC exercises a power under section 84 or an authorised officer exercises a power under section 86 or 87—
  - (a) the Crown is not entitled to assert any privilege in response to the exercise of those powers; and
  - (b) any privilege referred to in paragraph (a) is abrogated; and
  - (c) any obligation on a member of Victoria Police personnel to maintain secrecy or comply with a restriction upon the disclosure of information imposed by any enactment or any rule of law—
    - (i) is overridden; and
    - (ii) does not apply in respect of a direction of the IBAC under section 84 or the inspection, copying or seizure of any document or other thing by an authorised officer under section 86 or 87.

**S. 98**  
(Heading)  
amended by  
No. 2/2019  
s. 117(1).

**S. 98**  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 2/2019  
s. 117(3) (ILA  
s. 39B(1)).

**S. 98(1)(c)**  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.16),  
2/2019  
s. 117(2).

S. 98(2)  
inserted by  
No. 2/2019  
s. 117(3).

- (2) If an authorised officer exercises a power under a search warrant issued under section 91—
- (a) the Crown is not entitled to assert any privilege in response to the exercise of that power; and
  - (b) any privilege referred to in paragraph (a) is abrogated; and
  - (c) any obligation on a public officer to maintain secrecy or comply with a restriction upon the disclosure of information imposed by any enactment or any rule of law—
    - (i) is overridden; and
    - (ii) does not apply in respect of the inspection, copying or seizure of any document or other thing by the authorised officer under the search warrant.

S. 98(4)  
inserted by  
No. 2/2019  
s. 117(3).

- (4) A person is not subject to any criminal, civil, administrative or disciplinary proceedings or actions only because the person has not maintained secrecy or complied with a restriction upon the disclosure of information imposed by any enactment or any rule of law in the circumstances referred to in subsection (1)(c) or (2)(c).

S. 98(5)  
inserted by  
No. 2/2019  
s. 117(3).

- (5) This section does not apply to information, documents or things that are subject to Cabinet confidentiality.

S. 99  
inserted by  
No. 52/2012  
s. 18.

### **99 Journalist privilege does not apply**

A person is not, in relation to the exercise of a power under this Part, entitled to the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**.

**100 Application to Supreme Court to determine privilege**

- (1) Within 7 days after a sealed envelope or document or thing secured otherwise than in an envelope is given to the proper officer of the Supreme Court in accordance with section 97, the IBAC may apply to the Supreme Court to determine whether or not the document is the subject of privilege.
- (2) If no application is made under subsection (1) within the period of 7 days, the proper officer must return the document to the claimant of privilege.
- (3) The IBAC must give notice of the application to the claimant of privilege within a reasonable time before the hearing of the application.
- (4) Notice under subsection (3) must be in the prescribed form.
- (5) The claimant is entitled to appear and be heard on the hearing of the application.

S. 100  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**101 Determination of privilege claims**

- (1) On an application under section 100, the Supreme Court must determine whether or not the document in the sealed envelope or the document or thing secured otherwise than in an envelope is the subject of privilege.
- (2) For the purpose of making a determination under subsection (1), the Judge constituting the Supreme Court and any other person authorised by the Court may—
  - (a) open the sealed envelope or access the document or thing secured otherwise than in an envelope; and
  - (b) inspect the document or thing.

S. 101  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (3) If the Supreme Court determines that the document or thing is the subject of privilege—
- (a) the Court must order that the document or thing be returned to the claimant; and
  - (b) the proper officer must return the document or thing to the claimant.
- (4) If the Court determines that the document or thing is not the subject of privilege—
- (a) the Court must order that the document or thing be given to the IBAC; and
  - (b) the proper officer must release the document or thing accordingly.
- (5) Subject to subsection (2), a person must not open a sealed envelope or otherwise have access to the document or thing contained in the sealed envelope before—
- (a) the Court determines the claim of privilege; or
  - (b) the document or thing is returned to the claimant.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (6) Subject to subsection (2), a person must not open or otherwise have access to a document or thing secured otherwise than in an envelope before—
- (a) the Court determines the claim of privilege; or
  - (b) the document or thing is returned to the claimant.

Penalty: 120 penalty units or imprisonment for 12 months or both.

## **Part 5—Defensive equipment and firearms**

Pt 5 (Heading and ss 102–114) inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

### **102 Authorisation to possess, carry and use defensive equipment for investigating certain police personnel conduct**

S. 102 (Heading) amended by No. 37/2014 s. 10(Sch. item 85.17).

S. 102 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use defensive equipment for the purposes of investigating police personnel conduct by any police officer or protective services officer.
- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that the senior IBAC Officer reasonably requires the possession, carrying and use of defensive equipment—
  - (a) to perform functions and exercise powers of the IBAC or an authorised officer in relation to investigations; and
  - (b) to ensure the safety of the senior IBAC Officer in the performance of those functions or the exercise of those powers.

S. 102(1) amended by No. 37/2014 s. 10(Sch. item 85.18).

- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of defensive equipment.
- (4) An authorisation under this section—
- (a) must specify the type of defensive equipment to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use defensive equipment in the course of an investigation of police personnel conduct by any police officer or protective services officer unless authorised to do so under this section.

Penalty: 60 penalty units or imprisonment for 6 months or both.

S. 102(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.18).

S. 103  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**103 Authorisation to possess, carry and use defensive equipment for investigating possible corrupt conduct**

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use defensive equipment for the purposes of an investigation into possible corrupt conduct.
- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that—
- (a) requesting assistance from the Chief Commissioner of Police may compromise the investigation; and

- (b) the senior IBAC Officer reasonably requires the possession, carrying and use of defensive equipment—
  - (i) to perform functions and exercise powers of the IBAC or an authorised officer in relation to an investigation; and
  - (ii) to ensure the safety of the senior IBAC Officer in the performance of IBAC functions or the exercise of IBAC powers.
- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of defensive equipment.
- (4) An authorisation under this section—
  - (a) must specify the type of defensive equipment to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use defensive equipment in the course of an investigation into possible corrupt conduct unless authorised to do so under this section.

Penalty: 60 penalty units or imprisonment for 6 months or both.

**104 Authorisation to possess, carry and use defensive equipment for training purposes**

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use defensive equipment for the purposes of—

S. 104  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (a) providing or receiving training in relation to the use of that equipment; or
  - (b) testing and maintaining that equipment.
- (2) An authorisation under this section—
- (a) must specify the type of defensive equipment to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.

S. 105  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**105 Authorisation to acquire, store and maintain defensive equipment**

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use defensive equipment for the purposes of one or more of the following—
- (a) the purchase or acquisition of that equipment;
  - (b) the maintenance of that equipment;
  - (c) the issue of that equipment;
  - (d) accepting the return of that equipment from a person authorised under this Part to possess, carry and use that equipment;
  - (e) storage of that equipment.
- (2) An authorisation under this section must—
- (a) specify the type of defensive equipment to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.

- (3) A senior IBAC Officer who is authorised under this section must ensure that any defensive equipment to which the authorisation relates is safely and securely stored when it is returned from the possession of a person authorised to possess, carry and use it under this Part.

**106 Authorisation to possess, carry and use firearms for investigating certain police personnel conduct**

S. 106  
(Heading)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.19).

S. 106  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use a firearm for the purposes of investigating police personnel conduct by any police officer or protective services officer.
- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that the senior IBAC Officer reasonably requires the possession, carrying and use of a firearm—
- (a) to perform functions and exercise powers of the IBAC or an authorised officer in relation to investigations; and
- (b) to ensure the safety of the senior IBAC Officer in the performance of those functions or the exercise of those powers.
- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of firearms.

S. 106(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.20).

- (4) An authorisation under this section—
  - (a) must specify the type of firearm to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use a firearm in the course of an investigation of police personnel conduct by any police officer or protective services officer unless authorised to do so under this section.

S. 106(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.20).

Penalty: 60 penalty units or imprisonment for 6 months or both.

#### **107 Authorisation to possess, carry and use firearms for investigating possible corrupt conduct**

S. 107  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use a firearm for the purposes of an investigation into possible corrupt conduct.
- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that—
  - (a) requesting assistance from the Chief Commissioner of Police may compromise the investigation; and
  - (b) the senior IBAC Officer reasonably requires the possession, carrying and use of a firearm—
    - (i) to perform functions and exercise powers of the IBAC or an authorised officer in relation to investigations; and
    - (ii) to ensure the safety of the senior IBAC Officer in the performance of IBAC functions or the exercise of IBAC powers.

- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of firearms.
- (4) An authorisation under this section—
  - (a) must specify the type of firearm to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use a firearm in the course of an investigation into possible corrupt conduct unless authorised to do so under this section.

Penalty: 60 penalty units or imprisonment for 6 months or both.

**108 Authorisation to possess, carry and use firearms for training purposes**

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use a firearm for the purposes of—
  - (a) providing or receiving training in relation to the use of that firearm; or
  - (b) testing and maintaining that firearm.
- (2) An authorisation under this section—
  - (a) must specify the type of firearm to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.

S. 108  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 109  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**109 Authorisation to acquire, dispose of, store and maintain firearms**

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer—
  - (a) to acquire or dispose of a firearm on behalf of the IBAC; and
  - (b) to possess and carry firearms for the purposes of—
    - (i) acquiring or disposing of firearms; and
    - (ii) maintaining firearms; and
    - (iii) storing firearms.
- (2) An authorisation under this section must—
  - (a) specify the type of firearm to which it relates; and
  - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (3) A firearm acquired under this section is taken to be acquired by the IBAC and must be registered under the **Firearms Act 1996** in the name of the IBAC.

S. 110  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**110 Senior IBAC Officer must not contravene conditions of authorisation**

A senior IBAC Officer who is authorised under this Part to possess, carry or use defensive equipment or a firearm must not contravene any conditions to which the authorisation is subject.

Penalty: 60 penalty units or imprisonment for 6 months or both.

**111 The IBAC to notify Chief Commissioner of Police of acquisition or disposal of firearms**

S. 111  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (1) The IBAC must notify the Chief Commissioner of Police within 7 days of—
  - (a) the acquisition of a firearm; or
  - (b) the disposal of a firearm.
- (2) The notification must—
  - (a) be in writing; and
  - (b) state the make, type, calibre, action and serial number of the firearm.

**112 Storage of firearms**

S. 112  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (1) The IBAC must ensure that a firearm acquired under an authorisation under this Part is stored—
  - (a) in the case of a category A or B longarm, in accordance with clause 1(1) and (2) of Schedule 4 to the **Firearms Act 1996**;
  - (b) in the case of a category C or D longarm or a general category handgun, in accordance with clause 2(1), (2) and (2A) of Schedule 4 to the **Firearms Act 1996**, as if the reference to the holder of the licence were a reference to a senior IBAC Officer authorised under section 109.
- (2) A senior IBAC Officer who is authorised under this Part to possess, carry or use a firearm, must ensure that the firearm is stored—
  - (a) in the case of a category A or B longarm, in accordance with clause 1(1) and (2) of Schedule 4 to the **Firearms Act 1996**;
  - (b) in the case of a category C or D longarm or a general category handgun, in accordance with clause 2(1), (2) and (2A) of Schedule 4 to the **Firearms Act 1996**, as if the reference

to the holder of the licence were a reference to the senior IBAC Officer authorised under this Part.

S. 113  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### 113 Storage of cartridge ammunition

- (1) The IBAC must ensure that any cartridge ammunition acquired in accordance with this Part is stored—
  - (a) in the case of cartridge ammunition for a category A or B longarm, in accordance with clause 1(3) of Schedule 4 to the **Firearms Act 1996**;
  - (b) in the case of cartridge ammunition for a category C or D longarm or a general category handgun, in accordance with clause 2(3) of Schedule 4 to the **Firearms Act 1996**.
- (2) A senior IBAC Officer who is authorised under this Part to possess, carry or use a firearm must ensure that any cartridge ammunition is stored—
  - (a) in the case of cartridge ammunition for a category A or B longarm, in accordance with clause 1(3) of Schedule 4 to the **Firearms Act 1996**;
  - (b) in the case of cartridge ammunition for a category C or D longarm or a general category handgun, in accordance with clause 2(3) of Schedule 4 to the **Firearms Act 1996**.

S. 114  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### 114 Requirement to notify Chief Commissioner of Police of loss, theft or destruction

The IBAC must notify the Chief Commissioner of Police of the loss, theft or destruction of any firearm acquired by the IBAC within 24 hours after becoming aware of that loss, theft or destruction.

## **Part 6—Examinations**

### **Division 1—Examinations**

Pt 6  
(Headings  
and ss 115–  
158)  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

#### **115 Power to hold examinations**

- (1) For the purposes of an investigation, the IBAC may hold an examination.
- (2) The IBAC may appoint a person as an examiner to preside at any examination if the person—
  - (a) would be eligible to be appointed to be the Commissioner in accordance with section 20(2) or, in the case of a Deputy Commissioner who is not eligible under section 20(2), subject to subsection (2A), such a Deputy Commissioner; and
  - (b) has taken an oath or made an affirmation under section 37.
- (2A) The IBAC must not appoint a Deputy Commissioner who is not eligible under section 20(2) as an examiner unless the IBAC Commissioner is of the opinion that—
  - (a) it is appropriate to do so; and
  - (b) the Deputy Commissioner has the appropriate skills and knowledge to perform the function of examiner.

S. 115  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 30/2016  
s. 29 (LA  
s. 39B(1)).

S. 115(2)  
inserted by  
No. 30/2016  
s. 29.

S. 115(2)(a)  
amended by  
No. 11/2021  
s. 138(1).

S. 115(2A)  
inserted by  
No. 11/2021  
s.138(2).

S. 115(3)  
inserted by  
No. 30/2016  
s. 29.

(3) A consultant appointed under section 36 may be appointed as an examiner if the consultant meets the criteria specified in subsection (2).

S. 115(4)  
inserted by  
No. 30/2016  
s. 29,  
amended by  
No. 11/2021  
s. 138(3).

(4) A person appointed under subsection (2) may perform any function or exercise any power that the IBAC has under this Part other than under this section or section 117, 132(1), 141, 153(1) or 156(1).

S. 115(5)  
inserted by  
No. 30/2016  
s. 29.

(5) A person appointed under subsection (2) may exercise the powers specified in section 132 as if the person was an IBAC officer authorised to do so by the Commissioner under section 132(1).

S. 115(6)  
inserted by  
No. 30/2016  
s. 29.

(6) For the avoidance of doubt, a person appointed to preside at any examination may preside at a public examination.

S. 115(7)  
inserted by  
No. 30/2016  
s. 29.

(7) The IBAC must as soon as practicable notify the Victorian Inspectorate of any appointment made under subsection (2).

S. 115(8)  
inserted by  
No. 30/2016  
s. 29.

(8) A notice under subsection (7) must specify details of the following—

- (a) the person appointed;
- (b) the reasons for the appointment.

S. 116  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

## **116 Conduct of examinations**

In holding an examination, the IBAC—

S. 116(b)  
amended by  
No. 2/2019  
s. 118.

- (a) is not bound by the rules of evidence; and
- (b) subject to any requirements under this Division, may regulate the procedure of the examination as the IBAC considers appropriate.

**117 Examinations generally to be held in private**

- (1) Subject to subsection (2), an examination is not open to the public unless the IBAC considers on reasonable grounds—
- (a) there are exceptional circumstances; and
  - (b) it is in the public interest to hold a public examination; and
  - (c) a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing; and
  - (d) the conduct that is the subject of the investigation may constitute—
    - (i) serious corrupt conduct; or
    - (ii) systemic corrupt conduct; or
    - (iii) serious police personnel misconduct; or
    - (iv) systemic police personnel misconduct.
- (2) The IBAC must not hold an examination in public if the examination may disclose particulars likely to lead to the identification of a person who has made an assessable disclosure.
- (3) However, the IBAC may hold an examination in public if the information that may be disclosed is information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (3A) If the IBAC holds an examination in public, the IBAC may hold any part of the examination in private—
- (a) on application by—
    - (i) a person attending the examination in accordance with a witness summons; or

S. 117  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 85/2012  
s. 97.

S. 117(1)(c)  
amended by  
No. 2/2019  
s. 119(1)(a).

S. 117(1)(d)  
inserted by  
No. 2/2019  
s. 119(1)(b).

S. 117(3)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 11).

S. 117(3A)  
inserted by  
No. 2/2019  
s. 119(2).

**S. 117(3B)**  
inserted by  
No. 2/2019  
s. 119(2).

(ii) a person authorised by the IBAC under section 119A to appear at the public examination; or

(b) on its own motion.

(3B) In deciding whether or not to hold part of the examination in private, the IBAC may have regard to—

(a) whether it is in the public interest to keep that part of the examination open to the public; and

(b) whether holding the examination in private is necessary to prevent unreasonable damage to a person's reputation, safety or wellbeing.

**S. 117(4)**  
substituted by  
No. 2/2019  
s. 119(3).

(4) For the purposes of subsection (1)(b) and (3B)(a), the factors the IBAC may take into account in determining whether or not it is in the public interest to hold a public examination or part of an examination open to the public (as applicable) include, but are not limited to—

(a) in the case of an investigation of conduct that may constitute serious corrupt conduct or serious police personnel misconduct—whether the conduct relates to an individual or is an isolated incident or systemic in nature; and

(b) in the case of an investigation of conduct that may constitute systemic corrupt conduct or systemic police personnel misconduct—the seriousness of the matter being investigated; and

(c) the benefit of exposing to the public, and making the public aware of, corrupt conduct or police personnel misconduct.

(5) Not less than 10 business days before a public examination is held, the IBAC must—

S. 117(5)  
amended by  
No. 2/2019  
s. 119(4).

(a) inform the Victorian Inspectorate that the IBAC intends to hold the public examination; and

(b) provide a written report to the Victorian Inspectorate giving the reasons the IBAC decided to hold a public examination in accordance with subsection (1).

(5A) The IBAC must not make a public announcement of its intention to hold a public examination for the purposes of an investigation unless the IBAC has notified the Victorian Inspectorate in accordance with subsection (5) of its intention to do so.

S. 117(5A)  
inserted by  
No. 2/2019  
s. 119(5).

(6) A judicial officer is not required to attend a public examination but may consent to doing so.

### **118 Offence to be present at examination**

(1) A person (other than an IBAC Officer or a Victorian Inspectorate Officer) must not be present at an examination that is not open to the public unless he or she is—

S. 118  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 30/2016  
s. 30 (ILA  
s. 39B(1)).

(a) attending in accordance with a witness summons duly served under section 124; or

(b) subject to section 127(2), an Australian legal practitioner representing a person who is attending in accordance with a witness summons; or

(c) entitled to be present by reason of a direction given by the IBAC under section 119; or

(d) an Australian legal practitioner, or other person, engaged by the IBAC to assist the IBAC in the examination; or

(e) any other person authorised to be present by the IBAC or otherwise authorised to be present under this Act or any other law.

