

Version No. 012
**Independent Broad-based Anti-corruption
Commission Act 2011**

No. 66 of 2011

Version incorporating amendments as at
17 April 2013

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**Independent Broad-based Anti-corruption
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17 April 2013

The Parliament of Victoria enacts:

PART 1—PRELIMINARY¹

1 Purpose

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

2 Commencement

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

3 Definitions

- (1) In this Act—

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

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

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

s. 3

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

approved health professional means—

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

S. 3(1) def. of
arrest warrant
inserted by
No. 28/2012
s. 3(1).

arrest warrant means a warrant to arrest a person issued under section 139(2) or section 153(1);

S. 3(1) def. of
assessable disclosure
inserted by
No. 85/2012
s. 84(1).

assessable disclosure has the same meaning as in the **Protected Disclosure Act 2012**;

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

authorised officer means a sworn IBAC Officer appointed as an authorised officer under section 81;

Australian legal practitioner has the same meaning as it has in the **Legal Profession Act 2004**;

S. 3(1) def. of
breach of discipline
inserted by
No. 13/2012
s. 3(1).

breach of discipline, in relation to a member of the police force, means a breach of discipline committed under section 69 of the **Police Regulation Act 1958**;

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

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

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

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

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

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

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

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

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

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

Chief Commissioner of Police means the Chief Commissioner of Police appointed under Part I of the **Police Regulation Act 1958**;

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

Commissioner means the person appointed under section 20;

complaint means—

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

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

s. 3

S. 3(1) def. of
confidentiality notice
inserted by
No. 28/2012
s. 3(1).

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

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

corrupt conduct has the meaning given by
section 4;

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

Council has the same meaning as it has in section
3(1) of the **Local Government Act 1989**;

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

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

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

defensive equipment means one or more of the following—

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

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

Deputy Commissioner means a person appointed under section 23;

detained person means—

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

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

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

S. 3(1) def. of *detrimental action* inserted by No. 85/2012 s. 84(1).

detrimental action has the same meaning as in the **Protected Disclosure Act 2012**;

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

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

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

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

domestic partner of a person means—

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

Note

A registered relationship is defined in subsection (4).

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

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

examination means an examination under Part 6;

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

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

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

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

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

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

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

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

IBAC Committee means the Joint House Committee established under section 5(fa) of the **Parliamentary Committees Act 2003**;

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

IBAC Officer means—

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

S. 3(1) def. of *integrity body* inserted by No. 28/2012 s. 3(1), amended by No. 82/2012 s. 253.

integrity body means—

- (a) the Auditor-General appointed under section 94A of the **Constitution Act 1975**;
- (b) the Commissioner for Law Enforcement Data Security appointed under section 5 of the **Commissioner for Law Enforcement Data Security Act 2005**;
- (c) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;
- (d) the Privacy Commissioner appointed under section 50 of the **Information Privacy Act 2000**;
- (e) the Victorian Inspectorate;
- (f) the Integrity Commissioner appointed under section 175 of the Law Enforcement Integrity Commissioner Act 2006 of the Commonwealth;

-
- (g) the Australian Crime Commission established under section 7 of the Australian Crime Commission Act 2002 of the Commonwealth;
 - (h) the Independent Commission Against Corruption established under section 4 of the Independent Commission Against Corruption Act 1988 of New South Wales;
 - (i) the Police Integrity Commission established under section 6 of the Police Integrity Commission Act 1996 of New South Wales;
 - (j) the Crime and Misconduct Commission established under section 220 of the Crime and Misconduct Act 2001 of Queensland;
 - (k) the Integrity Commission established under section 7 of the Integrity Commission Act 2009 of Tasmania;
 - (l) the Corruption and Crime Commission established under section 6 of the Corruption and Crime Commission Act 2003 of Western Australia;
 - (m) the Commonwealth Ombudsman established under section 4 of the Ombudsman Act 1976 of the Commonwealth;
 - (n) an Ombudsman of another State or a Territory established under an Act of that jurisdiction corresponding to the **Ombudsman Act 1973**;
 - (o) any other prescribed person or body which has an integrity function;
-

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

judicial officer means—

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

S. 3(1) def. of
law enforcement agency
inserted by
No. 28/2012
s. 3(1).

law enforcement agency means—

- (a) the Chief Commissioner of Police;
- (b) the Victorian WorkCover Authority established under section 18 of the **Accident Compensation Act 1985**;
- (c) the Environment Protection Authority established under section 5 of the **Environment Protection Act 1970**;
- (d) the Australian Federal Police constituted under section 6 of the Australian Federal Police Act 1979 of the Commonwealth;
- (e) the police force or police service (however described) of another State or a Territory;
- (f) any other prescribed person or body which has a law enforcement function;

notification to the IBAC means—

- (a) in relation to corrupt conduct, a notification under section 57(1);
- (b) in relation to police personnel conduct, a notification under section 57(2), (4) or (6);
- (c) a notification under section 236C of the **Accident Compensation Act 1985**;
- (d) a notification under section 19A of the **Audit Act 1994**;
- (e) a notification under section 19A of the **Electoral Act 2002**;
- (f) a notification under section 54C of the **Environment Protection Act 1970**;
- (g) a notification under section 16E of the **Ombudsman Act 1973**;
- (h) a notification under section 74A of the **Public Administration Act 2004**;
- (i) a notification under section 37G of the **Racing Act 1958**;

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

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

S. 3(1) def. of *notification to the IBAC* inserted by No. 13/2012 s. 3(1), amended by No. 82/2012 s. 3(a).

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

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

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

police force means—

- (a) the Chief Commissioner of Police;
- (b) a Deputy Commissioner of Police or an Assistant Commissioner of Police appointed under Part I of the **Police Regulation Act 1958**;
- (c) other members of the force within the meaning of section 3(1) of the **Police Regulation Act 1958**;
- (d) police reservists appointed under Part VI of the **Police Regulation Act 1958**;
- (e) protective services officers appointed under Part VIA of the **Police Regulation Act 1958**;

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

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

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

police personnel means—

- (a) a member of the police force;
- (b) an executive or employee employed under Part 3 of the **Public Administration Act 2004** in the office of the Chief Commissioner of Police;
- (c) a police recruit appointed under section 8A of the **Police Regulation Act 1958**;

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

police personnel conduct has the meaning given by section 5;

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

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

police personnel misconduct has the meaning given by section 5;

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

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

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

prescribed means prescribed by regulations made under this Act;

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

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

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

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

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

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

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

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

privilege means—

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

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

prosecutorial body means—

- (a) the Director of Public Prosecutions appointed under section 87AB of the **Constitution Act 1975**;
- (b) the Victorian WorkCover Authority established under section 18 of the **Accident Compensation Act 1985**;
- (c) the Director of Public Prosecutions of the Commonwealth appointed under section 18 of the Director of Public Prosecutions Act 1983 of the Commonwealth;
- (d) the Director of Public Prosecutions of another State or a Territory;
- (e) any other prescribed person or body which has a prosecutorial function;

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

protected disclosure complaint means a disclosure that the IBAC has determined under section 26 of the **Protected Disclosure Act 2012** to be a protected disclosure complaint;

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

public body has the meaning given by section 6;

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

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

public officer has the meaning given by section 6;

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

public sector has the meaning given by section 6;

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

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

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

referral means a referral under Division 5 of Part 3;

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

relevant head of jurisdiction means—

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

- (a) in relation to the Supreme Court, a Judge of the Supreme Court, an Associate Judge of the Supreme Court or a judicial registrar of the Supreme Court—
 - (i) the Chief Justice; or
 - (ii) if the Chief Justice is the person whose conduct is being investigated, the President of the Court of Appeal; or

- (b) in relation to the County Court, a judge of the County Court or an associate judge of the County Court—
 - (i) the Chief Judge of the County Court; or
 - (ii) if the Chief Judge is the person whose conduct is being investigated, the next most senior judge of the County Court;
- (c) in relation to the Magistrates' Court or a magistrate—
 - (i) the Chief Magistrate; or
 - (ii) if the Chief Magistrate is the person whose conduct is being investigated, the most senior Deputy Chief Magistrate;

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

relevant offence means—

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

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

relevant principal officer means—

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

- (ii) the public officers employed by that public body;
- (b) the Chief Commissioner of Police, in relation to members of police personnel;
- (c) the Chief Executive Officer of a Council, in relation to members of Council staff employed by that Council;

report of the Chief Commissioner of Police means—

- (a) a report on an investigation completed by the Chief Commissioner of Police under Part IVA or IVB of the **Police Regulation Act 1958**;
- (b) a report to the IBAC under section 57(3);

S. 3(1) def. of *report of the Chief Commissioner of Police* inserted by No. 28/2012 s. 3(1), amended by No. 85/2012 s. 84(2).

restricted matter means—

- (a) any evidence given to the IBAC;
- (b) the contents of any document, or a description of any thing, produced to the IBAC;
- (c) the contents of any document, or a description of any thing, which the IBAC has made a copy of or seized under Division 3 or Division 4 of Part 4;
- (d) the existence of, or any information about, a confidentiality notice or a witness summons;
- (e) the subject matter of an investigation in relation to which a witness summons has been issued;

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

- (f) any information that could enable a person who has been, or is proposed to be, examined by, or who has produced, or may produce, any document or thing to, the IBAC, to be identified or located;
- (g) the fact that a person has been, or is proposed to be, examined by, or has produced, or may produce, any document or thing to, the IBAC;

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

search warrant means a warrant issued under section 91;

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

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

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

serious injury includes an injury that—

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

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

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

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

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

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

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

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

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

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

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

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

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

witness summons means a witness summons issued under section 120(1).

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

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

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

s. 4

qualifications, training and experience to take those samples.

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

(3) A reference in this Act to the investigative functions of the IBAC—

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

(a) in respect of corrupt conduct, is a reference to the functions specified in section 15(2)(a), (3)(a) and (3)(c);

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

(b) in respect of police personnel conduct, is a reference to the functions specified in section 15(2)(b), (2)(c), (3)(b) and (3)(c).

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

(4) For the purposes of the definition of *domestic partner* in subsection (1)—

(a) registered relationship has the same meaning as it has in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

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

4 *Corrupt conduct*

(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 reasonable doubt at a trial, constitute a relevant offence.

- (2) Conduct may be *corrupt conduct* for the purposes of this Act if—
 - (a) all or any part of the conduct occurs outside Victoria, including outside Australia; and
 - (b) the conduct would be corrupt conduct if it occurred in Victoria.
- (3) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the **Electoral Act 2002**.

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

For the purposes of this Act—

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

S. 5
inserted by
No. 13/2012
s. 4 (as
amended by
No. 82/2012
s. 148(1)).

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- (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;
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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.

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

- (1) For the purposes of this Act—

public body means, subject to this section—

- (a) a public sector body within the meaning of section 4(1) of the **Public Administration Act 2004**;

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

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- (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 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**;
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- (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, a 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;
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- (w) the holder of any other statutory office or any other prerogative office;
- (x) any other person in the service of the Crown or a public body;
- (y) a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);
- (z) a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition;
- (za) an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer;

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

- (2) The following are not a *public body* or a *public officer* for the purposes of this Act—
- (a) the IBAC;
 - (b) an IBAC Officer;
 - (c) a Public Interest Monitor;
 - (d) the Office of the Special Investigations Monitor;
 - (e) the Special Investigations Monitor appointed under section 5 of the **Major Crime (Special Investigations Monitor) Act 2004**;
 - (f) the Victorian Inspectorate;

- (g) a Victorian Inspectorate Officer within the meaning of section 3 of the **Victorian Inspectorate Act 2011**;
 - (h) a court.
- (3) In determining if a function is a public function the factors that may be taken into account include—
- (a) that the function is conferred on the body or person by or under a statutory provision;
 - (b) that the function is of a regulatory nature;
 - (c) that the body that performs the function is a company (within the meaning of the Corporations Act) all of the shares in which are held by or on behalf of the State.
- (4) To avoid doubt—
- (a) the factors listed in subsection (3) are not exhaustive of the factors that may be taken into account in determining if a function is a public function; and
 - (b) the fact that one or more of the factors set out in subsection (3) are present in relation to a function does not necessarily result in the function being a public function.
- (5) The fact that a body or person receives public funds does not of itself make that body or person a public body or public officer for the purposes of this Act.

7 Protected disclosure complaint taken to be complaint

- (1) For the purposes of this Act, other than Divisions 1 and 2 of Part 3—
- (a) a protected disclosure complaint that would not otherwise constitute a complaint is taken to be—

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

- (i) a complaint made to the IBAC under section 51; or
 - (ii) if the disclosure relates to the conduct of a member of police personnel—a police personnel conduct complaint made to the IBAC under section 52; and
- (b) the person who made the protected disclosure complaint is taken to be the complainant in relation to the complaint.
- (2) To avoid doubt, a protected disclosure complaint that would otherwise constitute a notification under this Act is taken to be a complaint not a notification.

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

8 Objects of Act

The objects of this Act are to—

- (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.

9 Act binds the Crown

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

10 Application of Act

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

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

11 Investigation of conduct occurring before the commencement of this section

This Act applies to and in respect of conduct all or part of which occurred before the commencement of this section if the conduct—

- (a) is the conduct of, or in relation to, a person or body (whether or not still in existence) who or which would have been a public officer or public body within the meaning of this Act had this section been in force at the time the conduct occurred; and
- (b) would have been corrupt conduct or police personnel conduct within the meaning of this Act had this section been in force at the time the conduct occurred.

S. 11
inserted by
No. 28/2012
s. 5.

PART 2—THE IBAC

Division 1—Constitution and Staff

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

12 Establishment of the IBAC

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

13 The IBAC is a body corporate

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

Note

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

14 Constitution of the IBAC

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

15 Functions of the IBAC

- (1) The IBAC has the functions conferred on the IBAC under this Act or any other Act.
- (2) Without limiting the generality of subsection (1), 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**;
 - (c) to hold examinations;
 - (d) to make referrals to other persons or bodies.

