

Parliamentary Library Research Service  
Department of Parliamentary Services

## **Current Issues Brief**

### **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011**

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A discussion of issues relevant to the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011. The paper includes background information, an overview of the main provisions of the Bill, and information on anti-corruption commissions in other Australian jurisdictions.

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This Current Issues Brief is part of a series of papers produced by the DPS Library's Research Service. Current Issues Briefs seek to provide an overview of a subject for Members, and include information on key issues related to the subject. The views expressed in this paper are those of the authors.

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## Introduction

The Baillieu Government introduced the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011 ('the Bill') on 8 December 2011. The Bill amends the *Independent Broad-based Anti-corruption Commission Act 2011* ('the IBAC Act') which was assented to on 29 November 2011. The IBAC Act provides for the creation of a Victorian anti-corruption commission – the Independent Broad-based Anti-corruption Commission or 'IBAC' – similar to existing anti-corruption commissions in New South Wales, Queensland, Western Australia and Tasmania.

The Baillieu Government is introducing legislation to create the IBAC in stages. The first IBAC Bill, which is now the IBAC Act, established the role of the IBAC commissioner and provided for the IBAC's educational and corruption prevention functions.<sup>1</sup> The first IBAC Bill also provided for the establishment of a Joint House Committee of the Parliament of Victoria to oversee the IBAC. This Bill, the second IBAC Bill, provides for the IBAC's jurisdiction and investigative functions. Further legislation, yet to be released, will provide for the IBAC's examination and referral powers.

The stated purpose of this Bill is to provide the IBAC with duties, functions and powers to enable it: to identify, expose, and investigate serious corrupt conduct (across the public sector) and police misconduct; to assess police personnel conduct; and to prevent corrupt conduct and police personnel misconduct. Hence, the IBAC will have oversight of serious corrupt conduct across the public sector (including police) and will have oversight of police conduct generally.

The Bill makes consequential amendments to the *Parliamentary Committees Act 2003* to enable oversight of the IBAC's newly provided investigative functions and the *Police Regulation Act 1958* to provide for the IBAC's oversight of police personnel conduct. The Bill also makes consequential amendments to the *Surveillance Devices Act 1999* and the *Telecommunications (Interception) (State Provisions) Act 1988* in order to include the IBAC as an agency under those Acts.<sup>2</sup> The Bill additionally provides for the repeal of the *Police Integrity Act 2008*, the enabling legislation for the Office of Police Integrity ('the OPI').

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<sup>1</sup> The Parliamentary Library Research Service produced a Current Issues Brief on the Independent Broad-based Anti-corruption Commission Bill 2011. See C. Ross et al. (2011) 'Independent Broad-based Anti-corruption Commission Bill 2011', *Current Issues Brief*, no. 1, Melbourne, Victorian Parliamentary Library, viewed 11 January 2012, <<http://www.parliament.vic.gov.au/publications/research-papers?sort=latest>>.

<sup>2</sup> Explanatory Memorandum, Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011, pp. 1-2.

## 1. Second Reading Speech

The Minister responsible for the establishment of an anti-corruption commission,<sup>3</sup> the Hon. Andrew McIntosh, gave the second reading speech for the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011 on 8 December 2011. Mr McIntosh began his speech by saying that:

Last month this Parliament passed historic legislation creating Victoria's first ever anticorruption body with oversight of the entire public sector: the Independent Broad-based Anti-corruption Commission Act 2011... That act sets the foundations for IBAC, establishing its corporate structure and providing it with crucial education and prevention functions. This Bill builds upon that act to implement IBAC's investigative functions and powers.<sup>4</sup>

Mr McIntosh said that this Bill provides the 'framework' for the IBAC: 'defining its jurisdiction, providing investigative and complaint handling powers, and setting recommendation and reporting functions'.<sup>5</sup>

Mr McIntosh said that the Bill provides important definitions that articulate the IBAC's investigative jurisdiction, including the definition of 'corrupt conduct'. He said that in accordance with the Government's policy, the IBAC's jurisdiction is broad-based, covering the wider public sector and including Ministers, MPs, Ministerial advisers, Parliamentary officers, all police personnel, the judiciary, local government and a range of other public officers and bodies.<sup>6</sup>

He emphasised that the Bill establishes that the IBAC has two main jurisdictional areas of responsibility: the first being jurisdiction over serious corrupt conduct as it relates to the whole public sector (including police), and the second being oversight of police conduct generally for both members of the police force and other police personnel. In this regard, he stated that the Bill delivers on the Coalition Government's promise to instil oversight of the police in a single expert body.<sup>7</sup>

Mr McIntosh said that the Bill provides for any person to make a complaint to the IBAC about conduct they believe may be corrupt and for relevant principal officers of public bodies to notify the IBAC of conduct they believe to be corrupt. The Bill also provides that individuals will be able to make complaints regarding police personnel conduct to the IBAC, and requires the Chief Commissioner of Police to notify the IBAC of complaints in relation to police personnel who are not members of the police force.<sup>8</sup>

The Minister stated that the Bill allows the IBAC to conduct an investigation on a complaint, a notification or on its own motion. He said that the IBAC is obligated to only investigate matters of serious corrupt conduct.<sup>9</sup> He explained that future legislation, to be introduced in 2012, will provide mechanisms for the IBAC to refer matters it receives that do not fit within its definition of corrupt conduct to other, more appropriate, bodies.<sup>10</sup>

The Minister noted that the Bill provides for special procedures for IBAC investigations in relation to the judiciary, in order to ensure the preservation of the separation of powers. He said that the Bill 'strikes a balance between independence and accountability by recognising

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<sup>3</sup> The 'Minister responsible for the establishment of an anti-corruption commission' is the Minister's formal title.

<sup>4</sup> Victoria, Legislative Assembly (2011) *Debates*, Book 20, 8 December, pp. 6305-6306.

<sup>5</sup> *ibid.*, p. 6305.

<sup>6</sup> *ibid.*, p. 6306.

<sup>7</sup> *ibid.*, pp. 6305-6306.

<sup>8</sup> *ibid.*, p. 6307.

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

the special independent nature of the judiciary, while still providing a mechanism to investigate the judiciary for this type of conduct'.<sup>11</sup>

Mr McIntosh then spoke about the Bill's provision of 'strong investigative powers' to enable the IBAC to carry out its investigative functions effectively.<sup>12</sup> In regard to police, he said that the IBAC is empowered to 'require members of the police force to give information, documents and answers' and that 'Failure to comply with a direction will be a breach of discipline under the Police Regulation Act'.<sup>13</sup>

He said that authorised IBAC Officers will 'be able to enter police personnel premises on the reasonable belief that there are documents or other things that are relevant to an IBAC investigation on those premises'.<sup>14</sup> Furthermore, if 'there is a concern that relevant documents may be concealed or destroyed, or their forensic value diminished, authorised IBAC Officers will be entitled to seize those documents or things'.<sup>15</sup>

The Minister further said that the 'IBAC will be able to apply to the Supreme Court for a search warrant in relation to other premises, such as government departments, vehicles and so on'.<sup>16</sup>

He added that these powers are 'appropriately balanced with provisions to protect those subject to these powers', including procedural safeguards such as 'the power to apply to the Supreme Court for return of things seized from police personnel premises under entry and search powers'.<sup>17</sup>

The Minister also stated that the Bill amends the Surveillance Devices Act to allow IBAC Officers to use surveillance devices during covert investigations'.<sup>18</sup> He said that in order to enable the IBAC to intercept telecommunications during investigations, the Bill amends the Telecommunications (Interception) (State Provisions) Act, and that the Commonwealth will need to amend the relevant Commonwealth legislation.<sup>19</sup>

In regard to the outcome of investigations, the Minister stated that the 'IBAC will report directly to Parliament, preserving its independence from executive control'.<sup>20</sup> He also said that the Bill provides procedural fairness protections for persons named or adversely commented on in an IBAC report.<sup>21</sup> The Minister additionally stated that:

The Bill also enables IBAC to make a private recommendation arising out of an investigation to one or more of the relevant principal officers, or responsible minister or the Premier, as appropriate. Such a recommendation might be to take action to prevent something from happening in the future. IBAC will be able to require a report in response to the recommendation, and if that response is not satisfactory, IBAC will be able to report on that matter in accordance with the reporting provisions.<sup>22</sup>

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<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*, p. 6308.

<sup>13</sup> *ibid.*, p. 6307.

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*, pp. 6307-6308.

<sup>16</sup> *ibid.*, p. 6308.

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> See *ibid.*

<sup>22</sup> *ibid.*

## 2. Background

Readers are advised that the Parliamentary Library's Current Issues Brief on the Independent Broad-based Anti-corruption Commission Bill (2011) – the first IBAC Bill – provides detailed background information on: the definition, effects and control of corruption; the history and current composition of Victoria's integrity system (including the Proust Review, the Coalition response to the Proust Review and proposal of the IBAC model); and the history and composition of anti-corruption commissions in other Australian jurisdictions.<sup>23</sup>

The Background section for this Current Issues Brief will focus on issues relating to the content of the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill, including the intended jurisdiction (with a focus on police oversight) and investigatory powers of the IBAC.

A review of the available literature on Australian anti-corruption commissions found that experts in the field commonly identify the jurisdiction, definition of corruption, and investigatory powers, as key elements in the composition of anti-corruption commissions.<sup>24</sup>

### Jurisdiction and Police Oversight

The Liberal Nationals Coalition went to the 2010 Victorian state election with a policy to establish a public-sector-wide anti-corruption commission, modelled on New South Wales' Independent Commission Against Corruption (ICAC). Unlike the ICAC, however, the proposed IBAC would also have jurisdiction over police (in line with the anti-corruption commissions in Queensland and Western Australia).<sup>25</sup> Under Coalition policy Victoria's current police watchdog agency – the Office of Police Integrity (OPI) – will be subsumed within the overarching public sector integrity body of the IBAC.<sup>26</sup> Notably, it is this Bill that provides for the repeal of the Police Integrity Act 2008, the enabling legislation of the OPI.<sup>27</sup>

#### *Office of Police Integrity*

The OPI was established as a police oversight and anti-corruption body – by the Bracks Labor government in 2004 – through amendments to the Police Regulation Act.<sup>28</sup> In 2008, the enactment of the Police Integrity Act then provided stand alone legislation that consolidated provisions of the Police Regulation Act specific to the OPI.<sup>29</sup> Under the Police Integrity Act, the OPI is headed by the Director, Police Integrity and has 'a mandate to detect, investigate and prevent corruption and serious misconduct by sworn members of Victoria Police' and to 'oversee complaints about police'.<sup>30</sup> The OPI is equipped with a full suite of coercive powers to undertake its investigations, and can conduct an investigation on the basis of a complaint or on its own motion.<sup>31</sup> The OPI's exercise of coercive powers is

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<sup>23</sup> See Ross (2011) op. cit.

<sup>24</sup> For example see: T. Prenzler & N. Faulkner (2010) 'Towards a Model Public Sector Integrity Commission', *Australian Journal of Public Administration*, vol. 69, iss. 3, pp. 251-262; R. Douglas (2009) *Douglas and Jones's Administrative Law*, Sixth Edition, Sydney, Federation Press, pp. 175-192; P. Hall (2004) *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures*, Sydney, Lawbook.

<sup>25</sup> Victorian Liberal Nationals Coalition (2010) *IBAC: An Independent Broad-based Anti-corruption Commission for Victoria*, Melbourne, Liberal Victoria, p. 4.

<sup>26</sup> Victorian Liberal Nationals Coalition (2010) op. cit., pp. 22, 33.

<sup>27</sup> See clause 16 of the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill.

<sup>28</sup> For further background information on the establishment of the OPI in 2004, see Ross (2011) op. cit., pp. 5-6.

<sup>29</sup> Office of Police Integrity (2011) *Annual Report 2010-11*, Melbourne, OPI, p. 20, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=17&m=10&t=1>>.

<sup>30</sup> Office of Police Integrity (2009) *The Office of Police Integrity: The First Five Years, Nov 2004 – Nov 2009*, Melbourne, OPI, p. 6, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=21&m=11&t=1>>.