Penalty: 120 penalty units or imprisonment for 12 months or both.

S. 118(2)  
inserted by  
No. 30/2016  
s. 30.

(2) In this section, *present* includes being remotely present.

S. 119  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 82/2012  
s. 13.

### 119 The IBAC may give directions

(1) The IBAC may give directions as to the persons who—

- (a) may be present during an examination or part of an examination;
- (b) must not be present during an examination or part of an examination.

S. 119(1A)  
inserted by  
No. 30/2016  
s. 31.

(1A) For the purposes of subsection (1), a direction under subsection (1) may provide that a person may be remotely present during an examination or part of an examination.

(2) A direction under subsection (1) must not prevent the presence, when evidence is being taken at an examination, of—

- (a) subject to section 127(2), an Australian legal practitioner representing a person attending in accordance with a witness summons; or
- (b) an IBAC Officer; or
- (c) a Victorian Inspectorate Officer; or
- (d) any other person authorised to be present under this Act or any other law.

**119A Appearance at public examination by interested party**

S. 119A  
inserted by  
No. 2/2019  
s. 120.

The IBAC may authorise a person to appear at a public examination if satisfied that—

- (a) the person has a substantial and direct interest in the subject matter of the examination; and
- (b) it is appropriate for the person to appear at the examination as an interested party.

**Note**

Under section 127(7), the IBAC may authorise the person to be represented at the examination by an Australian legal practitioner.

**120 Witness summons**

S. 120  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 82/2012  
s. 14(1).

(1) For the purposes of an investigation, the IBAC may issue the following witness summonses to a person—

- (a) a summons to attend the IBAC to give evidence at an examination at a specified time and place on a specified date;
- (b) a summons to attend at a specified time and place on a specified date to produce documents or other things to the IBAC;
- (c) a summons to attend an examination at a specified time and place on a specified date before the IBAC to give evidence and produce documents or other things.

(1A) A witness summons under subsection (1) may specify that attendance required under the summons is to be by means of audio visual link or audio link and in a specified manner.

S. 120(1A)  
inserted by  
No. 11/2021  
s. 131.

(1B) A witness summons under subsection (1) that provides for attendance as described in subsection (1A)—

S. 120(1B)  
inserted by  
No. 11/2021  
s. 131.

S. 120(1C)  
inserted by  
No. 11/2021  
s. 131.

- (a) need not specify a place for attendance; and
  - (b) may specify, if any documents are to be produced, that those documents are to be produced by secure electronic means and in a specified manner.
- (1C) The IBAC may vary the means of attendance required under a witness summons under subsection (1) without reissuing the witness summons if the consent of the person attending or that person's legal representative is given to that variation.
- (2) The IBAC may, under subsection (1), issue a witness summons directed to a person if satisfied that it is reasonable to do so, having regard to—
- (a) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
  - (b) the age of the person and any mental impairment to which the person is known or believed to be subject.
- (3) The IBAC must not issue a witness summons to a person who is under the age of 18 years unless the IBAC considers on reasonable grounds that—
- (a) the information, document or thing that the person could provide may be compelling and probative evidence; and
  - (b) it is not practicable to obtain the information, document or thing by any other means.
- (4) If a person is issued with a witness summons referred to in subsection (1)(b), the IBAC may excuse that person from attendance if the person produces the required documents or things to the IBAC before the time and date for production specified in the witness summons in accordance with any directions given by the IBAC.

- (5) A person to whom a witness summons is directed must, in accordance with the summons, attend from day to day unless excused from further attendance.

## **121 Content and form of witness summons**

S. 121  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 82/2012  
s. 14(2)(3).

- (1) Subject to section 120(1A), (1B) and (1C), a witness summons must require the person to whom it is directed to attend at a specified time and place on a specified date—
- (a) to give evidence at an examination before the IBAC; or
  - (b) to produce to the IBAC any documents or other things described in the witness summons that are in the person's possession or control; or
  - (c) to both give evidence at an examination and produce any documents or other things described in the witness summons that are in the person's possession or control.
- (2) A witness summons referred to in subsection (1)(a) or (c) must state the nature of the matters about which the person to whom it is directed is to be questioned, except to the extent to which the IBAC considers on reasonable grounds that this would be likely to prejudice the conduct of the investigation to which the witness summons relates or would be contrary to the public interest.
- (3) A witness summons must—
- (a) be in the prescribed form; and

S. 121(1)  
amended by  
No. 11/2021  
s. 132.

- (b) be accompanied by a copy of any relevant confidentiality notice; and
  - (c) be accompanied by a statement setting out the matters specified in subsection (4).
- (4) A statement referred to in subsection (3)(c) must include the following—
- (a) that failure to comply with the witness summons may be an offence and penalties may apply;
  - (b) whether it is intended that the examination is to be held in public or in private;
  - (c) that if the person summoned is under the age of 16 years at the date of issue of the witness summons, the person need not comply with the witness summons, subject to the requirements of section 123;
  - (d) that the person is entitled to seek legal advice in relation to the witness summons and the examination generally;
  - (e) that the person has a right to legal representation at an examination;
  - (f) that, if applicable, the person has a right to have an interpreter present at the examination;
  - (g) that, if applicable, the person is required to have a parent, a guardian or an independent person present at the examination;
  - (h) that a person may claim a privilege but—
    - (i) a person is not excused from answering a question or giving information or from producing a document or other thing on the ground that the answer, information, document or other thing

may tend to incriminate the person or  
make the person liable to a penalty;

- (ii) that if the person is a public officer, the  
Crown is not entitled to assert any  
privilege;

S. 121(4)(h)(ii)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.21),  
2/2019 s. 121.

- (i) if a person gives any answer, information,  
document or other thing that may tend to  
incriminate the person, an immunity as to the  
use of that evidence may apply;

- (j) that, with limited exceptions in relation to a  
person who is a member of Victoria Police  
personnel, statutory secrecy provisions may  
apply which prevent the person from  
answering a question or giving information  
or producing documents or other things;

S. 121(4)(j)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.21).

- (k) that the person has a right to complain to the  
Victorian Inspectorate;

- (l) any other prescribed matter.

**122 IBAC to report to Victorian Inspectorate on issue of  
witness summonses**

Within 3 days after the issue of a witness  
summons, the IBAC must give a written report to  
the Victorian Inspectorate specifying—

S. 122  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

- (a) the name of the person summoned; and

S. 122(a)  
amended by  
No. 2/2019  
s. 122(a).

- (b) the reasons why the witness summons was  
issued; and

S. 122(b)  
amended by  
No. 2/2019  
s. 122(b).

- (c) if, under section 121(2), the witness  
summons does not state, or fully state, the  
nature of the matters about which the person

S. 122(c)  
inserted by  
No. 2/2019  
s. 122(c).

to whom it is directed is to be questioned—  
the reason for not stating or fully stating the  
nature of those matters; and

S. 122(d)  
inserted by  
No. 2/2019  
s. 122(c).

- (d) if, under section 124(2), the witness summons requires immediate attendance by a person before the IBAC—the reasons for requiring the immediate attendance of the person.

S. 123  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

### **123 Witness summons directed to person under 16 years**

- (1) A witness summons directed to a person under the age of 16 years at the date of issue of the witness summons has no effect.
- (2) A person who claims to be under the age of 16 years at the date of issue of a witness summons directed to the person must provide proof of age in accordance with the regulations to the IBAC.

S. 124  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

### **124 Service of witness summons**

S. 124(1)  
amended by  
No. 11/2021  
s. 133(1).

- (1) Subject to subsection (2) or (2A), a witness summons must be served at a reasonable time, being not less than 7 days, before the date on which the person is required to attend or otherwise comply with the witness summons.
- (2) The IBAC may issue a witness summons requiring immediate attendance by a person before the IBAC if the IBAC considers on reasonable grounds that a delay in the person's attendance is likely to result in—
- (a) evidence being lost or destroyed; or
  - (b) the commission of an offence; or

- (c) the escape of the person who is summoned;  
or
- (d) serious prejudice to the conduct of the investigation to which the witness summons relates.

(2A) If a witness summons is varied by consent under section 120(1C), the 7 day period for service under subsection (1) does not apply and the summons is not required to be reissued.

S. 124(2A)  
inserted by  
No. 11/2021  
s. 133(2).

(3) A witness summons directed to a natural person must be served by serving a copy of the witness summons to the person personally or in accordance with section 191(1).

S. 124(3)  
amended by  
No. 11/2021  
s. 133(3)(a).

(4) A witness summons directed to a body corporate must be served by sending a copy of the witness summons by registered post to the head office, a registered office, a principal office or a principal place of business of the body corporate or to a postal address of the body corporate or in accordance with section 191(2).

S. 124(4)  
substituted by  
No. 30/2016  
s. 32,  
amended by  
No. 11/2021  
s. 133(3)(b).

(5) Subsection (4) is in addition to, and not in derogation of, section 109X and 601CX of the Corporations Act.

## **125 Supreme Court may order service by other means**

(1) If it appears that it is not reasonably practicable to serve a witness summons in accordance with section 124, the IBAC may apply to the Supreme Court for an order that the witness summons be served by another means.

S. 125  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

(2) On an application under subsection (1), if the Supreme Court is satisfied that it is not reasonably practicable to serve a witness summons in accordance with section 124, the Court may—

- (a) order that the witness summons be served by any other means the Court considers appropriate; or
- (b) make an order for substituted service.

## **126 Witness already held in custody**

S. 126  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 82/2012  
s. 15.

S. 126(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.22).

- (1) If a witness summons is issued to a person who is in a prison or a police gaol, the IBAC may give a written direction that the person be delivered into the custody of a police officer for the purpose of bringing the person before the IBAC as required by the witness summons.
- (2) A direction under subsection (1)—
  - (a) must be in the prescribed form; and
  - (b) must include a statement that if the person who is the subject of the direction is under the age of 16 years at the date the direction is given, the direction is of no effect and the person is not required to attend the IBAC.
- (3) While a person who is subject to a direction under subsection (1) is absent from a prison or a police gaol, the person is deemed to be in the legal custody of the police officer.
- (4) The person is to be detained in the legal custody of the police officer until he or she is excused by the IBAC from attendance.
- (5) The police officer who has custody of a person under subsection (3) must return the person to the prison or the police gaol from which the person

S. 126(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.22).

S. 126(4)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.22),  
30/2016 s. 33.

S. 126(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.22).

was removed under the direction under subsection (1) when the person is excused by the IBAC from attendance.

**127 Legal representation of witnesses and other persons**

(1) Subject to this section, a witness may be represented at an examination by an Australian legal practitioner.

S. 127  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 82/2012  
s. 16.

(1A) For the purposes of this section, the attendance of an Australian legal practitioner at the IBAC for the purposes of representing a witness includes attendance by the practitioner by means of audio visual link or audio link.

S. 127(1A)  
inserted by  
No. 11/2021  
s. 134.

(2) The IBAC may direct a witness not to seek legal advice or representation in relation to a witness summons from a specified Australian legal practitioner if the IBAC considers on reasonable grounds that the examination would be prejudiced because the Australian legal practitioner is—

- (a) a witness in the examination or another examination; or
- (b) the representative of another witness in the examination or another examination; or
- (c) a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate; or
- (d) the representative of a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate.

(3) A direction under subsection (2) may be made at any time, whether before, at or after the time for complying with the witness summons.

- (4) The IBAC must advise the person bound by the direction that a direction has been made under subsection (2).
- (5) A person is bound by a direction under subsection (2) from the time when the IBAC gives the advice to that person under subsection (4).
- (6) If the IBAC gives a direction under subsection (2), the IBAC must, unless section 124(2) applies, allow the person bound by the direction at least 3 days from the date of receipt of the direction to obtain legal advice or representation by another Australian legal practitioner before the person is required to attend for the purpose of complying with the witness summons.
- (7) The IBAC may authorise a person who is not a witness to be represented by an Australian legal practitioner during the examination of a witness if the IBAC—
  - (a) has authorised the person under section 119A to appear at a public examination; or
  - (b) considers that there are special circumstances.
- (7A) The IBAC may direct a person referred to in subsection (7) not to be represented by a specified Australian legal practitioner if the IBAC considers on reasonable grounds that the examination would be prejudiced because the Australian legal practitioner is—
  - (a) a witness in the examination or another examination; or
  - (b) the representative of a witness in the examination or another examination; or

S. 127(7)  
substituted by  
No. 2/2019  
s. 123.

S. 127(7A)  
inserted by  
No. 2/2019  
s. 123.

- (c) a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate; or
  - (d) the representative of a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate.
- (8) The IBAC may direct a person who has received a proposed report, or draft or part of a proposed report or information contained in a report or to whom a confidentiality notice is directed not to seek legal advice or representation in relation to the report or confidentiality notice from a specified Australian legal practitioner if the IBAC considers on reasonable grounds that the investigation would be prejudiced because the Australian legal practitioner is—
- (a) a witness in the examination or another examination; or
  - (b) the representative of another witness in the examination or another examination; or
  - (c) a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate; or
  - (d) the representative of a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate.
- (9) The IBAC must advise the person bound by the direction that a direction has been made under subsection (8).
- (10) A person is bound by a direction under subsection (8) from the time when the IBAC gives the advice to that person under subsection (9).

S. 128  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

## **128 IBAC to inform Victorian Inspectorate of direction in relation to specified Australian legal practitioner**

S. 128(1)  
amended by  
No. 2/2019  
s. 124.

- (1) If the IBAC makes a direction in relation to a specified Australian legal practitioner under section 127(2), (7A) or (8), the IBAC must inform the Victorian Inspectorate in writing of—
  - (a) that direction;
  - (b) the reasons for the direction;
  - (c) the specific provision of this Act relied on in making the direction;
  - (d) the factors taken into consideration in making the direction.

S. 128(2)  
amended by  
No. 2/2019  
s. 124.

- (2) The IBAC must inform the Victorian Inspectorate of a direction under section 127(2), (7A) or (8) within 24 hours of the making of the direction.

S. 129  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3))  
amended by  
No. 82/2012  
s. 17.

## **129 Specific provisions relating to witnesses**

- (1) At any time during an examination, if the IBAC becomes aware that a witness is under the age of 16 years, the IBAC must immediately release the person from compliance with any witness summons applying to that person.
- (2) If a witness does not have knowledge of the English language that is sufficient to enable the witness to understand questions asked of him or her or to answer those questions, before the examination commences, or during the examination, as the case requires, the IBAC must provide for a competent interpreter to be present for the examination.

- (3) If a witness is under the age of 18 years, the witness must be accompanied by a parent or guardian or an independent person.
- (4) The IBAC must direct that an independent person be present during the examination of a witness if—
  - (a) the IBAC believes the witness has a mental impairment; or
  - (b) the witness provides the IBAC with reasonably satisfactory medical evidence that the witness has a mental impairment.
- (5) For the purposes of this section, the following persons may be present at an examination, in the capacity specified in this section, by means of audio visual link or audio link—
  - (a) an interpreter;
  - (b) a parent or guardian;
  - (c) an independent person.

S. 129(5)  
inserted by  
No. 11/2021  
s. 135.

**129A The IBAC may issue suppression order**

- (1) The IBAC may issue a suppression order prohibiting or restricting the publication of any information or evidence given during a public examination if the IBAC considers that the suppression order is necessary—
  - (a) to prevent prejudice or hardship being caused to any person, including harm to their safety or reputation; or
  - (b) to avoid the possibility of any prejudice to legal proceedings; or
  - (c) for any other reason having regard to all the circumstances.
- (2) A suppression order must specify the ground on which it is made.

S. 129A  
inserted by  
No. 30/2016  
s. 34.

- (3) The IBAC must cause a copy of the suppression order to be placed on the door of the place where the public examination is being held.
- (4) The IBAC must take reasonable steps, including by publishing notice of the making of the suppression order on the IBAC's website, to notify any relevant person or body corporate that a suppression order has been made.
- (5) If the suppression order is made in relation to information or evidence that is given by the IBAC to another person, the IBAC must cause a copy of the suppression order to be given to that person.
- (6) A suppression order made under this section is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.
- (7) A person must not engage in conduct that constitutes a contravention of a suppression order that is in force under this section if the person—
  - (a) knows that the suppression order is in force;  
or
  - (b) is reckless as to whether the suppression order is in force.

Penalty: In the case of a natural person,  
600 penalty units or imprisonment for  
5 years;

In the case of a body corporate,  
3000 penalty units.

**Note**

Section 185 applies to an offence against this subsection.

- (8) An offence against subsection (7) is an indictable offence.

**130 Actions to be taken before questioning of a witness or requiring production of a document or other thing**

- (1) Before a witness summoned to attend an examination and not excused from attendance under section 120(4) is asked any questions or required to produce a document or thing, the IBAC must—
- (a) confirm the age of a witness if the IBAC considers that a witness may be under the age of 18 years;
  - (b) release any witness under the age of 16 years from compliance with any witness summons;
  - (c) inform the witness orally and in writing of the person's rights and obligations as specified in section 121(4) unless the witness informs the IBAC that—
    - (i) an Australian legal practitioner has explained the statement referred to in section 121(3)(c) to the witness before the examination; and
    - (ii) the witness does not wish to be informed of the statement referred to in section 121(3)(c) again;
  - (d) inform an Australian legal practitioner who is representing a witness or other person at the examination of any non-disclosure requirements that apply under the Act and, in the case of an investigation of a public interest complaint, the confidentiality requirements under the **Public Interest Disclosures Act 2012**;
  - (e) take any other actions prescribed for the purposes of this subsection.

S. 130  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
Nos 82/2012  
s. 18, 85/2012  
s. 98.

S. 130(1)(c)  
substituted by  
No. 30/2016  
s. 35.

S. 130(1)(d)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 12).

- (2) Before a witness summoned to attend to give evidence at an examination is asked any questions, the IBAC must advise the witness of the nature of the matters in respect of which the witness is to be asked questions, except to the extent to which the IBAC forms the opinion on reasonable grounds that this would prejudice the investigation or would be contrary to the public interest.
- (3) For the avoidance of doubt, the IBAC is not required to give reasons for forming the opinion referred to in subsection (2).