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

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- (4) Without limiting subsections (2) and (3), the IBAC has the following functions in relation to protected disclosure complaints—
- (a) to investigate any of those complaints that it may investigate in accordance with—
 - (i) its corrupt conduct investigative functions; or
 - (ii) its police personnel conduct investigative functions;
 - (b) to refer the complaints to other persons or bodies to investigate;
 - (c) to dismiss the complaints.
- (5) The IBAC has education and prevention functions for the purpose of achieving the objects of this Act.
- (6) Without limiting the generality of subsection (5), the IBAC has the following functions under subsection (5)—
- (a) to examine systems and practices in the public sector and public sector legislation;
 - (b) to provide information to, consult with and make recommendations to, the public sector;
 - (c) to assist the public sector to increase capacity to prevent corrupt conduct and police personnel misconduct by providing advice, training and education services;
 - (d) to provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct;
 - (e) to provide information and education services to members of police personnel and the community about police personnel
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- conduct, including the detrimental effects of police personnel misconduct and ways in which to assist in preventing police personnel misconduct;
- (f) to publish information on ways to prevent corrupt conduct and police personnel misconduct.
- (7) For the purpose of achieving the objects of this Act, the IBAC has the following functions—
- (a) to receive information, conduct research and collect intelligence, and to use that information, research and intelligence in support of investigations;
- (b) to report on, and make recommendations as a result of, the performance of its duties and functions.
- (8) The IBAC has the monitoring and review functions set out in Part 8.

Note

See also Part 8 of the **Protected Disclosure Act 2012** which sets out the functions of the IBAC under that Act.

16 Powers of the IBAC

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

17 Delegation

- (1) The IBAC, by instrument, may delegate to the Commissioner any duty, function or power of the IBAC under this Act or any other Act other than this power of delegation.

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

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- (2) The IBAC, by instrument, may delegate to a Deputy Commissioner any duty, function or power of the IBAC under this Act or any other Act other than—
 - (a) a duty, function or power under section 162, 165, 189 or 190;
 - (b) a duty, function or power under section 42(7), 79(2), 117(1), 117(5), 127(2), 127(8), 139(1), 141, 153(1) or 156(1);
 - (c) this power of delegation.
 - (3) A delegation under this section to a former judge of the Supreme Court or the County Court or a former Chief Magistrate does not affect any pension or other rights or privileges that the person has as a former judge or Chief Magistrate.

18 IBAC not subject to direction or control

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

19 Independence of the Commissioner

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

20 Appointment of the Commissioner

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

21 Veto of proposed Commissioner

- (1) Subject to subsection (4), the Minister must not make a recommendation under section 20 unless—
 - (a) the Minister has submitted details of the proposed recommendation to the IBAC Committee; and
 - (b) either—
 - (i) within the time specified in subsection (2) the IBAC Committee has informed the Minister that it has decided not to veto the recommendation; or
 - (ii) the time specified in subsection (2) has elapsed and the IBAC Committee has not vetoed the recommendation.
 - (2) The IBAC Committee must make a decision under this section within 30 days after the Minister has submitted details of the proposed recommendation to the IBAC Committee.
 - (3) The IBAC Committee—
 - (a) may decide to veto or not to veto the proposed recommendation;
 - (b) must notify the Minister in writing of its decision within the period specified in subsection (2).
 - (4) Subsections (1) to (3) do not apply to the appointment of the first Commissioner under this Act and the Minister may make the recommendation for the appointment of the first Commissioner after the Premier has consulted in relation to the proposed recommendation with the member of the Legislative Assembly who is for the time being the Leader of Her Majesty's Opposition.
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22 Duties, functions and powers of the Commissioner

The Commissioner—

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

23 Deputy Commissioners

- (1) Subject to subsections (2) and (3), the Governor in Council on the recommendation of the Minister may by instrument appoint one or more persons as Deputy Commissioners being persons whom the Minister considers have the experience and qualifications necessary to enable the IBAC to achieve the objects of this Act and perform its duties and functions.
- (2) The Minister must, in making a recommendation, ensure that at least one Deputy Commissioner is an Australian lawyer within the meaning of the **Legal Profession Act 2004**.
- (3) Before making a recommendation under this section, the Minister must obtain the concurrence of the Commissioner.
- (4) A person holding a judicial office immediately before being appointed to be a Deputy Commissioner must cease to hold that judicial office upon being appointed to be a Deputy Commissioner.

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

24 Terms and conditions

- (1) The Commissioner or a Deputy Commissioner holds office for the period not exceeding 5 years as is specified in the instrument of appointment.
 - (2) The Commissioner is not eligible to be re-appointed.
 - (3) A Deputy Commissioner is eligible to be re-appointed.
 - (4) Subject to this section, the Commissioner or a Deputy Commissioner is appointed on the terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment.
 - (5) The remuneration of the Commissioner or a Deputy Commissioner cannot be reduced during his or her term of office unless he or she consents to the reduction.
 - (6) If a person who has been a judge of the Supreme Court or the County Court or has been the Chief Magistrate is appointed as the Commissioner or a Deputy Commissioner, the appointment does not affect any pension or other rights or privileges the person has as a former judge or Chief Magistrate.
 - (7) If the Commissioner or a Deputy Commissioner was immediately before his or her appointment a judge of the Supreme Court, his or her service as a Commissioner or Deputy Commissioner shall count as service in the office of judge of the Supreme Court for the purposes of entitlement to a pension under section 83 of the **Constitution Act 1975**.
 - (8) If the Commissioner or a Deputy Commissioner was immediately before his or her appointment a judge of the County Court, his or her service as a Commissioner or Deputy Commissioner shall count as service in the office of judge of the
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County Court for the purposes of entitlement to a pension under section 14 of the **County Court Act 1958**.

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

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

Note

This includes a legal practising certificate under the **Legal Profession Act 2004**.

- (b) conduct any trade, business or profession; or
 - (c) accept any other employment.
- (14) The **Public Administration Act 2004** does not apply to the Commissioner or a Deputy Commissioner in respect of the office of Commissioner or Deputy Commissioner.

25 Vacancy and resignation—office of the Commissioner

- (1) The Commissioner ceases to hold office if he or she—
 - (a) resigns by writing delivered to the Governor; or
 - (b) becomes an insolvent under administration; or
 - (c) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
 - (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (e) is appointed to a judicial office; or
 - (f) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.
- (2) The Commissioner ceases to hold office if he or she is removed from office under section 26.

26 Suspension and removal from office of the Commissioner

- (1) The Governor in Council may suspend the Commissioner from office on any of the following grounds—
 - (a) misconduct;
 - (b) neglect of duty;
 - (c) inability to perform the duties of the office;
 - (d) any other ground on which the Governor in Council is satisfied that the Commissioner is unfit to hold office.
- (2) The Minister must cause a full statement of the grounds of suspension to be presented to each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the suspension.
- (3) The Governor in Council must remove the Commissioner from office if each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the statement of the grounds of suspension is presented to it, declares by resolution that the Commissioner ought to be removed from office.
- (4) The Governor in Council must remove the suspension and restore the Commissioner to office unless each House of the Parliament makes a declaration of the kind specified in subsection (3) within the time specified in that subsection.
- (5) The Commissioner can only be removed from office in accordance with this section.

27 Vacancy and resignation—office of Deputy Commissioner

- (1) A Deputy Commissioner ceases to hold office if he or she—
- (a) resigns by writing delivered to the Governor;
or
 - (b) becomes an insolvent under administration;
or
 - (c) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
 - (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (e) is appointed to a judicial office; or
 - (f) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.
- (2) A Deputy Commissioner ceases to hold office if he or she is removed from office under section 28.

28 Removal from office of a Deputy Commissioner

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

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

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

30 Acting appointment

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

- (1) The Governor in Council may on the recommendation of the Minister appoint a person to act in the office of Commissioner or a Deputy Commissioner during—
- (a) any vacancy (including an initial vacancy) in the office of the Commissioner or Deputy Commissioner; or
 - (b) any period when the person holding the office—
 - (i) is absent from duty; or
 - (ii) is for any other reason unable to perform the duties of the office.
- (2) Subject to this section, a person appointed under subsection (1) can be appointed for a period not exceeding 6 months.
- (3) Subject to subsection (4), an acting appointment or acting appointments in respect of each vacancy referred to in subsection (1)(a) or each period referred to in subsection (1)(b) must not exceed a total of 6 months in duration.
- (4) An acting appointment or acting appointments in respect of each vacancy referred to in subsection (1)(a) or each period referred to in subsection (1)(b) must not exceed a total of 12 months in duration, if—
- (a) a Deputy Commissioner or Deputy Commissioners are appointed to act; or

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- (b) the person appointed to act is a person who is eligible for appointment as the Commissioner under section 20; or
- (c) the person appointed to act is a person who, in the opinion of the Minister—
- (i) has the experience and qualifications necessary to enable the IBAC to achieve the objects of this Act and perform its duties and functions; and
 - (ii) has prior experience in a senior role in a body with investigative functions, intelligence gathering functions or substantially similar functions.
- (5) A vacancy in the office of the Commissioner must be filled by a person appointed in accordance with section 20 within the period of 12 months after the vacancy occurred.
- (6) The Governor in Council may at any time remove a person acting in the office of the Commissioner or a Deputy Commissioner from the office.
- (7) While a person is acting in the office of Commissioner or Deputy Commissioner the person—
- (a) has and may exercise all the powers, and must perform all the functions and duties, of that office; and
 - (b) unless subsection (8) applies, is entitled to be paid the remuneration and allowances which the Commissioner or Deputy Commissioner would have been entitled to.
- (8) If there is no current holder of the office of Commissioner under section 20 or Deputy Commissioner under section 23, a person appointed to act as the Commissioner or to act as the Deputy Commissioner is entitled to be paid
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the remuneration and allowances specified in the instrument of appointment of that person as acting Commissioner or acting Deputy Commissioner.

31 Oath or affirmation of office

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

32 Delegation

- (1) The Commissioner, by instrument, may delegate to a Deputy Commissioner or the Chief Executive Officer any duty, function or power of the Commissioner under this Act (including any duty, function or power delegated to the Commissioner under section 17) or any other Act other than, subject to subsections (5) and (6)—
 - (a) a duty, function or power under section 42(7), 79(2), 85, 91, 117(1), 117(5), 127(2), 127(8), 139(1), 141, 153(1), 156(1), 162, 165, 189 or 190;
 - (b) the power of authorisation under section 189 or 190;
 - (c) this power of delegation.

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

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- (2) The Commissioner, by instrument, may delegate to a senior IBAC Officer who is not the holder of an office specified in subsection (1) any duty, function or power of the Commissioner under this Act (including any duty, function or power delegated to the Commissioner under section 17) or any other Act other than—
- (a) a duty, function or power under section 42(1), 42(3), 42(4), 42(5), 42(7), 47(2), 50(2), 73, 74, 75, 78(2), 79(2), 81, 84, 85, 91, 115, 117(1), 117(5), 119, 127(2), 127(8), 139(1), 141, 153(1), 156(1), 162, 165, 189 or 190;
 - (b) the power of authorisation under section 189 or 190;
 - (c) this power of delegation.
- (3) A Deputy Commissioner, by instrument, may delegate to the Chief Executive Officer or a senior IBAC Officer any duty, function or power of the Deputy Commissioner under this Act (including any duty, function or power delegated to the Deputy Commissioner under section 17 or this section) or any other Act other than this power of delegation.
- (4) The Chief Executive Officer, by instrument, may delegate to a senior IBAC Officer any duty, function or power of the Chief Executive Officer under this Act (including any duty, function or power delegated to the Chief Executive Officer under this section) or any other Act other than this power of delegation.
- (5) Despite subsection (1), if the Commissioner has made a declaration of inability to act in respect of a particular matter under section 29, the Commissioner, by instrument, may delegate to a sworn IBAC Officer who would be qualified to be
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appointed under section 20 to be the Commissioner any duty, function or power of the Commissioner under this Act (including any duty, function or power delegated to the Commissioner under section 17) or any other Act which the Commissioner considers is necessary to enable that sworn IBAC Officer to act in respect of that particular matter.

- (6) Despite subsection (1), if a sworn IBAC Officer to whom section 61(1) applies is conducting an investigation referred to in section 61, the Commissioner, by instrument, may delegate to that sworn IBAC Officer any duty, function or power of the Commissioner under this Act (including any duty, function or power delegated to the Commissioner under section 17) or any other Act which the Commissioner considers is necessary to enable that sworn IBAC Officer to act in respect of that particular investigation.
- (7) A delegation under this section to a former judge of the Supreme Court or the County Court or a former Chief Magistrate does not affect any pension or other rights or privileges that the person has as a former judge or Chief Magistrate.

33 Chief Executive Officer

- (1) The IBAC must appoint a person as the Chief Executive Officer of the IBAC.
- (2) The Chief Executive Officer holds office, subject to this Act, on a full-time basis and on such terms and conditions as are determined by the IBAC and specified in the instrument of appointment.
- (3) The IBAC may at any time remove or suspend the Chief Executive Officer from office.

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

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

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

35 Staff

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

36 Consultants

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

37 Oath or affirmation by staff and consultants

- (1) Before commencing employment with the IBAC, a person referred to in section 35 must take an oath or make an affirmation that he or she—

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

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

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

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

- (a) the administration of this Act; or
 - (b) the performance of duties and functions or the exercise of powers by the IBAC.
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39 Obligation to avoid actual or perceived conflicts of interest

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

Division 2—Disclosure by the IBAC

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

40 Unauthorised disclosures or provision of information

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

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

- (a) for the performance of the duties and functions or the exercise of the powers of the person or the IBAC in accordance with this Act or any other Act; or
- (b) for the purposes of—
 - (i) proceedings for an offence; or
 - (ii) a disciplinary process or action—
brought as a result of an investigation conducted by the IBAC or by the Victorian Inspectorate; or
- (c) for the purposes of proceedings for an offence against this Act or the **Protected Disclosure Act 2012**; or

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

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

Note

The person may be subject to further confidentiality obligations under Part 7 of the **Protected Disclosure Act 2012**.