<sup>31</sup> Office of Police Integrity (2011) 'About OPI', OPI website, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=7&m=1&t=1>>; Office of Police Integrity (2011) *Annual Report 2010-11*, op. cit., pp. 22-23.

overseen by the Special Investigations Monitor (SIM).<sup>32</sup> As at 30 June 2011, the OPI employed 146 people<sup>33</sup> and in the 2010-11 financial year the budget target for the OPI by the Department of Justice was \$26.2 million.<sup>34</sup>

The design and performance of the OPI has been subject to some criticism. The Brumby government's 2009-10 *Review of Victoria's Integrity and Anti-Corruption System* – known as 'the Proust Review' – found that the effectiveness of the OPI could be improved by extending its jurisdiction from being limited to sworn officers to including all employees of Victoria Police.<sup>35</sup> The Report of the Proust Review noted that 'The changing nature of police work means that unsworn public servants now comprise 24 percent of Victoria Police's workforce. These employees may be senior, work closely with sworn officers and have access to highly sensitive information and evidence'.<sup>36</sup> The Report further noted that 'unsworn officers are not subject to OPI investigations; rather their conduct is subject to scrutiny by the Ombudsman' and went on to recommend that the distinction between investigations into sworn officers and unsworn employees of Victoria Police be removed.<sup>37</sup>

The Proust Review also found that oversight of the OPI could be improved. The Report noted that currently the SIM has oversight of the OPI's exercise of powers 'while the Ombudsman may investigate complaints into the administrative actions of OPI officers'.<sup>38</sup> The Report stated that this arrangement risked 'unnecessarily disjointed oversight' where scrutiny of OPI officers' conduct is separated from their exercise of powers. The Report also stated that 'This arrangement may be perceived as a conflict of interest, given the initial appointment of the current Ombudsman as the head of the OPI'.<sup>39</sup>

#### *Position of the Parties on Police Oversight*

In June 2010, the Brumby government accepted the recommendations of the Proust Review. Labor policy going into the 2010 state election was to extend the jurisdiction of the OPI to include unsworn as well as sworn employees of Victoria Police. Additionally, under the Proust model the OPI was to become a part of the proposed 'Victorian Integrity and Anti-Corruption Commission' or 'VIACC' which was to have been overseen by a Parliamentary Committee.<sup>40</sup>

The Victorian Greens have stated that they are not opposed to the Office of Police Integrity, or the concept of a police oversight body, but that it needs to be accompanied by a 'broad-ranging' anti-corruption commission on the model of those in the other major states. The Greens have also said that the Director, Police Integrity, as an independent officer of the Parliament, should be accountable to a Parliamentary Committee.<sup>41</sup>

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<sup>32</sup> Office of Police Integrity (2011) 'About OPI', op. cit. Note: the Victorian Parliament passed the *Public Interest Monitor Act 2011* on 24 November 2011, the object of which is to provide further checks and balances on applications to use coercive powers and conduct covert investigations in Victoria. See Victoria, Legislative Assembly (2011) *Debates*, Book 17, 25 October, pp. 4833–4835.

<sup>33</sup> Office of Police Integrity (2011) *Annual Report 2010-11*, op. cit., pp. 46, 64.

<sup>34</sup> Victorian Government (2011) *Service Delivery: Budget Paper No. 3: 2011-12*, Melbourne, Department of Treasury and Finance, p. 241, viewed 3 February 2012, <<http://www.budget.vic.gov.au/CA25783300199E40/pages/service-delivery>>.

<sup>35</sup> E. Proust & P. Allen (2010) *Review of Victoria's Integrity and Anti-Corruption System*, Public Sector Standards Commissioner, Melbourne, State Services Authority, p. 20, viewed 30 January 2012, <<http://www.ssa.vic.gov.au/products/view-products/review-of-victorias-integrity-and-anti-corruption-system.html>>.

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> J. Brumby (2010) *Government Adopts the Proust Integrity Model*, Media Release, 2 June; Ross (2011) op. cit., pp. 7-8.

<sup>41</sup> See Victoria, Legislative Council (2008) *Debates*, Book 6, 8 May, pp. 1602-1607. Section 9 of the Police Integrity Act 2008 provides that the Director, Police Integrity is an independent officer of the Parliament.



The Coalition has stated that the OPI is 'flawed in both its conception and operations' as an anti-corruption body because its jurisdiction is limited to sworn police officers (rather than being public-sector-wide) and it is not subject to standing Parliamentary oversight.<sup>42</sup> The Coalition's key policy document on IBAC states that: 'police corruption, as with all government corruption, must be subject to the investigative power and jurisdiction of a single body capable of investigating corruption where ever it leads'.<sup>43</sup>

As stated in the Minister's second reading speech, this Bill provides that the IBAC will have oversight of serious corrupt conduct across the public sector (including sworn police officers and unsworn staff) as well as oversight of police conduct generally.<sup>44</sup> The Bill uses the term 'police personnel' to refer to both sworn and unsworn employees of Victoria police.<sup>45</sup> It uses terms such as 'a public officer who is a member of police personnel other than a member of the police force' to indicate an unsworn employee, and 'a public officer who is a member of the police force' to indicate a sworn officer.<sup>46</sup>

### Investigatory Powers

Strong investigatory powers are conferred on anti-corruption commissions because the 'hidden' nature of corruption makes it difficult to detect and expose. The available literature on the subject explains that corruption is often described as a 'consensual' or 'victimless' crime, where those involved have a mutual interest in keeping it hidden.<sup>47</sup> As Michael Symons puts it: 'If the outcome is achieved – both parties are happy. Even if the outcome is not achieved it is highly unlikely the 'losing' party will complain to the authorities'.<sup>48</sup> Accordingly, it is argued that corruption is much more likely to be exposed in jurisdictions that have an anti-corruption commission with strong powers and comprehensive coverage of the public sector.<sup>49</sup>

Features common to Australian anti-corruption commissions include the capacity to: conduct own motion investigations; apply for warrants to search properties and seize evidence; engage in covert tactics including the use of listening devices, optical surveillance, assumed identities and controlled operations; hold public hearings and require attendance and answers to questions.<sup>50</sup> Articulations of best practice hold that these powers need to be subject to Parliamentary oversight and balanced with safeguards against unnecessary infringements on individual rights.<sup>51</sup>

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<sup>42</sup> Victorian Liberal Nationals Coalition (2010) op cit., p. 12.

<sup>43</sup> *ibid.*, p. 22.

<sup>44</sup> Victoria, Legislative Assembly (2011) *Debates*, Book 20, 8 December, p. 6305.

<sup>45</sup> See clause 3 of the Bill for the formal definition of 'police personnel'.

<sup>46</sup> See new section 3B provided by clause 4 of the Bill.

<sup>47</sup> A.J. Brown & B. Head (2005) 'Institutional Capacity and Choice in Australia's Integrity Systems', *Australian Journal of Public Administration*, vol. 64, iss. 2, p. 92; B. Hindess (2004) *Corruption and Democracy in Australia*, Report No. 3, Democratic Audit of Australia, Canberra, p. 15, viewed 1 February 2010, <[http://democraticaudit.org.au/?page\\_id=21](http://democraticaudit.org.au/?page_id=21)>; Douglas (2009) op. cit., p. 175.

<sup>48</sup> M. Symons (2008) 'Catch Me if You Can! A Comparison Between the Law Enforcement and Commission Approach to Corruption Investigation', Conference Paper, *Empowering Anti-Corruption Agencies: Defying Institutional Failure and Strengthening Preventative and Repressive Capacities*, Network on Anti-Corruption Agencies, University Institute of Lisbon, p. 1.

<sup>49</sup> Prenzler & Faulkner (2010) op. cit., p. 255.

<sup>50</sup> *ibid.*, p. 259.

<sup>51</sup> *ibid.*, pp. 259-260; Brown & Head (2005) op. cit., p. 94. Also see Law Institute Victoria (2010) *Submission to the Integrity and Anti-corruption System Review*, LIV, East Melbourne, viewed 2 February 2012,

<<http://www.ssa.vic.gov.au/products/view-products/review-of-victorias-integrity-and-anti-corruption-system.htm>>;

Liberty Victoria (2010) *Position Paper on the Proposed Victorian Integrity and Anti-Corruption Commission*, 24 September, LV, Melbourne, viewed 2 February 2012, <<http://www.libertyvictoria.org/node/31>>.

### *Office of Police Integrity Powers*

In order to provide a comparison between the existing investigative powers of the OPI and those proposed for the IBAC by this Bill, a brief outline of the OPI's powers is provided below:<sup>52</sup>

[Under the Police Integrity Act] The Director [OPI] has the power to:

- Conduct investigations into the conduct of a sworn member of Victoria Police.
- Conduct investigations into police corruption or misconduct generally.
- Conduct investigations into any of the policies, practices or procedures of Victoria Police.
- Direct any member of Victoria Police to give information and documents and answer questions concerning investigations into disciplinary matters (section 47).
- Summons (require) witnesses to attend examinations to give evidence and to produce specified documents or other things (section 53).
- Conduct an examination (interview or hearing) for the purpose of an investigation (section 61).

Authorised OPI officers have the power to enter, search and seize documents or other things from public authority premises, if they believe it is relevant to an investigation (sections 88 & 89).

Authorised OPI officers may enter, search and inspect or copy things at public authority premises (section 88), and may seize them in certain circumstances (section 89) if this is relevant to an investigation.

Authorised OPI officers can carry firearms and use defensive equipment when required for the protection of the officer in the performance of their duties (section 102 & 103).

*Confiscation Act 1997* - Authorised OPI officers have the power to obtain orders from the Supreme Court of Victoria to direct financial institutions to provide financial information if it is believed that the person is involved in the commission of an offence (section 115).

*Crimes (Assumed Identities) Act 2004* - Authorised OPI officers have powers to obtain and use 'assumed identities' (false identities) to enable them to perform investigations of a covert nature (section 4). The Director must specifically authorise the use of an 'assumed identity' (section 5).

*Crimes (Controlled Operations) Act 2004* - Authorised OPI officers can perform 'controlled operations' (section 12). This Act enables authorised OPI officers, in limited circumstances, to do things which would otherwise be illegal, as long as it is for the purpose of obtaining evidence for a criminal offence. The Director must specifically authorise the undertaking of any controlled operation (section 13).

*Surveillance Devices Act 1999* - Authorised OPI officers can apply for warrants from the Magistrates or Supreme Court of Victoria, to enable them to use and install surveillance devices for the purpose of investigations.

*Telecommunications (Interception and Access) Act 1979* [Cth.] - Authorised OPI officers can apply for warrants from the Administrative Appeals Tribunal (AAT) or Federal Court to allow them to intercept and access telecommunications for the purpose of investigations.

*Whistleblower Protection Act 2001* - The Ombudsman may refer relevant matters to the Director under this Act. OPI has a range of powers under the Act to conduct investigations or into matters referred by the Ombudsman.<sup>53</sup>

This Bill provides the IBAC with powers that include the ability to: conduct own motion inquiries (s 41); require members of the police force to give information, produce documents and answer questions (s 53); use entry, search and seizure powers in police premises (ss 54-59); apply to the Supreme Court for search warrants in regard to other premises (ss 60-

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<sup>52</sup> This list of powers is quoted verbatim from the OPI website. Office of Police Integrity (2011) 'Powers', OPI website, viewed 30 January 2012, <<http://www.opi.vic.gov.au/index.php?i=40&m=95&t=1>>.

<sup>53</sup> *ibid.*

66); and use defensive equipment and firearms (ss 70-82). The Bill also provides for the IBAC to use surveillance devices (cl 13) and intercept telecommunications (cl 14) (subject to Commonwealth approval). Readers should bear in mind that, as stated previously, further IBAC legislation is pending.

### 3. Main Provisions of the Bill

This section of the Current Issues Brief provides an overview of the main provisions of the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011. For a description of the Bill in its entirety readers are directed to consult the Explanatory Memorandum.

#### Part 1 – Preliminary

##### *Purpose*

Clause 1 of the Bill provides that the purpose of the proposed Act is to—

- (a) amend the Independent Broad-based Anti-corruption Commission Act 2011 to provide the IBAC with the duties, functions and powers to enable the IBAC to—
  - (i) identify, expose and investigate serious corrupt conduct;
  - (ii) identify, expose and investigate police personnel misconduct;
  - (iii) assess police personnel conduct;
  - (iv) prevent corrupt conduct and police personnel misconduct;
- (b) consequentially amend the Parliamentary Committees Act 2003, the Police Regulation Act 1958, the Surveillance Devices Act 1999 and the Telecommunications (Interception) (State Provisions) Act 1988;
- (c) repeal the Police Integrity Act 2008.

##### *Commencement*

Clause 2 of the Bill provides that the proposed Act will come into operation on a day or days to be proclaimed.

#### Part 2 – Amendment of the Independent Broad-based Anti-corruption Commission Act 2011

##### Division 1 – Amendment of Parts 1 and 2 of the Act

##### *Definitions*

Clause 3 of the Bill inserts 48 definitions of key words or terms into section 3 of the IBAC Act.

##### *New Sections 3A to 3C Inserted*

Clause 4 of the Bill inserts new sections 3A, 3B and 3C after section 3 of the IBAC Act. Notably, section 3A provides the definition of ‘corrupt conduct’ for the IBAC Act:

- (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
  - (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
  - (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d)—

being conduct that would, if the facts were found proved beyond a reasonable doubt at a trial, constitute a relevant offence.

The term 'relevant offence' is defined in clause 3 of the Bill as meaning:

- (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.

Section 3A(2) then provides that '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*'.