S. 131  
(Heading)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 13).

### **131 Witness attending examination in relation to investigation of public interest complaint to be informed of confidentiality obligations**

Before a person attending as a witness at an examination (whether voluntarily or in response to a summons) is asked any questions or required to produce a document or thing, the IBAC must—

S. 131  
inserted by  
No. 85/2012  
s. 99.

S. 131(a)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 14).

- (a) advise the person that additional obligations under the **Public Interest Disclosures Act 2012** relating to confidentiality may apply to the person; and
- (b) inform the person of the nature of those obligations.

S. 132  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

### **132 Power to examine on oath or affirmation**

- (1) An IBAC Officer who is authorised to do so by the Commissioner may administer an oath or affirmation to a person.
- (2) An IBAC Officer who is authorised to do so by the Commissioner may, in relation to a person summoned to attend at an examination—
  - (a) require the person to either take an oath or make an affirmation;

- (b) administer an oath or affirmation to the person;
  - (c) examine the person in accordance with the witness summons;
  - (d) require the person to produce documents or things in accordance with the witness summons.
- (3) An IBAC Officer may witness a statutory declaration from any witness or other person.

S. 132(3)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 69.2).

### **132A Cross-examination of witness**

S. 132A  
inserted by  
No. 2/2019  
s. 125.

- (1) The following persons may, with the leave of the IBAC, cross-examine a witness at a public examination of the witness on any matter that the IBAC considers relevant—
- (a) another witness;
  - (b) a person authorised under section 119A to appear at the examination;
  - (c) an Australian legal practitioner authorised under section 127 to represent a person referred to in paragraph (a) or (b) during the examination of the witness.
- (2) The witness being cross-examined has the same protections and is subject to the same liabilities and confidentiality obligations in relation to the cross-examination that apply in relation to the examination of the witness by the IBAC.

### **133 Video recording of examination**

- (1) If a person attends the IBAC for an examination in accordance with a witness summons, the IBAC must ensure that the person's attendance is video recorded.

S. 133  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

- (2) Subject to subsection (3), evidence of anything said by the person during the attendance is inadmissible as evidence against any person in any proceeding before a court or tribunal unless—
  - (a) the attendance was video recorded; and
  - (b) the video recording is available to be tendered in evidence.
- (3) A court may admit evidence of anything said by a person during an attendance that is otherwise inadmissible because of subsection (2) if the court is satisfied that there are exceptional circumstances that justify the admission of the evidence.
- (4) Unless the IBAC considers on reasonable grounds that doing so may prejudice an investigation, a person who is examined must be provided with a copy of—
  - (a) the video recording; and
  - (b) any transcript created.
- (5) If the IBAC determines not to provide a person with a copy of the video recording and any transcript in accordance with subsection (4), the IBAC must allow the person to view the video recording of his or her evidence at the IBAC premises at any reasonable time.

S. 134  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

**134 IBAC to give copy of video recording and any transcript to Victorian Inspectorate**

As soon as possible after an examination, the IBAC must provide the Victorian Inspectorate with a copy of the video recording and any transcript of the examination of the person who has been examined.

**135 Offence for summoned witness to fail to attend examination**

- (1) A person who is duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the IBAC must not, without reasonable excuse, fail to attend in accordance with the witness summons.

Penalty: 240 penalty units or imprisonment for 2 years or both.

**Note**

Section 185 applies to an offence against this subsection.

- (2) A person who is duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the IBAC must not, without reasonable excuse, fail to attend from day to day unless—

- (a) excused by the IBAC; or  
(b) released from further attendance by the IBAC.

Penalty: 240 penalty units or imprisonment for 2 years or both.

**Note**

Section 185 applies to an offence against this subsection.

S. 135  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

Note to  
s. 135(1)  
inserted by  
No. 30/2016  
s. 46(5).

Note to  
s. 135(2)  
inserted by  
No. 30/2016  
s. 46(6).

S. 136  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 30/2016  
s. 36 (ILA  
s. 39B(1)).

### **136 Offence for summoned witness to refuse or fail to answer question**

- (1) A person who is duly served with a witness summons to attend as a witness to give evidence at an examination before the IBAC, must not, without reasonable excuse, refuse or fail to answer a question that he or she is required to answer by the IBAC.

Penalty: 240 penalty units or imprisonment for 2 years or both.

S. 136(2)  
inserted by  
No. 30/2016  
s. 36.

- (2) If a question that a witness is required to answer by the IBAC is relevant in any respect to the subject matter of the investigation, it is not a reasonable excuse to refuse or fail to answer the question on the ground that the question does not relate to the direct involvement of the witness in identified corrupt conduct.

Note to s. 136  
inserted by  
No. 30/2016  
s. 46(7).

#### **Note**

Section 185 applies to an offence against this section.

S. 137  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

### **137 Offence for summoned witness to fail to produce document or other thing**

A person who is duly served with a witness summons to attend as a witness before the IBAC must not, without reasonable excuse, refuse or fail to produce a document or other thing that he or she was required to produce by the witness summons.

Penalty: 240 penalty units or imprisonment for 2 years or both.

Note to s. 137  
inserted by  
No. 30/2016  
s. 46(8).

#### **Note**

Section 185 applies to an offence against this section.

**138 Offence to fail to take oath or make affirmation**

A person who is duly served with a witness summons to attend as a witness at an examination before the IBAC must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so.

Penalty: 240 penalty units or imprisonment for 2 years or both.

S. 138  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

**Division 2—Arrest for failure to appear**

**139 Warrant to arrest witness who fails to appear**

- (1) The IBAC may apply to a Judge of the Supreme Court or a magistrate for the issue of a warrant to arrest a person, if the IBAC believes on reasonable grounds that the person has—
  - (a) been duly served with a witness summons; and
  - (b) failed to appear at the IBAC in accordance with the witness summons.
- (2) A Judge of the Supreme Court or a magistrate may issue an arrest warrant if satisfied by evidence on oath or by affirmation that there are reasonable grounds for the belief under subsection (1).
- (3) The rules to be observed with respect to warrants to arrest under the **Magistrates' Court Act 1989** (other than section 62 or 64(2), (3) or (4)) extend and apply to an arrest warrant under this section.

S. 139  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

S. 139(1)  
amended by  
No. 30/2016  
s. 37.

S. 139(2)  
amended by  
Nos 30/2016  
s. 37, 6/2018  
s. 68(Sch. 2  
item 69.3).

S. 139(4)  
amended by  
No. 22/2020  
s. 7C(1).

- (4) A person arrested under an arrest warrant issued under this section—
- (a) must be brought before the IBAC as soon as practicable; and
  - (b) may be detained in police custody until excused from attendance by the IBAC.

S. 139(5)  
amended by  
No. 22/2020  
s. 7C(2).

- (5) The issue of an arrest warrant under this section, or the arrest of a person under that warrant, does not relieve the person from any liability for non-compliance with the witness summons.

S. 140  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

#### **140 Bail for person arrested**

S. 140(1)  
amended by  
Nos 30/2016  
s. 38, 22/2020  
s. 7D.

- (1) If it is not practicable for a person arrested under an arrest warrant issued under section 139(2) to be brought before the IBAC within a reasonable time after he or she is arrested, the person must be brought before the Supreme Court or the Magistrates' Court.

S. 140(2)  
amended by  
No. 30/2016  
s. 38.

- (2) When a person is brought before the Supreme Court or the Magistrates' Court under subsection (1), the Supreme Court or the Magistrates' Court must deal with the person in accordance with the **Bail Act 1977** as if the person had been accused of an offence.

S. 141  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 22/2020  
s. 7E.

#### **141 Person held in custody**

- (1) The IBAC may direct that a person arrested under an arrest warrant issued under section 139(2) be detained in a prison or a police gaol for the purpose of ensuring his or her attendance at the examination if the IBAC is satisfied that there are reasonable grounds to believe that it is necessary—

- (a) to prevent that person from escaping from police custody; or
  - (b) to ensure the safety of the person.
- (2) If a person is detained in a prison in accordance with a direction under subsection (1), the IBAC may give a written direction for the person to be delivered into the custody of a police officer for the purpose of bringing the person before the IBAC.

S. 141(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.2).

**Division 2A—Warrant to arrest for likely failure to comply with witness summons in certain circumstances**

Pt 6 Div. 2A  
(Heading and  
ss 141A–  
141F)  
inserted by  
No. 22/2020  
s. 7F.

**141A Warrant to arrest potential witness who has not yet been summoned**

S. 141A  
inserted by  
No. 22/2020  
s. 7F.

- (1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if—
- (a) the IBAC has commenced an investigation under section 60; and
  - (b) as a result of the investigation, the IBAC suspects on reasonable grounds that conduct of the person constitutes corrupt conduct; and
  - (c) a witness summons has not been issued under section 120(1) in respect of the person; and

- (d) the IBAC believes on reasonable grounds that—
    - (i) the person is about to leave, is making preparations to leave, or is likely to leave, the State; and
    - (ii) if a witness summons were issued under section 120(1), including a summons requiring immediate attendance under section 124(2), the person would be unlikely to attend before the IBAC, unless the person were arrested under an arrest warrant; and
  - (e) the person is 18 years of age or over.
- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath or affirmation that—
- (a) there are reasonable grounds for—
    - (i) the suspicion under subsection (1)(b); and
    - (ii) the belief under subsection (1)(d); and
  - (b) the granting of an arrest warrant is reasonable having regard to—
    - (i) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
    - (ii) the age of the person and any mental impairment to which the person is known or believed to be subject; and
  - (c) if the person were not arrested, any information, document or thing sought to be obtained from the person would be lost and

could not reasonably be obtained from any other source.

**141B Warrant to arrest witness to whom a witness summons has been issued but not served**

S. 141B  
inserted by  
No. 22/2020  
s. 7F.

- (1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if—
  - (a) the IBAC has commenced an investigation under section 60; and
  - (b) as a result of the investigation, the IBAC suspects on reasonable grounds that conduct of the person constitutes corrupt conduct; and
  - (c) a witness summons has been issued under section 120(1) in respect of the person but not served; and
  - (d) the IBAC believes on reasonable grounds that—
    - (i) the person is evading, attempting to evade, or likely to attempt to evade, service of the witness summons; and
    - (ii) the person is unlikely to attend before the IBAC in accordance with the witness summons, unless the person is arrested under an arrest warrant; and
  - (e) the person is 18 years of age or over.
- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath or affirmation that—
  - (a) there are reasonable grounds for—
    - (i) the suspicion under subsection (1)(b); and
    - (ii) the belief under subsection (1)(d); and

- (b) the granting of an arrest warrant is reasonable having regard to—
  - (i) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
  - (ii) the age of the person and any mental impairment to which the person is known or believed to be subject; and
- (c) if the person were not arrested, any information, document or thing sought to be obtained from the person would be lost and could not reasonably be obtained from any other source.

S. 141C  
inserted by  
No. 22/2020  
s. 7F.

**141C Warrant to arrest witness to whom a witness summons has been issued and served**

- (1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if—
  - (a) the IBAC has commenced an investigation under section 60; and
  - (b) as a result of the investigation, the IBAC suspects on reasonable grounds that conduct of the person constitutes corrupt conduct; and
  - (c) the person has been duly served with a witness summons issued under section 120(1); and
  - (d) the IBAC believes on reasonable grounds that the person is unlikely to attend before the IBAC in accordance with the witness summons, unless the person is arrested under an arrest warrant; and
  - (e) the person is 18 years of age or over.

- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath or affirmation that—
- (a) there are reasonable grounds for—
    - (i) the suspicion under subsection (1)(b); and
    - (ii) the belief under subsection (1)(d); and
  - (b) the granting of an arrest warrant is reasonable having regard to—
    - (i) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
    - (ii) the age of the person and any mental impairment to which the person is known or believed to be subject; and
  - (c) if the person were not arrested, any information, document or thing sought to be obtained from the person would be lost and could not reasonably be obtained from any other source.

**141D Matters relating to an arrest warrant issued under section 141A(2), 141B(2) or 141C(2)**

- (1) The rules to be observed with respect to warrants to arrest under the **Magistrates' Court Act 1989** (other than section 62 or 64(2), (3) or (4)) extend and apply to an arrest warrant issued under section 141A(2), 141B(2) or 141C(2).
- (2) A person arrested under an arrest warrant issued under section 141A(2) or 141B(2) must be served with a witness summons issued under section 120(1) as soon as practicable after the arrest.

S. 141D  
inserted by  
No. 22/2020  
s. 7F.

- (3) The issue of an arrest warrant under section 141A(2), 141B(2) or 141C(2), or the arrest of a person under that warrant, does not relieve the person from any liability for non-compliance with a witness summons duly served on the person before or after the arrest.

S. 141E  
inserted by  
No. 22/2020  
s. 7F.

**141E Arrest warrant under section 141A, 141B or 141C may be granted by telephone or audio visual link in certain circumstances**

- (1) An application by the IBAC for an arrest warrant under section 141A(1), 141B(1) or 141C(1) may be made by telephone or audio visual link if the IBAC believes on reasonable grounds that—
- (a) the application is urgent; and
  - (b) the person to be named in the arrest warrant is about to leave the State.
- (2) An application made by telephone or audio visual link for an arrest warrant must be supported by—
- (a) an affidavit setting out the grounds for an arrest warrant under section 141A(1), 141B(1) or 141C(1), as the case requires, and the grounds for the belief under subsection (1), that is—
    - (i) sworn or affirmed; or
    - (ii) if it is not reasonably practicable for the affidavit to be sworn or affirmed, a prepared copy of the affidavit that is not sworn or affirmed; or
  - (b) if it is not reasonably practicable for an affidavit to be prepared, as much information as the Judge of the Supreme Court deciding the application considers is reasonably practicable in the circumstances, regarding—

- (i) the grounds for an arrest warrant under section 141A(1), 141B(1) or 141C(1), as the case requires; and
  - (ii) the grounds for the belief under subsection (1).
- (3) If the IBAC makes an application by telephone or audio visual link for an arrest warrant that is supported by an affidavit (whether or not sworn or affirmed), the IBAC must transmit by electronic communication a copy of the affidavit to the Judge of the Supreme Court deciding the application.
- (4) A Judge of the Supreme Court may issue an arrest warrant under section 141A(2), 141B(2) or 141C(2) on an application made by telephone or audio visual link if satisfied that—
  - (a) the grounds for issuing an arrest warrant under section 141A(2), 141B(2) or 141C(2) are satisfied; and
  - (b) there are reasonable grounds for the belief under subsection (1).
- (5) If a Judge of the Supreme Court issues an arrest warrant under section 141A(2), 141B(2) or 141C(2) on an application made by telephone or audio visual link, the Judge must—
  - (a) inform the IBAC of the issue of the arrest warrant; and
  - (b) if practicable, transmit by electronic communication a copy of the arrest warrant to the IBAC.
- (6) If it is not practicable to transmit by electronic communication a copy of the arrest warrant to the IBAC, the Judge may direct the IBAC to—

- (a) complete a form of arrest warrant in the terms stated to the IBAC by the Judge of the Supreme Court and write on it the name of the Judge and the date on which and the time at which the arrest warrant was issued; and
  - (b) provide the form of arrest warrant completed by the IBAC to the Judge of the Supreme Court as soon as practicable.
- (7) If the IBAC makes an application to a Judge of the Supreme Court by telephone or audio visual link for an arrest warrant, whether or not an arrest warrant is issued, the IBAC must provide to the Judge, not later than the day following the day on which the application was made, a sworn or affirmed affidavit setting out the grounds for the arrest warrant in the same terms stated by the IBAC under subsection (2).
- (8) If an application under section 141A(1), 141B(1) or 141C(1) is made by telephone or audio visual link and the application is supported by a prepared affidavit specified in subsection (2)(a)(ii) or information specified in subsection (2)(b), a Judge of the Supreme Court may issue an arrest warrant under section 141A(2), 141B(2) or 141C(2) despite the evidence not being given under oath or affirmation.

S. 141F  
inserted by  
No. 22/2020  
s. 7F.

**141F Person arrested must be brought before the Supreme Court or Magistrates' Court**

- (1) A person arrested under an arrest warrant issued under section 141A(2), 141B(2) or 141C(2) must be brought, as soon as practicable, before the Supreme Court or the Magistrates' Court and the Supreme Court or the Magistrates' Court (as the case requires) may—

- (a) discharge the person from custody on bail in accordance with the **Bail Act 1977** as if the person had been accused of an offence; or
  - (b) subject to subsection (2), order the continued detention of the person in a prison or police gaol, for the purpose of ensuring the person's attendance before the IBAC, for a specified period not exceeding 24 hours or until the person is excused by the IBAC, whichever is earlier; or
  - (c) order that the person be discharged from custody unconditionally.
- (2) The Supreme Court or the Magistrates' Court must not make an order under subsection (1)(b) unless the Supreme Court or the Magistrates' Court (as the case requires) is satisfied that—
- (a) detention of the person is necessary for the purpose of ensuring the person's attendance before the IBAC for the purposes of a witness summons issued under section 120(1); and
  - (b) the IBAC is taking all reasonable steps to schedule the attendance as soon as is practicable.
- (3) If a person is detained in a prison in accordance with an order made under subsection (1)(b), the IBAC may give a written direction for the person to be delivered into the custody of a police officer for the purpose of bringing the person before the IBAC.
- (4) If a person is detained in accordance with an order made under subsection (1)(b), the IBAC must, before the expiration of the period of detention specified in the order—
- (a) release the person from custody unconditionally; or
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- (b) cause the person to be again brought before the Supreme Court or the Magistrates' Court.
- (5) If a person is brought before the Supreme Court or the Magistrates' Court in accordance with subsection (4)(b), the Supreme Court or the Magistrates' Court (as the case requires) may exercise any of the powers set out in subsection (1).

**Note**

A person discharged or released from custody unconditionally is not relieved from any obligation to comply with a witness summons requiring attendance at a later date.

Pt 6 Div. 2B  
(Heading and  
s. 141G)  
inserted by  
No. 22/2020  
s. 7F.

**Division 2B—General provisions in respect of  
arrest warrant issued under Division 2 or 2A**

S. 141G  
inserted by  
No. 22/2020  
s. 7F.

**141G Person arrested under arrest warrant issued under  
Division 2 or 2A to be given opportunity to seek  
legal advice or legal representation**

- (1) Subject to section 127 and subsection (2), the IBAC is required to give a person arrested under an arrest warrant issued under Division 2 or 2A a reasonable opportunity to seek legal advice or obtain legal representation before the time specified for the person to attend before the IBAC in accordance with a witness summons issued under section 120(1).
- (2) Despite section 127(6), if the IBAC gives a direction under section 127(2), the IBAC is not required to allow the person bound by the direction at least 3 days from the receipt of the direction to obtain legal advice or representation by another Australian legal practitioner before the person is required to attend before the IBAC in

accordance with the witness summons issued under section 120(1).