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

41 Disclosure or provision of information by the IBAC

- (1) If the IBAC considers it appropriate, the IBAC, at any time, may provide or disclose any information acquired by reason of, or in the course of, the performance of its duties and functions or the exercise of its powers under this Act or any other Act to any of the following persons or bodies if the IBAC considers that the information is relevant to the performance of the duties and functions or the exercise of powers of that person or body—
 - (a) an integrity body;
 - (b) a law enforcement agency;
 - (c) a prosecutorial body;
 - (d) the relevant principal officer.
- (2) Subsection (1) applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).
- (3) The IBAC must not provide or disclose information under subsection (1) that is likely to lead to the identification of a person who has made an assessable disclosure to—

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- (a) an entity specified in subsection (1)(a), (b) or (c), if the entity is—
 - (i) the subject of the assessable disclosure; or
 - (ii) the employer of the person who is the subject of the assessable disclosure; or
 - (b) an entity specified in subsection (1)(d) in any circumstances.
- (4) However, the IBAC may provide or disclose under subsection (1) information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

Division 3—Confidentiality notices

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

42 Confidentiality notice

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

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

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

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- (2) A confidentiality notice must—
- (a) be in the prescribed form;
 - (b) specify the restricted matter or restricted matters in respect of which the confidentiality notice is issued;
 - (c) include a copy of the provisions of subsections (3) to (8) and section 44 and an explanation of the effect of those provisions;
 - (d) include a statement—
 - (i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and
 - (ii) directing the person to the provisions of that Act which impose those obligations;
 - (e) if a restricted matter specified in the confidentiality notice is the fact that the person has been, or is proposed to be, examined by, or has produced, or may produce, any document or thing to, the IBAC, specify that the IBAC authorises the person to whom the confidentiality notice is issued to disclose the restricted matter to—
 - (i) the person's spouse or domestic partner; and
 - (ii) the person's employer or manager or both, for the purpose of enabling the person to whom the confidentiality notice is issued to take the appropriate leave from his or her employment in order to comply with the witness summons—
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except to the extent that the IBAC considers that the authorisation to make the disclosure to the person's spouse, domestic partner, employer or manager would be likely to prejudice any of the matters specified in subsection (1)(a), (b) or (c).

- (3) If at any time the IBAC considers on reasonable grounds that it is necessary to restrict disclosure of a different restricted matter from any of those specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1) are not likely to be prejudiced, the IBAC must issue to the person to whom the confidentiality notice was issued—
- (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (4) If at any time the IBAC considers on reasonable grounds that it is no longer necessary to restrict disclosure of a particular restricted matter specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1) are not likely to be prejudiced, the IBAC must issue to the person to whom the confidentiality notice was issued—
- (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (5) If at any time the IBAC considers on reasonable grounds that it is no longer necessary to restrict disclosure of the restricted matter or restricted matters specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1) are not
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likely to be prejudiced, the IBAC must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice.

- (6) A confidentiality notice in respect of a particular investigation ceases to have effect on whichever of the following occurs first—
- (a) the date on which the IBAC issues a notice cancelling the confidentiality notice under subsection (3), (4) or (5);
 - (b) the date which is the expiry of the period of 5 years from the date on which the first confidentiality notice in respect of that investigation was issued to that person or, if an extension is granted under subsection (8), the date on which the period of extension expires.
- (7) If the IBAC considers on reasonable grounds that it is necessary to extend the period of 5 years specified in subsection (6)(b) on any of the grounds specified in subsection (8), the IBAC may apply to the Supreme Court for an extension of the period.
- (8) The Supreme Court, on the application of the IBAC, may, by order, extend the period of 5 years specified in subsection (6)(b), if the Supreme Court is satisfied that an extension is necessary to avoid prejudice to—
- (a) the investigation being conducted by the IBAC; or
 - (b) the safety or reputation of a person; or
 - (c) the fair trial of a person who has been, or may be, charged with an offence; or

- (d) any proceedings that are proposed to be commenced or which have not been finally determined.
- (9) A confidentiality notice under subsection (1) or a notice cancelling a confidentiality notice under subsection (3), (4) or (5) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served under section 124(3), 124(4), 124(5) or 125.

43 IBAC to provide Victorian Inspectorate with copies

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

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

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

44 Disclosure subject to confidentiality notice

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

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

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

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

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

Note

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

- (2) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made in any of the following circumstances—
- (a) in accordance with a direction or authorisation given by the IBAC;
 - (b) to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42, including if the person—
 - (i) does not have a sufficient knowledge of the English language to understand the nature of the witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42, to an interpreter;
 - (ii) is a person under the age of 18 years, to a parent, guardian or independent person;

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- (iii) is a person who is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42 without assistance, to an independent person;
- (c) subject to section 127(2) and (8), for the purposes of obtaining legal advice or representation in relation to—
- (i) a witness summons, a confidentiality notice or an order extending a confidentiality notice under section 42;
 - (ii) the person's rights, liabilities, obligations and privileges under this Act or the **Protected Disclosure Act 2012**;
- (d) by an Australian legal practitioner who receives a disclosure in the circumstances specified in paragraph (c), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;
- (e) as is otherwise authorised or required to be made by or under this Act.
- (3) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of making a complaint to the Victorian Inspectorate about the conduct of the IBAC or of an IBAC Officer.
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- (4) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of complying with a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (5) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure made is of information that has been published by the IBAC in a report or has otherwise been made public in accordance with this Act.
- (6) A person who makes a disclosure of information permitted by subsection (2) must, when making the disclosure, provide the person to whom the disclosure is made with a copy of the confidentiality notice and of any order extending the confidentiality notice under section 42, unless the person has a reasonable excuse for not doing so.

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

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

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

Division 4—Protection of persons and documents

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

45 Who is a protected person?

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

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

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

46 What is a protected document or other thing?

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

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

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

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

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

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

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

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

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

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

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

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- (b) apply to the court hearing the criminal proceeding to determine the application—
- (i) by confidential affidavit that is not disclosed to one or more of the parties or any representative of those parties; or
 - (ii) at a hearing held in closed court in which the protected person and each party to the proceeding has a right to be heard by the court regarding the objection; or
 - (iii) at a hearing held without notice to, and without the presence of, one or more of the parties or any representative of those parties; or
 - (iv) by any combination of the methods set out in subparagraphs (i) to (iii).
- (3) If the court is satisfied that it is not in the public interest to determine the application under subsection (2) by the method elected by the protected person, the court may determine the application by any other method set out in subsection (2)(b) that it thinks fit.
- (4) In deciding which method to use to determine the application, the court must take into account—
- (a) the public interest in protecting the confidentiality of any secret investigative method used by the IBAC, the Victorian Inspectorate, a law enforcement agency or an integrity body and documents and other things in the possession or control of the IBAC; and
 - (b) the extent to which the method of determining the objection which is the subject of the application may disclose information that—
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- (i) reveals the identity of an informer or puts an informer's safety at risk; or
 - (ii) reveals the identity of a person who has been summoned, or who has appeared, as a witness in an examination, or puts that person's safety at risk; or
 - (iii) reveals the identity of a person who has provided the IBAC with information relating to an investigation, or puts that person's safety at risk; or
 - (iv) reveals the identity of a person whose name appears in any evidence given or information provided to the IBAC relating to an investigation, or puts that person's safety at risk; or
 - (v) reveals the identity of a person who is or has been the subject of an investigation, or puts that person's safety at risk; or
 - (vi) places at risk an ongoing investigation under this Act or by the Victorian Inspectorate, a law enforcement agency or an integrity body; or
 - (vii) places at risk the disclosure of any secret investigative method used by the IBAC, the Victorian Inspectorate, a law enforcement agency or an integrity body; or
 - (viii) it would otherwise not be in the public interest to disclose.
- (5) If the court determines the objection by the method of confidential affidavit set out in subsection (2)(b)(i), the court may require the protected person to provide the court with any further confidential affidavits the court requires to determine the objection.
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- (6) Without limiting any other basis on which the court may refuse to require production of the document or other thing, or to allow a party to the criminal proceeding to inspect the document or other thing, the court must refuse to so require or allow if the court determines that the document or other thing is a protected document or other thing.
 - (7) Subsection (6) does not apply if the party seeking production or inspection of the document or other thing satisfies the court that exceptional circumstances exist that require the production or inspection of the document or other thing.

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

49 Court may appoint special counsel to represent party

- (1) If a court decides to determine an objection referred to in section 48, the court may appoint a special counsel to represent the interests of a party to the proceeding at the hearing.
 - (2) A special counsel must be a barrister within the meaning of the **Legal Profession Act 2004** who, in the opinion of the court, has the appropriate skills and ability to represent the interests of the party at the hearing.
 - (3) At any time before the special counsel attends the hearing or obtains any confidential affidavit in relation to the objection, the special counsel may communicate with the party whose interests he or she is representing, or any representative of that party, for the purpose of obtaining information from the party or representative in relation to the criminal proceeding.
 - (4) At any time after the special counsel commences to attend the hearing or obtains any confidential affidavit in relation to the objection, the special counsel—
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- (a) must not take instructions from the party whose interests he or she is representing, or from any representative of that party; and
 - (b) may communicate to that party or a representative of that party any order made by the court at or in relation to the hearing; and
 - (c) must not communicate any other information in relation to the hearing to that party or a representative of that party without leave of the court.

50 Compellability of protected persons as witnesses

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

- (1) This section applies to—
 - (a) any legal proceeding;
 - (b) any proceeding of any tribunal, authority or person having power to require the production of documents or the answering of questions, other than the Victorian Inspectorate;
 - (c) any disciplinary process or action.
 - (2) In any proceeding, process or action to which this section applies, a protected person is not compellable to disclose any matter or thing of which the person has knowledge as a result of the performance of the duties and functions or the exercise of powers of the person or the IBAC under this Act or any other Act, unless the IBAC certifies in writing that in the IBAC's opinion the giving of evidence by the protected person is in the public interest.
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s. 51

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

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

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

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

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

PART 3—INVESTIGATIONS

Division 1—Complaints to the IBAC

51 Complaints to the IBAC about corrupt conduct

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

52 Police personnel conduct complaints to the IBAC

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

53 Complaint to be in writing

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

54 Complaint from detained person

- (1) This section applies if a detained person wishes to—
 - (a) provide information or make a complaint to the IBAC under this Act; or
 - (b) make a disclosure to the IBAC under Part 2 of the **Protected Disclosure Act 2012**.
- (2) The detained person may inform the person in charge that he or she wishes to communicate with the IBAC.

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

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

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

55 Withdrawal of complaint

- (1) Subject to subsection (4), a person who makes a complaint may withdraw the complaint at any time after making it.
- (2) If a complaint is withdrawn, the IBAC may continue to investigate the matter that is the subject of the complaint.
- (3) If a complaint is withdrawn and the IBAC continues to investigate the matter that is the subject of the complaint the investigation is taken to be an investigation conducted by the IBAC on its own motion.
- (4) A complaint that is a protected disclosure complaint may not be withdrawn.

Division 2—Information and notifications to the IBAC

56 The IBAC may receive information

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

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

57 Notifications to the IBAC

- (1) The relevant principal officer may notify the IBAC of any matter that the person believes on reasonable grounds constitutes corrupt conduct.
- (2) The Chief Commissioner of Police must notify the IBAC of any complaint received by the Chief Commissioner of Police about corrupt conduct or police personnel misconduct by a member of police personnel who is not a member of the police force.
- (3) If the Chief Commissioner of Police investigates a complaint about police personnel misconduct by a member of police personnel who is not a member of the police force, after completing that investigation, the Chief Commissioner of Police must in writing report to the IBAC on—
 - (a) the results of the investigation; and
 - (b) the action (if any) taken or proposed to be taken.

Note

Under sections 86M and 86O of the **Police Regulation Act 1958**, the Chief Commissioner of Police must provide the IBAC with certain details relating to complaints about police personnel misconduct by a member of the police force.

- (4) The Chief Commissioner of Police must notify the IBAC of any complaint made to a member of the police force under section 86L of the **Police Regulation Act 1958** about conduct of—
 - (a) the Chief Commissioner of Police; or
 - (b) a Deputy Commissioner of Police; or
 - (c) an Assistant Commissioner of Police.
- (5) A notification under subsection (2) or (4) must be made as soon as practicable after the Chief Commissioner of Police receives the complaint.

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

s. 58

- (6) The Chief Commissioner of Police may notify the IBAC about police personnel conduct of a member of police personnel.
- (7) This section has effect despite any duty of secrecy or other restriction on disclosure.

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

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

58 IBAC must dismiss, investigate or make referral

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

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

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

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

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

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

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- (3) A notification under (2) must be given within a reasonable time after the action has been taken or the investigation has commenced.
- (4) The IBAC must not notify a person under subsection (1) or (2) if the IBAC considers that notifying that person would—
- (a) not be in the public interest or in the interests of justice; or
 - (b) put a person's safety at risk; or
 - (c) cause unreasonable damage to a person's reputation; or
 - (d) prejudice an investigation under this Act or an investigation by the police force or the person or body to which the referral was made; or
 - (e) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.
- (5) A notification under subsection (1) or (2) relating to an action referred to in section 58(b) or (c) must include a written statement advising the recipient that it is an offence under section 184 to disclose the action.

Division 4—Carrying out investigations

60 Conducting investigations about corrupt conduct

- (1) Subject to subsection (2), the IBAC may conduct an investigation in accordance with its corrupt conduct investigative functions—
- (a) on a complaint made to it under section 51; or

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

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- (b) on a notification to it under section 57(1); or
 - (c) on its own motion.
- (2) The IBAC must not conduct an investigation under subsection (1) unless it is reasonably satisfied that the conduct is serious corrupt conduct.
- (3) The IBAC may conduct an investigation under subsection (1) in relation to conduct of, or in relation to—
- (a) a person who was a public officer at the time of the conduct even if that person is no longer a public officer;
 - (b) a body that was a public body at the time of the conduct even if that body is no longer a public body or has ceased to exist as a body or as a public body;
 - (c) a person referred to in section 4(1)(a) which is, or was, a corporation even if that corporation has been deregistered under the Corporations Act.
- (4) The IBAC must not conduct an investigation under subsection (1) in relation to conduct which occurred entirely before the commencement of section 11 if the IBAC considers that—
- (a) the conduct is trivial or unrelated to the functions of the IBAC; or
 - (b) the complaint or notification is frivolous or vexatious; or
 - (c) the complaint or notification lacks substance or credibility; or
 - (d) the conduct occurred at too remote a time to justify investigation; or
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- (e) the complaint or notification was not made genuinely or was made primarily for a mischievous purpose.
- (5) The IBAC must not conduct an investigation under subsection (1) in relation to conduct which occurred entirely before the commencement of section 11 unless the IBAC is reasonably satisfied that—
- (a) it is in the public interest for the IBAC to investigate that conduct; and
 - (b) subject to subsection (4), in all the circumstances it is appropriate for the IBAC to investigate that conduct, having regard to the IBAC's functions of identifying and exposing serious corrupt conduct; and
 - (c) in the case of conduct that another investigatory body has already investigated or decided not to investigate—
 - (i) there is reliable, substantial and highly probative evidence that was not considered by the investigatory body; or
 - (ii) there is reliable, substantial and highly probative evidence that the investigation or decision not to investigate was materially affected by error.
- (6) In this section—
- investigatory body* means—
- (a) an integrity body; or
 - (b) any other person or body (whether or not still in existence) with the power to require the production of documents or the answering of questions.
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s. 61

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

61 Conducting investigations about conduct of judicial officers

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

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

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

- The IBAC must not include any finding of corrupt conduct of a judicial officer or any other adverse finding in relation to a judicial officer arising from an investigation in—
- (a) a special report under section 162; or
 - (b) an annual report under section 165.