Section 3B inserts definitions of 'police personnel conduct', 'police personnel conduct complaint' and 'police personnel misconduct'. It provides that for the purposes of the IBAC Act—

*Police personnel conduct*, in relation to a public officer who is a member of the police force, means—

- (a) an act or decision or the failure or refusal by the member of the police force 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 member of the police force has as or, by virtue of being, a member of the police force; or
- (b) conduct which constitutes an offence punishable by imprisonment; or
- (c) conduct which is likely to bring the police force into disrepute or diminish public confidence in it; or
- (d) disgraceful or improper conduct (whether in the member of the police force's official capacity or otherwise);

*Police personnel conduct*, in relation to a public officer who is a member of police personnel other than a member of the police force, means—

- (a) an act or decision or the failure or refusal by the member of police personnel 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 member of police personnel has as or, by virtue of being, a member of police personnel; or
- (b) conduct which is likely to bring police personnel into disrepute or diminish public confidence in police personnel;

*Police personnel conduct complaint* means—

- (a) a complaint made to the IBAC under section 86L of the Police Regulation Act 1958 in relation to the conduct of a member of the police force; or
- (b) a complaint made to the IBAC in relation to the police personnel conduct of a member of police personnel other than a member of the police force;

*Police personnel misconduct*, in relation to a public officer who is a member of the police force, means—

- (a) conduct which constitutes an offence punishable by imprisonment; or
- (b) conduct which is likely to bring the police force into disrepute or diminish public confidence in it; or
- (c) disgraceful or improper conduct (whether in the member of the police force's official capacity or otherwise);

*Police personnel misconduct*, in relation to a public officer who is a member of police personnel other than a member of the police force, means conduct which is likely to bring police personnel into disrepute or diminish public confidence in police personnel.

Notably, section 3C inserts definitions of 'public body', 'public officer' and 'public sector' into the IBAC Act and by doing so sets out the jurisdiction of the IBAC:

- (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);
  - (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 the 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 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 1989*;
  - (m) a member of Council staff employed under the Local Government Act 1989;
  - (n) a judge, 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;
  - (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.

Subsection 3C(2) provides that the following are not a public body or a public officer for the purposes of the IBAC Act: the IBAC, an IBAC officer, a Public Interest Monitor, the Office of the Special Investigations Monitor, the Special Investigations Monitor, the Victorian Inspectorate, a Victorian Inspectorate Officer, and a court.

#### *Section 4 Substituted— Objects of Act*

Clause 5 of the Bill replaces the existing section 4 of the IBAC Act, which sets out the objects of the Act, with a new extended section 4. The extended section 4 provides that the objects of the IBAC Act are to—

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

- (i) serious corrupt conduct; and
- (ii) police personnel misconduct;
- (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.

*Section 9 Substituted— Functions of the IBAC*

Clause 6 of the Bill replaces the existing section 9 of the IBAC Act, which sets out the functions of the IBAC, with a new extended section 9:

- (1) The IBAC has the functions conferred on the IBAC under this Act or any other Act.
- (2) The IBAC has the following functions—
  - (a) to identify, expose and investigate serious corrupt conduct;
  - (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 members of the police force;
    - (iii) to ensure that members of the police force have regard to the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.
- (4) The IBAC has education and prevention functions for the purpose of achieving the objects of this Act.
- (5) Without limiting the generality of subsection (4), the IBAC has the following functions under subsection (4) —
  - (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.
- (6) 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.

## **Division 2— Parts 3 and 4 Substituted**

### *Parts 3 and 4 Substituted*

Clause 9 of the Bill extends for 63 pages and replaces the existing Part 3 (Reports) and Part 4 (General) of the IBAC Act with the following new Parts:

- Part 3 (Investigations);
- Part 4 (Investigative Powers);
- Part 5 (Defensive Equipment and Firearms);
- Part 6 (Recommendations, Actions and Reports); and
- Part 7 (General).<sup>54</sup>

### New Part 3— Investigations

The new Part 3 provides the IBAC with the ability to conduct investigations and has three Divisions: Division 1 deals with complaints to the IBAC (new sections 34-38); Division 2 deals with the provision of information and notifications to the IBAC (new sections 39-40); and Division 3 deals with conducting investigations (new sections 41-49).

#### *Division 1—Complaints to the IBAC*

Section 34 provides that a person may make a complaint to the IBAC about corrupt conduct.

Section 35 provides that a person may make a complaint to the IBAC about police personnel conduct.

Section 36 provides that complaints to the IBAC must be in writing unless there are exceptional circumstances.

Section 37 provides for the procedure by which a detained person can make a complaint to the IBAC.

Section 38 provides that if a person withdraws a complaint they made to the IBAC, the IBAC may continue to investigate the matter on its own motion.

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

Section 39 provides that the IBAC may receive and use information relevant to its investigations even if that information has not been part of a complaint.

Section 40 provides that the relevant principal officers may notify the IBAC of conduct believed to be corrupt. It also provides that the Chief Commissioner of Police must notify the IBAC of any complaints received about police personnel misconduct in relation to a member of police personnel who is not a member of the police force, and of the results of an investigation in such a case, including details of any action taken or proposed. Notably, under the Police Regulation Act, the Chief Commissioner of Police is required to notify the IBAC of complaints made about police personnel misconduct by a member of the police force.

Section 40 additionally provides that the Chief Commissioner must also notify the IBAC of any complaint made to the police about the conduct of the Chief Commissioner of Police, the Deputy Commissioner of Police, or an Assistant Commissioner of Police.

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<sup>54</sup> Explanatory Memorandum, p. 15.



### *Division 3— Carrying Out Investigations*

Section 41 deals with conducting investigations into corrupt conduct. Subsection 41(1) provides that the IBAC may conduct an investigation in accordance with its corrupt conduct investigative functions, on a complaint (made to the IBAC under s 34), on a notification (made to the IBAC under s 40(1)), or on its own motion. Subsection 41(2) provides that the IBAC must not conduct an investigation unless it is reasonably satisfied that the conduct is serious corrupt conduct.

Sections 42-44 provide that the IBAC can carry out investigations into the conduct of judicial officers. Subsection 42(1) provides that an investigation into the conduct of a judicial officer must be conducted by a sworn IBAC officer who is a former judge or magistrate of a court of a higher level, or of the same level (but not the same court), as the person being investigated, and is not an Australian legal practitioner. Subsection 42(2) provides that during an investigation into the conduct of a judicial officer, the IBAC must have proper regard for the preservation of the independence of judicial officers, and must notify, and may consult, the relevant head of jurisdiction, unless doing so would prejudice the investigation.

Section 43 provides that the IBAC must not include findings about judicial officers in special or annual reports.

Section 44 provides that the IBAC must dismiss complaints or notifications that directly relate to the merits of a decision, order or judgment made by the judicial officer.

Section 45 deals with conducting investigations into police personnel conduct. Subsection 45(1) provides that the IBAC may conduct an investigation into police personnel conduct on a police personnel conduct complaint (made under s 35); on a notification (made under s 40(2), (4) or (6)); on information provided under section 86M of the Police Regulation Act; or on the IBAC's own motion. Subsections 45(2) – 45(4) provide that the IBAC may attempt to resolve a police personnel conduct complaint by conciliation and that the Chief Commissioner of Police must be notified prior to the commencement of the attempted conciliation and at the resolution. Subsection 45(5) provides that the IBAC may conduct an investigation into police personnel conduct, even if that person is no longer a member of police personnel.

Section 46 relates to the conduct of the Chief Commissioner, Deputy Commissioner or Assistant Commissioner of Police. Subsection 46(1) provides that, subject to exceptions, the IBAC must investigate a complaint or notification made to it, or a complaint made under section 86L of the Police Regulation Act, if it is about the conduct of the Chief Commissioner of Police, a Deputy Commissioner of Police, or an Assistant Commissioner of Police. Subsection 46(2) then provides a list of circumstances in which the IBAC may determine that a complaint or notification referred to in subsection (1) does not warrant investigation.

Section 47 provides a similar list of circumstances to those in section 46(2), in which the IBAC may determine that complaints or notifications do not warrant investigation.

Section 48 provides that the IBAC may discontinue an investigation at any time.

Section 49 provides for what happens to an investigation when other proceedings are on foot. Subsection 49(1) provides that the IBAC may commence or continue an investigation despite the fact that civil or criminal proceedings about the matter are pending or commenced. Subsection 49(2) provides that if the IBAC is aware of such proceedings, the IBAC must take all reasonable steps to ensure that the conduct of the investigation does not prejudice the proceedings.

## New Part 4— Investigative Powers

The new Part 4 provides the IBAC with its investigative powers and has five Divisions: Division 1 provides for the appointment of IBAC Officers as authorised officers (new sections 50-52); Division 2 provides the IBAC with additional powers in regard to police (new section 53); Division 3 provides the IBAC with entry, search and seizure powers for police personnel premises (new sections 54-59); Division 4 provides the IBAC with search warrant powers (new sections 60-66); and Division 5 deals with related issues of privilege (new sections 67-69).

### *Division 1— Authorised Officers*

Sections 50-52 provide for the appointment of IBAC Officers as authorised officers, the provision of identity cards to authorised officers, and the required procedures relating to the identity cards.

### *Division 2— Additional Powers— Conduct of Police*

Section 53 empowers the IBAC to require police to give information, produce documents, and answer questions. Subsection 53(1) restricts the application of this section to the investigation by the IBAC into a possible breach of discipline involving corrupt conduct of a member of the police force, or police personnel conduct of a member of the police force.

Subsection 53(2) then provides that, for the purposes of an investigation to which this section applies, the IBAC may direct any member of the police force to give the IBAC any relevant information; produce any relevant document; or answer any relevant question. According to the Explanatory Memorandum, a member of the police force who fails to comply with such a direction will have committed a breach of discipline under section 69(1)(ac) of the Police Regulation Act (as inserted into the Police Regulation Act by clause 11(2) of this Bill).<sup>55</sup>

Subsection 53(3) provides that any information, document or answer given in accordance with subsection (2) is not admissible in evidence before any court or person acting judicially, except in proceedings for perjury or giving false information; a breach of discipline by a member of the police force; an offence under the IBAC Act concerning failure to comply with a direction of the IBAC; or review proceedings under Division 1 or Part IV of the Police Regulation Act.

### *Division 3— Entry, Search and Seizure— Police Personnel Premises*

Section 54 provides that the powers under this Division must not be exercised by an authorised officer without the written authority of the IBAC Commissioner. The Commissioner cannot delegate this power unless section 26(5) or (6) applies.<sup>56</sup>

Section 55 empowers the IBAC 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

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<sup>55</sup> Explanatory Memorandum, p. 19.

<sup>56</sup> Section 26(5) and (6) deals with the ability of the IBAC Commissioner to delegate powers to a sworn senior IBAC Officer.

- (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.

Subsections 55(2)-(3) then set out the procedures for exercising a power of entry under this section. Subsection 55(4) states that this section does not provide for an authorised officer to enter any part of police personnel premises that is used for residential purposes.

Section 56 provides the IBAC with the power to seize documents or things at police personnel premises, if the authorised officer reasonably suspects that the document or thing is relevant to an investigation and that it may be concealed, destroyed or its forensic value diminished if it is not immediately seized.

Sections 57-59 provide for the circumstances in which seized items can be accessed or returned.

#### *Division 4— Search Warrant Powers*

Section 60 deals with search warrants. Subsection 60(1) provides that, subject to subsection (2), an authorised officer may apply to a Judge of the Supreme Court for a search warrant in relation to either: (a) particular premises (including any vehicle, vessel or aircraft on or in those premises), and/or (b) a particular vehicle, vessel or aircraft located in a public place, if the authorised officer believes on reasonable grounds that entry is necessary for the purpose of investigation.

Subsection 60(2) states that an application requires a written authorisation of the Commissioner in the prescribed form. The Commissioner is unable to delegate this power unless section 26(5) or (6) applies.<sup>57</sup>

Subsection 60(3) provides that if a Judge of the Supreme Court is satisfied by evidence on oath that there are reasonable grounds for the belief under subsection (1)(a) or (b) above, the Judge may issue a warrant authorising the person named in the warrant to:

- (a) enter and search the premises or vehicle, vessel or aircraft named in the search warrant to inspect any document or thing; and
- (b) make a copy of any document that the person reasonably considers to be relevant to the investigation; and
- (c) take possession of any document or other thing that the person reasonably considers to be relevant to the investigation.

Subsection 60(4) provides that a search warrant issued under this section must state: the purpose for which the search is required; and any conditions to which it is subject; whether entry is authorised at all hours or at stated times; and a day, not later than 28 days after the issue of the search warrant, on which it expires.

Subsection 60(5) provides that a search warrant must be in the prescribed form.

Subsection 60(6) provides that, except as otherwise provided for in this Act, the rules relating to search warrants under the *Magistrates' Court Act 1989* apply under this section.

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<sup>57</sup> *ibid.*

Subsection 60(7) provides that, 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 this would prejudice the investigation.

Section 61 sets out the procedure for executing a search warrant.

Section 62 deals with the provision of copies, and the giving of receipts, when documents or other things are seized under a search warrant.

Section 63 deals with the return of seized documents and other things.