**142 Report to Victorian Inspectorate on issue of arrest warrant**

Within 3 days after the issue of an arrest warrant under Division 2 or 2A, the IBAC must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person named in the arrest warrant;
- (b) the reasons in summary form as to why the IBAC applied for the issue of an arrest warrant.

S. 142 inserted by No. 28/2012 s. 21 (as amended by No. 82/2012 s. 151(3)), amended by No. 22/2020 s. 7G.

S. 142(b) substituted by No. 30/2016 s. 39, amended by No. 2/2019 s. 126.

**Division 3—Privileges and secrecy provisions applying to examinations**

**143 Privileges and secrecy generally**

- (1) If a person is a public officer, any obligation to maintain secrecy or comply with a restriction upon the disclosure of information obtained by or provided to the person in his or her service as a public officer imposed by any enactment or any rule of law—

- (a) is overridden; and
- (b) does not apply to the disclosure of information under Part 6.

S. 143 inserted by No. 28/2012 s. 21 (as amended by No. 82/2012 s. 151(3)).

S. 143(1) amended by Nos 37/2014 s. 10(Sch. item 85.23), 2/2019 s. 127(1).

S. 143(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.23),  
substituted by  
No. 2/2019  
s. 127(2).

(2) The Crown is not entitled to assert any privilege in relation to an examination of a public officer, including any requirement under a witness summons.

S. 143(3)  
inserted by  
No. 2/2019  
s. 127(2).

(3) Any privilege referred to in subsection (2) is abrogated.

S. 143(4)  
inserted by  
No. 2/2019  
s. 127(2).

(4) A person is not subject to any criminal, civil, administrative or disciplinary proceedings or actions only because the person has not maintained secrecy or complied with a restriction upon the disclosure of information imposed by any enactment or any rule of law in the circumstances referred to in subsection (1).

S. 143(5)  
inserted by  
No. 2/2019  
s. 127(2).

(5) This section does not apply to information, documents or things that are subject to Cabinet confidentiality.

Note to s. 143  
inserted by  
No. 2/2019  
s. 127(3).

**Note**

A public officer includes a member of Victoria Police personnel.

S. 144  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 85/2012  
s. 100.

**144 Privilege against self-incrimination abrogated—  
witness summons**

(1) A person is not excused from answering a question or giving information or from producing a document or other thing in accordance with a witness summons, on the ground that the answer to the question, the information, or the production of the document or other thing, might tend to incriminate the person or make the person liable to a penalty.

(2) Any answer, information, document or thing that might tend to incriminate the person or make the person liable to a penalty is not admissible in evidence against the person before any court or person acting judicially, except in proceedings for—

- (a) perjury or giving false information; or
- (b) an offence against this Act; or
- (c) an offence against the **Victorian Inspectorate Act 2011**; or
- (d) an offence against section 72 or 73 of the **Public Interest Disclosures Act 2012**; or
- (e) contempt of the IBAC under this Act; or
- (f) a disciplinary process or action.

S. 144(2)(d)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 15).

\* \* \* \* \*

S. 144(3)  
repealed by  
No. 67/2014  
s. 135.

#### **145 Journalist privilege does not apply**

A person is not, in relation to an examination or witness summons, entitled to the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**.

S. 145  
inserted by  
No. 52/2012  
s. 19.

#### **146 Procedure for determining claims of privilege or claims of a secrecy requirement**

- (1) This section applies if a person claims at an examination, or on production of a document or other thing, before the IBAC that—
  - (a) the information which is an answer to a question or otherwise required to be provided is the subject of privilege; or

S. 146  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

- (b) the document or other thing is the subject of privilege; or
  - (c) the document or thing cannot be disclosed due to a secrecy requirement of any enactment or other law that applies to the person; or
  - (d) the information which is an answer to a question or otherwise required to be provided cannot be disclosed due to a secrecy requirement of any enactment or other law that applies to the person.
- (2) A person making a claim to which this section applies must attend before the IBAC in accordance with the witness summons.
- (3) The IBAC must consider the claim of privilege or application of the secrecy requirement and either—
- (a) withdraw the requirement to answer the question or provide the information or to produce the document or other thing, as the case requires, over which the claim is made; or
  - (b) not withdraw the requirement and, in the case of a requirement to produce a document or other thing, require the claimant to immediately seal the document or other thing in an envelope, or otherwise secure it if it cannot be sealed in an envelope, and give it to the IBAC.
- (4) If the claim relates to a document or other thing, the IBAC must not inspect the document or thing in considering the claim.
- (5) If the IBAC does not withdraw the requirement to answer the question or provide the information or to produce the document or other thing the IBAC must—
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- (a) apply to the Supreme Court in accordance with section 147 for determination of the claim of privilege or application of the secrecy requirement; and
  - (b) if the IBAC requires the claimant to give the document or other thing to the IBAC under subsection (3)(b), the IBAC must immediately give the sealed envelope or the document or other thing otherwise secured to the proper court officer of the Supreme Court to be held in safe custody.
- (6) Subject to section 148, a person must not open a sealed envelope or interfere with a document or thing secured otherwise than in an envelope before delivery to the proper officer of the Supreme Court.

**147 Application to Supreme Court to determine privilege or application of secrecy requirement**

- (1) Within the relevant period specified in subsection (2), the IBAC may apply to the Supreme Court for a determination of—
  - (a) a claim of privilege under this Division;
  - (b) the application of a secrecy requirement under any enactment or other law.
- (2) An application under subsection (1) must be made—
  - (a) in the case of a document or other thing, within 7 days after the IBAC gives the sealed envelope or the document or other thing secured otherwise than in an envelope to the proper officer under section 146; or
  - (b) within 7 days after the person refused to provide information which is an answer to a question or otherwise required to be provided at an examination on the basis of

S. 147  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

a claim of privilege or the application of a secrecy requirement under any enactment or other law.

- (3) If no application is made under subsection (1) in relation to a document or other thing within the period of 7 days, the proper officer of the Supreme Court must return the document or other thing to the claimant.
- (4) If no application is made under subsection (1) in relation to the provision of information in answer to a question or otherwise required to be provided within the period of 7 days, the requirement to answer the question or provide the information is taken to be withdrawn.
- (5) The IBAC must give notice of the application to the claimant within a reasonable time before the hearing of the application.
- (6) Notice under subsection (5) must be in the prescribed form.
- (7) The claimant is entitled to appear and be heard on the hearing of the application.

S. 148  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

#### **148 Determination of claim**

- (1) On an application under section 147, the Supreme Court must determine whether or not the information required in answer to a question asked at the examination or otherwise required to be provided or the document or other thing in the sealed envelope or secured otherwise than in an envelope is the subject of—
  - (a) privilege; or
  - (b) any secrecy requirement under an enactment or other law.
- (2) If the application is in respect of a document or other thing, for the purposes of making a determination under subsection (1), the Judge

constituting the Supreme Court and any other person authorised by the Court may—

- (a) open the sealed envelope or access the document or other thing secured otherwise than in an envelope; and
  - (b) inspect the document or thing.
- (3) If the Court determines that the document or other thing is the subject of privilege or a secrecy requirement under an enactment or other law—
- (a) the Court must order that the document or thing be returned to the claimant; and
  - (b) the proper officer must return the document or thing to the claimant.
- (4) If the Court determines that the document or other thing is not the subject of privilege or a secrecy requirement under an enactment or other law—
- (a) the Court must order that the document or thing be given to the IBAC; and
  - (b) the proper officer must release the document or thing accordingly.
- (5) If the Court determines that the information which is an answer to a question or otherwise required to be provided is the subject of privilege or a secrecy requirement under an enactment or other law, the Court must order that the claimant is not required to provide the information to the IBAC in answer to the question or is not otherwise required to provide that information, as the case requires.
- (6) If the Court determines that the information which is an answer to a question or otherwise required to be provided is not the subject of privilege or a secrecy requirement under an enactment or other law, the Court must order that the claimant provide the information to the IBAC in answer to the question or otherwise provide that information
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in accordance with the requirement of the IBAC,  
as the case requires.

- (7) Subject to subsection (2), a person must not open a sealed envelope or otherwise have access to the document or thing contained in the sealed envelope before—
- (a) the Court determines the claim of privilege or the application of a secrecy requirement to it; or
  - (b) the document or thing is returned to the claimant.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (8) Subject to subsection (2), a person must not open or otherwise have access to a document or thing secured otherwise than in an envelope before—
- (a) the Court determines the claim of privilege or the application of a secrecy requirement to it; or
  - (b) the document or thing is returned to the claimant.

Penalty: 120 penalty units or imprisonment for 12 months or both.

S. 149  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

#### **149 Protection of legal practitioners and witnesses**

- (1) An Australian legal practitioner representing a person at an examination or assisting the IBAC at an examination has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- (2) A person appearing as a witness at an examination has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

## Division 4—Assistance for witnesses

### 150 Reimbursement of expenses of certain witnesses

A person appearing as a witness in an examination who is entitled to a reimbursement of expenses in accordance with the regulations must be paid an amount for any expenses incurred by that appearance as provided in the prescribed scale.

S. 150  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
substituted by  
No. 30/2016  
s. 40.

### 151 Provision of legal assistance to witnesses

(1) Subject to subsection (3), a person appearing as a witness in an examination may apply to the prescribed person for legal assistance in connection with his or her appearance as a witness.

S. 151  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

(2) The prescribed person—

(a) may approve an application made under subsection (1); and

(b) may impose—

(i) a limit on the legal assistance to be provided; and

(ii) any other condition on the approval.

(2A) The prescribed person, by instrument, may delegate to any employee or class of employees employed under Part 3 of the **Public Administration Act 2004** any power of the prescribed person under this section.

S. 151(2A)  
inserted by  
No. 30/2016  
s. 41.

#### Note

See sections 42 and 42A of the **Interpretation of Legislation Act 1984**.

(3) If the IBAC certifies in writing that an application to the prescribed person referred to in subsection (1) would prejudice an investigation, the IBAC must nominate another appropriate

person for the purposes of the witness in an examination seeking the provision of legal assistance under this section.

- (4) If the IBAC nominates a person under subsection (3), for the purposes of this section, a reference to the prescribed person is taken to be a reference to that nominated person.
- (5) For the purposes of this section, *legal assistance* means payment to an Australian legal practitioner or a prescribed person or body for legal advice and representation provided to a person appearing as a witness in an examination.

### **Division 5—Contempt**

#### **152 Contempt of the IBAC**

S. 152  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

A person who has been served with a witness summons by the IBAC is guilty of contempt of the IBAC if the person, without reasonable excuse—

- (a) fails to attend an examination by the IBAC as required by the witness summons; or
- (b) fails to produce any document or other thing the person is required by the witness summons to produce; or
- (c) when called or examined as a witness at an examination, refuses to be sworn or to make an affirmation; or
- (d) when called or examined as a witness at an examination, refuses or fails to answer any question relevant to the subject matter of the examination; or
- (e) engages in threatening or obstructive behaviour before the IBAC; or
- (f) engages in any other conduct that would, if the IBAC were the Supreme Court, constitute a contempt of that Court.

**153 Charging and arresting a person for contempt**

- (1) If it appears to the IBAC that a person is guilty of contempt of the IBAC, the IBAC may—
  - (a) issue a certificate of charge—
    - (i) charging the person with contempt; and
    - (ii) setting out or attaching details of the alleged contempt; and
  - (b) issue an arrest warrant in the prescribed form to arrest the person.
- (2) An arrest warrant—
  - (a) may be directed to a named police officer or all police officers; and
  - (b) authorises the police officer or police officers to whom it is directed to arrest the person named in the warrant.
- (3) A person who is arrested under an arrest warrant—
  - (a) is to be brought before the Supreme Court without delay to be dealt with according to law; and
  - (b) may be detained in police custody in the meantime.

S. 153  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

S. 153(2)(a)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 85.24(a)).

S. 153(2)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.24(b)).

**154 Report to Victorian Inspectorate on issue of arrest warrants**

Within 3 days after the issue of an arrest warrant under this Division, the IBAC must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person named in the arrest warrant;

S. 154  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

- (b) the reasons why the arrest warrant was issued.

S. 155  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)),  
amended by  
No. 82/2012  
s. 19.

### **155 Bail pending court appearance for contempt**

- (1) If it is not practicable for the person to be brought before the Supreme Court without delay after he or she is arrested—
- (a) the person for the time being in charge of the place where he or she is detained must—
    - (i) advise the person that he or she is entitled to apply to a bail justice for discharge from custody; and
    - (ii) give the person a written statement, in the prescribed form, of his or her right to apply for discharge from custody; and
  - (b) if the person elects to apply for discharge from custody, the person for the time being in charge of the place where he or she is detained must—
    - (i) give written notice to the IBAC of the person's election to apply; and
    - (ii) cause the person to be brought before a bail justice as soon as practicable; and
    - (iii) cause to be produced before the bail justice the arrest warrant and the certificate of charge for the person; and
    - (iv) abide by the decision of the bail justice in relation to the person.
- (2) When a person is brought before a bail justice under subsection (1), the bail justice may discharge the person from custody on bail in accordance with the **Bail Act 1977** as if the person had been accused of an offence.

**156 Custody pending court appearance for contempt**

- (1) Subject to section 155, if the IBAC considers on reasonable grounds that it is necessary to prevent a person who is arrested under an arrest warrant from escaping from police custody or to ensure the safety of the person, the IBAC may direct that the person be detained in a prison or a police gaol for the purpose of ensuring his or her appearance before the Supreme Court.
- (2) If a person detained in police custody under this Division, other than a person detained in accordance with a direction under subsection (1), is required to be detained overnight, the Chief Commissioner of Police must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.
- (3) If a person is detained in a prison in accordance with a direction under subsection (1), the IBAC may give a written direction for the person to be delivered into the custody of a police officer for the purpose of bringing the person before the Supreme Court.

S. 156  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

S. 156(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.25).

**157 Supreme Court to deal with contempt**

- (1) A contempt of the IBAC is to be dealt with by the Supreme Court as if—
  - (a) the contempt were a contempt of an inferior court; and
  - (b) the certificate of charge were an application to the Supreme Court for punishment for the contempt.
- (2) A certificate of charge is evidence of the matters set out in or attached to it.

S. 157  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

S. 158  
inserted by  
No. 28/2012  
s. 21 (as  
amended by  
No. 82/2012  
s. 151(3)).

**158 Act or omission constituting both an offence and contempt**

If an act or omission by an offender constitutes both an offence against this Act and contempt of the IBAC, the offender is liable to be proceeded against for the offence against this Act or for contempt of the IBAC or both, but is not liable to be punished more than once for the same act or omission.

## Part 7—Recommendations, actions and reports

Pt 7 (Heading  
and ss 159–  
165)  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### 159 Recommendations

- (1) The IBAC may at any time make recommendations in relation to a matter arising out of an investigation about any action that the IBAC considers should be taken to one or more of the following—
  - (a) the relevant principal officer;
  - (b) the responsible Minister;
  - (c) the Premier.
- (2) A recommendation under subsection (1) which is not contained in a report must be made in private.
- (3) A recommendation under subsection (1), must not contain any information that is likely to lead to the identification of a person who has made an assessable disclosure.
- (4) However, a recommendation under subsection (1) may contain information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (5) Subject to subsection (6), subsection (2) does not limit the power of the IBAC to make public a recommendation under section 162 or 165 if the IBAC considers there has been a failure to take appropriate action in relation to the recommendation.

S. 159  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 85/2012  
s. 101.

S. 159(4)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 16).

- (6) The IBAC may require a person (other than the Chief Commissioner of Police) who has received a recommendation under subsection (1) to give a report to the IBAC, within a reasonable specified time, stating—
- (a) whether or not he or she has taken, or intends to take, action recommended by the IBAC; and
  - (b) if the person has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.
- (7) The person who has received a recommendation under subsection (1) must comply with a requirement of the IBAC under subsection (6).

S. 160  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
Nos 28/2012  
s. 22, 85/2012  
s. 102.

**160 The IBAC may request the Chief Commissioner of Police to take certain actions**

- (1) After receiving a report of the Chief Commissioner of Police, the IBAC may in writing request the Chief Commissioner of Police to take any action that the IBAC considers is appropriate—
- (a) in addition to any action taken or proposed to be taken by the Chief Commissioner of Police; or
  - (b) in substitution for any action taken or proposed to be taken by the Chief Commissioner of Police.
- (2) The IBAC may under subsection (1) request the Chief Commissioner of Police to conduct a further investigation under Part 9 of the **Victoria Police Act 2013** or, in the case of a public interest complaint, Part 10 of that Act.

S. 160(2)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.26),  
2/2019  
s. 57(Sch. 1  
Pt A item 17).

### **161 Actions by Chief Commissioner of Police**

If the IBAC has made a recommendation under section 159, or a request under section 160, to the Chief Commissioner of Police, the Chief Commissioner of Police must—

- (a) adopt the recommendation or take the requested action; or
- (b) if the Chief Commissioner of Police has not adopted the recommendation or taken the requested action, or does not intend to adopt the recommendation or take the requested action, give a report to the IBAC stating the reason for not intending to adopt the recommendation or take the requested action.

S. 161  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### **162 Special reports**

- (1) The IBAC may at any time cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions.
- (2) If the IBAC intends to include in a report under this section adverse findings about a public body, the IBAC must give the relevant principal officer of that public body an opportunity to respond to the adverse material and fairly set out each element of the response in its report.
- (3) If the IBAC intends to include in a report under this section a comment or an opinion which is adverse to any person, the IBAC must first provide the person a reasonable opportunity to respond to the adverse material and fairly set out each element of the response in its report.
- (4) If the IBAC intends to include in a report under this section a comment or an opinion about any person which is not adverse to the person, the IBAC must first provide that person with the

S. 162  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 85/2012  
s. 103.

relevant material in relation to which the IBAC intends to name that person.

- (5) If the IBAC is aware of a criminal investigation or any criminal proceedings or other legal proceedings in relation to a matter or person to be included in a report under this section, the IBAC must not include in the report any information which would prejudice the criminal investigation, criminal proceedings or other legal proceedings.
- (6) The IBAC must not include in a report under this section a statement as to—
  - (a) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or
  - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence.
- (7) The IBAC must not include in a report under this section any information that would identify any person who is not the subject of any adverse comment or opinion unless the IBAC—
  - (a) is satisfied that it is necessary or desirable to do so in the public interest; and
  - (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
  - (c) states in the report that the person is not the subject of any adverse comment or opinion.