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

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

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

64 Conducting investigations about police personnel conduct

- (1) The IBAC may conduct an investigation in accordance with its police personnel conduct investigative functions—
 - (a) on a police personnel conduct complaint made to it under section 52;
 - (b) on a notification to the IBAC under section 57(2), (4) or (6) or information provided under section 86M of the **Police Regulation Act 1958**;
 - (c) on its own motion.
- (2) The IBAC may attempt to resolve a police personnel conduct complaint under section 52 in relation to police personnel conduct by conciliation.
- (3) The IBAC must notify the Chief Commissioner of Police of the proposal to attempt conciliation under subsection (2) before commencing a conciliation.
- (4) The IBAC must notify the Chief Commissioner of Police of the results of the attempted conciliation under subsection (2).
- (5) The IBAC may conduct an investigation under subsection (1) in relation to police personnel conduct of, or in relation to, a person who was a member of police personnel at the time of the

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

conduct even if that person is no longer a member of police personnel.

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

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

- (1) Subject to subsection (2), the IBAC must investigate a complaint or a notification to the IBAC or a complaint under section 86L of the **Police Regulation Act 1958** in accordance with this Act if that complaint or notification is of conduct of—
 - (a) the Chief Commissioner of Police; or
 - (b) a Deputy Commissioner of Police; or
 - (c) an Assistant Commissioner of Police.
- (2) The IBAC may determine that a complaint or a notification referred to in subsection (1) does not warrant investigation if it considers on reasonable grounds that any of the following criteria apply—
 - (a) the subject matter of the complaint or notification is trivial or unrelated to the functions of the IBAC; or
 - (b) the complaint or notification is frivolous or vexatious; or
 - (c) the complaint or notification lacks substance or credibility; or
 - (d) the matter has already been the subject of a complaint or notification which has been investigated or otherwise dealt with; or
 - (e) the complaint or notification relates to conduct that occurred at too remote a time to justify investigation; or
 - (f) the complaint or notification was not made genuinely or was made primarily for a mischievous purpose; or

(g) in all of the circumstances, the conduct does not warrant investigation.

(3) The IBAC may notify a person who made a complaint or notification referred to in subsection (1) of the IBAC's determination that the complaint or notification does not warrant investigation.

66 Conducting investigations into protected disclosure complaints about detrimental action

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

(1) This section applies if—

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

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

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

(3) Subsection (2) applies whether or not the IBAC is reasonably satisfied that the conduct that is the subject of the further protected disclosure complaint is serious corrupt conduct.

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

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

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

- (1) Subject to sections 60(2), 60(4), 60(5), 63 and 65, the IBAC, in its absolute discretion, may determine that a complaint or a notification to the IBAC does not warrant investigation.
- (2) Without limiting subsection (1), the IBAC may determine under that subsection that a complaint or a notification to the IBAC does not warrant investigation if, in the opinion of the IBAC—
- (a) the subject matter of the complaint or notification is trivial or unrelated to the functions of the IBAC; or
 - (b) the complaint or notification is frivolous or vexatious; or
 - (c) the complaint or notification lacks substance or credibility; or
 - (d) the matter has already been the subject of a complaint or notification which has been investigated or otherwise dealt with; or
 - (e) the complaint or notification relates to conduct that occurred at too remote a time to justify investigation; or
 - (f) the complaint or notification was not made genuinely or was made primarily for a mischievous purpose; or
 - (g) in all of the circumstances, the conduct does not warrant investigation.

- (3) If a person who makes a complaint, other than a complaint referred to in section 65, has delayed making the complaint by more than a year after becoming aware of the conduct which is the subject of the complaint, the IBAC—
- (a) may require the person to give an explanation for the delay; and
 - (b) if not satisfied with the explanation, in its absolute discretion, may decide not to investigate the complaint.

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68 When certain complaints or notifications to the IBAC are dismissed

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

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

- (d) the IBAC determines that the complaint does not warrant investigation because the IBAC considers on reasonable grounds that the subject matter of the complaint is trivial; or
 - (e) the person who made the complaint has requested that the complaint not be investigated.
- (3) The IBAC must dismiss a protected disclosure complaint if the matter disclosed is a matter that neither the IBAC nor a body specified in section 73(3) may investigate.
 - (4) The IBAC may dismiss a protected disclosure complaint if the IBAC considers that referring the disclosure to any other body would prejudice criminal proceedings, a criminal investigation or an investigation by the IBAC or the Victorian Inspectorate.

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

69 Discontinuance of investigation

The IBAC may discontinue an investigation at any time.

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

70 Investigation when other proceedings on foot

- (1) The IBAC may commence or continue to investigate a matter despite the fact that any proceedings (whether civil or criminal) are on foot, or are commenced, in any court or tribunal that relate to, or are otherwise connected with, the subject matter of the investigation.
- (2) If the IBAC is or becomes aware that such proceedings are on foot, or have been commenced, the IBAC must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

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

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

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

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

72 The IBAC may conduct coordinated investigations

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

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

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- (b) in accordance with section 41, provide or disclose information to an integrity body or a law enforcement agency with which the IBAC is conducting a coordinated investigation;
 - (c) in accordance with Part 3, receive information from an integrity body or a law enforcement agency with which the IBAC is conducting a coordinated investigation;
 - (d) enter into a memorandum of understanding or an agreement with any integrity body or law enforcement agency in relation to the conduct of coordinated investigations with that integrity body or law enforcement agency.
- (4) Without limiting subsection (3)(d), a memorandum of understanding or an agreement under that subsection may be in relation to—
- (a) coordinated investigations generally; or
 - (b) specific coordinated investigations or classes of coordinated investigation.
- (5) Nothing in this section permits a duty or function of the IBAC to be performed or a power of the IBAC to be exercised other than—
- (a) by a person authorised to perform that duty or function, or exercise that power, under this Act; and
 - (b) in a manner required or authorised under this Act.

Division 5—Referrals

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

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

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

- (1) The IBAC must refer to a person or body specified in subsection (2) a complaint or notification to the IBAC if, at any time, the IBAC considers that—
- (a) the subject matter of the complaint or notification is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and
 - (b) it would be more appropriate for the complaint or notification to be investigated by that person or body rather than by the IBAC.
- (2) For the purposes of subsection (1) and subject to subsection (3), the following persons and bodies are specified—
- (a) the Chief Commissioner of Police;
 - (b) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;
 - (c) the Auditor-General appointed under section 94A of the **Constitution Act 1975**;
 - (d) the Victorian Inspectorate;
 - (e) the Victorian WorkCover Authority established under section 18 of the **Accident Compensation Act 1985**;

S. 73(2)(ea)
inserted by
No. 79/2012
s. 81.

- (ea) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**;
 - (f) the Racing Integrity Commissioner appointed under section 37A of the **Racing Act 1958**;
 - (g) the Environment Protection Authority established under section 5 of the **Environment Protection Act 1970**;
 - (h) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**;
 - (i) the relevant principal officer;
 - (j) any other prescribed person or body which has a law enforcement function or an integrity function.
- (3) A protected disclosure complaint may only be referred to—
- (a) in the case of a protected disclosure complaint relating to the conduct of a member of the police personnel—the Chief Commissioner of Police; or
 - (b) in any other case—
 - (i) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**; or
 - (ii) the Victorian Inspectorate.
- (4) Despite subsection (1), the IBAC must not refer to the Chief Commissioner of Police any complaint or notification to the IBAC to the extent that the complaint or notification relates to conduct of—
- (a) the Chief Commissioner of Police; or

- (b) a Deputy Commissioner of Police; or
 - (c) an Assistant Commissioner of Police.
- (5) If, in accordance with this section, the IBAC refers a complaint or notification to the Chief Commissioner of Police, the Chief Commissioner must—
- (a) in the case of a complaint or notification that is not a protected disclosure complaint—investigate the complaint or notification under Division 2 of Part IVA of the **Police Regulation Act 1958**; or
 - (b) in the case of a protected disclosure complaint—investigate the protected disclosure complaint under Part IVB of the **Police Regulation Act 1958**.

74 Referrals to prosecutorial bodies

- (1) If the IBAC considers it appropriate, the IBAC, at any time, may refer to a prosecutorial body any matter that the IBAC considers is relevant to the performance of the prosecutorial duties and functions or the exercise of prosecutorial powers of that prosecutorial body.
- (2) Without limiting any matter which may be referred under this section, the IBAC may refer—
 - (a) any matter under investigation by the IBAC;
 - (b) any matter raised in a report of the Chief Commissioner of Police.

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

75 Referrals to prosecutorial bodies for advice

- (1) After receiving a report of the Chief Commissioner of Police, the IBAC may refer to a prosecutorial body for advice any matter that the IBAC considers is relevant to the performance of the prosecutorial duties and functions or the

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

s. 76

exercise of prosecutorial powers of that prosecutorial body.

- (2) If the IBAC refers a matter to a prosecutorial body for advice under subsection (1) the IBAC must notify in writing the Chief Commissioner of Police—
 - (a) of the referral; and
 - (b) of the advice received by the IBAC from the prosecutorial body in respect of the referral.
- (3) The Chief Commissioner of Police must not conduct any disciplinary process or action against the person who is the subject of a referral under subsection (1) until the Chief Commissioner of Police has received the notification from the IBAC under subsection (2)(b).

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

76 Consultation prior to referral

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

S. 77
inserted by
No. 28/2012
s. 20.

77 Information to be provided with referral

In accordance with section 41, the IBAC may provide or disclose to a person or body to which a referral is made under this Division any information that the IBAC has in relation to the matter referred.

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

78 Provision to the IBAC of information about referred complaint or notification

- (1) This section applies to a referral under section 73 other than—
 - (a) a referral to the Chief Commissioner of Police in relation to conduct of a person who is not a member of police personnel; or
 - (b) a referral to the Victorian Inspectorate.

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- (2) If the IBAC has made a referral to which this section applies, the IBAC, at any time, may require the person or body to which the referral is made to provide to the IBAC, within a reasonable time specified by the IBAC, information regarding—
 - (a) any investigation of the referred matter;
 - (b) any action taken in respect of the referred matter.
 - (3) A person or body to which a requirement is made under this section must provide the required information to the IBAC within the time specified by the IBAC under subsection (2).

79 Withdrawal of referred complaint or notification

- (1) This section applies to a referral under section 73 other than—
 - (a) a referral to the Chief Commissioner of Police in relation to conduct of a person who is not a member of police personnel; or
 - (b) a referral to the Victorian Inspectorate.
- (2) At any time after the IBAC has made a referral to which this section applies of a complaint or notification to the IBAC, the IBAC may—
 - (a) determine to investigate that complaint or notification under Division 4; and
 - (b) withdraw that referral by providing written notice to the person or body to which the complaint or notification was referred.
- (3) A person or body which receives a notice from the IBAC withdrawing a referral under subsection (2) must—
 - (a) cease its investigation of the referred complaint or notification; and

S. 79
inserted by
No. 28/2012
s. 20,
amended by
82/2012 s. 257.

- (b) provide the IBAC with any evidence that the person or body has in its possession or control in relation to that referred complaint or notification; and
 - (c) cooperate with the IBAC and ensure that its officers provide all reasonable assistance requested by the IBAC in relation to that complaint or notification.
- (4) The IBAC, as soon as reasonably practicable, must notify the Victorian Inspectorate in writing of the withdrawal under this section of any referral.

S. 80
inserted by
No. 28/2012
s. 20,
amended by
No. 82/2012
s. 11.

80 Notice of withdrawal of referral

- (1) Subject to subsection (2), if the IBAC withdraws a complaint or notification to the IBAC referred to a person or body under section 79, the IBAC may notify the person or body who made the complaint or notification of that withdrawal of the referral and that the IBAC is to investigate the complaint or notification.
- (2) The IBAC must not notify a person or a body under subsection (1) if the IBAC considers that notifying that person would—
 - (a) not be in the public interest or in the interests of justice; or
 - (b) put a person's safety at risk; or
 - (c) cause unreasonable damage to a person's reputation; or
 - (d) prejudice an investigation under this Act or an investigation by the police force or the person or body to which the referral was made; or

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- (e) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.
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Pt 4
(Headings
and ss 36–45)
substituted as
Pt 4
(Headings
and ss 81–
101) by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

S. 81
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

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

PART 4—INVESTIGATIVE POWERS

Division 1—Authorised officers

81 Appointment of authorised officers

- (1) Subject to subsection (2), the IBAC, by instrument, may appoint a sworn IBAC Officer to be an authorised officer for the purposes of this Act.
- (2) The IBAC must not appoint a sworn IBAC Officer to be an authorised officer unless the IBAC is satisfied that the sworn IBAC Officer is suitably qualified or trained to perform the functions and exercise the powers of an authorised officer for the purposes of this Act.
- (3) An appointment of a sworn IBAC Officer as an authorised officer—
 - (a) may, generally or in a particular case, specify the functions, duties or powers under this Act or the regulations in respect of which that person is an authorised officer; and
 - (b) may be made subject to any conditions that the IBAC considers appropriate.

82 Identity cards

- (1) The IBAC must issue an identity card to each authorised officer.

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- (2) An identity card issued to an authorised officer must—
- (a) contain a photograph of the authorised officer; and
 - (b) contain the signature of the authorised officer; and
 - (c) be signed by the Commissioner.