Section 64 deals with assistance in executing search warrants.

Section 65 provides that members of the police force must provide reasonable assistance to a person executing a search warrant.

Section 66 deals with privilege claims in relation to search warrants.

#### *Division 5—Privilege*

Section 67 provides for the abrogation of certain privileges in relation to police personnel. It relates to the exercise of powers under sections 53 (power to require police to give information and documents and answer questions), 55 (power to enter police personnel premises) or 56 (power to seize documents or things at police personnel premises). The Explanatory Memorandum states that:

For these powers, the Crown is not entitled to any privilege in respect of the documents or other things, and any obligation of a member of police personnel to maintain secrecy or any other restriction on disclosure of information is also overridden, and does not apply in respect of the exercise of a power under section 53 or to the inspection, copying or seizure of any document or thing under sections 55 and 56.<sup>58</sup>

Sections 68 and 69 provide that the IBAC may apply to the Supreme Court to determine whether a document or other thing is subject to privilege, and sets out the procedure for this to be done. If a person accesses the document or thing before the Court determines privilege or before the document or thing is returned to the claimant, a penalty of 120 penalty units or imprisonment for 12 months or both applies.<sup>59</sup>

#### New Part 5—Defensive Equipment and Firearms

The new Part 5 sets out provisions relating to the use of defensive equipment and firearms by authorised and suitably trained senior IBAC officers. It consists of new sections 70-82.

The Explanatory Memorandum states that defensive equipment is defined in clause 3 as—

- an article designed or adapted to discharge oleoresin capsicum spray;
- body armour within the meaning of the *Control of Weapons Act 1991*;
- an extendable baton;
- handcuffs or cable ties.<sup>60</sup>

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<sup>58</sup> Explanatory Memorandum, pp. 24-25.

<sup>59</sup> From 1 July 2011 to 30 June 2012, the value of one penalty unit is \$122.14. Office of the Chief Parliamentary Counsel (2011) 'Penalty and Fee Units', OCPC website, State Government Victoria, viewed 6 September 2011, <<http://www.ocpc.vic.gov.au/CA2572B3001B894B/pages/faqs-penalty-and-fee-units>>.

<sup>60</sup> Explanatory Memorandum, p. 25.

Section 70 empowers the IBAC to authorise the use of defensive equipment for investigating police personnel conduct by members of the police force. Subsection 70(1) gives authority to the IBAC, by instrument, to authorise a suitably trained senior IBAC Officer to possess, carry and use defensive equipment for investigating police personnel conduct by members of the police force.

Subsection 70(2) provides that an authorisation may only be issued by IBAC if it is satisfied that the senior IBAC Officer reasonably requires the defensive equipment to perform functions and exercise powers in investigations; and to ensure the safety of the senior IBAC Officer in performing those functions.

Subsection 70(3) provides that the senior IBAC Officer must be suitably trained in the use of defensive equipment, that is, must have completed a prescribed course of training.

Subsection 70(4) provides that an authorisation under this section must specify the type of defensive equipment and may be subject to any conditions that the IBAC considers appropriate to impose.

Subsection 70(5) provides that a senior IBAC Officer must not possess, carry or use defensive equipment in the course of an investigation of police personnel conduct by a member of the police force unless authorised to do so under this section. The penalty is 60 penalty units or imprisonment for 6 months or both.

Section 71 empowers the IBAC to authorise the use of defensive equipment for investigating possible corrupt conduct. Subsection 71(1) gives authority to the IBAC, by instrument, to authorise a suitably trained senior IBAC Officer to possess, carry and use defensive equipment for the purposes of an investigation into possible corrupt conduct.

Subsection 71(2) provides that an authorisation may only be issued by the IBAC if it is satisfied that—

- (a) requesting assistance from the Chief Commissioner of Police may compromise the investigation; and
- (b) the senior IBAC Officer reasonably requires the defensive equipment—
  - (i) to perform functions and exercise powers of the IBAC or an authorised officer in investigations; and
  - (ii) to ensure the safety of the senior IBAC Officer in performing those functions and exercising of IBAC powers.

Subsections 71(3) to (5) makes similar provisions to those in subsections 70(3) to (5).

Section 72 provides the possession, carrying out and use of defensive equipment by IBAC Officers for training, testing and maintenance purposes.

Section 73 provides that the IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use defensive equipment for the purposes of: purchasing or acquiring; maintaining; issuing; accepting the return of; and storing of that equipment.

Section 74 empowers the IBAC to authorise the use of firearms for investigating police personnel conduct by members of the police force. The provisions under this section which relate to the authorisation of a suitably trained senior IBAC Officer to possess, carry and use a firearm, for the purposes of investigating police personnel conduct by any member of the police force, mirror the provisions outlined under section 70 above (which relates to the

authorisation to possess, carry and use defensive equipment for investigating police personnel conduct by members of the police force).

The Explanatory Memorandum states that a firearm is defined in clause 3 as having the same meaning as in section 3(1) of the *Firearms Act 1996*.<sup>61</sup>

Section 75 empowers the IBAC to authorise the use of firearms for investigating possible corrupt conduct. The provisions under this section which relate to the authorisation of a suitably trained senior IBAC Officer to possess, carry and use a firearm for the purposes of investigating possible corrupt conduct mirror the provisions outlined under section 71 above (which relate to the authorisation to possess, carry and use defensive equipment for investigating possible corrupt conduct).

Section 76 deals with authorisations to use firearms for training, testing and maintenance purposes.

Section 77 provides for authorisations to acquire, dispose of, store and maintain firearms.

Section 78 provides that an authorised senior IBAC Officer must not possess, carry or use defensive equipment or a firearm except under the conditions authorised. There is a penalty of 60 penalty units or 6 months imprisonment or both.

Sections 79 to 82 provide for procedures relating to the acquisition, disposal, storage and loss of firearms, and the storage of ammunition.

#### New Part 6—Recommendations, Actions and Reports

The new Part 6 provides for the IBAC to make recommendations and report on actions that should be taken following the investigation of a matter. It consists of new sections 83-89.

Section 83 provides for the IBAC to make recommendations to the relevant principal officer; the responsible Minister; or the Premier:

- (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.

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<sup>61</sup> *firearm* means any device, whether or not assembled or in parts—

(a) which is designed or adapted to discharge shot or a bullet or other missile by the expansion of gases produced in the device by the ignition of strongly combustible materials or by compressed air or other gases, whether stored in the device in pressurised containers or produced in the device by mechanical means; and

(b) whether or not operable or complete or temporarily or permanently inoperable or incomplete— and which is not—

(c) an industrial tool powered by cartridges containing gunpowder or compressed air or other gases which is designed and intended for use for fixing fasteners or plugs or for similar purposes; or

(d) a captive bolt humane killer; or

(e) a spear gun designed for underwater use; or

(f) a device designed for the discharge of signal flares; or

(h) a device commonly known as a kiln gun or ringblaster, designed specifically for knocking out or down solid material in kilns, furnaces or cement silos; or

(i) a device commonly known as a line thrower designed for establishing lines between structures or natural features and powered by compressed air to other compressed gases and used for rescue purposes, rescue training or rescue demonstration; or

(j) a device of a prescribed class;

see *Firearms Act 1996*, pp. 11-12.

- (2) A recommendation under subsection (1) which is not contained in a report must be made in private.
- (3) Subject to subsection (4), subsection (2) does not limit the power of the IBAC to make public a recommendation under section 86 or 89 if the IBAC considers there has been a failure to take appropriate action in relation to the recommendation.
- (4) 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.
- (5) The person who has received a recommendation under subsection (1) must comply with a requirement of the IBAC under subsection (4).

Section 84 provides that the IBAC may request the Chief Commissioner of Police to take certain actions. Subsection 84(1) states that after receiving a report on an investigation completed by the Chief Commissioner of Police under Part IVA of the Police Regulation Act or a report under section 40(3), the IBAC may write a request to the Chief Commissioner to take any action that the IBAC considers appropriate, either in addition to any action taken or proposed by the Chief Commissioner, or in substitution for any action taken or proposed by the Chief Commissioner.

Subsection 84(2) then provides that the IBAC may, under subsection (1), request the Chief Commissioner of Police to conduct a further investigation in accordance with section 86O of the Police Regulation Act.<sup>62</sup>

Section 85 states that upon receiving a recommendation by the IBAC under section 83 or a request under section 84, the Chief Commissioner must adopt the recommendation or take the requested action; or give a report to the IBAC stating the reason for not intending to adopt the recommendation or taking the requested action.

Section 86 deals with special reports. Subsection 86(1) provides that the IBAC may at any time report to each House of the Parliament on any matter relating to the performance of its duties and functions.

Subsection 86(2) provides that if the IBAC intends to include adverse findings about a public body in a report under this section, the IBAC must give the public body's relevant principal officer an opportunity to respond, and fairly set out each element of the response in its report.

Subsection 86(3) provides that if the IBAC intends to include adverse comment or opinion about a person in a report under this section, any person subject to an adverse comment or opinion must first be given an opportunity by IBAC to respond to the adverse material and the IBAC must fairly set out each element of the response in its report.

Subsection 86(4) provides that if the IBAC intends to name a person in a report under this section but not comment on the person adversely, the person must first be provided with the relevant material.

Subsection 86(5) provides that 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

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<sup>62</sup> Section 86O of the Police Regulation Act 1958, deals with Investigations by the Chief Commissioner.

report under this section, the IBAC must not include any information that would be prejudicial to the investigation or proceedings.

Subsection 86(6) provides that the IBAC must not include in a report under this section a statement as to a finding or opinion that a specified person has committed, is committing or is about to commit any criminal or disciplinary offence; or a recommendation or opinion that a specified person should be prosecuted for a criminal or disciplinary offence.

Subsection 86(7) provides that 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 is satisfied that it is in the public interest; and that it will not unreasonably damage the person's reputation, safety or wellbeing; and states in the report that the person is not the subject of any adverse comment or opinion.

Subsection 86(8) provides that the IBAC must not include in a report under this section any information that discloses the identity of a person to whom a direction has been given under Division 1 of Part 7 of the IBAC Act or Division 4A of Part IV of the Police Regulation Act.<sup>63</sup>

Subsection 86(9) provides that the clerk of each House of Parliament must cause the report to be laid before each House on the day on which it is received or on the next sitting day of that House of Parliament.

Subsection 86(10) provides that if the IBAC proposes to transmit a report to the Parliament when neither House is sitting, the IBAC must give the clerk of each House one business day's notice of its intention to do so; and give the report to the clerk of each House of the Parliament on the day indicated on the notice; and publish the report on the IBAC's internet site as soon as practicable following its handover to the clerks.

Subsection 86(11) provides that the clerk of each House of Parliament must notify each of their members of the receipt of the notice under subsection (10)(a) on the same day that it is received by the clerk; and distribute a copy of the report to each member as soon as practicable following its receipt under subsection (10)(b); and cause the report to be laid before each House of Parliament on the next sitting day.

Subsection 86(12) provides that a report that is given to the clerks under subsection (10)(b) is taken to be published by order, or under the authority, of Parliament.

Subsection 86(13) provides that the publication of a report by the IBAC under subsection (10)(c) has absolute Parliamentary privilege as if it had been published by the Government Printer under the authority of the Parliament. The Explanatory Memorandum states that this also applies to the publication of a report under this subsection by the IBAC on its internet website.<sup>64</sup>

Section 87 provides for the IBAC to advise a complainant and other persons about the results of an investigation, including action taken by the IBAC and recommendations made by the IBAC. Section 87 also lists certain circumstances in which the IBAC must not provide any information under this section.

Section 88 provides that after conducting an investigation, the IBAC may: make a recommendation in accordance with section 83; transmit a special report under section 86;

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<sup>63</sup> These Divisions deal with the testing of IBAC Officers and members of the police force respectively, for alcohol and drugs of dependence.

<sup>64</sup> Explanatory Memorandum, p. 31.



advise a complainant or other person as per section 87; do a combination or none of the above; make no finding or take no action after the investigation.

Section 89 lists the matters to be included in the IBAC's annual report. Subsection 89(1) provides that under Part 7 of the *Financial Management Act 1994*, the IBAC must include in its annual report: the prescribed information relating to the performance of its duties and functions; any recommendations for changes to any Victorian Act or law in force, or for specified administrative actions to be taken which the IBAC considers necessary as a result of the performance of its duties and functions; a description of its activities in relation to the performance of its duties and functions. Subsections 89(2) to 89(8) mirror the provisions already set out in subsections 86(2) to 86(8) above, relating to special reports.

### New Part 7 General

#### *Division 1—Alcohol and Drug Testing of IBAC Officers*

Division 1 of the new Part 7 consists of new sections 90-97 and deals with alcohol and drug testing of IBAC Officers.

#### *Division 2—Offences and Proceedings*

Division 2 of the new Part 7 consists of new sections 98-108 and provides for offences and proceedings under the IBAC Act.