- (8) The IBAC must not include in a report under this section any information that—
- (a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—
    - (i) Division 1 of Part 9 of this Act;
    - (ii) Part 5 of the **Victoria Police Act 2013**;  
or
  - (b) is likely to lead to the identification of a person who has made an assessable disclosure.
- (9) However, the IBAC may in a report under this section include information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (10) The clerk of each House of the Parliament must cause the report to be laid before the House of the Parliament on the day on which it is received or on the next sitting day of that House of the Parliament.
- (11) If the IBAC proposes to transmit a report to the Parliament on a day on which neither House of the Parliament is actually sitting, the IBAC must—
- (a) give one business day's notice of intention to do so to the clerk of each House of the Parliament; and
  - (b) give the report to the clerk of each House of the Parliament on the day indicated in the notice; and
  - (c) publish the report on the IBAC's Internet website as soon as practicable after giving it to the clerks.

S. 162(8)(a)(ii)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 85.27).

S. 162(9)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 18).

- (12) The clerk of each House of the Parliament must—
- (a) notify each member of the House of the Parliament of the receipt of the notice under subsection (11)(a) on the same day that the clerk receives that notice; and
  - (b) give a copy of the report to each member of the House of the Parliament as soon as practicable after the report is received under subsection (11)(b); and
  - (c) cause the report to be laid before the House of the Parliament on the next sitting day of the House of the Parliament.
- (13) A report that is given to the clerks under subsection (11)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (14) The publication of a report by the IBAC under subsection (11)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a document to which those sections applied and had been published by the Government Printer under the authority of the Parliament.

S. 162A  
inserted by  
No. 2/2019  
s. 128.

#### **162A Advance copy of report to the Parliament**

- (1) If the IBAC proposes to transmit a report to the Parliament under section 162, the IBAC must give an advance copy of the report to—
- (a) the Minister; and
  - (b) the Secretary to the Department of Premier and Cabinet.

- (2) The copy of the report must be given at least one business day before the report is due to be transmitted to the Parliament.
- (3) The IBAC is not required to give an advance copy of the report under subsection (1) if the IBAC considers that in all the circumstances it would be inappropriate to do so.

### **163 Advice to a complainant and other persons**

- (1) Subject to subsection (4), the IBAC may provide a complainant with information about the results of an investigation including—
  - (a) any action taken by the IBAC; and
  - (b) any recommendation by the IBAC that any action or further action be taken.
- (2) Subject to subsection (4), the IBAC must provide a complainant with the information referred to in subsection (1) if the investigation relates to—
  - (a) a corrupt conduct complaint or police personnel conduct complaint in relation to a police officer or protective services officer; or
  - (b) a public interest complaint.
- (3) Subject to subsections (4) and (5), the IBAC may provide information about the commencement, conduct or results of an investigation, including any action taken and any recommendation that any action or further action be taken, to one or more of the following—
  - (a) the relevant principal officer or any other appropriate senior officer;

S. 163  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 82/2012  
s. 20, 85/2012  
s. 104.

S. 163(2)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.28(a)).

S. 163(2)(b)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A  
item 19(a)).

S. 163(3)  
amended by  
No. 30/2016  
s. 42(1)(a).

S. 163(3)(a)  
amended by  
No. 30/2016  
s. 42(1)(b).

S. 163(4)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.28(b)).

- (b) the responsible Minister;
  - (c) the Premier.
- (4) The IBAC must not provide any information under this section if the IBAC considers that the provision of the information would—
- (a) not be in the public interest or in the interests of justice; or
  - (b) put a person's safety at risk; or
  - (c) cause unreasonable damage to a person's reputation; or
  - (d) prejudice an investigation under this Act or an investigation by Victoria Police; or
  - (e) be likely to lead to the disclosure of any secret investigative method used by the IBAC or members of police personnel; or
  - (f) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.
- (5) The IBAC must not provide any information under subsection (3) that is likely to lead to the identification of a person who has made an assessable disclosure.
- (6) However, the IBAC may provide information under subsection (3) to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (7) This section does not apply to a police personnel conduct complaint if—

S. 163(6)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A  
item 19(b)).

(a) the complaint has been investigated as a public interest complaint under Part 10 of the **Victoria Police Act 2013**; and

S. 163(7)(a)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 85.28(c)),  
2/2019  
s. 57(Sch. 1  
Pt A  
item 19(c)).

(b) the IBAC has, in relation to, or in relation to a matter arising out of, an investigation, decided not to—

(i) take further action; or

(ii) request the Chief Commissioner of Police to take action.

(8) Information given to a complainant under subsection (1) or (2) must include a written statement advising the complainant that it is an offence under section 184 to disclose the information.

(9) For the purposes of this section, *senior officer* means a person who holds a position or is a member of a class of positions that is prescribed for the purposes of this section.

S. 163(9)  
inserted by  
No. 30/2016  
s. 42(2).

#### 164 Outcome of investigation

(1) After conducting an investigation, the IBAC may—

(a) make a referral under Division 5 of Part 3;

(b) make a recommendation in accordance with section 159;

(c) transmit a special report under section 162;

(d) advise a complainant or other person in accordance with section 163;

(e) do any combination or all or none of the matters referred to in paragraphs (a) to (d);

S. 164  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 82/2012  
s. 21 (ILA  
s. 39B(1)),  
amended by  
Nos 28/2012  
s. 23, 82/2012  
s. 21.

(f) determine to make no finding or take no action following the investigation.

(2) Without limiting subsection (1), after conducting an investigation, the IBAC may also take any other action that the IBAC is permitted to take under this or any other Act.

S. 165  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 85/2012  
s. 105.

### 165 Matters to be included in annual report

(1) The IBAC in its annual report for a financial year under Part 7 of the **Financial Management Act 1994** must include—

- (a) the prescribed information relating to the performance of its duties and functions;
- (b) any recommendations for changes to any Act or law in force in Victoria or for specified administrative actions to be taken which the IBAC considers necessary as a result of the performance of its duties and functions;
- (c) a description of its activities in relation to the performance of its duties and functions;
- (d) an account of the implementation of the annual plan prepared by the IBAC under section 168.

S. 165(1)(c)  
amended by  
No. 2/2019  
s. 180(1)(a).

S. 165(1)(d)  
inserted by  
No. 2/2019  
s. 180(1)(b).

(2) If the IBAC intends to include in its annual report adverse findings about a public body, the IBAC must give the relevant principal officer of that public body an opportunity to respond to the adverse material and fairly set out each element of the response in its report.

(3) If the IBAC intends to include in its annual report a comment or an opinion which is adverse to any person, the IBAC must first provide the person a reasonable opportunity to respond to the adverse material and fairly set out each element of the response in its report.

- (4) If the IBAC intends to include in a report under this section a comment or an opinion about any person which is not adverse to the person, the IBAC must first provide that person with the relevant material in relation to which the IBAC intends to name the person.
- (5) If the IBAC is aware of a criminal investigation or any criminal proceedings or other legal proceedings in relation to a matter or person to be included in its annual report, the IBAC must not include in the annual report any information which would prejudice the criminal investigation, criminal proceedings or other legal proceedings.
- (5A) The IBAC must not include in its annual report information concerning its functions under the **Witness Protection Act 1991** that would—
- (a) prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the IBAC is aware; or
  - (b) compromise the operational activities or methodologies of Victoria Police or of any authority or body referred to in the definition of *approved authority* in section 3(1) of the **Witness Protection Act 1991**; or
  - (c) disclose information about the identity or location, or compromise the security, of a person—
    - (i) who is or has been included in the Victorian witness protection program, within the meaning of the **Witness Protection Act 1991**; or
    - (ii) to whom alternative protection arrangements, within the meaning of the **Witness Protection Act 1991**, are being or have been provided.

S. 165(5A)  
inserted by  
No. 34/2016  
s. 31.

- (6) The IBAC must not include in its annual report a statement as to—
- (a) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or
  - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence or a disciplinary offence.
- (7) The IBAC must not include in its annual report any information that would identify any person who is not the subject of any adverse comment or opinion unless the IBAC—
- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
  - (b) is satisfied that it will not cause unreasonable damage to a person's reputation, safety or wellbeing; and
  - (c) states in the report that the person is not the subject of any adverse comment or opinion.
- (8) The IBAC must not include in its annual report any information that—
- (a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—
    - (i) Division 1 of Part 9 of this Act;
    - (ii) Part 5 of the **Victoria Police Act 2013**;or
  - (b) is likely to lead to the identification of a person who has made an assessable disclosure.

S. 165(8)(a)(ii)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 85.29).

(9) However, the IBAC may in an annual report include information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

S. 165(9)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 20).

(10) As soon as practicable after the end of each financial year, the IBAC must cause the annual report for that financial year to be transmitted to each House of Parliament.

S. 165(10)  
inserted by  
No. 2/2019  
s. 180(2).

**Note**

See also section 67 of the **Public Interest Disclosures Act 2012** for additional matters that are to be included in the IBAC's annual report.

Note to s. 165  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 21).

**166 Persons who receive reports or information prior to publication**

S. 166  
inserted by  
No. 28/2012  
s. 24.

(1) Subject to subsections (3), (4) and (5), a person who receives a proposed report, an advance copy of a report under section 162A, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, before the report is published by the IBAC in accordance with section 162 or 165 must not disclose any information contained in the proposed report or draft or part of the proposed report unless—

S. 166(1)  
amended by  
No. 2/2019  
s. 129(1).

- (a) the disclosure is permitted under subsection (2); and
- (b) the advice required by subsection (6) is given at the same time the disclosure is made.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(2) For the purposes of subsection (1), a disclosure is permitted if the disclosure—

- (a) is made in accordance with a direction or authorisation given by the IBAC; or

S. 166(2)(ca)  
inserted by  
No. 2/2019  
s. 129(2).

- (b) is made by an officer of an entity to other officers of the entity for the purposes of enabling the entity to respond to the proposed report or draft or part of the proposed report; or
  - (c) subject to section 127(2) and (8), is made for the purposes of obtaining legal advice or representation in relation to the proposed report or draft or part of the proposed report; or
  - (ca) is made by the Secretary to the Department of Premier and Cabinet to relevant officers of the Department of Premier and Cabinet for the purpose of enabling the Premier or the responsible Minister to respond to the report; or
  - (d) is otherwise authorised or required to be made by or under this Act.
- (3) Despite subsection (1), a disclosure is permitted if the disclosure is made for the purposes of making a complaint to the Victorian Inspectorate about the conduct of the IBAC or of an IBAC Officer.
- (4) Despite subsection (1), a disclosure is permitted if the disclosure is made for the purposes of complying with a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (5) Despite subsection (1), a disclosure is permitted if the disclosure is made after the information is published by the IBAC in a report or has otherwise been made public in accordance with this Act.

(6) A person who makes a disclosure of information permitted by subsection (2) must advise any person to whom the disclosure is made that this section applies in relation to the subsequent disclosure of that information by the person to whom the disclosure is made.

**Note**

Section 185 applies to an offence against this section.

**Note to s. 166  
inserted by  
No. 30/2016  
s. 46(9).**

Pt 8 (Heading and ss 167–170) inserted by No. 82/2012 s. 258, amended by No. 37/2014 s. 10(Sch. items 85.30–85.33), repealed by No. 70/2016 s. 48, new Pt 8 (Heading and ss 167–170A) inserted by No. 2/2019 s. 181.

## **Part 8—Budget, annual plan and performance audit**

New s. 167 inserted by No. 2/2019 s. 181.

### **167 Budget**

The IBAC's budget for each financial year is to be determined in consultation with the Parliamentary Committee concurrently with the annual plan under section 168.

New s. 168 inserted by No. 2/2019 s. 181.

### **168 Annual plan**

- (1) Before the beginning of each financial year, the IBAC must—
  - (a) prepare a draft annual plan describing the IBAC's proposed work program for that financial year; and
  - (b) submit the plan to the Parliamentary Committee for its consideration.
- (2) After considering the draft annual plan, the Parliamentary Committee—
  - (a) must return the plan to the IBAC; and
  - (b) may provide to the IBAC any comments regarding the plan, including suggestions of changes to be made to the plan.

- (3) As soon as practicable after the passage of the annual appropriation Acts for a financial year and after considering any comments received from the Parliamentary Committee, the IBAC must finalise the annual plan for that financial year.
- (4) The IBAC must indicate in the annual plan the nature of any changes suggested by the Parliamentary Committee under subsection (2)(b) that the IBAC has not adopted.
- (5) Before the beginning of the financial year to which the annual plan relates, the IBAC must—
  - (a) present the annual plan to the Parliamentary Committee; and
  - (b) cause the plan to be transmitted to the Parliament in accordance with section 169.

**169 Transmission of annual plan to Parliament**

- (1) The IBAC must cause the annual plan for a financial year to be transmitted to each House of Parliament as soon as practicable after it has been prepared.
- (2) The clerk of each House of Parliament must cause the annual plan to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (3) If the IBAC proposes to transmit the annual plan to the Parliament at a time when a House of the Parliament is not likely to next sit until after the beginning of the financial year to which the annual plan relates, the IBAC must—
  - (a) give one business day's notice of the IBAC's intention to do so to the clerk of that House of Parliament; and

New s. 169  
inserted by  
No. 2/2019  
s. 181.

- (b) give the annual plan to the clerk of that House of Parliament on the day indicated in the notice; and
  - (c) publish the annual plan on an Internet website maintained by the IBAC on the day after giving it to the clerk.
- (4) If a clerk of a House of the Parliament is given notice under subsection (3)(a), the clerk must—
- (a) notify each member of the House of the receipt of the notice on the same day that the clerk receives the notice; and
  - (b) give a copy of the annual plan to each member of the House as soon as practicable after the clerk receives the annual plan; and
  - (c) cause the annual plan to be laid before the House on the next sitting day of the House.
- (5) An annual plan given to the clerk of a House of the Parliament in accordance with subsection (3) is taken to have been published by order, or under authority, of the House.

New s. 170  
inserted by  
No. 2/2019  
s. 181.

### **170 Independent performance audit**

- (1) A suitably qualified person may be appointed by resolution of the Legislative Council and Legislative Assembly, on the recommendation of the Parliamentary Committee, as an independent performance auditor of the IBAC other than the following—
- (a) the Auditor-General;
  - (b) any other VAGO officer, within the meaning of section 3(1) of the **Audit Act 1994**;
  - (c) a person engaged by the Auditor-General under section 7 of the **Audit Act 1994** to assist in the performance of a function under that Act;

- (d) a person to whom the Auditor-General has delegated a power or function under section 8 of the **Audit Act 1994**.
- (2) The independent performance auditor—
  - (a) is appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and
  - (b) in conducting the audit, must comply with directions as to the audit given by the Parliamentary Committee.
- (3) Remuneration payable under the appointment is paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.
- (4) The independent performance auditor must conduct a performance audit at least once every 4 years to determine whether the IBAC is achieving its objectives effectively, economically and efficiently and in compliance with this Act.
- (5) Subject to any directions given by the Parliamentary Committee, the independent performance auditor may exercise any powers of the Auditor-General under Part 7 of the **Audit Act 1994** to the extent necessary to conduct the audit as if a reference in that Part to the Auditor-General includes a reference to the independent performance auditor.
- (6) The Parliamentary Committee must prepare and finalise a specification for a performance audit before the independent performance auditor may call for any information or rely on any power under Part 7 of the **Audit Act 1994** in relation to the audit.

- (7) Before finalising a specification for a performance audit the Parliamentary Committee must—
  - (a) prepare a draft specification for the performance audit that sets out the objectives of the audit and the particular issues (if any) to be addressed; and
  - (b) consult with the IBAC on the draft specification.
- (8) If the IBAC does not respond to a request for comment on a draft specification for a performance audit within 15 business days of receiving the request—
  - (a) the IBAC is taken to have no comment on the draft specification; and
  - (b) the independent performance auditor may finalise the specification.
- (9) The Parliamentary Committee must provide the final specification for a performance audit to the IBAC.
- (10) The independent performance auditor may apply additional auditing and assurance standards applied by the Auditor-General under section 78(2) of the **Audit Act 1994**, to the conduct of performance audits of the IBAC.

S. 170A  
inserted by  
No. 2/2019  
s. 181.

#### **170A Report of independent performance auditor**

- (1) The independent performance auditor may make a report of a performance audit conducted under section 170.
- (2) A report under subsection (1)—
  - (a) may include any information and recommendations the independent performance auditor considers relevant; and
  - (b) must set out the reasons for opinions expressed in the report.

- (3) The independent performance auditor must not make a report under subsection (1) unless—
- (a) at least 20 business days before making the report, the independent performance auditor gives the IBAC a copy of the proposed report or a summary of findings and proposed recommendations; and
  - (b) the independent performance auditor asks the IBAC in writing for comment before a specified date, being at least 10 business days after the material referred to in paragraph (a) is given to the IBAC; and
  - (c) the independent performance auditor includes in the report any comments made before the specified date, or a summary of those comments, in a form agreed between the independent performance auditor and the IBAC.
- (4) The independent performance auditor must, within 7 sitting days of making the report, transmit the report to each House of the Parliament.
- (5) The independent performance auditor must not include in a report under subsection (1)—
- (a) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
  - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

- (6) The independent performance auditor must not include in a report under subsection (1)—
- (a) any information that the independent performance auditor considers would prejudice any criminal proceedings or criminal investigations, or any investigations by the IBAC; or
  - (b) any information that discloses the identity of a person to whom, or in respect of whom, a direction has been given under—
    - (i) Division 1 of Part 9; or
    - (ii) Part 5 of the **Victoria Police Act 2013**; or
  - (c) any information that—
    - (i) is likely to lead to the identification of a person who has made an assessable disclosure; and
    - (ii) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (7) If the independent performance auditor intends to include in a report under subsection (1) a comment or an opinion that is adverse to any person who is to be named in the report and who is employed under section 35(1) or engaged under section 35(2) or 36, the IBAC must, after receiving a copy of the proposed report or the relevant part of the proposed report, give the person a reasonable opportunity to respond to the IBAC in relation to the adverse material.

## Part 9—General

### Division 1—Alcohol and drug testing of IBAC Officers

Pt 9  
(Headings  
and ss 171–  
196)  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### 171 Application of Division

- (1) This Division does not apply to the Commissioner.
- (2) In this Division, a reference to an *IBAC Officer* does not include a reference to the Commissioner.