83 Production of identity card

- (1) An authorised officer must produce his or her identity card for inspection before exercising a power under Division 3 or 4 of this Part unless it is not practicable to do so.
- (2) An authorised officer must produce his or her identity card for inspection if requested to do so by any person at the premises during the exercise of a power under Division 3 or 4 of this Part unless to do so would endanger safety or frustrate an investigation.
- (3) If an authorised officer does not comply with a request under subsection (2), the authorised officer must immediately cease exercising the power under Division 3 or 4 of this Part unless the reason for not complying is that to comply would endanger safety or frustrate an investigation.
- (4) An authorised officer exercising a power under Division 2 of this Part must produce his or her identity card for inspection if requested to do so by the person subject to the exercise of that power unless it is not practicable to do so.

S. 83
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

S. 84
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

Division 2—Additional powers—conduct of police

84 Power to require police to give information and documents and answer questions

- (1) This section applies to the investigation by the IBAC in respect of a possible breach of discipline involving—
 - (a) corrupt conduct of a member of the police force; or
 - (b) police personnel conduct of a member of the police force.
- (2) For the purposes of an investigation to which this section applies, the IBAC may direct any member of the police force to—
 - (a) give the IBAC any relevant information; or
 - (b) produce any relevant document to the IBAC; or
 - (c) answer any relevant question.

Note

Failure to comply with a direction of the IBAC under this section is a breach of discipline. See section 69(1)(ac) of the **Police Regulation Act 1958**.

- (3) Any information, document or answer given or produced in accordance with a direction under subsection (2) is not admissible in evidence before any court or person acting judicially, except in proceedings for—
 - (a) perjury or giving false information; or
 - (b) a breach of discipline by a member of the police force; or
 - (c) an offence under this Act concerning failure to comply with a direction of the IBAC; or
 - (d) review proceedings under Division 1 of Part IV of the **Police Regulation Act 1958**.

Division 3—Entry, search and seizure—police personnel premises

85 The IBAC must authorise use of powers under this Division

A power under this Division must not be exercised by an authorised officer without express written authority from the Commissioner.

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

Note

The Commissioner cannot delegate this power unless section 32(5) or (6) applies. See section 32.

86 Power to enter police personnel premises

- (1) If an authorised officer reasonably believes there are documents or other things that are relevant to an investigation which are on police personnel premises, the authorised officer may—
- (a) enter those premises at any time; and
 - (b) enter any vehicle, vessel or aircraft on those premises; and
 - (c) search those premises or any vehicle, vessel or aircraft on those premises for documents or other things that are relevant to an investigation; and
 - (d) inspect or copy any document or other thing found at those premises or in any vehicle, vessel or aircraft on those premises; and
 - (e) do anything that it is necessary or convenient to do to enable a search and an inspection to be carried out under this section.
- (2) On exercising a power of entry under this section, the authorised officer must—
- (a) identify himself or herself to a person at the police personnel premises who is apparently in charge of those premises; and

S. 86
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

- (b) inform the person apparently in charge that the authorised officer is authorised to enter the police personnel premises or any vehicle, vessel or aircraft on those premises.
- (3) The Chief Commissioner of Police must ensure that each member of police personnel at police personnel premises gives the authorised officer any assistance the authorised officer reasonably requires to enable the authorised officer to exercise powers under this section.
- (4) For the avoidance of doubt, an authorised officer does not have authority under this section to enter any part of police personnel premises that is used for residential purposes.

S. 87
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

87 Power to seize documents or things at police personnel premises

- (1) An authorised officer who exercises a power of entry under section 86 may seize a document or other thing at the police personnel premises or in any vehicle, vessel or aircraft on those premises if the authorised officer reasonably suspects that—
 - (a) the document or other thing is relevant to an investigation; and
 - (b) if the document or other thing is not immediately seized—
 - (i) it may be concealed or destroyed; or
 - (ii) its forensic value may be diminished.
- (2) The Chief Commissioner of Police must ensure that each member of police personnel at police personnel premises makes available to the authorised officer any facilities or equipment that are reasonably necessary for the authorised officer to seize a document or other thing under this section.

88 Copies of, access to or receipt for documents or other things seized

S. 88
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

(1) If an authorised officer seizes under section 87—

- (a) a document, disk or tape or other thing that can be readily copied; or
- (b) a storage device the information in which can be readily copied—

the authorised officer, on request by a person at the police personnel premises, must give a copy of the document, thing or information to the person as soon as practicable after the seizure.

(2) An authorised officer may refuse a request under subsection (1) if the authorised officer has consulted the IBAC and—

- (a) the IBAC is satisfied that the work involved in copying the document, thing or information would substantially and unreasonably interfere with the performance of the IBAC's functions; or
- (b) the IBAC considers that it is in the public interest to do so.

(3) An authorised officer must not refuse a request under subsection (1) unless the authorised officer has—

- (a) given the person who made the request a written notice stating an intention to refuse the request; and
- (b) given the person a reasonable opportunity to make a further request for a copy of the document, thing or information in a form that would remove the ground for refusal; and

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- (c) as far as is reasonably practicable, provided the person with any information that would assist the making of the further request for access in such a form.
- (4) An authorised officer is not required to provide any information under subsection (3)(c) if the IBAC considers that it is not in the public interest for the document, thing or information to be provided.
- (5) If an authorised officer refuses a request under subsection (1)—
- (a) the authorised officer must provide a receipt for the document, thing or information seized; and
 - (b) on request by the Chief Commissioner of Police, the IBAC must permit the Chief Commissioner of Police to have access to the document, thing or information seized unless the IBAC is of the opinion that it is not in the public interest for the Chief Commissioner of Police to have access.
- (6) The IBAC must not refuse a request for access under subsection (5)(b), unless the IBAC has—
- (a) given the Chief Commissioner of Police a written notice stating an intention to refuse to give access; and
 - (b) given the Chief Commissioner of Police a reasonable opportunity to make a further request for access in a form that would remove the ground for refusal; and
 - (c) as far as is reasonably practicable, provided the Chief Commissioner of Police with any information that would assist the making of the further request for access in such a form.
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- (7) The IBAC is not required to provide any information under subsection (6)(c) if the IBAC is of the opinion that it is not in the public interest for the information to be provided.
- (8) For the avoidance of doubt, an authorised officer or the IBAC is not required to give reasons for refusing a request under this section.

89 Application for return of things seized

- (1) Within 7 days after a document or other thing is seized by an authorised officer under section 87, an interested person may apply to the Supreme Court for an order—
 - (a) setting aside the seizure; and
 - (b) requiring the IBAC to deliver the document or other thing to the interested person.
- (2) On an application under subsection (1), the Supreme Court may make an order setting aside the seizure and requiring the IBAC to deliver the document or other thing to the interested person if the Court is satisfied that the grounds for the seizure—
 - (a) did not exist; or
 - (b) no longer exist.
- (3) In this section, *interested person* in relation to a document or other thing means—
 - (a) the Chief Commissioner of Police; or
 - (b) a person authorised by the Chief Commissioner of Police to apply under this section on behalf of the Chief Commissioner of Police; or
 - (c) any other person who claims to have a legal or equitable interest in the document or other thing.

S. 89
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

s. 90

S. 90
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 82/2012
s. 12.

90 Return of things seized from police personnel premises

- (1) The IBAC must take all reasonable steps to return a document or other thing seized under section 87 to the Chief Commissioner of Police if the document or other thing is required as evidence relating to a legal proceeding.
- (2) The IBAC must immediately take all reasonable steps to return a document or other thing seized under section 87 to the Chief Commissioner of Police if the IBAC is no longer satisfied that its retention is necessary for the purposes of—
 - (a) an investigation; or
 - (b) a report on an investigation; or
 - (c) a legal proceeding arising out of, or connected with, an investigation.
- (3) This section is subject to any order of the Supreme Court made under section 89.

Division 4—Search warrant powers

91 Search warrant

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

- (1) Subject to subsection (2), an authorised officer may apply to a Judge of the Supreme Court for a search warrant in relation to either or both of the following—
 - (a) particular premises, if the authorised officer believes on reasonable grounds that entry to the premises (including any vehicle, vessel or aircraft on or in those premises) is necessary for the purpose of an investigation;
 - (b) a particular vehicle, vessel or aircraft located in a public place if the authorised officer believes on reasonable grounds that entry to the vehicle, vessel or aircraft is necessary for the purpose of an investigation.

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- (2) An application must not be made without the written authorisation, in the prescribed form, of the Commissioner.

Note

The Commissioner cannot delegate this power unless section 32(5) or (6) applies. See section 32.

- (3) If a Judge of the Supreme Court is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for the belief under subsection (1)(a) or (b), the Judge may issue a search warrant authorising any person named in the warrant—
- (a) to enter and search the premises or vehicle, vessel or aircraft named or described in the search warrant and inspect any document or thing at those premises or on or in that vehicle, vessel or aircraft; and
 - (b) to make a copy of any document relevant, or that the person reasonably considers may be relevant, to the investigation; and
 - (c) to take possession of any document or other thing that the person considers relevant to the investigation.
- (4) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
 - (b) any conditions to which the search warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the search warrant, on which the search warrant ceases to have effect.
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- (5) A search warrant must be in the prescribed form.
- (6) Except as otherwise provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
- (7) If a search warrant is issued in relation to court premises, the IBAC must notify, and may consult, the head or heads of jurisdiction about the issuing of the search warrant, unless to do so would prejudice the investigation.

92 Procedure for executing search warrant

- (1) On executing a search warrant, the person executing it—
 - (a) must announce that he or she is authorised by the search warrant to enter the premises, vehicle, vessel or aircraft, as the case requires, unless, in the case of a vehicle, vessel or aircraft it is in a public place; and
 - (b) if the person has been unable to obtain unforced entry, must give any person at the premises or in control of the vehicle, vessel or aircraft an opportunity to allow entry to the premises, vehicle, vessel or aircraft, as the case requires.
- (2) A person executing a search warrant need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises, vehicle vessel or aircraft is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.
- (3) If the occupier is present at premises where a search warrant is being executed, the person executing the warrant must—

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

- (a) identify himself or herself to the occupier;
and
 - (b) give the occupier a copy of the search
warrant.
- (4) If the occupier is not present at premises where a search warrant is being executed, the person executing the warrant must—
- (a) identify himself or herself to a person at the premises who is apparently over the age of 18 years; and
 - (b) give that person a copy of the warrant.
- (5) If there is no person apparently over the age of 18 years present at premises where a search warrant is being executed, the person executing the warrant must leave a copy of the warrant in a conspicuous place at the premises unless the IBAC has given a direction under subsection (6).
- (6) The IBAC may direct that a copy of a search warrant not be left at premises where no person apparently over the age of 18 years is present if the IBAC is satisfied that it would be contrary to the public interest for the copy to be left at the premises.

93 Copies or receipts to be given for documents or other things

- (1) If under a search warrant a person takes possession of—
- (a) a document, disk or tape or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied—

the person, on request by the occupier, must give a copy of the document, thing or information to the occupier as soon as practicable after taking

S. 93
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

possession of it, unless it would be contrary to the public interest to do so.

- (2) If a person takes possession of a document or thing under a search warrant and has not provided a copy of the document, thing or information under subsection (1) the person must provide a receipt in the prescribed form for that document or thing as soon as practicable after taking possession of it.

S. 94
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

94 Return of documents and other things

- (1) The IBAC must take all reasonable steps to return a document or other thing seized under a search warrant to the person from whom it was seized if the document or other thing is required as evidence relating to a legal proceeding.
- (2) The IBAC must immediately take all reasonable steps to return a document or other thing seized under a search warrant to the person from whom it was seized if the IBAC is no longer satisfied that its retention is necessary for the purposes of—
 - (a) an investigation; or
 - (b) a report on an investigation; or
 - (c) a legal proceeding arising out of, or connected with, an investigation.

S. 95
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

95 Assistance in executing search warrants

- (1) A person executing a search warrant may—
 - (a) seek the assistance of another person (an *assistant*) over the age of 18 years who possesses specialised skills or technical knowledge necessary for exercising a power authorised by the search warrant; or

- (b) take onto the premises any equipment, vehicle, animal or material that the person reasonably requires for exercising a power authorised by the search warrant.
- (2) The person may authorise the assistant—
 - (a) to take stated action at the premises, vehicle, vessel or aircraft; and
 - (b) to exercise stated powers the person is authorised by the search warrant to exercise.
- (3) For the purposes of subsection (2), the person—
 - (a) is only permitted to authorise the assistant to take stated action or exercise stated powers that are consistent with the specialist skills or technical knowledge of the assistant; and
 - (b) cannot authorise the assistant to arrest a person.
- (4) The person must inform the assistant of—
 - (a) action the assistant is authorised to take; and
 - (b) the assistant's powers under this section.
- (5) Without limiting subsection (1), the IBAC may seek assistance from the Chief Commissioner of Police when executing a search warrant.
- (6) Subsection (1) applies, in relation to animals, despite any other Act or law, other than the **Charter of Human Rights and Responsibilities Act 2006**.

96 Police must provide reasonable assistance

The Chief Commissioner of Police must ensure that members of the police force give a person executing a search warrant any assistance that the person reasonably requires to enable that person, or an assistant authorised under section 95, to

S. 96
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

exercise the powers authorised by the search warrant.

S. 97
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

97 Privilege claims in relation to search warrants

- (1) This section applies if—
 - (a) a person executing a search warrant (the *searcher*) wishes to inspect, copy or seize a document or other thing under the search warrant; and
 - (b) a person who is entitled to claim the privilege (the *claimant*) claims that the document or other thing is the subject of privilege.
- (2) The searcher must consider the claim of privilege and either—
 - (a) cease exercising the power under the search warrant in relation to the document or other thing over which the claim of privilege is made; or
 - (b) require the claimant to immediately seal the document or other thing in an envelope, or otherwise secure it if it cannot be sealed in an envelope, and give it to the searcher.
- (3) The searcher must not inspect the document or other thing in considering the claim of privilege.
- (4) If the searcher requires the claimant to give the document or other thing to the searcher under subsection (2)(b), the searcher must—
 - (a) notify the Commissioner as soon as practicable; and
 - (b) immediately give the document or other thing to the proper officer of the Supreme Court to be held in safe custody.