#### *Division 3—Miscellaneous*

Section 109 provides that the *Freedom of Information Act 1982* does not apply to a document that discloses information about: a complaint; or an investigation conducted under this Act; or a recommendation made by the IBAC under this Act; or a report, including a draft report on an investigation conducted under this Act. In this section 'document' has the same meaning as it has in the Freedom of Information Act.

Section 110 provides that the Governor in Council may make regulations for any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act. It also preserves the force of any regulation made before the commencement of this Bill.

Section 111 provides that, without limiting the generality of section 110, the regulations may prescribe: a body or entity to be a public body; an office to be a public office; security checks for IBAC Officers; identity card requirements for IBAC Officers; requirements for the disclosure and reporting of pecuniary interests by IBAC Officers, including providing for the manner of disclosure and the compilation, maintenance and publication of registers of pecuniary interests; the information to be included in the annual report; an appropriate defensive equipment training course; an appropriate firearms training course; the procedures and persons authorised to conduct testing of IBAC Officers for alcohol and drugs, and the forms for the purposes of this Act.

### **Part 3—Amendments to Other Acts and Repeal**

#### *Amendment of section 12A of the Parliamentary Committees Act 2003*

Clause 10 of the Bill amends section 12A of the Parliamentary Committees Act 2003 as follows:

(1A) Despite anything to the contrary in subsection (1), the IBAC Committee cannot: investigate a matter relating to conduct the subject of any complaint or notification made to the IBAC; review any decision to investigate, not investigate or discontinue the investigation of a complaint or notification to the IBAC; review any findings, recommendations,

determinations or other decisions of the IBAC in relation to a complaint or notification or investigation conducted by the IBAC; disclose any information about the performance or exercise of a power by the IBAC which may prejudice any criminal investigation or criminal proceedings; or prejudice any investigation by the IBAC; or contravene any secrecy or confidentiality provision in any relevant Act.

*Amendment of Police Regulation Act 1958*

Clause 11 amends the Police Regulation Act to replace references to the OPI with references to the IBAC.

*Amendment of the Major Crime (Investigative Powers) Act 2004*

According to the Explanatory Memorandum, clause 12 amends section 9 of the Major Crime (Investigative Powers) Act to ensure that a coercive powers order specifies that the Supreme Court has considered submissions made by a Public Interest Monitor, in determining the coercive powers order.<sup>65</sup>

*Amendment of Surveillance Devices Act 1999*

Clause 13 amends section 3 of the Surveillance Devices Act to empower the IBAC to apply for surveillance devices.

*Amendment of Sections 1 and 3 of the Telecommunications (Interception) (State Provisions) Act 1988*

According to the Explanatory Memorandum, clause 14 amends the Telecommunications (Interception) (State Provisions) Act to include the IBAC so that the IBAC is eligible to intercept telecommunications (pending Commonwealth approval).<sup>66</sup>

*Repeal of Police Integrity Act 2008*

Clause 16 of the Bill repeals the Police Integrity Act.

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<sup>65</sup> *ibid.*, p. 39.

<sup>66</sup> *ibid.*, p. 40.

## 4. Other Jurisdictions

This final section of the Current Issues Brief provides information about anti-corruption commissions in other Australian jurisdictions that is relevant to the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011. At present, the states of New South Wales, Queensland, Western Australia and Tasmania have anti-corruption commissions. South Australia, the Commonwealth<sup>67</sup> and the Territories do not, however, it is now South Australian government policy to establish an anti-corruption commission.<sup>68</sup>

As previously stated, the Parliamentary Library's Current Issues Brief on the Independent Broad-based Anti-corruption Commission Bill 2011 provided information on the history and composition of each Australian anti-corruption commission, including information on the establishment, the role of the commissioner, and the prevention and education functions of each commission.

This section provides an overview of the jurisdiction, investigative powers, and reporting procedures of Australian anti-corruption commissions. Provisions relating to public hearings and referral powers of interstate anti-corruption commissions are not discussed in detail, as those provisions are yet to be introduced in Victoria. The section concludes with a comparative table summarising each commission's jurisdiction and investigative powers (Figure 1.).

Readers should bear in mind that the type of conduct which anti-corruption commissions address is described in some state legislation as 'misconduct' (Queensland, Western Australia, Tasmania), and in others as 'corrupt conduct' (New South Wales). However, in NSW, corrupt conduct can involve a variety of matters, including 'official misconduct'.<sup>69</sup> In Victoria, as previously stated, the IBAC will seek to combat 'corrupt conduct' and 'police personnel misconduct'.<sup>70</sup>

### New South Wales

The NSW Independent Commission Against Corruption (ICAC) was established by the *Independent Commission Against Corruption Act 1988* ('the ICAC Act').

#### *Jurisdiction*

The ICAC's jurisdiction includes all NSW public sector agencies (except for the police force) and employees, including the judiciary, Members of Parliament, Ministers, and local councils.<sup>71</sup> The Police Integrity Commission (PIC) is responsible for detecting and

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<sup>67</sup> As noted in Ross (2011) op cit., p. 17, the Commonwealth established the Australian Commission for Law Enforcement Integrity in 2006, which is responsible for preventing, detecting and investigating corrupt conduct in the Australian Crime Commission, the Australian Federal Police and the Australian Customs and Border Protection Service. See Australian Commission for Law Enforcement Integrity (2012) 'About Us', ACLEI website, viewed 3 February 2012, <[http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About\\_Us](http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us)>.

<sup>68</sup> South Australian Premier, the Hon. Jay Weatherill, announced in October 2011 that an anti-corruption commission will be established in South Australia. See M. Owen (2011) 'South Australia to Have its Own Corruption-Fighting Body, New Premier Jay Weatherill Decides,' *theaustralian.com.au*, 24 October, viewed 2 November 2011, <<http://www.theaustralian.com.au/national-affairs/state-politics/south-australia-to-have-its-own-corruption-fighting-body-new-premier-jay-weatherill-decides/story-e6frgczx-1226175279454>>.

<sup>69</sup> Independent Commission Against Corruption Act 1988 (NSW) s 8(2)(a).

<sup>70</sup> See pp. 12-13 of this Brief.

<sup>71</sup> Independent Commission Against Corruption (2011) 'Overview', ICAC website, viewed 22 December 2011 <<http://www.icac.nsw.gov.au/about-the-icac/overview>>.

investigating police misconduct.<sup>72</sup> NSW also has a separate Crime Commission, which was established to reduce the incidence of illegal drug trafficking and organised crime.<sup>73</sup>

The ICAC Act gives the ICAC broad jurisdiction to investigate any allegation which, in its opinion, implies that corrupt conduct has occurred, or conduct that is likely to allow, encourage or cause corrupt conduct.<sup>74</sup> A more detailed explanation of the scope of ICAC's jurisdiction is provided for through the definition of 'corrupt conduct' in the ICAC Act. Section 8 of the ICAC Act defines 'corrupt conduct' as:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Corrupt conduct is further defined in the ICAC Act as any conduct of any person that could adversely affect the exercise of official functions by any public official or public body.<sup>75</sup> A number of specific examples are provided, including official misconduct.<sup>76</sup> Importantly, the section is retrospective and extraterritorial.<sup>77</sup> Further, the section applies to officials that are no longer in office, and to conduct of public officials prior to taking office.<sup>78</sup>

The ICAC Act provides that conduct will *not* be considered 'corrupt conduct' unless it involves a criminal or disciplinary offence, or is conduct that would constitute reasonable grounds for dismissal of the public official.<sup>79</sup> In the case of Members of Parliament, the ICAC Act states that conduct will *not* be considered corrupt unless it constitutes or involves 'a substantial breach of an applicable code of conduct'.<sup>80</sup> An 'applicable code' refers to ministerial and parliamentary codes of conduct, in addition to local government codes of conduct.<sup>81</sup>

The ICAC Act provides some guidance with regard to determining if a breach of the code is 'a substantial breach', providing that the test is whether a reasonable person would consider the conduct to threaten the integrity of the relevant office or Parliament.<sup>82</sup>

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<sup>72</sup> Police Integrity Commission (date unknown) 'Welcome', PIC website, viewed 22 December 2011, <<http://www.pic.nsw.gov.au/>>.

<sup>73</sup> New South Wales Crime Commission (2010) 'Home: Establishment', NSW Crime Commission website, viewed 22 December 2011, <<http://www.crimecommission.nsw.gov.au/>>.

<sup>74</sup> Independent Commission Against Corruption (2011) 'Functions of the ICAC', ICAC website, viewed 22 December 2011 <<http://www.icac.nsw.gov.au/about-the-icac/overview/functions-of-the-icac>>.

<sup>75</sup> s 8(2), and which could involve any of the matters listed in s 8(2)(a-y).

<sup>76</sup> Section 8(2)(a-y) includes the following: official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition), bribery, blackmail, secret commissions, fraud, theft, perverting the course of justice, embezzlement, election bribery, election funding offences, election fraud, treating, tax evasion, revenue evasion, currency violations, illegal drug dealings, illegal gambling, financial benefit through vice of others, bankruptcy and company violations, harbouring criminals, forgery, treason, homicide or violence, or any related offences.

<sup>77</sup> ss 8(3) and 8(5).

<sup>78</sup> ss 8(3) and 8(4).

<sup>79</sup> s 9(1).

<sup>80</sup> ss 9(1)(d), 9(3).

<sup>81</sup> See s 440(5) of the *Local Government Act 1993* (NSW).

<sup>82</sup> s 9(4).

### *Investigative Powers*

The ICAC has a range of investigative powers. The ICAC can conduct an investigation on its own initiative, or on a complaint, report or reference made to it, and has a broad discretion with regard to what matters to investigate.<sup>83</sup>

The powers the ICAC may exercise when investigating a matter include the power to:

- obtain information by notice, requiring an official to produce a statement;<sup>84</sup>
- obtain documents by notice, requiring a person (whether or not the person is a public official) to attend before an ICAC officer or present a document;<sup>85</sup>
- enter public premises used by an official and inspect or take copies of any document;<sup>86</sup>
- hold a public inquiry if it is considered to be in the public interest.<sup>87</sup>

An ICAC officer may apply to the Commissioner, or authorised officer, for a search warrant if there are reasonable grounds for believing that there is a document, or 'other thing connected with any matter that is being investigated' under the ICAC Act, on any premises.<sup>88</sup> A search warrant authorises the ICAC officer to enter and search the premises and seize any such documents ('or other things') found on the premises.<sup>89</sup> If an item is seized pursuant to a search warrant, the ICAC may retain it, so long as that is reasonably necessary for the purposes of the investigation.<sup>90</sup> The officer authorised to enter premises under a search warrant 'may use such force as is reasonably necessary' for the purpose of entering the premises.<sup>91</sup>

In addition to powers set out in the ICAC Act, ICAC officers may apply for an approval under the *Law Enforcement (Controlled Operations) Act 1997 (NSW)* to conduct a 'controlled operation', which is an operation 'that would otherwise be unlawful'.<sup>92</sup>

The ICAC may also seek a warrant under the *Surveillance Devices Act 2007 (NSW)*<sup>93</sup> to use a surveillance device, or seek permission to intercept telephone conversations under the *Telecommunications (Interception and Access) Act 1979 (Cth)*.<sup>94</sup> The Ombudsman inspects ICAC records of telephone intercepts, controlled operations and surveillance devices in order to ensure compliance with statutory requirements.<sup>95</sup> Further, the ICAC reports on its use of surveillance devices to the Attorney-General of New South Wales.<sup>96</sup>

Under the *Law Enforcement and National Security (Assumed Identities) Act 2010 (NSW)*, ICAC officers may also obtain written authorisation to use false identities.<sup>97</sup>

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<sup>83</sup> s 20.

<sup>84</sup> s 21.

<sup>85</sup> s 22.

<sup>86</sup> With the Commissioner's written authorisation. s 23.

<sup>87</sup> See s 31. Note, however, that the Commission may decide to hold parts of an inquiry in private if it considers it to be in the public interest (s 31(9)).

<sup>88</sup> s 40(4). Note, however, that Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (other than sections 69–73A) applies to a search warrant issued under the ICAC Act, s 48(1).

<sup>89</sup> s 41(1).

<sup>90</sup> s 47(2)(a).

<sup>91</sup> s 43(1).

<sup>92</sup> Independent Commission Against Corruption (2011) *Annual Report 2010-11*, Sydney, ICAC, viewed 14 November 2011, p. 54, <[http://www.icac.nsw.gov.au/publications-and-resources/publications-search?option=com\\_pubsearch&view=search&task=doSearch&Itemid=132#results](http://www.icac.nsw.gov.au/publications-and-resources/publications-search?option=com_pubsearch&view=search&task=doSearch&Itemid=132#results)>;

<sup>93</sup> s 19.

<sup>94</sup> See Independent Commission Against Corruption (2011) *Annual Report 2010-11*, op cit., pp. 32-33; Independent Commission Against Corruption (2011) 'Investigations: Statutory Powers', ICAC website, viewed 2 February 2011, <<http://www.icac.nsw.gov.au/investigations/investigation-process/statutory-powers>>.

