

Independent broad-based anti-corruption commission evaluation



Assessment question: The Independent Broad-based Anti-corruption Commission (IBAC) was created with the aim of preventing public sector corruption and police misconduct. How does IBAC meet its intended legislated and organizational functions and where does it sit within an administrative framework?

Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) is an entity put into force via statutory authority, and became operational of February 2013. IBAC has been consolidated via the *Independent Broad-based Anti-Corruption Commission Act* [1]. Through legislation, IBAC possess the power to investigate most matters surrounding corruption, as well as misconduct concerning the behaviors of the police and the public sector. Despite having most complaints referred straight to Victoria Police, IBAC generally adheres to more 'serious' matters such as those concerning the behaviors of a senior officer, or a complaint pertaining to corruption. Since inception, IBAC has become the cornerstone of integrity reforms in Victoria and has been crucial in setting up the anti-corruption and integrity sector for the years to come.

The powers of IBAC is varying and of a rather small scale, but predominantly they possess investigatory powers as well as the ability to call and hold public hearings.[2] Additionally, IBAC can monitor and oversee misconduct investigations conducted by Victoria Police.[3]

With the understanding of what IBAC is and what it offers, this research paper will aim to provide a clear understanding of legislation and how it

incorporates itself within the organizational functions of IBAC and what role it plays within the governmental and administrative setting.

The Effects of Legislation

The IBAC Act was passed in 2011 and became operational in 2013.

Legislation provided IBAC several investigative powers including:

- The power to induce or make someone give evidence[4];
- Intercept and use any form of surveillance devices[5];
- The power to seize and prohibit the making of documents[6]; and
- Ability to seize evidence via entering and search any premises of interest[7].

Through legislation, IBAC are tasked with formulating the identification and investigation of serious and corrupt behavior in both the police and the public sector, in which under section 18[8]of the Act enabled IBAC full independence. IBAC would not be subjected to follow or be overshadowed by the minister or any other body with higher authority. This however, is only in regard to the performance of IBAC's duties, functions and the exercising of its powers.

Jurisdiction has given IBAC functions relating to the conduct of police due to The Office of Police Integrity (OPI) being replaced by IBAC on February 2013. The overall purpose of the OPI was to detect, investigate and act upon corrupt behavior concerning the organization. Additionally, the police have the duty and responsibility to adhere to the laws pertaining to *The Charter of Human Rights and Responsibilities Act* [9] .

Upon takeover, legislation surrounding IBAC defines corrupt behavior; divided into five categories:

- Conduct that involves conspiracy and an attempt to take part in said conduct
- Misusing information.[10]
- Conduct of public officer or body (i. e. Victoria police and Police officers) breaching organizational or public trust.[11]
- Deliberate and dishonest behavior of the expected behavior needed for the functioning of a public body.[12]
- Conduct that affects the honest performance of the expected performance of both the public officer and body.[13]

In addition to the Act, IBAC has a duty relating to the *Charter of Human Rights and Responsibility Act* [14] . IBAC must always act compatibly with the Charter and must give appropriate and proper consideration to the rights of those making decisions.[15] Depending on the case, IBAC has the authority to act in a way which would limit an individual's rights. In the same vein, it is the responsibility of IBAC to ensure that police officers and protective service officers (PSO's) are always aware of the laws surrounding the human rights regulations as outlined in the Charter.[16]

When upholding the charter, IBAC:

- Assesses allegations received for potential breaches of the charter[17]; and
- Considers whether police officers and PSO's have had sufficient regard to the Charter rights where relevant, when conducting investigations, reviews of Victoria Police investigations and audits of complaints handled by Victoria Police.[18]

The other legislation that IBAC adheres to is the *The Protected Disclosure Act*. [19]The Act illustrates IBAC's role in deciding which complaints can be treated as a protected disclosure.[20]

As part of making its assessment, IBAC has to determine which complaint is eligible to the protected disclosure status pertaining to the Act. Under the Act, IBAC, the Victorian Ombudsman, Victoria Police, and the Judicial Commission are the only ones who can investigate complaints that have a protected disclosure in place.[21]Depending on the case and investigative information, IBAC determines if any of those agencies are adequately placed to investigate the particular complaint and as a result will transfer the matter to the chosen agency for investigation.[22]

In the same notion, IBAC also has the responsibility under the Act to deliver guidelines on

handling disclosures and ensuring the good and healthy welfare of those who had protected disclosures, and ensuring their responsibility to provide information and education about the protected disclosure scheme is met.

[23]

Overall, IBAC through legislation has been given several powers from being independent to the main crux of being able to execute search warrants, force the giving of evidence, summoning witnesses and doing all that is necessary to maintaining the ease in which the public can confide within.