- (5) Subject to section 101, a person must not open a sealed envelope or interfere with a document or thing secured otherwise than in an envelope before delivery to the proper officer of the Supreme Court.

Division 5—Privilege

98 Certain privileges abrogated in relation to police personnel

If the IBAC exercises a power under section 84 or an authorised officer exercises a power under section 86 or 87—

- (a) the Crown is not entitled to assert any privilege in response to the exercise of those powers; and
- (b) any privilege referred to in paragraph (a) is abrogated; and
- (c) any obligation on a member of police personnel to maintain secrecy or other restriction upon the disclosure of information imposed by any enactment or any rule of law—
 - (i) is overridden; and
 - (ii) does not apply in respect of a direction of the IBAC under section 84 or the inspection, copying or seizure of any document or other thing by an authorised officer under section 86 or 87.

S. 98
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

99 Journalist privilege does not apply

A person is not, in relation to the exercise of a power under this Part, entitled to the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**.

S. 99
inserted by
No. 52/2012
s. 18.

s. 100

S. 100
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

100 Application to Supreme Court to determine privilege

- (1) Within 7 days after a sealed envelope or document or thing secured otherwise than in an envelope is given to the proper officer of the Supreme Court in accordance with section 97, the IBAC may apply to the Supreme Court to determine whether or not the document is the subject of privilege.
- (2) If no application is made under subsection (1) within the period of 7 days, the proper officer must return the document to the claimant of privilege.
- (3) The IBAC must give notice of the application to the claimant of privilege within a reasonable time before the hearing of the application.
- (4) Notice under subsection (3) must be in the prescribed form.
- (5) The claimant is entitled to appear and be heard on the hearing of the application.

S. 101
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

101 Determination of privilege claims

- (1) On an application under section 100, the Supreme Court must determine whether or not the document in the sealed envelope or the document or thing secured otherwise than in an envelope is the subject of privilege.
- (2) For the purpose of making a determination under subsection (1), the Judge constituting the Supreme Court and any other person authorised by the Court may—
 - (a) open the sealed envelope or access the document or thing secured otherwise than in an envelope; and
 - (b) inspect the document or thing.

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- (3) If the Supreme Court determines that the document or thing is the subject of privilege—
- (a) the Court must order that the document or thing be returned to the claimant; and
 - (b) the proper officer must return the document or thing to the claimant.
- (4) If the Court determines that the document or thing is not the subject of privilege—
- (a) the Court must order that the document or thing be given to the IBAC; and
 - (b) the proper officer must release the document or thing accordingly.
- (5) Subject to subsection (2), a person must not open a sealed envelope or otherwise have access to the document or thing contained in the sealed envelope before—
- (a) the Court determines the claim of privilege; or
 - (b) the document or thing is returned to the claimant.

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

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

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

Pt 5 (Heading and ss 102–114) inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

S. 102 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

PART 5—DEFENSIVE EQUIPMENT AND FIREARMS

102 Authorisation to possess, carry and use defensive equipment for investigating police personnel conduct by members of the police force

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use defensive equipment for the purposes of investigating police personnel conduct by any member of the police force.
- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that the senior IBAC Officer reasonably requires the possession, carrying and use of defensive equipment—
 - (a) to perform functions and exercise powers of the IBAC or an authorised officer in relation to investigations; and
 - (b) to ensure the safety of the senior IBAC Officer in the performance of those functions or the exercise of those powers.
- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of defensive equipment.
- (4) An authorisation under this section—
 - (a) must specify the type of defensive equipment to which it relates; and

(b) may be subject to any conditions that the IBAC considers appropriate to impose.

- (5) A senior IBAC Officer must not possess, carry or use defensive equipment in the course of an investigation of police personnel conduct by any member of the police force unless authorised to do so under this section.

Penalty: 60 penalty units or imprisonment for 6 months or both.

103 Authorisation to possess, carry and use defensive equipment for investigating possible corrupt conduct

S. 103
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use defensive equipment for the purposes of an investigation into possible corrupt conduct.
- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that—
- (a) requesting assistance from the Chief Commissioner of Police may compromise the investigation; and
 - (b) the senior IBAC Officer reasonably requires the possession, carrying and use of defensive equipment—
 - (i) to perform functions and exercise powers of the IBAC or an authorised officer in relation to an investigation; and
 - (ii) to ensure the safety of the senior IBAC Officer in the performance of IBAC functions or the exercise of IBAC powers.

- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of defensive equipment.
- (4) An authorisation under this section—
 - (a) must specify the type of defensive equipment to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use defensive equipment in the course of an investigation into possible corrupt conduct unless authorised to do so under this section.

Penalty: 60 penalty units or imprisonment for 6 months or both.

S. 104
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

104 Authorisation to possess, carry and use defensive equipment for training purposes

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use defensive equipment for the purposes of—
 - (a) providing or receiving training in relation to the use of that equipment; or
 - (b) testing and maintaining that equipment.
- (2) An authorisation under this section—
 - (a) must specify the type of defensive equipment to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.

105 Authorisation to acquire, store and maintain defensive equipment

S. 105
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use defensive equipment for the purposes of one or more of the following—
 - (a) the purchase or acquisition of that equipment;
 - (b) the maintenance of that equipment;
 - (c) the issue of that equipment;
 - (d) accepting the return of that equipment from a person authorised under this Part to possess, carry and use that equipment;
 - (e) storage of that equipment.
- (2) An authorisation under this section must—
 - (a) specify the type of defensive equipment to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (3) A senior IBAC Officer who is authorised under this section must ensure that any defensive equipment to which the authorisation relates is safely and securely stored when it is returned from the possession of a person authorised to possess, carry and use it under this Part.

106 Authorisation to possess, carry and use firearms for investigating police personnel conduct by members of the police force

S. 106
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use a firearm for the purposes of investigating police personnel conduct by any member of the police force.

- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that the senior IBAC Officer reasonably requires the possession, carrying and use of a firearm—
 - (a) to perform functions and exercise powers of the IBAC or an authorised officer in relation to investigations; and
 - (b) to ensure the safety of the senior IBAC Officer in the performance of those functions or the exercise of those powers.
- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of firearms.
- (4) An authorisation under this section—
 - (a) must specify the type of firearm to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use a firearm in the course of an investigation of police personnel conduct by any member of the police force unless authorised to do so under this section.

Penalty: 60 penalty units or imprisonment for 6 months or both.

S. 107
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

107 Authorisation to possess, carry and use firearms for investigating possible corrupt conduct

- (1) Subject to subsection (2), the IBAC, by instrument, may authorise a suitably trained senior IBAC Officer to possess, carry and use a firearm for the purposes of an investigation into possible corrupt conduct.

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- (2) The IBAC must not give an authorisation under subsection (1) unless satisfied that—
- (a) requesting assistance from the Chief Commissioner of Police may compromise the investigation; and
 - (b) the senior IBAC Officer reasonably requires the possession, carrying and use of a firearm—
 - (i) to perform functions and exercise powers of the IBAC or an authorised officer in relation to investigations; and
 - (ii) to ensure the safety of the senior IBAC Officer in the performance of IBAC functions or the exercise of IBAC powers.
- (3) For the purposes of subsection (1), a senior IBAC Officer is suitably trained if the IBAC is satisfied that the senior IBAC Officer has completed a prescribed course of training in the use of firearms.
- (4) An authorisation under this section—
- (a) must specify the type of firearm to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.
- (5) A senior IBAC Officer must not possess, carry or use a firearm in the course of an investigation into possible corrupt conduct unless authorised to do so under this section.
- Penalty: 60 penalty units or imprisonment for 6 months or both.

S. 108
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

108 Authorisation to possess, carry and use firearms for training purposes

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer to possess, carry and use a firearm for the purposes of—
 - (a) providing or receiving training in relation to the use of that firearm; or
 - (b) testing and maintaining that firearm.
- (2) An authorisation under this section—
 - (a) must specify the type of firearm to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.

S. 109
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

109 Authorisation to acquire, dispose of, store and maintain firearms

- (1) The IBAC, by instrument, may authorise a senior IBAC Officer—
 - (a) to acquire or dispose of a firearm on behalf of the IBAC; and
 - (b) to possess and carry firearms for the purposes of—
 - (i) acquiring or disposing of firearms; and
 - (ii) maintaining firearms; and
 - (iii) storing firearms.
- (2) An authorisation under this section must—
 - (a) specify the type of firearm to which it relates; and
 - (b) may be subject to any conditions that the IBAC considers appropriate to impose.

- (3) A firearm acquired under this section is taken to be acquired by the IBAC and must be registered under the **Firearms Act 1996** in the name of the IBAC.

110 Senior IBAC Officer must not contravene conditions of authorisation

A senior IBAC Officer who is authorised under this Part to possess, carry or use defensive equipment or a firearm must not contravene any conditions to which the authorisation is subject.

Penalty: 60 penalty units or imprisonment for 6 months or both.

S. 110 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

111 The IBAC to notify Chief Commissioner of Police of acquisition or disposal of firearms

- (1) The IBAC must notify the Chief Commissioner of Police within 7 days of—
- (a) the acquisition of a firearm; or
 - (b) the disposal of a firearm.
- (2) The notification must—
- (a) be in writing; and
 - (b) state the make, type, calibre, action and serial number of the firearm.

S. 111 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

112 Storage of firearms

- (1) The IBAC must ensure that a firearm acquired under an authorisation under this Part is stored—
- (a) in the case of a category A or B longarm, in accordance with clause 1(1) and (2) of Schedule 4 to the **Firearms Act 1996**;
 - (b) in the case of a category C or D longarm or a general category handgun, in accordance with clause 2(1), (2) and (2A) of Schedule 4 to the **Firearms Act 1996**, as if the reference to the holder of the licence were a reference

S. 112 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

to a senior IBAC Officer authorised under section 109.

- (2) A senior IBAC Officer who is authorised under this Part to possess, carry or use a firearm, must ensure that the firearm is stored—
- (a) in the case of a category A or B longarm, in accordance with clause 1(1) and (2) of Schedule 4 to the **Firearms Act 1996**;
 - (b) in the case of a category C or D longarm or a general category handgun, in accordance with clause 2(1), (2) and (2A) of Schedule 4 to the **Firearms Act 1996**, as if the reference to the holder of the licence were a reference to the senior IBAC Officer authorised under this Part.

S. 113
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

113 Storage of cartridge ammunition

- (1) The IBAC must ensure that any cartridge ammunition acquired in accordance with this Part is stored—
- (a) in the case of cartridge ammunition for a category A or B longarm, in accordance with clause 1(3) of Schedule 4 to the **Firearms Act 1996**;
 - (b) in the case of cartridge ammunition for a category C or D longarm or a general category handgun, in accordance with clause 2(3) of Schedule 4 to the **Firearms Act 1996**.
- (2) A senior IBAC Officer who is authorised under this Part to possess, carry or use a firearm must ensure that any cartridge ammunition is stored—
- (a) in the case of cartridge ammunition for a category A or B longarm, in accordance with clause 1(3) of Schedule 4 to the **Firearms Act 1996**;

(b) in the case of cartridge ammunition for a category C or D longarm or a general category handgun, in accordance with clause 2(3) of Schedule 4 to the **Firearms Act 1996**.

114 Requirement to notify Chief Commissioner of Police of loss, theft or destruction

The IBAC must notify the Chief Commissioner of Police of the loss, theft or destruction of any firearm acquired by the IBAC within 24 hours after becoming aware of that loss, theft or destruction.

S. 114
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

Pt 6
(Headings
and ss 115–
158)
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

S. 115
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

S. 116
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

S. 117
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 85/2012
s. 97.

PART 6—EXAMINATIONS

Division 1—Examinations

115 Power to hold examinations

For the purposes of an investigation, the IBAC may hold an examination.

116 Conduct of examinations

In holding an examination, the IBAC—

- (a) is not bound by the rules of evidence; and
- (b) may regulate the procedure of the examination as the IBAC considers appropriate.

117 Examinations generally to be held in private

- (1) Subject to subsection (2), an examination is not open to the public unless the IBAC considers on reasonable grounds—
 - (a) there are exceptional circumstances; and
 - (b) it is in the public interest to hold a public examination; and
 - (c) a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing.
- (2) The IBAC must not hold an examination in public if the examination may disclose particulars likely to lead to the identification of a person who has made an assessable disclosure.

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- (3) However, the IBAC may hold an examination in public if the information that may be disclosed is information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.
- (4) For the purposes of subsection (1)(b), the factors the IBAC may take into account in determining whether or not it is in the public interest to hold a public examination include, but are not limited to—
- (a) whether the corrupt conduct or the police personnel conduct being investigated is related to an individual and was an isolated incident or systemic in nature;
 - (b) the benefit of exposing to the public, and making it aware of, corrupt conduct or police personnel misconduct;
 - (c) in the case of police personnel conduct investigations, the seriousness of the matter being investigated.
- (5) Not less than 7 days before a public examination is held, the IBAC must—
- (a) inform the Victorian Inspectorate that the IBAC intends to hold the public examination; and
 - (b) provide a written report to the Victorian Inspectorate giving the reasons the IBAC decided to hold a public examination in accordance with subsection (1).
- (6) A judicial officer is not required to attend a public examination but may consent to doing so.

118 Offence to be present at examination

A person (other than an IBAC Officer or a Victorian Inspectorate Officer) must not be present at an examination that is not open to the public unless he or she is—

S. 118
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

- (a) attending in accordance with a witness summons duly served under section 124; or
- (b) subject to section 127(2), an Australian legal practitioner representing a person who is attending in accordance with a witness summons; or
- (c) entitled to be present by reason of a direction given by the IBAC under section 119; or
- (d) an Australian legal practitioner, or other person, engaged by the IBAC to assist the IBAC in the examination; or
- (e) any other person authorised to be present by the IBAC or otherwise authorised to be present under this Act or any other law.

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

119 The IBAC may give directions

- (1) The IBAC may give directions as to the persons who—
 - (a) may be present during an examination or part of an examination;
 - (b) must not be present during an examination or part of an examination.
- (2) A direction under subsection (1) must not prevent the presence, when evidence is being taken at an examination, of—
 - (a) subject to section 127(2), an Australian legal practitioner representing a person attending in accordance with a witness summons; or
 - (b) an IBAC Officer; or
 - (c) a Victorian Inspectorate Officer; or
 - (d) any other person authorised to be present under this Act or any other law.