<sup>95</sup> Independent Commission Against Corruption (2011) 'Accountability Mechanisms', ICAC website, viewed 22 December 2011, <<http://www.icac.nsw.gov.au/about-the-icac/independence-accountability/accountability>>.

<sup>96</sup> *ibid.*

<sup>97</sup> *Law Enforcement and National Security (Assumed Identities) Act 2010*, s 5.

A 'commission investigator'<sup>98</sup> may be seconded from the police force to assist the ICAC. When acting in the person's capacity as an officer of the ICAC, a seconded police officer may exercise all the powers, immunities, liabilities and responsibility of a NSW police officer.<sup>99</sup>

### *Reporting Procedures*

The ICAC is required to produce an annual report.<sup>100</sup> In addition, the ICAC 'may' prepare reports in relation to any matter it has investigated.<sup>101</sup> However, it must prepare reports in relation to a matter that has been referred to it by both Houses of Parliament or a matter that has been the subject of a public inquiry.<sup>102</sup> The report must be presented to the Presiding Officer of each House of Parliament 'as soon as possible after the [ICAC] Commission has concluded its involvement in the matter',<sup>103</sup> and must include:

- a statement of findings, opinions and recommendations;
- the reasoning behind the findings, opinions and recommendations;
- a statement on whether the DPP should be asked to advise on prosecution of specific criminal offences;
- a statement on whether disciplinary or dismissal action should be considered against a public official.<sup>104</sup>

The ICAC may defer making a report if it is satisfied that it is desirable to do so in the public interest and so long as it was not a matter referred to the ICAC by both Houses of Parliament.<sup>105</sup>

The ICAC Act also allows some restrictions on the publication of evidence, however, the ICAC may only direct that evidence is not to be published if that is necessary or desirable in the public interest.<sup>106</sup>

### ***Police Integrity Commission***

In NSW, police misconduct is detected and investigated by the Police Integrity Commission (PIC) pursuant to the *Police Integrity Commission Act 1996* (NSW) ('the PIC Act').

The principal function of the PIC is to 'prevent, detect and investigate serious police misconduct'.<sup>107</sup> Police misconduct is defined in section 5 of the PIC Act, and includes: police corruption, the commission of a criminal offence by a police officer, and misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Act 1990* (NSW). Misconduct also includes corrupt conduct within the meaning of the ICAC Act involving a police officer.<sup>108</sup> The PIC Act extends to former police officers.<sup>109</sup>

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<sup>98</sup> Section 101A states that a 'commission investigator' is an officer of the ICAC who is designated by the Commissioner as an investigator.

<sup>99</sup> s 101B.

<sup>100</sup> s 76.

<sup>101</sup> s 74(1).

<sup>102</sup> ss 74(2), (3).

<sup>103</sup> s 74(7).

<sup>104</sup> Independent Commission Against Corruption (2011) 'Reporting Requirements', ICAC website, viewed 23 December 2011,

<<http://www.icac.nsw.gov.au/about-the-icac/independence-accountability/reporting-requirements>>.

<sup>105</sup> s 74(8).

<sup>106</sup> s 112(1A).

<sup>107</sup> Police Integrity Commission (2011) *Annual Report 2010-2011*, Sydney, PIC, p. 7. Also see s 13 of the Police Integrity Commission Act 1996.

<sup>108</sup> Police Integrity Commission Act 1996, s 5(2)(c).

<sup>109</sup> s 5(3).

Investigative powers granted to the PIC under the PIC Act include powers to obtain information, documents or other things by notice,<sup>110</sup> enter public premises,<sup>111</sup> hold hearings (in public or in private),<sup>112</sup> and summon witnesses and take evidence at hearings.<sup>113</sup> In addition, a PIC officer may apply for a search warrant to enter premises and seize items connected with any matter that is being investigated under the PIC Act.<sup>114</sup>

If PIC investigators are seconded police officers or approved former police officers they do not require a licence or permit under the *Firearms Act 1996* to possess or use semi-automatic pistols (including ammunition), so long as they are acting in their capacity as officers of the PIC.<sup>115</sup>

PIC officers may also seek approval under the Law Enforcement (Controlled Operations) Act 1997 to conduct controlled operations.<sup>116</sup>

The PIC may prepare reports in relation to any matter that has been or is the subject of an investigation, which are to be given to the Presiding Officer of each House of Parliament.<sup>117</sup> The PIC Act also states that the PIC must prepare reports in relation to matters into which it has conducted a public hearing.<sup>118</sup> However, the PIC may defer making a report 'if it is satisfied that it is desirable to do so in the public interest'.<sup>119</sup>

## Queensland

The Queensland Crime and Misconduct Commission (CMC) was established by the *Crime and Misconduct Act 2001* (Qld). The CMC has three broad functions: firstly, it operates as a crime commission;<sup>120</sup> secondly, it works to reduce 'official misconduct' and promote integrity in the public sector; and thirdly, it operates the Queensland witness protection program.<sup>121</sup> The CMC's jurisdiction, investigative powers and reporting requirements in relation to its misconduct function are outlined below.

### *Jurisdiction*

The CMC's misconduct jurisdiction applies to defined 'units of public administration' within the Queensland public sector.<sup>122</sup> It includes the Queensland Police Service and 'elected officials' (Members of Parliament and Local Councillors), however, the CMC is not empowered to investigate an elected official unless the alleged misconduct will amount to a criminal offence.<sup>123</sup>

The judiciary are also included within the scope of the CMC, however, the Crime and Misconduct Act states that in order to preserve the independence of the judiciary, a CMC

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<sup>110</sup> ss 25, 26.

<sup>111</sup> Authorised in writing by the Commissioner. s 29.

<sup>112</sup> ss 32, 33.

<sup>113</sup> s 38.

<sup>114</sup> ss 46, 47.

<sup>115</sup> s 124.

<sup>116</sup> Police Integrity Commission (2011) *Annual Report 2010-2011*, op cit., p. 65.

<sup>117</sup> ss 96(1), (3).

<sup>118</sup> s 96(2).

<sup>119</sup> s 96(5).

<sup>120</sup> Investigating and preventing major crime such as organised crime, paedophilia and terrorist activity.

<sup>121</sup> Ross (2011) op. cit., p. 20.

<sup>122</sup> For the list of units of public administration under the jurisdiction of the CMC, see s 20 of the Crime and Misconduct Act 2001 (Qld).

<sup>123</sup> Crime and Misconduct Commission (2011) 'About Us: Our Jurisdiction', CMC website, viewed 11 January 2012, <<http://www.cmc.qld.gov.au/about-us/our-jurisdiction>>. See also Hall (2004) op. cit., p. 288. Hall explains that 'This is because there is no code of conduct or disciplinary regime applying to people such as Members of Parliament, a breach of which might be characterised as a "disciplinary breach": *CMC Report – An Investigation into Matters relating to the Conduct of the Hon Ken Haywood MP, November 2003*, Chapter 1, at p. 3.'

investigation into a judicial officer must be limited to ‘investigating misconduct of a kind that, if established, would warrant the judicial officer’s removal from office’.<sup>124</sup> Additionally, the investigation must be conducted in accordance with ‘appropriate conditions and procedures’ settled in consultation between the CMC chairperson and the Queensland Chief Justice.<sup>125</sup> A CMC report regarding procedures and operations of a state court, or the procedures and practices of administrative offices of a state court, may only be given to the chief judge of the court to which the subject matter of the report relates<sup>126</sup> and does not have to be tabled in Parliament.<sup>127</sup>

The Crime and Misconduct Act refers to two types of misconduct: ‘official misconduct’ and ‘police misconduct’. Official misconduct is defined as conduct in which a person’s official powers are exercised in a way that:

- is not honest or impartial; or
- is a breach of the trust placed in the person as a public officer; or
- involves a misuse of official information or material;
- constitutes a criminal offence or is serious enough to justify dismissal.<sup>128</sup>

Further, an attempt by any person to corrupt a public sector officer can constitute official misconduct if the matter involves a criminal offence.<sup>129</sup>

Queensland police officers are additionally subject to a broader set of rules regarding ‘police misconduct’.<sup>130</sup> Police misconduct is defined in the Crime and Misconduct Act as any conduct (other than official misconduct) that is: ‘disgraceful, improper or unbecoming a police officer, or shows unfitness to be or continue as a police officer, or does not meet the standard the community reasonably expects of a police officer’.<sup>131</sup>

The Crime and Misconduct Act applies retrospectively and extraterritorially and to misconduct engaged in while in office or prior to coming to office.<sup>132</sup>

### *Investigative Powers*

In order to investigate misconduct, the CMC has a range of statutory powers, including: powers to enter and search ‘official premises’<sup>133</sup> by notice and seize or copy any relevant items; the power to obtain information or documents by notice; and the power to require immediate production of a document at a hearing.<sup>134</sup>

The CMC can also apply for a search warrant under section 86 of the Crime and Misconduct Act, which grants the CMC a range of powers, including: powers to enter premises, search any person or thing, and seize any thing that is relevant to the investigation; to detain any person at the premises; and to remove walls, ceilings or other structural components of premises to search for evidence.<sup>135</sup> All of these powers, except causing structural damage, can be exercised without a warrant if there is a reasonable belief that an immediate search is

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<sup>124</sup> s 58(2)(a).

<sup>125</sup> s 58(2)(b).

<sup>126</sup> See s 65(2).

<sup>127</sup> s 69(2).

<sup>128</sup> Crime and Misconduct Commission (2011) ‘Topics: What is Misconduct?’, CMC website, viewed 11 January 2012, <<http://www.cmc.qld.gov.au/topics/misconduct/report-misconduct/what-is-misconduct>>. Also see ss 14-15.

<sup>129</sup> *ibid.*

<sup>130</sup> Crime and Misconduct Commission (2011) ‘Topics: What is Misconduct?’ *op cit.*

<sup>131</sup> Crime and Misconduct Act 2001, schedule 2.

<sup>132</sup> ss 16-17.

<sup>133</sup> s 73(7) defines official premises as premises occupied or used by a unit of public administration, excluding a state court. Authorisation must be granted by the CMC chairperson.

<sup>134</sup> ss 73, 75, 75B.

<sup>135</sup> s 92.



necessary to prevent evidence being destroyed or diminished.<sup>136</sup> A general power to seize evidence is also included in the Crime and Misconduct Act.<sup>137</sup>

A CMC officer may apply to the chairperson for approval to conduct a controlled operation in relation to a suspected misconduct offence.<sup>138</sup> A controlled operation must only be approved in accordance with part 6A of the Crime and Misconduct Act.

The CMC also has a range of monitoring and surveillance powers. Surveillance devices and other monitoring powers can be used by the CMC under warrant of a Supreme Court judge, in addition to the use of 'assumed identities' for intelligence gathering.<sup>139</sup>

In addition, the CMC has the power to intercept telecommunications, under the *Telecommunications Interception Act 2009* (Qld) and the *Telecommunications (Interception and Access) Act 1979* (Cth), in prescribed circumstances with a warrant.<sup>140</sup>

### *Reporting Procedures*

In performing its functions, the CMC 'may' produce a report.<sup>141</sup> If a report is produced, it must include any recommendations, as well as an objective summary of 'all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations'.<sup>142</sup> The CMC's annual reports, and reports about complaints it has dealt with in which the CMC decides that prosecution proceedings or disciplinary action should be considered, do not have to be tabled in the Legislative Assembly.<sup>143</sup> However, a CMC report on a public hearing or a report that the parliamentary committee directs be given to the Speaker, must be tabled.<sup>144</sup>

## **Western Australia**

The Western Australian Corruption and Crime Commission (CCC) was established by the *Corruption and Crime Commission Act 2003* (WA) ('the CCC Act').

### *Jurisdiction*

The CCC's misconduct jurisdiction applies to all Western Australian 'public officers', including police officers, Members of Parliament, ministers, the judiciary and local government (including councillors and employees).<sup>145</sup> However, the CCC's jurisdiction over the judiciary is limited to matters where the alleged misconduct, if proved, would constitute grounds for removal from office.<sup>146</sup> Additionally, the CCC must proceed with proper regard for preserving the independence of judicial officers and 'act in accordance with conditions and procedures formulated in continuing consultation with the Chief Justice'.<sup>147</sup>

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<sup>136</sup> s 96.

<sup>137</sup> s 111.

<sup>138</sup> s 139.

<sup>139</sup> ss 121-128, and s 146O-146ZE.

<sup>140</sup> Crime and Misconduct Commission (2011) 'About us: Our powers', CMC website, viewed 11 January 2012, <<http://www.cmc.qld.gov.au/about-us/our-powers>>. Also see: Crime and Misconduct Commission (2011) *Annual Report 2010-11*, Brisbane, CMC, viewed 2 February 2012, <<http://www.cmc.qld.gov.au/research-and-publications/publications/corporate/annual-report-2010201311-1>>.

<sup>141</sup> s 64(1).

<sup>142</sup> s 64(2).

<sup>143</sup> s 69(2).