S. 171  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

#### 172 Alcohol and drug testing of IBAC Officers

- (1) The IBAC may direct an IBAC Officer to test for the presence of alcohol or a drug of dependence if the IBAC reasonably believes that—
  - (a) the test result is relevant to the capacity of the IBAC Officer to perform his or her duties or exercise his or her powers; or
  - (b) the IBAC Officer has been involved in a critical incident.
- (2) A direction under subsection (1) must specify whether the IBAC Officer is required to do one or more of the following—
  - (a) provide a sample of breath;
  - (b) provide a sample of urine;
  - (c) allow a registered medical practitioner or an approved health professional to take from the officer a sample of the officer's blood.
- (3) A direction under subsection (1) must be—
  - (a) in writing; and
  - (b) made in accordance with the regulations.

S. 172  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (4) Nothing in this section affects the operation of Part 5 of the **Road Safety Act 1986**.

S. 173  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 28/2012  
s. 25.

**173 The IBAC may have regard to evidence in certain circumstances**

The IBAC may have regard to evidence derived from a sample obtained in accordance with a direction made under this Division in—

- (a) managing the performance of the duties or the exercise of the powers of the IBAC Officer; or
- (b) conducting any disciplinary process or action against the IBAC Officer relating to the performance of the duties or the exercise of the powers of the IBAC Officer as an IBAC Officer under this Act.

S. 174  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 28/2012  
s. 26.

**174 Taking a sample when an IBAC Officer is unconscious or otherwise unable to comply with direction**

- (1) If an IBAC Officer is unconscious or otherwise unable to comply with a direction and the IBAC reasonably believes that the IBAC Officer was involved in a critical incident, the IBAC may direct a registered medical practitioner to take from the IBAC Officer a sample of blood to test for the presence of alcohol or a drug of dependence.
- (2) If a sample of blood is taken under subsection (1), the IBAC must, upon the IBAC Officer regaining consciousness or otherwise becoming able to comply with a direction, advise the IBAC Officer—
  - (a) of the taking of the sample; and
  - (b) that he or she may refuse to consent to the use of any evidence derived from the sample; and

- (c) that a refusal to consent to the use of the evidence may constitute grounds for a disciplinary process or action against the IBAC Officer.
- (3) A direction under subsection (1) must be—
  - (a) in writing; and
  - (b) made in accordance with the regulations.
- (4) The IBAC must destroy any evidence derived from a sample of blood taken under subsection (1) if the IBAC Officer refuses to consent to the use of that evidence in the circumstances set out in subsection (2).
- (5) The IBAC must destroy any sample of blood taken under subsection (1) in respect of which consent is refused.
- (6) Nothing in this section affects the operation of Part 5 of the **Road Safety Act 1986**.

**175 Admissibility of test result in certain proceedings**

- (1) Evidence derived from a sample obtained in accordance with a direction made under this Division is inadmissible in any proceeding in a court, tribunal or before a person or body authorised to hear and receive evidence.
- (2) Subject to subsection (3), subsection (1) does not apply—
  - (a) in a proceeding under the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** to rebut or support an allegation that the presence of alcohol or a drug of dependence contributed to the injury in respect of which the proceeding was commenced; or

S. 175  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 28/2012  
s. 27.

S. 175(2)(a)  
amended by  
No. 67/2013  
s. 649(Sch. 9  
item 19(3)).

- (b) in a prosecution under the **Occupational Health and Safety Act 2004** to rebut or support an allegation that the presence of alcohol or a drug of dependence contributed to the occurrence of the act, matter or thing constituting the offence in respect of which the prosecution is brought; or
  - (c) in a proceeding arising out of, or connected with, a critical incident; or
  - (d) in a proceeding to the extent that the evidence is relevant to the defence of a person, other than the IBAC Officer who provided the sample, to rebut or support an allegation that the presence of alcohol or a drug of dependence affected the performance of the duties or the exercise of the powers of the IBAC Officer as an IBAC Officer; or
  - (e) to any disciplinary process or action against the IBAC Officer relating to the performance of the duties or the exercise of the powers of the IBAC Officer as an IBAC Officer under this Act.
- (3) Subsection (2) does not apply to evidence derived from a sample obtained in accordance with a direction made under section 174(1) if the IBAC Officer from whom the sample was taken refuses to consent to the use of that evidence in the circumstances set out in section 174(2).
- (4) In this section, *proceeding* includes a coronial inquest or inquiry.

S. 176  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

## **176 Handling and confidentiality of test results**

The IBAC must ensure that the result of any test conducted in accordance with a direction given under this Division is handled in accordance with the regulations.

**177 Offence to disclose identifying information**

A person must not disclose to any person the identity of a person to whom or in respect of whom a direction is given under this Division other than as required or authorised by—

- (a) this Act; or
- (b) the regulations.

Penalty: 60 penalty units.

S. 177  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**178 No action against registered medical practitioner or approved health professional**

No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or health professional in the course of taking any sample which the practitioner or health professional believes on reasonable grounds was required or allowed to be taken from any IBAC Officer under this Division.

S. 178  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**Division 2—Offences and proceedings**

**179 Offence to impersonate IBAC Officer**

A person who is not an IBAC Officer must not, in any way, hold himself or herself out to be an IBAC Officer.

Penalty: 120 penalty units or imprisonment for 12 months or both.

S. 179  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**Note**

Section 185 applies to an offence against this section.

Note to s. 179  
inserted by  
No. 30/2016  
s. 46(10).

S. 180  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 30/2016  
s. 43.

### **180 Offence to hinder or obstruct an IBAC Officer**

A person must not, without reasonable excuse, hinder or obstruct an IBAC Officer who is performing a function or exercising a power under Part 4 or 6.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note to s. 180  
inserted by  
No. 30/2016  
s. 46(11).

#### **Note**

Section 185 applies to an offence against this section.

S. 181  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### **181 Compliance with direction or requirement**

A person must not, without reasonable excuse, refuse or fail to comply with a direction or requirement made of the person in the exercise of a power by an IBAC Officer under this Act or the regulations.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note to s. 181  
inserted by  
No. 30/2016  
s. 46(12).

#### **Note**

Section 185 applies to an offence against this section.

S. 182  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### **182 Statement which is false or misleading**

A person must not wilfully make a statement that the person knows to be false or misleading in a material particular or mislead or attempt to mislead the IBAC or an IBAC Officer in the exercise of its, his or her powers under this Act or the regulations.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note to s. 182  
inserted by  
No. 30/2016  
s. 46(13).

#### **Note**

Section 185 applies to an offence against this section.

**183 Disclosure of transferred restricted matter**

- (1) A person must not disclose a transferred restricted matter except as permitted by this section.

Penalty: 120 penalty units or imprisonment for 12 months or both.

**Note**

Section 185 applies to an offence against this subsection.

S. 183  
inserted by  
No. 82/2012  
s. 22.

Note to  
s. 183(1)  
inserted by  
No. 30/2016  
s. 46(14).

- (2) Unless the IBAC orders otherwise, a transferred restricted matter may be disclosed if that matter has already been disclosed as part of an examination that was open to the public.
- (3) A transferred restricted matter may be disclosed—
- (a) in accordance with a direction of the IBAC; or
  - (b) subject to 127(2), to a legal practitioner for the purpose of obtaining legal advice or representation relating to a witness summons or matter; or
  - (c) to a person for the purpose of obtaining legal assistance relating to a witness summons or matter; or
  - (d) to an officer or agent of a body corporate by the body corporate or another officer or agent of the body corporate for the purpose of ensuring compliance with a witness summons; or
  - (e) to the Ombudsman in connection with a complaint to the Ombudsman that relates to a function of the Ombudsman under section 13 or 13AA of the **Ombudsman Act 1973**; or
  - (f) to the Victorian Inspectorate for the purpose of, or in connection with, a complaint to the Victorian Inspectorate; or
-

- (g) by a legal practitioner for the purpose of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with a client; or
  - (h) by a legal practitioner referred to in paragraph (b) for the purpose of giving legal advice, making representations, or obtaining legal aid, relating to the witness summons or matter; or
  - (i) by a person referred to in paragraph (c) for the purpose of obtaining legal aid relating to a witness summons or matter; or
  - (j) if that disclosure is otherwise authorised or required under this Act.
- (4) This section does not apply to an IBAC Officer.
- (5) Nothing in this section prevents the IBAC from issuing a confidentiality notice in relation to a transferred restricted matter.
- (6) In this section—

*Director* means the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** as in force immediately before its repeal;

*transferred restricted matter* means any of the following which, immediately before the repeal of the **Police Integrity Act 2008**, was a restricted matter within the meaning of section 23 of that Act as in force immediately before its repeal and which, by virtue of the Schedule, has become subject to this Act—

- (a) any evidence given before the Director;

- (b) the contents of any statement of information or document, or a description of any thing, produced to the Director;
- (c) the contents of any document, or a description of any thing, seized under the **Police Integrity Act 2008**;
- (d) any information that might enable a person who has been, or is about to be, examined before the Director to be identified or located;
- (e) the fact that a person had been, or was about to be, examined before the Director;
- (f) the existence of a witness summons under the **Police Integrity Act 2008**;
- (g) the subject matter of an investigation under the **Police Integrity Act 2008** in relation to which a witness summons under that Act had been issued.

**184 Offence to disclose certain information received from the IBAC**

S. 184  
inserted by  
No. 82/2012  
s. 22.

- (1) A person who made a complaint who is notified by the IBAC under section 59(1) or (2), other than a person notified that the IBAC has dismissed the complaint under section 58(a), must not disclose the content of the notification except in the circumstances specified in subsection (5).

S. 184(1)  
amended by  
No. 30/2016  
s. 46(15),  
substituted by  
No. 2/2019  
s. 130.

Penalty: 60 penalty units or 6 months imprisonment or both.

**Note**

Section 185 applies to an offence against this subsection.

- (2) A complainant who receives information under section 163(1) or (2) must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

**Note to s. 184(2) inserted by No. 30/2016 s. 46(16).**

**Note**

Section 185 applies to an offence against this subsection.

- (3) A person who receives information referred to in subsection (1) or (2) in any circumstance specified in subsection (5) must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

**Note to s. 184(3) inserted by No. 30/2016 s. 46(17).**

**Note**

Section 185 applies to an offence against this subsection.

- (4) A person other than a person referred to in subsection (3) who receives information referred to in subsection (1), (2) or (3) from a person referred to in those subsections must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

**Note to s. 184(4) inserted by No. 30/2016 s. 46(18).**

**Note**

Section 185 applies to an offence against this subsection.

- (5) For the purposes of this section, the specified circumstances are—
- (a) disclosure to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42 or to comply with this section, including if the person—
    - (i) does not have a sufficient knowledge of the English language to understand the nature of the witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42 or this section, to an interpreter;
    - (ii) is a person under the age of 18 years, to a parent, guardian or independent person;
    - (iii) is a person who is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons, a confidentiality notice, a notice cancelling a confidentiality notice, an order extending a confidentiality notice under section 42 or this section without assistance, to an independent person;
  - (b) disclosure for the purposes of obtaining legal advice or representation in relation to—
    - (i) a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice, an order extending a confidentiality notice

S. 184(5)(b)(ii)  
amended by  
No. 2/2019  
s. 57(Sch. 1  
Pt A item 22).

- under section 42 or compliance with this section;
- (ii) the person's rights, liabilities, obligations and privileges under this Act or the **Public Interest Disclosures Act 2012**;
  - (c) disclosure by an Australian legal practitioner who receives a disclosure in the circumstances specified in paragraph (b), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;
  - (d) disclosure for the purposes of making a complaint to the Victorian Inspectorate;
  - (e) disclosure for the purposes of complying with a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**;
  - (f) disclosure of information that has been published by the IBAC in a report or has otherwise been made public in accordance with this Act;
  - (g) disclosure to a person's spouse or domestic partner;
  - (h) disclosure to a person's employer or manager or both;
  - (i) disclosure as is otherwise authorised or required to be made by or under this Act.

**185 Criminal liability of officers of bodies corporate—  
accessorial liability**

S. 185  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
substituted by  
No. 30/2016  
s. 44.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
  - (a) authorised or permitted the commission of the offence by the body corporate; or
  - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
  - (a) section 44(1);
  - (b) section 44(6);
  - (c) section 44(7);
  - (d) section 54(7);
  - (e) section 59O(1);
  - (f) section 129A(7);
  - (g) section 135(1);
  - (h) section 135(2);
  - (i) section 136;
  - (j) section 137;
  - (k) section 166;
  - (l) section 179;

- (m) section 180;
  - (n) section 181;
  - (o) section 182;
  - (p) section 183(1);
  - (q) section 184(1);
  - (r) section 184(2);
  - (s) section 184(3);
  - (t) section 184(4).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer* in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
  - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

- (6) This section does not affect the operation of section 323 or 324 of the **Crimes Act 1958**.

**186 Maximum fine for body corporate**

- (1) If a body corporate is found guilty of an offence against this Act or the regulations and the court has power to fine the body corporate, it may, unless the contrary intention appears, impose on the body corporate a fine not greater than 5 times the amount of the maximum fine that could be imposed by the court on a natural person found guilty of the same offence committed at the same time.
- (2) This section has effect despite—
- (a) anything to the contrary in the **Sentencing Act 1991**; and
  - (b) the prescription of a maximum fine for the offence applicable to all offenders.

S. 186  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

**187 Responsible agency for the Crown**

- (1) If proceedings are brought against the Crown for an offence against this Act or the regulations, the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) In this section, the responsible agency in respect of an offence is the agency of the Crown—
- (a) whose acts or omissions are alleged to constitute the offence; or
  - (b) if that agency has ceased to exist, that is the successor of that agency; or
  - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

S. 187  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the leave of the court.

S. 188  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

### **188 Proceedings against successors to public bodies**

Proceedings for an offence against this Act or the regulations that were commenced against a public body before its dissolution, or that could have been commenced against a public body if not for its dissolution, may be continued or commenced against its successor if the successor is a public body.

S. 189  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 30/2016  
s. 47 (ILA  
s. 39B(1)).

### **189 Power to bring proceedings**

- (1) Proceedings for an offence under this Act or the regulations may be brought by—
  - (a) the IBAC;
  - (b) a sworn IBAC Officer who is authorised by the Commissioner;
  - (c) a police officer who is authorised by the Commissioner.
- (2) The Commissioner may authorise a sworn IBAC officer or a police officer to bring proceedings for an offence under this Act or the regulations.

S. 189(1)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.34).

S. 189(2)  
inserted by  
No. 30/2016  
s. 47.

**190 Power for the IBAC to bring criminal proceedings**

(1) Proceedings for an offence in relation to any matter arising out of an IBAC investigation may be brought by—

- (a) the IBAC;
- (b) a sworn IBAC Officer who is authorised by the Commissioner;
- (c) a police officer.

S. 190  
inserted by  
No. 28/2012  
s. 28,  
amended by  
No. 30/2016  
s. 48 (LA  
s. 39B(1)).

S. 190(1)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 85.34).

(2) The Commissioner may authorise a sworn IBAC officer to bring proceedings for an offence in relation to any matter arising out of an IBAC investigation.

S. 190(2)  
inserted by  
No. 30/2016  
s. 48.

**191 Service of document**

(1) Without limiting sections 42, 59I, 124 and 125, any document under this Act or the regulations required or authorised to be given to or served on any person (other than a body corporate) may be served on the person by—

- (a) giving it or serving it personally on the person; or
- (b) sending by registered post a copy of the document addressed to that person at the person's last known place of residence or business; or

S. 191  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

S. 191(1)  
substituted by  
No. 11/2021  
s. 136.

- (c) delivering a copy of the document to the person by means of electronic communication that is confirmed as having been received by the person; or
- (d) sending by registered post a copy of the document, addressed to the person's authorised legal representative, to the place of business of the person's authorised legal representative; or
- (e) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently not less than 16 years old; or
- (f) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently not less than 16 years of age.
- (g) leaving a copy of the document for that person—
  - (i) at the place of business of the person's authorised legal representative; and
  - (ii) with a person who apparently works there and who is apparently not less than 16 years of age; or
- (h) delivering a copy of the document, addressed to the person's authorised legal representative, to the person's authorised legal representative personally; or
- (i) delivering a copy of the document to the person's authorised legal representative by means of an electronic communication that is confirmed as having been received by the person's authorised legal representative.

- (2) Without limiting sections 42, 59I, 124 and 125, any document under this Act or the regulations required or authorised to be given to or served on a body corporate may be served by—
- (a) giving it or serving it on the body corporate at the head office, registered office or principal office of the body corporate; or
  - (b) leaving a copy of the document at the registered office or principal place of business of the body corporate with a person apparently employed at that office or place and who is apparently not less than 16 years of age; or
  - (c) sending by registered post a copy of the document addressed to that body corporate at the registered office or principal place of business of the body corporate; or
  - (d) delivering a copy of the document to the body corporate by means of an electronic communication that is confirmed as having been received by the body corporate.

**S. 191(2)**  
substituted by  
**No. 11/2021**  
s. 136.

- (2A) For the purposes of subsection (1), a person may deliver a confidentiality notice or witness summons to another person personally by placing a copy of the document on a surface in the presence of that other person.

**S. 191(2A)**  
inserted by  
**No. 11/2021**  
s. 136.

- (2B) For the purposes of subsections (1)(c) and (i) and (2)(d), the receipt of a document may be confirmed by any form of electronic communication.

**S. 191(2B)**  
inserted by  
**No. 11/2021**  
s. 136.

- (3) This section is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.

S. 192  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 28/2012  
s. 29.

## **192 Validity and effect of notices, orders and other documents and deemed service**

- (1) The validity of any notice, order or other document given or made under this Act, other than Divisions 2 and 3 of Part 2 and Part 6, or of the service of the notice, order or other document is not affected by any error, misdescription or irregularity which in the opinion of a court is not likely to mislead or which in fact does not mislead.
- (2) If due service of a notice, order or other document required under this Act or the regulations to be given or served on any owner or occupier has been once made on any owner or occupier, the notice, order or other document is binding on all persons claiming by, from or under that owner or occupier and on all subsequent owners or occupiers to the same extent as if served on each of those persons respectively.

### **Division 3—Miscellaneous**

S. 193  
inserted by  
No. 28/2012  
s. 30.

## **193 Immunity of the IBAC and IBAC Officers**

- (1) The IBAC or an IBAC Officer is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
  - (a) in the performance of a duty or a function or the exercise of a power under this Act or the regulations made under this Act; or
  - (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act or the regulations made under this Act.

- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to the IBAC or an IBAC Officer attaches instead to the State.