S. 119
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 82/2012
s. 13.

120 Witness summons

- (1) For the purposes of an investigation, the IBAC may issue the following witness summonses to a person—
 - (a) a summons to attend the IBAC to give evidence at an examination at a specified time and place on a specified date;
 - (b) a summons to attend at a specified time and place on a specified date to produce documents or other things to the IBAC;
 - (c) a summons to attend an examination at a specified time and place on a specified date before the IBAC to give evidence and produce documents or other things.
- (2) The IBAC may, under subsection (1), issue a witness summons directed to a person if satisfied that it is reasonable to do so, having regard to—
 - (a) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
 - (b) the age of the person and any mental impairment to which the person is known or believed to be subject.
- (3) The IBAC must not issue a witness summons to a person who is under the age of 18 years unless the IBAC considers on reasonable grounds that—
 - (a) the information, document or thing that the person could provide may be compelling and probative evidence; and
 - (b) it is not practicable to obtain the information, document or thing by any other means.
- (4) If a person is issued with a witness summons referred to in subsection (1)(b), the IBAC may excuse that person from attendance if the person

S. 120
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 82/2012
s. 14(1).

produces the required documents or things to the IBAC before the time and date for production specified in the witness summons in accordance with any directions given by the IBAC.

- (5) A person to whom a witness summons is directed must, in accordance with the summons, attend from day to day unless excused from further attendance.

S. 121
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 82/2012
s. 14(2)(3).

121 Content and form of witness summons

- (1) A witness summons must require the person to whom it is directed to attend at a specified time and place on a specified date—
- (a) to give evidence at an examination before the IBAC; or
 - (b) to produce to the IBAC any documents or other things described in the witness summons that are in the person's possession or control; or
 - (c) to both give evidence at an examination and produce any documents or other things described in the witness summons that are in the person's possession or control.
- (2) A witness summons referred to in subsection (1)(a) or (c) must state the nature of the matters about which the person to whom it is directed is to be questioned, except to the extent to which the IBAC considers on reasonable grounds that this would be likely to prejudice the conduct of the investigation to which the witness summons relates or would be contrary to the public interest.
- (3) A witness summons must—
- (a) be in the prescribed form; and
 - (b) be accompanied by a copy of any relevant confidentiality notice; and

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- (c) be accompanied by a statement setting out the matters specified in subsection (4).
- (4) A statement referred to in subsection (3)(c) must include the following—
- (a) that failure to comply with the witness summons may be an offence and penalties may apply;
 - (b) whether it is intended that the examination is to be held in public or in private;
 - (c) that if the person summoned is under the age of 16 years at the date of issue of the witness summons, the person need not comply with the witness summons, subject to the requirements of section 123;
 - (d) that the person is entitled to seek legal advice in relation to the witness summons and the examination generally;
 - (e) that the person has a right to legal representation at an examination;
 - (f) that, if applicable, the person has a right to have an interpreter present at the examination;
 - (g) that, if applicable, the person is required to have a parent, a guardian or an independent person present at the examination;
 - (h) that a person may claim a privilege but—
 - (i) a person is not excused from answering a question or giving information or from producing a document or other thing on the ground that the answer, information, document or other thing may tend to incriminate the person or make the person liable to a penalty;
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- (ii) that if the person is a member of police personnel, the Crown is not entitled to assert any privilege;
- (i) if a person gives any answer, information, document or other thing that may tend to incriminate the person, an immunity as to the use of that evidence may apply;
- (j) that, with limited exceptions in relation to a person who is a member of police personnel, statutory secrecy provisions may apply which prevent the person from answering a question or giving information or producing documents or other things;
- (k) that the person has a right to complain to the Victorian Inspectorate;
- (l) any other prescribed matter.

S. 122
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

122 IBAC to report to Victorian Inspectorate on issue of witness summonses

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

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

S. 123
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

123 Witness summons directed to person under 16 years

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

124 Service of witness summons

- (1) Subject to subsection (2), a witness summons must be served at a reasonable time, being not less than 7 days, before the date on which the person is required to attend or otherwise comply with the witness summons.
- (2) The IBAC may issue a witness summons requiring immediate attendance by a person before the IBAC if the IBAC considers on reasonable grounds that a delay in the person's attendance is likely to result in—
 - (a) evidence being lost or destroyed; or
 - (b) the commission of an offence; or
 - (c) the escape of the person who is summoned; or
 - (d) serious prejudice to the conduct of the investigation to which the witness summons relates.
- (3) A witness summons directed to a natural person must be served by serving a copy of the witness summons to the person personally.
- (4) A witness summons directed to a body corporate must be served by leaving a copy of the witness summons at the registered office or principal place of business of the body corporate with a person apparently employed at that office or place and who is apparently at least 16 years of age.
- (5) Subsection (4) is in addition to, and not in derogation of, section 109X and 601CX of the Corporations Act.

S. 124
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

S. 125
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

125 Supreme Court may order service by other means

- (1) If it appears that it is not reasonably practicable to serve a witness summons in accordance with section 124, the IBAC may apply to the Supreme Court for an order that the witness summons be served by another means.
- (2) On an application under subsection (1), if the Supreme Court is satisfied that it is not reasonably practicable to serve a witness summons in accordance with section 124, the Court may—
 - (a) order that the witness summons be served by any other means the Court considers appropriate; or
 - (b) make an order for substituted service.

S. 126
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 82/2012
s. 15.

126 Witness already held in custody

- (1) If a witness summons is issued to a person who is in a prison or a police gaol, the IBAC may give a written direction that the person be delivered into the custody of a member of the police force for the purpose of bringing the person before the IBAC as required by the witness summons.
- (2) A direction under subsection (1)—
 - (a) must be in the prescribed form; and
 - (b) must include a statement that if the person who is the subject of the direction is under the age of 16 years at the date the direction is given, the direction is of no effect and the person is not required to attend the IBAC.
- (3) While a person who is subject to a direction under subsection (1) is absent from a prison or a police gaol, the person is deemed to be in the legal custody of the member of the police force.

- (4) The person to whom a direction under subsection (1) applies is to be detained in the legal custody of the member of the police force until he or she is excused by the IBAC from attendance.
- (5) The member of the police force who has custody of a person under subsection (3) must return the person to the prison or the police gaol from which the person was removed under the direction under subsection (1) when the person is excused by the IBAC from attendance.

127 Legal representation of witnesses and other persons

- (1) Subject to this section, a witness may be represented at an examination by an Australian legal practitioner.
- (2) The IBAC may direct a witness not to seek legal advice or representation in relation to a witness summons from a specified Australian legal practitioner if the IBAC considers on reasonable grounds that the examination would be prejudiced because the Australian legal practitioner is—
 - (a) a witness in the examination or another examination; or
 - (b) the representative of another witness in the examination or another examination; or
 - (c) a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate; or
 - (d) the representative of a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate.
- (3) A direction under subsection (2) may be made at any time, whether before, at or after the time for complying with the witness summons.

S. 127
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 82/2012
s. 16.

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- (4) The IBAC must advise the person bound by the direction that a direction has been made under subsection (2).
 - (5) A person is bound by a direction under subsection (2) from the time when the IBAC gives the advice to that person under subsection (4).
 - (6) If the IBAC gives a direction under subsection (2), the IBAC must, unless section 124(2) applies, allow the person bound by the direction at least 3 days from the date of receipt of the direction to obtain legal advice or representation by another Australian legal practitioner before the person is required to attend for the purpose of complying with the witness summons.
 - (7) If the IBAC considers that there are special circumstances, the IBAC may authorise a person who is not a witness to be represented by an Australian legal practitioner during the examination of a witness.
 - (8) The IBAC may direct a person who has received a proposed report, or draft or part of a proposed report or information contained in a report or to whom a confidentiality notice is directed not to seek legal advice or representation in relation to the report or confidentiality notice from a specified Australian legal practitioner if the IBAC considers on reasonable grounds that the investigation would be prejudiced because the Australian legal practitioner is—
 - (a) a witness in the examination or another examination; or
 - (b) the representative of another witness in the examination or another examination; or
 - (c) a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate; or
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- (d) the representative of a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate.
- (9) The IBAC must advise the person bound by the direction that a direction has been made under subsection (8).
- (10) A person is bound by a direction under subsection (8) from the time when the IBAC gives the advice to that person under subsection (9).

128 IBAC to inform Victorian Inspectorate of direction in relation to specified Australian legal practitioner

S. 128
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

- (1) If the IBAC makes a direction in relation to a specified Australian legal practitioner under section 127(2) or 127(8), the IBAC must inform the Victorian Inspectorate in writing of—
 - (a) that direction;
 - (b) the reasons for the direction;
 - (c) the specific provision of this Act relied on in making the direction;
 - (d) the factors taken into consideration in making the direction.
- (2) The IBAC must inform the Victorian Inspectorate of a direction under section 127(2) or 127(8) within 24 hours of the making of the direction.

129 Specific provisions relating to witnesses

- (1) At any time during an examination, if the IBAC becomes aware that a witness is under the age of 16 years, the IBAC must immediately release the person from compliance with any witness summons applying to that person.

S. 129
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3))
amended by
No. 82/2012
s. 17.

- (2) If a witness does not have knowledge of the English language that is sufficient to enable the witness to understand questions asked of him or her or to answer those questions, before the examination commences, or during the examination, as the case requires, the IBAC must provide for a competent interpreter to be present for the examination.
- (3) If a witness is under the age of 18 years, the witness must be accompanied by a parent or guardian or an independent person.
- (4) The IBAC must direct that an independent person be present during the examination of a witness if—
 - (a) the IBAC believes the witness has a mental impairment; or
 - (b) the witness provides the IBAC with reasonably satisfactory medical evidence that the witness has a mental impairment.

S. 130
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
Nos 82/2012
s. 18, 85/2012
s. 98.

130 Actions to be taken before questioning of a witness or requiring production of a document or other thing

- (1) Before a witness summoned to attend an examination and not excused from attendance under section 120(4) is asked any questions or required to produce a document or thing, the IBAC must—
 - (a) confirm the age of a witness if the IBAC considers that a witness may be under the age of 18 years;
 - (b) release any witness under the age of 16 years from compliance with any witness summons;

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- (c) inform the witness orally and in writing of the person's rights and obligations as specified in section 121(4) unless—
- (i) the witness is represented at the examination by an Australian legal practitioner; and
 - (ii) the witness informs the IBAC that, prior to the examination, an Australian legal practitioner has explained the statement referred to in section 121(3)(c) to the witness;
- (d) inform an Australian legal practitioner who is representing a witness or other person at the examination of any non-disclosure requirements that apply under the Act and, in the case of an investigation of a protected disclosure complaint, the confidentiality requirements under the **Protected Disclosure Act 2012**;
- (e) take any other actions prescribed for the purposes of this subsection.
- (2) Before a witness summoned to attend to give evidence at an examination is asked any questions, the IBAC must advise the witness of the nature of the matters in respect of which the witness is to be asked questions, except to the extent to which the IBAC forms the opinion on reasonable grounds that this would prejudice the investigation or would be contrary to the public interest.
- (3) For the avoidance of doubt, the IBAC is not required to give reasons for forming the opinion referred to in subsection (2).

s. 131

S. 131
inserted by
No. 85/2012
s. 99.

131 Witness attending examination in relation to investigation of protected disclosure complaint to be informed of confidentiality obligations

Before a person attending as a witness at an examination (whether voluntarily or in response to a summons) is asked any questions or required to produce a document or thing, the IBAC must—

- (a) advise the person that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and
- (b) inform the person of the nature of those obligations.

S. 132
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

132 Power to examine on oath or affirmation

- (1) An IBAC Officer who is authorised to do so by the Commissioner may administer an oath or affirmation to a person.
- (2) An IBAC Officer who is authorised to do so by the Commissioner may, in relation to a person summoned to attend at an examination—
 - (a) require the person to either take an oath or make an affirmation;
 - (b) administer an oath or affirmation to the person;
 - (c) examine the person in accordance with the witness summons;
 - (d) require the person to produce documents or things in accordance with the witness summons.
- (3) An IBAC Officer may take a statutory declaration from any witness or other person.

133 Video recording of examination

- (1) If a person attends the IBAC for an examination in accordance with a witness summons, the IBAC must ensure that the person's attendance is video recorded.
- (2) Subject to subsection (3), evidence of anything said by the person during the attendance is inadmissible as evidence against any person in any proceeding before a court or tribunal unless—
 - (a) the attendance was video recorded; and
 - (b) the video recording is available to be tendered in evidence.
- (3) A court may admit evidence of anything said by a person during an attendance that is otherwise inadmissible because of subsection (2) if the court is satisfied that there are exceptional circumstances that justify the admission of the evidence.
- (4) Unless the IBAC considers on reasonable grounds that doing so may prejudice an investigation, a person who is examined must be provided with a copy of—
 - (a) the video recording; and
 - (b) any transcript created.
- (5) If the IBAC determines not to provide a person with a copy of the video recording and any transcript in accordance with subsection (4), the IBAC must allow the person to view the video recording of his or her evidence at the IBAC premises at any reasonable time.

S. 133
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

s. 134

S. 134
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

134 IBAC to give copy of video recording and any transcript to Victorian Inspectorate

As soon as possible after an examination, the IBAC must provide the Victorian Inspectorate with a copy of the video recording and any transcript of the examination of the person who has been examined.

S. 135
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

135 Offence for summoned witness to fail to attend examination

- (1) A person who is duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the IBAC must not, without reasonable excuse, fail to attend in accordance with the witness summons.

Penalty: 240 penalty units or imprisonment for 2 years or both.

- (2) A person who is duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the IBAC must not, without reasonable excuse, fail to attend from day to day unless—

- (a) excused by the IBAC; or
(b) released from further attendance by the IBAC.

Penalty: 240 penalty units or imprisonment for 2 years or both.

S. 136
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

136 Offence for summoned witness to refuse or fail to answer question

A person who is duly served with a witness summons to attend as a witness to give evidence at an examination before the IBAC, must not, without reasonable excuse, refuse or fail to answer

a question that he or she is required to answer by the IBAC.

Penalty: 240 penalty units or imprisonment for 2 years or both.

137 Offence for summoned witness to fail to produce document or other thing

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

Penalty: 240 penalty units or imprisonment for 2 years or both.