<sup>144</sup> s 69(1).

<sup>145</sup> Section 4 of the CCC Act states that the CCC's misconduct jurisdiction applies to 'public officers.' The term 'public officer' is defined in s 3 of the CCC Act by reference to s 1 of *The Criminal Code* (see the *Criminal Code Act Compilation Act (1913)* (WA), Appendix B.

<sup>146</sup> s 27(3).

<sup>147</sup> ss 27(4), (5).

Misconduct is defined in section 4 of the CCC Act as the corrupt use of a public office or appointment by a public officer, including conduct that:

- adversely affects the honest or impartial performance of a public officer or public authority's function;
- constitutes or involves dishonesty, impartiality or a breach of trust;
- involves the misuse of information or material acquired through the public officer's position;
- is an offence against the *Statutory Corporations (Liability of Directors) Act 1996* (WA) or other written law;
- is a disciplinary offence that warrants termination of the public officer's position under the *Public Sector Management Act 1994* (WA).

The CCC Act applies retrospectively and to conduct of public officers that have subsequently ceased employment.<sup>148</sup>

### *Investigative Powers*

The CCC may act on any allegation reported to it<sup>149</sup> or make its own proposition of misconduct.<sup>150</sup> There are a broad range of investigative powers set out in the CCC Act to enable the CCC to investigate misconduct. For example, the CCC can serve a notice requiring a public officer to produce a statement of information.<sup>151</sup> The CCC can also serve a notice requiring any person to attend before the commission or produce a record or thing specified in the notice.<sup>152</sup>

The CCC Act provides the CCC with the power to enter and search premises either with or without a warrant.<sup>153</sup> A warrant confers some additional powers, including the authority to stop and detain vehicles and aircraft, to break open and search any thing suspected of containing relevant material, to seize any relevant material, and to secure any relevant material against interference.<sup>154</sup> An authorised person acting under a warrant may use such reasonable force as is necessary.<sup>155</sup>

During an investigation an officer of the CCC may, with the appropriate authority, make use of assumed identities for the purpose of obtaining evidence.<sup>156</sup> The CCC Act provides for the officer using an assumed identity to be protected from liability for any actions undertaken while exercising this power in accordance with its approval.<sup>157</sup>

These investigative powers may also be exercised during two types of 'authorised operations': a 'controlled operation' and an 'integrity testing programme'.<sup>158</sup> The CCC may grant an authority to conduct a controlled operation to facilitate the obtaining of evidence of misconduct,<sup>159</sup> or a programme to test the integrity of a particular public officer, or class of,

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<sup>148</sup> s 6.

<sup>149</sup> According to s 25, a public officer or any other person may report, orally or in writing, to the Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct that has or may have occurred; is occurring or is likely to occur.

<sup>150</sup> s 26. Also see L. Roberts-Smith (2010) Public Seminar, 'The role of the Corruption and Crime Commission in the constitutional system of Western Australia', p. 3, viewed 11 January 2012, <<http://www.ccc.wa.gov.au/Publications/Reports/Pages/Speeches.aspx>>.

<sup>151</sup> s 94.

<sup>152</sup> s 95.

<sup>153</sup> s 100.

<sup>154</sup> s 101.

<sup>155</sup> s 101(5).

<sup>156</sup> ss 103-110.

<sup>157</sup> s 111.

<sup>158</sup> ss 119-134.

<sup>159</sup> s 121.

public officers.<sup>160</sup> Sections 119-134 of the CCC Act outline the requirements for approval and implementation of controlled operations and integrity testing programmes.

In addition to these investigative powers pursuant to the CCC Act, surveillance devices may be deployed by the CCC under and in accordance with the *Surveillance Devices Act 1998* (WA).<sup>161</sup> A warrant for an optical or listening device must be granted by a judge of the Supreme Court and the use of such devices is audited by the Parliamentary Inspector of the Corruption and Crime Commission.<sup>162</sup> Telecommunications interception may also be authorised by judicial warrant pursuant to the *Telecommunication (Interception and Access) Act 1979* (Cth).<sup>163</sup>

Section 8(1)(d)(i) of the *Firearms Act 1973* (WA) applies to an authorised CCC officer as if the officer were a member of the police force, which means that no licence is required for a firearm or ammunition in the officer's possession for use in the performance of his or her duties.<sup>164</sup>

### *Reporting Procedures*

The CCC may prepare a report on any matter it has investigated in respect of misconduct.<sup>165</sup> In the report, the Commission may include its assessment, opinion and any recommendations, and the reasons for its statements.<sup>166</sup> The CCC may table the report in Parliament,<sup>167</sup> however, reports may be made to a relevant Minister rather than to Parliament if the Commission considers it appropriate to do so.<sup>168</sup> The CCC is required to produce an annual report to be tabled in Parliament.<sup>169</sup>

## **Tasmania**

Tasmania's Integrity Commission was established by the *Integrity Commission Act 2009* (Tas).

### *Jurisdiction*

The Integrity Commission receives and assesses complaints in relation to possible misconduct by public officers. A public officer is a person who holds any office, employment or position in a public authority,<sup>170</sup> such as Members of Parliament and their staff, State government agencies, the Tasmania Police or other public sector bodies, as well as local government.<sup>171</sup> Although the Integrity Commission Act includes 'the Police Service' in its definition of 'public authority', the Integrity Commission's 2010-11 Annual Report identified the following issues in regard to this aspect of its jurisdiction:

The legislation is not sufficiently clear as to the precise role that the Commission is to play in respect of the oversight and monitoring of Tasmania Police. The Commission has not been granted access by Tasmania Police to its information systems to the extent that the Commission considers is required for it to properly carry out its functions. Further, there is a

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<sup>160</sup> s 123.

<sup>161</sup> Roberts-Smith (2010) op. cit., p. 6.

<sup>162</sup> *ibid.*

<sup>163</sup> *ibid.*

<sup>164</sup> s 184(5).

<sup>165</sup> s 84.

<sup>166</sup> s 84.

<sup>167</sup> s 84(4).

<sup>168</sup> s 89.

<sup>169</sup> s 91.

<sup>170</sup> s 4.

<sup>171</sup> s 5(1). Also see Integrity Commission (2011) 'Integrity Commission: Making a Complaint', Integrity Commission website, viewed 12 January 2012, <[http://www.integrity.tas.gov.au/making\\_a\\_complaint](http://www.integrity.tas.gov.au/making_a_complaint)>; and Integrity Commission (2011) 'Making a Complaint: Who are Public Officers', Integrity Commission website, viewed 12 January 2012, <[http://www.integrity.tas.gov.au/making\\_a\\_complaint/who\\_are\\_public\\_officers](http://www.integrity.tas.gov.au/making_a_complaint/who_are_public_officers)>.

difference of opinion as to the precise role the Commission is to play in the oversight and monitoring of the investigation by police of events such as death or serious injury in custody, deaths or serious injury resulting from a police pursuit, and the use of capsicum spray.... The question of whether or not Parliament intends the Commission to have any role in such circumstances is not sufficiently clear.<sup>172</sup>

Although some amendments were made to the Integrity Commission Act by the *Integrity Commission Amendment Act 2011*, the Hon. Brian Wightman, Minister for Justice and the Attorney-General, stated in the second reading speech:

The oversight of the activities of Tasmania Police by the Commission is admittedly a complicated matter and requires more consideration before any legislative change is made, if in fact any is found to be necessary.<sup>173</sup>

Courts and tribunals are not public authorities for the purposes of the Integrity Commission Act.<sup>174</sup> Nor does the Integrity Commission Act consider the Governor, judges and magistrates, the Tasmanian Industrial Commission and the Integrity Commission to be public authorities for the purposes of the Act.<sup>175</sup>

The Integrity Commission Act also defines a specific category of 'designated public officers', which includes: Members of Parliament, local government councillors, holders of a statutory office, as well as high ranking police officers and senior executive appointments.<sup>176</sup> In accordance with the Act, the Integrity Commission is to assess, investigate, and inquire into complaints relating to misconduct by a designated public officer.<sup>177</sup>

The Act applies retrospectively<sup>178</sup> and to conduct of public officers that have subsequently ceased employment.<sup>179</sup>

The Integrity Commission Act defines 'misconduct' as: behaviour that involves the breach of a public officer's code of conduct; dishonest or improper performance of a public officer's functions or exercise of power; misuse of information or public resources in connection with the performance of official functions; or conduct that could adversely affect the honest and proper performance of another public officer's functions or powers.<sup>180</sup> Serious misconduct is defined as behaviour that would, if proved, result in a person being charged with a criminal or serious offence or misconduct providing reasonable grounds for terminating the public officer's appointment.<sup>181</sup>

Any person can lodge a written complaint with the Integrity Commission, which the Integrity Commission enters on its 'register of complaints'.<sup>182</sup> The Integrity Commission's CEO may then accept, dismiss or refer the complaint.<sup>183</sup> Further, a recommendation may be made that a commission of inquiry be established under the *Commissions of Inquiry Act 1995* (Tas) in relation to the matter.<sup>184</sup>

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<sup>172</sup> Integrity Commission (2011) *Annual Report 2010-2011*, Hobart, Integrity Commission, p. vi, viewed 13 January 2012,

<<http://www.integrity.tas.gov.au/>>.

<sup>173</sup> Tasmania, House of Assembly (2011) *Debates*, 22 November, p. 38.

<sup>174</sup> s 5(2).

<sup>175</sup> s 5(2).

<sup>176</sup> Integrity Commission (2011) 'Making a Complaint: Who are Public Officers', op. cit.

<sup>177</sup> s 87.

<sup>178</sup> Integrity Commission (2011) *Annual Report 2010-2011*, op. cit., p. v.

<sup>179</sup> s 33(2).

<sup>180</sup> s 4. Also see Integrity Commission (2011) 'Integrity Commission: Making a Complaint', op. cit.

<sup>181</sup> *ibid.*

<sup>182</sup> ss 33, 34.

<sup>183</sup> s 35(1).

<sup>184</sup> s 35(1)(d).

### *Investigative Powers*

Although the Integrity Commission Act has a primary focus on misconduct prevention and education, it does provide the Integrity Commission with the power to initiate, receive, assess and investigate complaints of misconduct by public officials.<sup>185</sup>

If the CEO makes a determination that the Integrity Commission should investigate a complaint, it appoints an investigator.<sup>186</sup> The Act gives an investigator the power to request, by written notice, that a person produce any record, information, material or thing that the investigator requires.<sup>187</sup> The investigator may inspect and take copies or extracts from any such record, information, material or thing, which may be used for the purposes of the investigation.<sup>188</sup> The investigator may also request, with written notice, that a person must attend and give evidence before the investigator.<sup>189</sup> Investigations are to be conducted in private unless otherwise authorised by the CEO.<sup>190</sup>

The Act also grants the Integrity Commission entry and search powers, either with or without a warrant. For the purpose of conducting an investigation, and with written authorisation from the CEO, an investigator may enter any premises of a public authority without a search warrant.<sup>191</sup> Alternatively, an investigator may apply to a magistrate for a search warrant, which may authorise the investigator to exercise the following additional powers:

- operate equipment on the premises for a purpose relevant to the investigation;
- seize or make copies of any record, information, material or thing;
- inspect, download or seize any computer or equipment that the investigator suspects on reasonable grounds may contain any relevant information; and
- require any person who is on the premises to answer questions relevant to the investigation, produce any information requested or operate any equipment.<sup>192</sup>

The investigator may use such force as is reasonably necessary to gain entry to the premises and carry out the search.<sup>193</sup> Any information or material obtained by the investigator during the search may be used for the purposes of the investigation.<sup>194</sup>

Where a complaint of serious misconduct is made, an authorised investigator may apply for a warrant under the *Police Powers (Surveillance Devices) Act 2006* (Tas), as if the investigator were a law enforcement officer within the meaning of that Act.<sup>195</sup> However, unlike the anti-corruption commissions in NSW, Qld and WA, the Integrity Commission does not have telephone intercept powers.<sup>196</sup>

### *Reporting Procedures*

On completion of an investigation, the investigator is to prepare a report of his or her findings for the CEO, who submits a report of the investigation to the Board.<sup>197</sup> The CEO's report must include:

- the investigator's report; and

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<sup>185</sup> Integrity Commission (2011) *Annual Report 2010-2011*, op. cit., p.10. See also s 45(1).

<sup>186</sup> s 44.

<sup>187</sup> s 47(1).

<sup>188</sup> ss 47(5), 47(6).

<sup>189</sup> s 47(1)(b).

<sup>190</sup> s 48.

<sup>191</sup> s 50(1).

<sup>192</sup> s 52(1).

<sup>193</sup> s 52(4).

<sup>194</sup> s 52(2).

<sup>195</sup> s 53.

<sup>196</sup> Integrity Commission (2011) *Annual Report 2010-2011*, op. cit., p.ix.

<sup>197</sup> s 55.