Organizational Functions

IBAC is Victoria's independent anti-corruption agency which oversees Victoria Police. They are responsible for preventing, as well as prosecuting corruption and misconduct of both the police and the public sector. With legislation, IBAC has jurisdiction which covers the Victorian public sector, and that includes: Victoria Police, government departments/agencies, councils, schools/universities, public hospitals as well as the judiciary.[24]

IBAC was introduced with 3 main functions:

- Identify, expose and investigate serious corrupt behavior[25];
- Identify, expose and investigate police personnel misconduct[26]; and
- Assess police personnel conduct.[27]

In conjunction to the Act, IBAC determines whether or not corruption and misconduct has occurred. Upon and post investigation, IBAC details and clarifies any recommendations in this particular case in order to strengthen current systems and controls to further help enhance the prevention of corruption and misconduct.

By exposing and establishing appropriate measures through various methods such as investigations, reviews, reports, media and case studies, all

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these actions drive, to not only deter future wrongdoings, but it also ensures the broader community is more aware about corruption and making the public aware that no such behavior(s) will be tolerated.

At the end of the day, corruption does not only affect the offender(s) and the reputation of Victoria Police, or anything relating to the public sector but it also hurts the state of Victoria and its people due to the probable, and unnecessary use of tax payers money as well as the loss of public confidence and trust.

Where does IBAC sit within the Administrative Framework?

Administrative law is all about advocating and ensuring the correct standards set by the executive government decision makers.[28]This is achieved by preparing in principle that public authorities as well as officials of higher power must act within the law.[29]The whole notion of the administrative framework is to strike a balance concerning the interest of the public and the concerted interests represented by the government.

Individual decisions made by public officials, government departments and even some areas of the public sector are governed by administrative law. These usually come about due to statutory power and they typically do not include policy, legislation or contracts.[30]Decisions are reviewed by way of a merits/judicial review, and via the Ombudsman.

Administrative law assigns four key pillars for challenging and deciding administrative matters. These are:

- Judicial review: Courts decide and gives judgment surrounding the legality of a decision.[31]

- To access government documents due to freedom of information must require agencies to publish a certain piece of information.[32]

- Merits review: Decisions are reviewed independently and it is impartially reconsidered.[33]

- Independent investigations of complaints made to ombudsman regarding the unjust actions of the executive, as well as the direct actions of public officials.[34]

In the case of IBAC, and as specified, they possess varying powers which helps them go about their business. Depending on the severity of a case, IBAC has the power to act, enter, seize, or stop the production of documents or any other evidence. In addition, IBAC could use phone intercepts and any other surveillance devices. To keep IBAC in check they must always apply to the courts and tribunals to seek warrants when investigating a case.

When sufficient evidence of misconduct or corruption has been met, IBAC may then bring a criminal case forward for a particular offence. They can prosecute certain offences depending on the case but for the majority they cannot decide whether a person is guilty or innocent; but rather, refer the matter to the courts.

Through discussion, IBAC has powers to fully investigate allegations of misconduct and corrupt behavior. With such powers there are also limitations. IBAC must apply to the Supreme Court (or any other courts <https://assignbuster.com/independent-broad-based-anti-corruption-commission-evaluation/>

depending on the case) before the exercising of particular powers.

Accordingly, The Public Interest Monitor would make reviews and submissions on behalf of IBAC applications surrounding the warrants for surveillance devices and telecommunication interception.[35]

IBAC are restricted in investigating matters that is not within the nature of corruption or serious misconduct. Due to this, IBAC may refer complaints or investigative information to another body, mainly the Ombudsman of Victoria under *The Protected Disclosure Act* .[36]The Ombudsman will be tasked with investigating administrative actions concerning matters which do not appear to involve corrupt behavior, as well as actions that do not appear to involve corruption, given that it has first been given a referral by IBAC. By doing this, it would ensure that all suspected activity surrounding corruption and misconduct can be competently investigated and hopefully eroded.

Conclusion

IBAC seeks solutions towards the various and robust cases that aligns its core operation, functions, management and investigatory powers to prevent and prosecute corrupt and illegal behavior. As a result, this encompasses all of IBAC's operational activities and procedures needed whilst remaining adaptable to the changes and processes which adhere to legislation, whether it is from any of the past or future amendment to legislation concerning the operation of IBAC.

Despite such powers, the reality is and due to the nature of what they investigate, and depending on the nature of ' corruption' or ' misconduct', IBAC are still answerable at the most part to those of higher power and the

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courts. The scope of what IBAC investigates is already of a small field, and with the 'reasonable satisfaction' requirement further compounded, prior to starting investigation, IBAC's position within the administration setting is of a very limited nature in terms of what they can and cannot do and who they answer to.

It is vital that decision makers and bodies such as IBAC are all vulnerable under administration law and be subjected to review or be held to accountable to continue to ensure that the trust and the confidence of the public in the system is as strong as it should and needs to be.

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