**194 Exemption from Freedom of Information Act 1982**

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of any person or body to the extent to which the document discloses information that relates to—
- (a) a recommendation made by the IBAC under this Act; or
  - (b) an investigation conducted under this Act; or
  - (c) a report, including a draft report, on an investigation conducted under this Act.
- (2) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of the IBAC to the extent to which the document discloses information that relates to—
- (a) a complaint; or
  - (b) information received by the IBAC under section 56; or
  - (c) a notification made to the IBAC under a mandatory notification provision; or
  - (d) a preliminary inquiry.
- (3) In this section, *document* has the same meaning as it has in the **Freedom of Information Act 1982**.

S. 194  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 82/2012  
s. 23,  
substituted by  
No. 20/2017  
s. 129.

**194A Act applies equally to attendance in person or by audio or audio visual link**

- (1) For the avoidance of doubt, except as otherwise provided in Part 3 or Part 6, a provision of this Act that applies in relation to the attendance of a person or any rights of a person or obligations

S. 194A  
inserted by  
No. 11/2021  
s. 137.

imposed under Part 3 or Part 6 as a consequence of that attendance—

- (a) required under a witness summons; or
- (b) as legal representation at an examination; or
- (c) in accordance with section 129—

applies in relation to attendance by audio visual link or audio link in the same way that it applies in relation to attendance in person.

- (2) For the avoidance of doubt, except as otherwise provided by Part 3 or Part 6, a provision of this Act that applies in relation to the production of documents under a witness summons applies in relation to production of documents by secure electronic means in the same way that it applies in relation to production of documents in person.

S. 195  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)).

## 195 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
  - (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstance;
  - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or class of persons;
  - (d) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether

- unconditionally or on specified conditions and either wholly or to the extent specified;
- (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;
  - (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed (whether under this or any other Act) or published by any person—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as formulated, issued, prescribed (whether under this or any other Act) or published at the time the regulations are made or at any time before then; or
    - (iii) as formulated, issued, prescribed (whether under this or any other Act) or published from time to time;
  - (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (3) Any regulations made under sections 36 and 37 of this Act as in force before the commencement of section 9 of the **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012** which are in operation immediately before that commencement are deemed to have been made under this Act as amended by that section 9.

S. 196  
inserted by  
No. 13/2012  
s. 9 (as  
amended by  
No. 82/2012  
s. 148(3)),  
amended by  
No. 28/2012  
s. 31.

## 196 Regulations—specific matters

Without limiting the generality of section 195, the regulations may prescribe—

S. 196(fa)  
inserted by  
No. 30/2016  
s. 45(a).

- (a) a body or entity to be a public body;
- (b) an office to be a public office;
- (c) a person or body for the purposes of the definition of *integrity body* in section 3;
- (d) a person or body for the purposes of the definition of *law enforcement agency* in section 3;
- (e) a person or body for the purposes of the definition of *prosecutorial body* in section 3;
- (f) the content and form of a confidentiality notice;
- (fa) a person or body for the purposes of the definition of *senior officer* in section 41(5);
- (g) a person or body for the purposes of section 73(2)(j);
- (h) the content and form of a witness summons;
- (i) matters which constitute proof of age for the purposes of section 123(2);
- (j) content and form of a direction under section 127;
- (k) for the purpose of section 130(1)(e), actions which the IBAC is to take before questioning a witness at an examination or requiring a witness to produce a document or other thing;
- (l) scales of expenses payable to witnesses for the purposes of section 150;

- (m) for the purposes of section 151, persons who can approve legal assistance;
- (n) a person or body for the purposes of section 151(5);
- (na) a person or body for the purposes of the definition of *senior officer* in section 163(9);
- (o) security checks for IBAC Officers;
- (p) requirements relating to the issue of identity cards to IBAC Officers and the use of the identity cards;
- (q) requirements for the disclosure and reporting of pecuniary interests by IBAC Officers, including providing for the manner of disclosure (whether by statutory declaration or otherwise) and the compilation, maintenance and publication of registers of pecuniary interests;
- (r) the information to be included by the IBAC in its annual report;
- (s) an appropriate course of training in the use of defensive equipment;
- (t) an appropriate course of training in the use of firearms;
- (u) the persons authorised to analyse samples for the purpose of detecting the presence of alcohol or drugs of dependence;
- (v) the circumstances in which a breath sample, a urine sample or a blood sample may be taken;
- (w) the procedure for the taking of samples of breath, urine or blood;

S. 196(na)  
inserted by  
No. 30/2016  
s. 45(b).

- (x) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices;
- (y) the requirements relating to the accreditation of persons conducting analyses for the presence of drugs of dependence;
- (z) the procedure for the handling and analysis of samples of urine or blood;
- (za) offences relating to interference with test results or the testing procedure;
- (zb) the requirements in relation to the handling and confidentiality of test results;
- (zc) the form of notice for the purposes of section 100(4);
- (zd) forms for the purposes of this Act.

S. 197  
inserted by  
No. 82/2012  
s. 24,  
repealed by  
No. 66/2011  
s. 197(4).

\* \* \* \* \*

S. 198  
inserted by  
No. 82/2012  
s. 24.

## 198 Schedule

The Schedule has effect.

## Part 10—Transitional provisions

Pt 10  
(Heading and  
s. 199)  
inserted by  
No. 22/2020  
s. 7H.

### 199 Transitional provision—Justice Legislation Miscellaneous Amendments Act 2020

S. 199  
inserted by  
No. 22/2020  
s. 7H.

- (1) The amendments made to this Act by the **Justice Legislation Miscellaneous Amendments Act 2020** apply to an investigation under section 60 of this Act on or after the commencement of the **Justice Legislation Miscellaneous Amendments Act 2020** regardless of whether the investigation commenced prior to that commencement.
- (2) The IBAC may apply for an arrest warrant to be issued under section 141B(2) or 141C(2) in respect of a witness summons issued under section 120(1) prior to that commencement for the purposes of the investigation.

### 200 Regulations dealing with transitional matters— Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021

S. 200  
inserted by  
No. 11/2021  
s. 139.

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the amendment of this Act by the **Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021**, including the repeals and amendments made by that Act.
- (2) Regulations made under this section may—
  - (a) have a retrospective effect to a day on or from the date that the **Justice Legislation Amendment (System Enhancements and**

- Other Matters) Act 2021** receives the Royal Assent;
- (b) be of limited or general application;
  - (c) differ according to differences in time, place or circumstances;
  - (d) leave any matter or thing to be decided by a specified person or specified class of persons;
  - (e) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations made under this section have effect despite anything to the contrary—
- (a) in any Act (other than the **Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021** or the **Charter of Human Rights and Responsibilities Act 2006**); or
  - (b) in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.

## Schedule

Sch.  
inserted by  
No. 82/2012  
s. 25.

### Savings and transitional provisions

#### 1 Definitions

In this Schedule—

*commencement day* means the day on which section 16 of the **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012** comes into operation;

*Director* means the Director, Police Integrity under section 7 of the PIA as in force immediately before its repeal;

*OPI* means the Office of Police Integrity continued by section 5 of the PIA as in force immediately before its repeal;

*PIA* means the **Police Integrity Act 2008** as in force immediately before its repeal;

*property* means any legal or equitable estate or interest (whether present or future or whether vested or contingent) in real or personal property of any description;

*rights* means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

#### 2 General transitional provisions

- (1) Unless the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a repealed provision of the PIA continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—

- (a) any other repealed provisions of the PIA necessary to give effect to that continued provision; and
- (b) any regulations made under the PIA for the purposes of that continued provision.

**3 Office of Police Integrity and office of Director abolished**

- (1) On the commencement day, the Office of Police Integrity is abolished.
- (2) On the commencement day, the office of Director is abolished and the Director goes out of office.

**4 IBAC succeeds Office of Police Integrity**

On the commencement day—

- (a) all rights, property and assets that, immediately before the commencement day, were vested in the OPI or the Director are, by force of this clause, vested in the IBAC;
- (b) all debts, liabilities and obligations of the OPI or the Director existing immediately before that day become, by force of this clause, debts, liabilities and obligations of the IBAC;
- (c) the IBAC is, by force of this clause, substituted as a party to any proceeding pending in any court or tribunal to which the OPI or the Director was a party immediately before that day;
- (d) the IBAC is, by force of this clause, substituted as a party to any arrangement or contract entered into by or on behalf of the OPI, or by or on behalf of the Director, as a party and in force immediately before that day;

- (e) any reference to the OPI in any Act (other than this Act), subordinate instrument, agreement, deed or other document must be construed as a reference to the IBAC—
  - (i) so far as it relates to any period on or after that day; and
  - (ii) if not inconsistent with the context or subject matter.

#### **5 Superseded references to Director**

A reference in any Act (other than this Act), subordinate instrument, agreement, deed or other document to the Director must be construed as a reference to the IBAC or the Commissioner (as the case requires)—

- (a) so far as the reference relates to any period on or after the commencement day; and
- (b) if not inconsistent with the subject matter.

#### **6 Transfer of records, information and documents**

All information, documents, reports, records and equipment in the possession or control of the OPI immediately before the commencement day, whether held under the PIA, any other Act or otherwise (including any information, document or other thing seized or otherwise obtained under a warrant)—

- (a) are transferred to the custody of the IBAC on the commencement day; and
- (b) are taken to be information, documents, reports, records and equipment in the possession or control of the IBAC on and from that commencement day.

## **7 Transferred protected information**

If anything referred to in clause 4, 6, 10(2) or 11(2) is *protected information* within the meaning of section 30D of the **Surveillance Devices Act 1999**, on and from the commencement day—

- (a) the IBAC may only use that protected information in accordance with section 30F of that Act for the IBAC's corrupt conduct investigative functions or its police personnel conduct investigative functions; and
- (b) the IBAC must not disclose or communicate that protected information to any person or body for any other purpose.

## **8 Confidentiality**

(1) A reference in section 38 of this Act—

- (a) to a person employed or engaged under section 35 or engaged under section 36 includes a reference to a person who was a member of OPI personnel immediately before the commencement day and who is, on and from the commencement day, an IBAC Officer; and
- (b) to the administration of this Act or the performance of duties and functions or the exercise of powers by the IBAC includes a reference to—
  - (i) the administration of the PIA; or
  - (ii) the performance of duties and functions or the exercise of powers by the OPI or the Director under the PIA.

- (2) A reference in section 40 of this Act—
- (a) to an IBAC Officer includes a reference to a person who was a member of OPI personnel immediately before the commencement day and who is, on and from the commencement day, an IBAC Officer; and
  - (b) to information acquired in the course of, or as a result of, the performance of duties and functions or the exercise of powers of the IBAC under this Act includes a reference to—
    - (i) information obtained or received by the person referred to in paragraph (a) before the commencement day in the course of, or as a result of, the performance of duties and functions or the exercise of powers of the OPI or the Director under the PIA; or
    - (ii) a restricted matter within the meaning of section 23 of the PIA as in force immediately before the commencement day.

## 9 Annual reports and other reports

- (1) If, before the commencement day, the Director had not prepared any report required by section 28(1) of the PIA or under Part 7 of the **Financial Management Act 1994** for the financial year ending before the commencement day, the IBAC must prepare that report.
- (2) If, before the commencement day, the Director has prepared any report required by section 28(1) of the PIA or under Part 7 of the **Financial Management Act 1994** but that report has not been transmitted to each House of the Parliament under section 29 of the PIA or under the **Financial Management Act 1994**, the IBAC

must transmit that report to each House of the Parliament in accordance with the applicable requirements of section 29 of the PIA or the **Financial Management Act 1994**, as the case requires.

- (3) For the purposes of subclause (1)—
- (a) if the report relates to a whole financial year completed before the repeal of the PIA, the IBAC may prepare a report referred to in those provisions as a separate report and transmit the report to each House of the Parliament in accordance with section 29 of the PIA as in force immediately before its repeal or the **Financial Management Act 1994**, as the case requires; or
  - (b) if the report relates to a partial financial year completed before the repeal of the PIA, the IBAC may prepare a report referred to in those provisions as part of its own annual report under section 165.
- (4) If, before the commencement day, the Director has prepared a report under section 28(2) of the PIA but that report has not been transmitted to each House of the Parliament under section 29 of the PIA before its repeal, the IBAC may transmit that report to each House of the Parliament in accordance with section 162(1) as if it were a special report under that section and for that purpose, the IBAC may include in a special report any matter arising in connection with the Director's functions under the PIA as in force immediately before its repeal.
- (5) If, before the commencement day, the Director has commenced preparing but has not completed a report under section 28(2) of the PIA before its repeal, the IBAC may complete that report and transmit it to each House of the Parliament in

accordance with section 162(1) as if it were a special report under that section and for that purpose, the IBAC may include in a special report any matter arising in connection with the Director's functions under the PIA as in force immediately before its repeal.

- (6) If, before the commencement day, the Director has completed an investigation under the PIA but has not given a report under section 50 of the PIA before the commencement day, on and from the commencement day, the IBAC may make a recommendation under section 159 of this Act in relation to that investigation completed by the Director and section 159 applies as if the investigation completed by the Director had been an investigation by the IBAC under this Act.

## 10 Complaints

- (1) If, before the commencement day, the Director had received a complaint under section 86L of the **Police Regulation Act 1958** and—
- (a) had not commenced an investigation into the complaint under Division 2 of Part 3 of the PIA; or
  - (b) had commenced but not completed an investigation under Division 2 of Part 3 of the PIA—

the IBAC may investigate or complete the investigation of that complaint on and from the commencement day in accordance with this Act as if it were a complaint made in accordance with section 52 of this Act.

- (2) In an investigation referred to in subclause (1), the IBAC may use or rely upon any evidence given or document or other thing produced to or obtained by the Director or the OPI in relation to that

investigation under Part 3 or 4 of the PIA or under any other Act.

- (3) If, before the commencement day, the Director had completed an investigation under the PIA into the complaint but had not advised the complainant of the outcome of the complaint, section 163 applies to the complaint as if the complaint were made under this Act.

## **11 Own motion investigations**

- (1) An investigation initiated by the Director under section 44 of the PIA before the commencement day that had not been completed before the commencement day may be continued and completed by the IBAC, on and from the commencement day, under this Act as if it were an investigation conducted under section 64(1)(c) of this Act.
- (2) In an investigation referred to in subclause (1), the IBAC may use and rely upon any evidence given or document or other thing produced to the Director or the OPI in relation to that investigation under Part 3 or 4 of the PIA or any other Act.
- (3) The IBAC may undertake any investigation that could have been undertaken under section 48 of the PIA as if it were an own motion investigation.

## **12 Chief Commissioner of Police to respond to the IBAC**

A request made before the commencement day by the Director under Part 3 of the PIA for the Chief Commissioner of Police to take any action, or to conduct a further investigation, to which the Chief Commissioner of Police had not (in accordance with section 49 of the PIA) provided a written response before the commencement day, is taken, on and from that day, to be a request made under section 160 of this Act.

### **13 Direction to require answers etc. of police**

A direction given to a person under section 47 of the PIA for the purposes of an investigation under the PIA that was in force immediately before the commencement day is taken, on and from the commencement day, to be a direction given to the person under section 84 of this Act for the purposes of an investigation under Part 3.

### **14 Witness summonses and related matters**

- (1) A witness summons issued under section 53 of the PIA (other than a summons issued to a person who is 16 years of age or older but who is less than 18 years of age) that was in force immediately before the commencement day continues in force, on and from the commencement day, as if—
  - (a) Division 2 of Part 4 of the PIA had not been repealed; and
  - (b) a reference in that Division to the Director were a reference to the IBAC.
- (2) For the purposes of subclause (1), Part 4 of the PIA (other than section 68 and Divisions 6, 7, 8 or 9) continues to apply, despite its repeal—
  - (a) to that witness summons; and
  - (b) in relation to the person to whom that witness summons is directed; and
  - (c) as if any reference to—
    - (i) the Director were a reference to the IBAC; and
    - (ii) to the Special Investigations Monitor were reference to the Victorian Inspectorate; and
    - (iii) a member of staff of the OPI were a reference to an IBAC Officer.

- (3) A witness summons issued under section 53 of the PIA to a person who is 16 years of age or older but who is less than 18 years of age that was in force immediately before the commencement day ceases to have any force or effect on and from the commencement day.
- (4) On and from the commencement day, a person to whom a witness summons referred to in subclause (1) has been issued may be dealt with under section 135, 136, 137 or 138, Division 2 of Part 6 or Division 5 of Part 6 of this Act, as the case requires, as if the person had been issued with a witness summons under this Act.

## **15 Examinations**

- (1) If, immediately before the commencement day, a person was attending an examination under Division 3 of Part 4 of the PIA and had not been excused from attendance, on and from the commencement day—
  - (a) Part 4 of the PIA (other than section 68 and Divisions 6, 7, 8 or 9) continues to apply to that examination despite its repeal; and
  - (b) that Part applies as if a reference in that Part to—
    - (i) the Director were a reference to the IBAC; and
    - (ii) the Special Investigations Monitor were a reference to the Victorian Inspectorate; and
    - (iii) a member of staff of the OPI were a reference to an IBAC Officer.

- (2) On and from the commencement day, sections 135, 136, 137 and 138, Division 2 of Part 6 and Division 5 of Part 6 of this Act apply to a person referred to in subclause (1) as if that person had been summoned to attend an examination under Part 6.

**16 Legal assistance for witnesses**

- (1) A person to whom legal assistance has been granted under section 76 of the PIA immediately before its repeal is entitled to continue to receive that assistance.
- (2) An application under section 76 of the PIA before the commencement day that had not been determined before the commencement day may be determined under section 151 of this Act as if it were an application under section 151 of this Act.
- (3) An approval given under section 76 of the PIA before the commencement day in connection with an appearance that had not commenced, or that had commenced but had not concluded, before the commencement day, is taken, on and after the commencement day, to be an approval given under section 151.
- (4) A person to whom a witness summons under Part 4 of the PIA has been issued immediately before the repeal of that Act who has not applied for legal assistance under section 76 of the PIA before that repeal may apply, on and after the commencement day for legal assistance in accordance with section 151 as if the person had been issued with a witness summons under this Act.

### **17 Witness already held in custody**

If, immediately before the commencement day, a direction given under section 57(2) of the PIA in respect of a person who is held in a prison or police gaol was in force, on and after the commencement day—

- (a) section 57 of the PIA continues to apply in respect of that direction despite its repeal; and
- (b) that section applies as if any reference in that section to the Director were a reference to the IBAC.