- submissions or comments on the draft report;<sup>198</sup> and
- a recommendation that the complaint be dismissed, an inquiry be conducted, or the complaint be referred to the DPP, principal officer of the relevant public authority, the responsible minister, or other appropriate person for action.<sup>199</sup>

Upon receiving the report, the Board may dismiss the complaint, accept the CEO's recommendation, or make a different determination.<sup>200</sup> The Board must give written notice of its decision to the principal officer of the relevant public authority, as well as to the person to whom the complaint relates or any other person who has a 'special interest'<sup>201</sup> in the matter if the Board considers it appropriate.<sup>202</sup>

The Integrity Commission must table an annual report in Parliament.<sup>203</sup> In addition, the Integrity Commission may, at any time, table a report 'on any matter arising in connection with the performance of its functions or exercise of its powers'.<sup>204</sup> Information on investigations by the Integrity Commission is 'only released publicly if it is in the public interest, it does not jeopardise current or subsequent court proceedings,' and the Board has authorised its release.<sup>205</sup>

Figure 1 on the following page shows a summary of the jurisdiction and main investigative powers of anti-corruption commissions in Australia.

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<sup>198</sup> Section 56 states that 'Before finalising any report for submission to the Board, the CEO may give a draft of the report to the principal officer of the relevant public authority; the public officer who is the subject of the complaint; and any other person who in the chief executive officer's opinion has a special interest in the report.'

<sup>199</sup> s 57.

<sup>200</sup> For example, that an inquiry be conducted, that further investigation be conducted by the investigator, or that the complaint be referred to the DPP, principal officer of the relevant public authority, the responsible minister, or other appropriate person for action. See s 58(2).

<sup>201</sup> According to the CEO.

<sup>202</sup> s 59.

<sup>203</sup> s 11(1).

<sup>204</sup> s 11(3).

<sup>205</sup> Integrity Commission (2011) *Annual Report 2010-2011*, op. cit., p.15.

**Figure 1: Jurisdiction & main investigative powers of anti-corruption commissions in Australia**

	NSW	Qld	WA	Tas	Vic
Jurisdiction:	ICAC	CMC	CCC	Integrity Commission	IBAC
Members of Parliament	Yes	Yes*	Yes	Yes	Yes
Parliamentary officers	Yes	Yes	Yes	Yes	Yes
Staff of Members of Parliament (such as ministerial advisors)	Yes	Yes	Yes	Yes	Yes
Public servants	Yes	Yes	Yes	Yes	Yes
Police service	No**	Yes	Yes	Yes^	Yes
Police personnel	Partial^	Yes	Yes	Yes	Yes
Judiciary	Yes	Yes##	Yes##	No	Yes#
Local government councillors	Yes	Yes*	Yes	Yes	Yes
Local government employees	Yes	Yes	Yes	Yes	Yes
<b>Main investigative powers:</b>					
Entry, Search and Seizure powers (with or without a warrant)	Yes	Yes	Yes	Yes	Yes
Power to obtain documents	Yes	Yes	Yes	Yes	Yes+
Surveillance	Yes	Yes	Yes	Yes	Yes
Telecommunications Interception	Yes	Yes	Yes	No	Yes
Assume false identities	Yes	Yes	Yes	Not specified	Not specified

\* Only if alleged misconduct will amount to a criminal offence.

\*\* This is the role of the Police Integrity Commission.

^ Although the Integrity Commission Act includes 'the Police Service' in its definition of 'public authority', the Integrity Commission has identified some issues in regard to this aspect of its jurisdiction, as previously discussed on pp. 35-36.

^ Some ICAC functions listed in the ICAC Act do not extend to 'police officers, Crime Commission officers or administrative officers within the meaning of the *Police Integrity Commission Act 1996*.' In addition, the PIC's functions include the detection, investigation and prevention of misconduct by administrative officers of the NSW Police Force and officers of the NSW Crime Commission.<sup>206</sup>

# Although there are special procedures for IBAC investigations in relation to the judiciary.

## Only if misconduct, if established, would warrant the judicial officer's removal from office.

+ From any member of the police with respect to certain investigations.<sup>207</sup>

<sup>206</sup> Police Integrity Commission (date unknown) 'Welcome', PIC website, viewed 22 December 2011, <<http://www.pic.nsw.gov.au/>>.

<sup>207</sup> Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011, s 53.

## References

### Relevant Victorian Legislation

*Independent Broad-based Anti-corruption Commission Act 2011*  
*Parliamentary Committees Act 2003*  
*Police Regulation Act 1958*  
*Surveillance Devices Act 1999*  
*Telecommunications (Interception) (State Provisions) Act 1988*  
*Police Integrity Act 2008.*

### Relevant Legislation from Other Jurisdictions

*Telecommunications (Interception and Access) Act 1979* (Cth)  
*Independent Commission Against Corruption Act 1988* (NSW)  
*Police Integrity Commission Act 1996* (NSW)  
*Crime and Misconduct Act 2001* (Qld)  
*Corruption and Crime Commission Act 2003* (WA)  
*Integrity Commission Act 2009* (Tas)

### Bibliography

Australian Commission for Law Enforcement Integrity (2012) 'About Us', ACLEI website, viewed 3 February 2012, <[http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About\\_Us](http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us)>.

Brown, A.J. & B. Head (2005) 'Institutional Capacity and Choice in Australia's Integrity Systems', *Australian Journal of Public Administration*, vol. 64, iss. 2, pp. 84-95.

Brumby, J. (2010) *Government Adopts the Proust Integrity Model*, Media Release, 2 June.

Crime and Misconduct Commission (2011) 'About Us: Our Jurisdiction', CMC website, viewed 11 January 2012, <<http://www.cmc.qld.gov.au/about-us/our-jurisdiction>>.

Crime and Misconduct Commission (2011) 'About Us: Our Powers', CMC website, viewed 11 January 2012, <<http://www.cmc.qld.gov.au/about-us/our-powers>>.

Crime and Misconduct Commission (2011) *Annual Report 2010-11*, Brisbane, CMC, viewed 2 February 2012, <<http://www.cmc.qld.gov.au/research-and-publications/publications/corporate/annual-report-2010201311-1/annual-report-2010-11/annual-report-2010201311>>.

Crime and Misconduct Commission (2011) 'Topics: What is Misconduct?', CMC website, viewed 11 January 2012, <<http://www.cmc.qld.gov.au/topics/misconduct/report-misconduct/what-is-misconduct>>.

Douglas, R. (2009) *Douglas and Jones's Administrative Law*, Sixth Edition, Sydney, Federation Press.

Hall, P. (2004) *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures*, Sydney, Lawbook.

Hindess, B. (2004) *Corruption and Democracy in Australia*, Report No. 3, Democratic Audit of Australia, Canberra, viewed 1 February 2012, <[http://democraticaudit.org.au/?page\\_id=21](http://democraticaudit.org.au/?page_id=21)>.



Independent Commission Against Corruption (2011) 'Accountability Mechanisms', ICAC website, viewed 22 December 2011, <<http://www.icac.nsw.gov.au/about-the-icac/independence-accountability/accountability>>.

Independent Commission Against Corruption (2011) *Annual Report 2010-11*, Sydney, ICAC, viewed 14 November 2011, <[http://www.icac.nsw.gov.au/publications-and-resources/publications-search?option=com\\_pubsearch&view=search&task=doSearch&Itemid=132#results](http://www.icac.nsw.gov.au/publications-and-resources/publications-search?option=com_pubsearch&view=search&task=doSearch&Itemid=132#results)>.

Independent Commission Against Corruption (2011) 'Functions of the ICAC', ICAC website, viewed 22 December 2011 <<http://www.icac.nsw.gov.au/about-the-icac/overview>>.

Independent Commission Against Corruption (2011) 'Investigations: Statutory Powers', ICAC website, viewed 2 February 2011, <<http://www.icac.nsw.gov.au/investigations/investigation-process/statutory-powers>>.

Independent Commission Against Corruption (2011) 'Overview', ICAC website, viewed 22 December 2011 <<http://www.icac.nsw.gov.au/about-the-icac/overview>>.

Independent Commission Against Corruption (2011) 'Reporting Requirements', ICAC website, viewed 23 December 2011, <<http://www.icac.nsw.gov.au/about-the-icac/independence-accountability/reporting-requirements>>.

Integrity Commission (2011) *Annual Report 2010-2011*, Hobart, Integrity Commission, viewed 13 January 2012, <<http://www.integrity.tas.gov.au/>>.

Integrity Commission (2011) 'Integrity Commission: Making a Complaint', Integrity Commission website, viewed 12 January 2012, <[http://www.integrity.tas.gov.au/making\\_a\\_complaint](http://www.integrity.tas.gov.au/making_a_complaint)>;

Integrity Commission (2011) 'Making a Complaint: Who are Public Officers', Integrity Commission website, viewed 12 January 2012, <[http://www.integrity.tas.gov.au/making\\_a\\_complaint/who\\_are\\_public\\_officers](http://www.integrity.tas.gov.au/making_a_complaint/who_are_public_officers)>.

Law Institute Victoria (2010) *Submission to the Integrity and Anti-corruption System Review*, LIV, East Melbourne, viewed 2 February 2012, <<http://www.ssa.vic.gov.au/products/view-products/review-of-victorias-integrity-and-anti-corruption-system.htm>>.

Liberty Victoria (2010) *Position Paper on the Proposed Victorian Integrity and Anti-Corruption Commission*, 24 September, LV, Melbourne, viewed 2 February 2012, <<http://www.libertyvictoria.org/node/31>>.

New South Wales Crime Commission (2010) 'Home: Establishment', NSW Crime Commission website, viewed 22 December 2011, <<http://www.crimecommission.nsw.gov.au/>>.

Office of the Chief Parliamentary Counsel (2011) 'Penalty and Fee Units', OCPC website, State Government Victoria, viewed 6 September 2011, <<http://www.ocpc.vic.gov.au/CA2572B3001B894B/pages/faqs-penalty-and-fee-units>>.

Office of Police Integrity (2009) *The Office of Police Integrity: The First Five Years, Nov 2004 – Nov 2009*, Melbourne, OPI, p. 6, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=21&m=11&t=1>>.

Office of Police Integrity (2011) 'About OPI', OPI website, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=7&m=1&t=1>>.

Office of Police Integrity (2011) *Annual Report 2010-11*, Melbourne, OPI, p. 20, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=17&m=10&t=1>>.

Office of Police Integrity (2011) 'Powers', OPI website, viewed 27 January 2012, <<http://www.opi.vic.gov.au/index.php?i=40&m=95&t=1>>.

Owen, M. (2011) 'South Australia to Have its Own Corruption-Fighting Body, New Premier Jay Weatherill Decides,' *theaustralian.com.au*, 24 October, viewed 2 November 2011, <<http://www.theaustralian.com.au/national-affairs/state-politics/south-australia-to-have-its-own-corruption-fighting-body-new-premier-jay-weatherill-decides/story-e6frgczx-1226175279454>>.

Police Integrity Commission (date unknown) 'Welcome', PIC website, viewed 22 December 2011, <<http://www.pic.nsw.gov.au/>>.

Police Integrity Commission (2011) *Annual Report 2010-2011*, Sydney, PIC.

Prenzler, T. & N. Faulkner (2010) 'Towards a Model Public Sector Integrity Commission', *Australian Journal of Public Administration*, vol. 69, iss. 3, pp. 251 -262.

Proust, E. & P. Allen (2010) *Review of Victoria's Integrity and Anti-Corruption System*, Public Sector Standards Commissioner, Melbourne, State Services Authority, viewed 30 January 2012, <<http://www.ssa.vic.gov.au/products/view-products/review-of-victorias-integrity-and-anti-corruption-system.html>>.

Roberts-Smith, L. (2010) Public Seminar, 'The Role of the Corruption and Crime Commission in the Constitutional System of Western Australia', viewed 11 January 2012, <<http://www.ccc.wa.gov.au/Publications/Reports/Pages/Speeches.aspx>>.

Ross, C., B. Merner & A. Delacorn (2011) 'Independent Broad-based Anti-corruption Commission Bill 2011', *Current Issues Brief*, no. 1, Melbourne, Victorian Parliamentary Library, viewed 11 January 2012, <<http://www.parliament.vic.gov.au/publications/research-papers?sort=latest>>.

Symons, M. (2008) 'Catch Me if You Can! A Comparison Between the Law Enforcement and Commission Approach to Corruption Investigation', Conference Paper, *Empowering Anti-Corruption Agencies: Defying Institutional Failure and Strengthening Preventative and Repressive Capacities*, Network on Anti-Corruption Agencies, University Institute of Lisbon.

Victorian Government (2011) *Service Delivery: Budget Paper No. 3: 2011-12*, Melbourne, Department of Treasury and Finance, p. 241, viewed 3 February 2012, <<http://www.budget.vic.gov.au/CA25783300199E40/pages/service-delivery>>.

Victorian Liberal Nationals Coalition (2010) *IBAC: An Independent Broad-based Anti-corruption Commission for Victoria*, Melbourne, Liberal Victoria.

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