### **18 Confidentiality notices**

If a confidentiality notice issued under section 58 of the PIA is in force immediately before the commencement day, on and from the commencement day—

- (a) that notice continues in force as if Division 2 of Part 4 of the PIA had not been repealed; and
- (b) Division 2 of Part 4 of the PIA continues to apply in respect of that confidentiality notice despite its repeal; and
- (c) Division 2 of Part 4 of the PIA applies as if any reference in that Part to—
  - (i) the Director were a reference to the IBAC; and
  - (ii) the Special Investigations Monitor were a reference to the Victorian Inspectorate.

### **19 Legal professional privilege**

If a claim of privilege under section 71 of the PIA that was made before the commencement day had not been determined before the commencement

day, the claim is to be determined, on and from the commencement day, in accordance with sections 71 to 73 of the PIA—

- (a) as if those sections had not been repealed; and
- (b) as if a reference in those sections to the Director were a reference to the IBAC.

## **20 Arrest of recalcitrant witness**

(1) If, before the commencement day—

- (a) the Director applied to a magistrate under section 84(1) of the PIA for a warrant to arrest a person; and
- (b) the magistrate had not determined the application—

the application is to be determined, on and from the commencement day, under Division 7 of Part 4 of the PIA as if that Division had not been repealed and as if a reference in that Division—

- (c) to the Director were a reference to the IBAC; and
- (d) to the Special Investigations Monitor were a reference to the Victorian Inspectorate.

(2) If a warrant to arrest a person issued under section 84(2) of the PIA is in force immediately before the commencement day—

- (a) that warrant continues in force in accordance with its terms on and from that commencement day as if that section had not been repealed; and
- (b) subject to any conditions or limitations on an authorised officer's appointment under section 81, an authorised officer is authorised to do anything that a person named in the warrant is authorised to do pursuant to that

- warrant or in the execution of that warrant;  
and
- (c) Division 7 of Part 4 of the PIA continues to apply in relation to the person arrested and held in custody pursuant to that warrant; and
  - (d) for those purposes, a reference to the Director in Division 7 of Part 4 of the PIA is taken to be a reference to the IBAC.

## **21 Powers of entry, search and seizure**

- (1) Section 90 of the PIA as in force immediately before its repeal continues to apply, on and from the commencement day, in respect of a document or thing seized under section 89 of the PIA as if—
  - (a) a reference to an authorised officer were a reference to an authorised officer within the meaning of this Act; and
  - (b) a reference to the Director were a reference to the IBAC.
- (2) If an application under section 91 of the PIA in relation to a document or thing seized under section 89 of the PIA had not been determined before the commencement day—
  - (a) the application is to be determined, on and from the commencement day, under section 91 of the PIA as if that section had not been repealed; and
  - (b) for the purposes of paragraph (a), a reference in section 91 of the PIA to the Director is taken to be a reference to the IBAC.
- (3) Section 92 of the PIA as in force immediately before its repeal continues to apply in respect of a document or thing seized under section 89 of the PIA—

- (a) until the document or thing is returned in accordance with section 92 of the PIA; and
  - (b) as if a reference in section 92 of the PIA to the Director were a reference to the IBAC.
- (4) An application for a search warrant made under section 93 of the PIA before the commencement day that had not been determined before the commencement day is to be determined, on and from that commencement day, under section 93 of the PIA as if—
- (a) that section had not been repealed; and
  - (b) a reference in that section to the Director were a reference to the IBAC.
- (5) If a search warrant issued under section 93 of the PIA before the commencement day is in force immediately before the commencement day, on and from that commencement day, the search warrant—
- (a) continues in force in accordance with its terms; and
  - (b) subject to any conditions or limitations on an authorised officer's appointment under section 81, an authorised officer is authorised to do anything that a person named in the warrant is authorised to do pursuant to that warrant or in the execution of that warrant; and
  - (c) sections 94 to 101 of the PIA continue to apply to the warrant and anything done under that warrant, as if—
    - (i) those sections had not been repealed; and
    - (ii) a reference in those sections to the Director were a reference to the IBAC.

- (6) Without limiting section 14(2) of the **Interpretation of Legislation Act 1984**, despite the repeal of sections 94 to 101 of the PIA, on and from the commencement day, those sections continue to apply in relation to a search warrant issued under section 93 of the PIA (as in force immediately before its repeal) which has been executed before the commencement day as if—
- (a) those sections had not been repealed; and
  - (b) a reference in those sections to the Director were a reference to the IBAC.

## **22 Protection of persons, documents and other things**

- (1) A reference in Division 4 of Part 2 to a document or other thing that has come into a person's possession or control in the performance of the duties and functions or the exercise of the powers of the person or the IBAC under this Act includes a reference to a document or other thing that has come into a person's possession (whether before, on or after the commencement day) in the performance of functions under the PIA.
- (2) A person who was a *protected person* under the PIA as in force immediately before its repeal, is taken, on and from the commencement day, to be a protected person within the meaning of section 45.
- (3) A document or other thing which was a *protected document or other thing* with the meaning of section 105 of the PIA as in force immediately before its repeal, is taken, on and from the commencement day, to be a protected document or other thing within the meaning of section 46.
- (4) A reference in section 46—
  - (a) to an investigation includes a reference to an investigation under Division 2 of Part 3 of the PIA;

- (b) to a person who has been summoned, or who has appeared, as a witness in an examination, includes a reference to a person who has been summoned, or who has appeared, as a witness in an investigation under Division 2 of Part 3 of the PIA;
  - (c) to a person who has provided the IBAC with information relating to an investigation includes a person who has provided information to the Director relating to an investigation under Division 2 of Part 3 of the PIA as in force immediately before its repeal;
  - (d) to any evidence given or information provided to the IBAC relating to an investigation includes any evidence given or information provided to the Director relating to an investigation under Division 2 of Part 3 of the PIA as in force immediately before its repeal.
- (5) A certificate given by the Director under section 106(2) or 109A(2) of the PIA that was in force immediately before the commencement day continues in force, on and from that commencement day, as if it were a certificate given by the IBAC under section 47(2) or 50(2), as the case requires.
- (6) An objection made before the commencement day under section 107 of the PIA to the production or inspection of a document or other thing that has not been determined under section 107 of the PIA before that commencement day is to be determined, on and from the commencement day, under section 48.

### **23 Investigations completed but proceedings not commenced**

- (1) The IBAC or a sworn IBAC Officer who is authorised by the Commissioner under section 189(b) or 190(b) may commence criminal proceedings in relation to any matter for which the Director or a member of staff of the OPI authorised under section 51A(2) of the PIA was entitled to commence criminal proceedings under section 51A of the PIA as if that section had not been repealed.
- (2) The IBAC or a sworn IBAC Officer authorised by the Commissioner under section 189(b) or 190(b) may continue criminal proceedings commenced under section 51A of the PIA by the Director or a member of staff of the OPI authorised under section 51A(2) of that Act.

### **24 Contempt of Director**

- (1) If, before the commencement day, the Director issued a certificate of charge under section 79(1) of the PIA and the charge has not been determined, the charge is to be determined, on and from the commencement day, by the Supreme Court under section 82 of the PIA as if sections 79 and 82 had not been repealed.
- (2) If, before the commencement day, the Director issued a certificate of charge under section 79(1) of the PIA and an arrest warrant under section 79(1)(b) of that Act, on and from the commencement day—
  - (a) a person to whom section 80 of the PIA applies may elect to apply for bail in accordance with that section as if sections 79 and 80 had not been repealed; and

- (b) Division 6 of Part 4 of the PIA continues to apply in relation to the person arrested and held in custody pursuant to that warrant; and
- (c) for those purposes, a reference to the Director in Division 6 of Part 4 of the PIA is taken to be a reference to the IBAC.

**25 Exemption from Freedom of Information Act 1982 under section 51 of the PIA**

Despite the repeal of the PIA, section 51 of that Act continues to apply to any document specified in that section.

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 27 October 2011*

*Legislative Council: 10 November 2011*

The long title for the Bill for this Act was "A Bill for an Act to establish the Independent Broad-based Anti-corruption Commission, to amend the **Parliamentary Committees Act 2003** and certain other Acts, and for other purposes."

The **Independent Broad-based Anti-corruption Commission Act 2011** was assented to on 29 November 2011 and came into operation on 1 July 2012: section 2(2).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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## 2 Table of Amendments

This publication incorporates amendments made to the **Independent Broad-based Anti-corruption Commission Act 2011** by Acts and subordinate instruments.

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### **Independent Broad-based Anti-corruption Commission Act 2011, No. 66/2011**

*Assent Date:* 29.11.11  
*Commencement Date:* S. 197(4) on 10.2.15: s. 197(4)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

### **Victorian Inspectorate Act 2011, No. 70/2011**

*Assent Date:* 29.11.11  
*Commencement Date:* S. 43 on 1.7.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

### **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012, No. 13/2012** (as amended by No. 82/2012)

*Assent Date:* 20.3.12  
*Commencement Date:* Ss 3–9 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

### **Independent Broad-based Anti-corruption Commission Amendment (Examinations) Act 2012, No. 28/2012** (as amended by No. 82/2012)

*Assent Date:* 29.5.12  
*Commencement Date:* S. 10 on 1.7.12: Special Gazette (No. 222) 29.6.12 p. 1; ss 3–9, 11–31 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

### **Evidence Amendment (Journalist Privilege) Act 2012, No. 52/2012**

*Assent Date:* 18.9.12  
*Commencement Date:* Ss 17–19 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 3  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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**Commission for Children and Young People Act 2012, No. 79/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* S. 81 on 1.3.13: Special Gazette (No. 27) 29.1.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 3–25, 253–258 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; ss 298, 299 on 11.2.13: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Protected Disclosure Act 2012, No. 85/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 84–105 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013**

*Assent Date:* 26.2.13  
*Commencement Date:* S. 62 on 17.4.13: Special Gazette (No. 141) 16.4.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Integrity Legislation Amendment Act 2013, No. 28/2013**

*Assent Date:* 15.5.13  
*Commencement Date:* S. 3 on 15.5.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Courts Legislation Amendment (Judicial Officers) Act 2013, No. 63/2013**

*Assent Date:* 6.11.13  
*Commencement Date:* S. 86 on 1.2.14: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013**

*Assent Date:* 12.11.13  
*Commencement Date:* S. 649(Sch. 9 item 19) on 1.7.14: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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**Statute Law Revision Act 2013, No. 70/2013**

*Assent Date:* 19.11.13  
*Commencement Date:* S. 3(Sch. 1 item 23) on 1.12.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Court Services Victoria Act 2014, No. 1/2014**

*Assent Date:* 11.2.14  
*Commencement Date:* S. 68 on 1.7.14: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Legal Profession Uniform Law Application Act 2014, No. 17/2014**

*Assent Date:* 25.3.14  
*Commencement Date:* S. 160(Sch. 2 item 49) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014** (as amended by No. 21/2015)

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 85) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Privacy and Data Protection Act 2014, No. 60/2014**

*Assent Date:* 2.9.14  
*Commencement Date:* S. 140(Sch. 3 item 28) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Inquiries Act 2014, No. 67/2014**

*Assent Date:* 23.9.14  
*Commencement Date:* Ss 134, 135 on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Court Services Victoria and Other Acts Amendment Act 2015, No. 25/2015**

*Assent Date:* 29.6.15  
*Commencement Date:* S. 9 on 30.6.15: Special Gazette (No. 183) 30.6.15 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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**Justice Legislation Further Amendment Act 2016, No. 3/2016**

*Assent Date:* 16.2.16  
*Commencement Date:* S. 58 on 1.5.16: Special Gazette (No. 114) 26.4.16 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Judicial Commission of Victoria Act 2016, No. 16/2016**

*Assent Date:* 19.4.16  
*Commencement Date:* Ss 161–166 on 1.7.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016**

*Assent Date:* 31.5.16  
*Commencement Date:* Ss 3(a)(b)(d)–(h), 4–18, 21–49 on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1; ss 3(c), 19, 20 on 1.12.16: Special Gazette (No. 194) 21.6.16 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Witness Protection Amendment Act 2016, No. 34/2016**

*Assent Date:* 15.6.16  
*Commencement Date:* S. 31 on 1.7.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Road Legislation Further Amendment Act 2016, No. 70/2016**

*Assent Date:* 29.11.16  
*Commencement Date:* Ss 47, 48 on 1.1.17: Special Gazette (No. 389) 20.12.16 p. 1  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017**

*Assent Date:* 16.5.17  
*Commencement Date:* Ss 128, 129 on 1.9.17: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Parliamentary Budget Officer Act 2017, No. 27/2017**

*Assent Date:* 27.6.17  
*Commencement Date:* S. 58 on 1.7.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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**Oaths and Affirmations Act 2018, No. 6/2018**

*Assent Date:* 27.2.18  
*Commencement Date:* S. 68(Sch. 2 item 69) on 1.3.19: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019, No. 2/2019**

*Assent Date:* 5.3.19  
*Commencement Date:* S. 196 on 6.3.19: s. 2(1); ss 49–56, 57(Sch. 1 Pt A) on 31.12.19: Special Gazette (No. 537) 17.12.19 p. 1; ss 112–130 on 1.1.20: s. 2(3); ss 179–181 on 1.7.20: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Audit Amendment Act 2019, No. 12/2019**

*Assent Date:* 4.6.19  
*Commencement Date:* S. 21 on 1.7.19: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Guardianship and Administration Act 2019, No. 13/2019**

*Assent Date:* 4.6.19  
*Commencement Date:* S. 221(Sch. 1 item 23) on 1.3.20: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019**

*Assent Date:* 25.6.19  
*Commencement Date:* S. 265(1) on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1; s. 265(2) on 1.7.20: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Local Government Act 2020, No. 9/2020**

*Assent Date:* 24.3.20  
*Commencement Date:* S. 390(Sch. 1 items 56.1(a), 56.2) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1; s. 390(Sch. 1 items 56.1(b)(c), 56.3–56.5) on 24.10.20: s. 2(3)(f)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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**Justice Legislation Miscellaneous Amendments Act 2020, No. 22/2020**

*Assent Date:* 30.6.20  
*Commencement Date:* Ss 7A–7H on 1.7.20: s. 2  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

**Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021, No. 11/2021**

*Assent Date:* 23.3.21  
*Commencement Date:* S. 138 on 24.3.21: s. 2(1); ss 126–137, 139, 198 on 26.4.21: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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### **3 Amendments Not in Operation**

This version does not contain amendments that are not yet in operation.

#### 4 Explanatory details

<sup>1</sup> The provisions of this Act have been renumbered and relettered according to sections 298 and 299 of the **Integrity and Accountability Legislation Amendment Act 2012**, No. 82/2012 (*repealed*).

S. 298 read as follows:

#### **298 Renumbering of sections of the Independent Broad-based Anti-corruption Commission Act 2011**

The sections of the **Independent Broad-based Anti-corruption Commission Act 2011** set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
1	1
2	2
3	3
3A	4
3B	5
3C	6
3D	7
4	8
5	9
5A	10
5B	11
6	12
7	13
8	14
9	15
10	16

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
11	17
12	18
13	19
14	20
15	21
16	22
17	23
18	24
19	25
20	26
21	27
22	28
23	29
24	30
25	31
26	32
27	33
28	34
29	35
30	36
31	37
32	38
33	39
33A	40
33B	41
33C	42
33D	43
33E	44

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
33F	45
33G	46
33H	47
33I	48
33J	49
33K	50
34	51
35	52
36	53
37	54
38	55
39	56
40	57
40A	58
40B	59
41	60
42	61
43	62
44	63
45	64
46	65
46A	66
47	67
47A	68
48	69
49	70
49A	71
49B	72

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
49C	73
49D	74
49E	75
49F	76
49G	77
49H	78
49I	79
49J	80
50	81
51	82
52	83
53	84
54	85
55	86
56	87
57	88
58	89
59	90
60	91
61	92
62	93
63	94
64	95
65	96
66	97
67	98

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
67A	99
<b>Note</b>	
This section inserted by the <b>Evidence Amendment (Journalist Privilege) Act 2012</b>	
68	100
69	101
70	102
71	103
72	104
73	105
74	106
75	107
76	108
77	109
78	110
79	111
80	112
81	113
82	114
82A	115
82B	116
82C	117
82D	118
82E	119
82F	120
82G	121
82H	122

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
82I	123
82J	124
82K	125
82L	126
82M	127
82N	128
82O	129
82P	130
82PA	131
82Q	132
82R	133
82S	134
82T	135
82U	136
82V	137
82W	138
82X	139
82Y	140
82Z	141
82ZA	142
82ZB	143
82ZC	144
82ZCA	145
<b>Note</b>	
This section inserted by the <b>Evidence Amendment (Journalist Privilege) Act 2012</b>	
82ZD	146

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
82ZE	147
82ZF	148
82ZG	149
82ZH	150
82ZI	151
82ZJ	152
82ZK	153
82ZL	154
82ZM	155
82ZN	156
82ZO	157
82ZP	158
83	159
84	160
85	161
86	162
87	163
88	164
89	165
89A	166
89B	167
89C	168
89D	169
89E	170
90	171
91	172
92	173
93	174
94	175

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
95	176
96	177
97	178
98	179
99	180
100	181
101	182
101A	183
101B	184
102	185
103	186
104	187
105	188
106	189
106A	190
107	191
108	192
108A	193
109	194
110	195
111	196
112	197
113	198

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S. 299 read as follows:

**299 Renumbering of other provisions of the Independent Broad-based Anti-corruption Commission Act 2011**

- (1) The Parts of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive Arabic numerals starting with "1".
- (2) The Divisions of each Part of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive Arabic numerals starting with "1".
- (3) The subsections of each section of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive Arabic numerals enclosed in parentheses starting with "(1)".
- (4) The paragraphs of each section or subsection, or of each definition, of the **Independent Broad-based Anti-corruption Commission Act 2011** are relettered so that they bear lower-case letters in alphabetical order enclosed in parentheses starting with "(a)".
- (5) The subparagraphs of each paragraph of each section or subsection, or of each paragraph of each definition, of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive lower-case Roman numerals enclosed in parentheses starting with "(i)".
- (6) The sub-subparagraphs of each subparagraph of each paragraph of each section or subsection, or of each subparagraph of each paragraph of each definition, of the **Independent Broad-based Anti-corruption Commission Act 2011** are relettered so that they bear upper-case letters in

alphabetical order in parentheses starting with "(A)".

- (7) Each provision of the **Independent Broad-based Anti-corruption Commission Act 2011** that refers to a provision that has been renumbered or relettered under section 298 or this section is amended by substituting a reference to the provision as renumbered or relettered.
- (8) In this section, *provision* includes paragraph, subparagraph and sub-subparagraph.