S. 137
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

138 Offence to fail to take oath or make affirmation

A person who is duly served with a witness summons to attend as a witness at an examination before the IBAC must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so.

Penalty: 240 penalty units or imprisonment for 2 years or both.

S. 138
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

Division 2—Arrest for failure to appear

139 Warrant to arrest witness who fails to appear

(1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if the IBAC believes on reasonable grounds that the person has—

- (a) been duly served with a witness summons; and
- (b) failed to appear at the IBAC in accordance with the witness summons.

S. 139
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath that there are reasonable grounds for the belief under subsection (1).
- (3) The rules to be observed with respect to warrants to arrest under the **Magistrates' Court Act 1989** (other than section 62 or 64(2), (3) or (4)) extend and apply to an arrest warrant under this section.
- (4) A person arrested under an arrest warrant—
 - (a) must be brought before the IBAC as soon as practicable; and
 - (b) may be detained in police custody until excused from attendance by the IBAC.
- (5) The issue of an arrest warrant, or the arrest of a person under that warrant, does not relieve the person from any liability for non-compliance with the witness summons.

S. 140
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

140 Bail for person arrested

- (1) If it is not practicable for a person arrested under an arrest warrant to be brought before the IBAC within a reasonable time after he or she is arrested, the person must be brought before the Supreme Court.
- (2) When a person is brought before the Supreme Court under subsection (1), the Supreme Court must deal with the person in accordance with the **Bail Act 1977** as if the person had been accused of an offence.

S. 141
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

141 Person held in custody

- (1) The IBAC may direct that a person arrested under an arrest warrant be detained in a prison or a police gaol for the purpose of ensuring his or her attendance at the examination if the IBAC is satisfied that there are reasonable grounds to believe that it is necessary—

- (a) to prevent that person from escaping from police custody; or
 - (b) to ensure the safety of the person.
- (2) If a person is detained in a prison in accordance with a direction under subsection (1), the IBAC may give a written direction for the person to be delivered into the custody of a member of the police force for the purpose of bringing the person before the IBAC.

142 Report to Victorian Inspectorate on issue of arrest warrant

S. 142
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

Within 3 days after the issue of an arrest warrant under this Division, the IBAC must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person named in the arrest warrant;
- (b) the reasons why the arrest warrant was issued.

Division 3—Privileges and secrecy provisions applying to examinations

143 Privileges and secrecy generally

S. 143
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

- (1) If a person is a member of police personnel, any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or provided to the person in his or her service as a member of police personnel imposed by any enactment or any rule of law—
- (a) is overridden; and
 - (b) does not apply to the disclosure of information under Part 6.

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- (2) If a person is a member of police personnel—
- (a) the Crown is not entitled to assert any privilege in relation to the examination of that person, including any requirement under a witness summons; and
 - (b) any privilege referred to in paragraph (a) is abrogated.

S. 144
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 85/2012
s. 100.

**144 Privilege against self-incrimination abrogated—
witness summons**

- (1) A person is not excused from answering a question or giving information or from producing a document or other thing in accordance with a witness summons, on the ground that the answer to the question, the information, or the production of the document or other thing, might tend to incriminate the person or make the person liable to a penalty.
- (2) Any answer, information, document or thing that might tend to incriminate the person or make the person liable to a penalty is not admissible in evidence against the person before any court or person acting judicially, except in proceedings for—
- (a) perjury or giving false information; or
 - (b) an offence against this Act; or
 - (c) an offence against the **Victorian Inspectorate Act 2011**; or
 - (d) an offence against section 72 or 73 of the **Protected Disclosure Act 2012**; or
 - (e) contempt of the IBAC under this Act; or
 - (f) a disciplinary process or action.

- (3) Section 30 of the **Evidence (Miscellaneous Provisions) Act 1958** does not apply in respect of any statement made by any person in answer to any question in accordance with a witness summons under this Act.

145 Journalist privilege does not apply

A person is not, in relation to an examination or witness summons, entitled to the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**.

S. 145
inserted by
No. 52/2012
s. 19.

146 Procedure for determining claims of privilege or claims of a secrecy requirement

- (1) This section applies if a person claims at an examination, or on production of a document or other thing, before the IBAC that—
- (a) the information which is an answer to a question or otherwise required to be provided is the subject of privilege; or
 - (b) the document or other thing is the subject of privilege; or
 - (c) the document or thing cannot be disclosed due to a secrecy requirement of any enactment or other law that applies to the person; or
 - (d) the information which is an answer to a question or otherwise required to be provided cannot be disclosed due to a secrecy requirement of any enactment or other law that applies to the person.
- (2) A person making a claim to which this section applies must attend before the IBAC in accordance with the witness summons.
- (3) The IBAC must consider the claim of privilege or application of the secrecy requirement and either—

S. 146
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

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- (a) withdraw the requirement to answer the question or provide the information or to produce the document or other thing, as the case requires, over which the claim is made; or
 - (b) not withdraw the requirement and, in the case of a requirement to produce a document or other thing, require the claimant to immediately seal the document or other thing in an envelope, or otherwise secure it if it cannot be sealed in an envelope, and give it to the IBAC.
- (4) If the claim relates to a document or other thing, the IBAC must not inspect the document or thing in considering the claim.
- (5) If the IBAC does not withdraw the requirement to answer the question or provide the information or to produce the document or other thing the IBAC must—
- (a) apply to the Supreme Court in accordance with section 147 for determination of the claim of privilege or application of the secrecy requirement; and
 - (b) if the IBAC requires the claimant to give the document or other thing to the IBAC under subsection (3)(b), the IBAC must immediately give the sealed envelope or the document or other thing otherwise secured to the proper court officer of the Supreme Court to be held in safe custody.
- (6) Subject to section 148, a person must not open a sealed envelope or interfere with a document or thing secured otherwise than in an envelope before delivery to the proper officer of the Supreme Court.
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**147 Application to Supreme Court to determine
privilege or application of secrecy requirement**

S. 147
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

- (1) Within the relevant period specified in subsection (2), the IBAC may apply to the Supreme Court for a determination of—
 - (a) a claim of privilege under this Division;
 - (b) the application of a secrecy requirement under any enactment or other law.
- (2) An application under subsection (1) must be made—
 - (a) in the case of a document or other thing, within 7 days after the IBAC gives the sealed envelope or the document or other thing secured otherwise than in an envelope to the proper officer under section 146; or
 - (b) within 7 days after the person refused to provide information which is an answer to a question or otherwise required to be provided at an examination on the basis of a claim of privilege or the application of a secrecy requirement under any enactment or other law.
- (3) If no application is made under subsection (1) in relation to a document or other thing within the period of 7 days, the proper officer of the Supreme Court must return the document or other thing to the claimant.
- (4) If no application is made under subsection (1) in relation to the provision of information in answer to a question or otherwise required to be provided within the period of 7 days, the requirement to answer the question or provide the information is taken to be withdrawn.

- (5) The IBAC must give notice of the application to the claimant within a reasonable time before the hearing of the application.
- (6) Notice under subsection (5) must be in the prescribed form.
- (7) The claimant is entitled to appear and be heard on the hearing of the application.

S. 148
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

148 Determination of claim

- (1) On an application under section 147, the Supreme Court must determine whether or not the information required in answer to a question asked at the examination or otherwise required to be provided or the document or other thing in the sealed envelope or secured otherwise than in an envelope is the subject of—
 - (a) privilege; or
 - (b) any secrecy requirement under an enactment or other law.
- (2) If the application is in respect of a document or other thing, for the purposes of making a determination under subsection (1), the Judge constituting the Supreme Court and any other person authorised by the Court may—
 - (a) open the sealed envelope or access the document or other thing secured otherwise than in an envelope; and
 - (b) inspect the document or thing.
- (3) If the Court determines that the document or other thing is the subject of privilege or a secrecy requirement under an enactment or other law—
 - (a) the Court must order that the document or thing be returned to the claimant; and
 - (b) the proper officer must return the document or thing to the claimant.

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- (4) If the Court determines that the document or other thing is not the subject of privilege or a secrecy requirement under an enactment or other law—
- (a) the Court must order that the document or thing be given to the IBAC; and
 - (b) the proper officer must release the document or thing accordingly.
- (5) If the Court determines that the information which is an answer to a question or otherwise required to be provided is the subject of privilege or a secrecy requirement under an enactment or other law, the Court must order that the claimant is not required to provide the information to the IBAC in answer to the question or is not otherwise required to provide that information, as the case requires.
- (6) If the Court determines that the information which is an answer to a question or otherwise required to be provided is not the subject of privilege or a secrecy requirement under an enactment or other law, the Court must order that the claimant provide the information to the IBAC in answer to the question or otherwise provide that information in accordance with the requirement of the IBAC, as the case requires.
- (7) Subject to subsection (2), a person must not open a sealed envelope or otherwise have access to the document or thing contained in the sealed envelope before—
- (a) the Court determines the claim of privilege or the application of a secrecy requirement to it; or
 - (b) the document or thing is returned to the claimant.

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

s. 149

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

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

S. 149
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

149 Protection of legal practitioners and witnesses

- (1) An Australian legal practitioner representing a person at an examination or assisting the IBAC at an examination has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- (2) A person appearing as a witness at an examination has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

Division 4—Assistance for witnesses

S. 150
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

150 Reimbursement of expenses

A person appearing as a witness in an examination must be paid an amount for any expenses incurred by that appearance in accordance with the prescribed scale.

S. 151
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

151 Provision of legal assistance to witnesses

- (1) Subject to subsection (3), a person appearing as a witness in an examination may apply to the prescribed person for legal assistance in connection with his or her appearance as a witness.

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- (2) The prescribed person—
- (a) may approve an application made under subsection (1); and
 - (b) may impose—
 - (i) a limit on the legal assistance to be provided; and
 - (ii) any other condition on the approval.
- (3) If the IBAC certifies in writing that an application to the prescribed person referred to in subsection (1) would prejudice an investigation, the IBAC must nominate another appropriate person for the purposes of the witness in an examination seeking the provision of legal assistance under this section.
- (4) If the IBAC nominates a person under subsection (3), for the purposes of this section, a reference to the prescribed person is taken to be a reference to that nominated person.
- (5) For the purposes of this section, *legal assistance* means payment to an Australian legal practitioner or a prescribed person or body for legal advice and representation provided to a person appearing as a witness in an examination.

Division 5—Contempt

152 Contempt of the IBAC

A person who has been served with a witness summons by the IBAC is guilty of contempt of the IBAC if the person, without reasonable excuse—

- (a) fails to attend an examination by the IBAC as required by the witness summons; or
- (b) fails to produce any document or other thing the person is required by the witness summons to produce; or

S. 152
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

- (c) when called or examined as a witness at an examination, refuses to be sworn or to make an affirmation; or
- (d) when called or examined as a witness at an examination, refuses or fails to answer any question relevant to the subject matter of the examination; or
- (e) engages in threatening or obstructive behaviour before the IBAC; or
- (f) engages in any other conduct that would, if the IBAC were the Supreme Court, constitute a contempt of that Court.

S. 153
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

153 Charging and arresting a person for contempt

- (1) If it appears to the IBAC that a person is guilty of contempt of the IBAC, the IBAC may—
 - (a) issue a certificate of charge—
 - (i) charging the person with contempt; and
 - (ii) setting out or attaching details of the alleged contempt; and
 - (b) issue an arrest warrant in the prescribed form to arrest the person.
- (2) An arrest warrant—
 - (a) may be directed to a named member, or all members, of the police force; and
 - (b) authorises the member or members to whom it is directed to arrest the person named in the warrant.
- (3) A person who is arrested under an arrest warrant—
 - (a) is to be brought before the Supreme Court without delay to be dealt with according to law; and

- (b) may be detained in police custody in the meantime.

154 Report to Victorian Inspectorate on issue of arrest warrants

Within 3 days after the issue of an arrest warrant under this Division, the IBAC must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person named in the arrest warrant;
- (b) the reasons why the arrest warrant was issued.

S. 154
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

155 Bail pending court appearance for contempt

- (1) If it is not practicable for the person to be brought before the Supreme Court without delay after he or she is arrested—

- (a) the person for the time being in charge of the place where he or she is detained must—
- (i) advise the person that he or she is entitled to apply to a bail justice for discharge from custody; and
- (ii) give the person a written statement, in the prescribed form, of his or her right to apply for discharge from custody; and
- (b) if the person elects to apply for discharge from custody, the person for the time being in charge of the place where he or she is detained must—
- (i) give written notice to the IBAC of the person's election to apply; and
- (ii) cause the person to be brought before a bail justice as soon as practicable; and

S. 155
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)),
amended by
No. 82/2012
s. 19.

- (iii) cause to be produced before the bail justice the arrest warrant and the certificate of charge for the person; and
- (iv) abide by the decision of the bail justice in relation to the person.

- (2) When a person is brought before a bail justice under subsection (1), the bail justice may discharge the person from custody on bail in accordance with the **Bail Act 1977** as if the person had been accused of an offence.

S. 156
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

156 Custody pending court appearance for contempt

- (1) Subject to section 155, if the IBAC considers on reasonable grounds that it is necessary to prevent a person who is arrested under an arrest warrant from escaping from police custody or to ensure the safety of the person, the IBAC may direct that the person be detained in a prison or a police gaol for the purpose of ensuring his or her appearance before the Supreme Court.
- (2) If a person detained in police custody under this Division, other than a person detained in accordance with a direction under subsection (1), is required to be detained overnight, the Chief Commissioner of Police must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.
- (3) If a person is detained in a prison in accordance with a direction under subsection (1), the IBAC may give a written direction for the person to be delivered into the custody of a member of the police force for the purpose of bringing the person before the Supreme Court.

157 Supreme Court to deal with contempt

- (1) A contempt of the IBAC is to be dealt with by the Supreme Court as if—
- (a) the contempt were a contempt of an inferior court; and
 - (b) the certificate of charge were an application to the Supreme Court for punishment for the contempt.
- (2) A certificate of charge is evidence of the matters set out in or attached to it.

S. 157
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

158 Act or omission constituting both an offence and contempt

If an act or omission by an offender constitutes both an offence against this Act and contempt of the IBAC, the offender is liable to be proceeded against for the offence against this Act or for contempt of the IBAC or both, but is not liable to be punished more than once for the same act or omission.

S. 158
inserted by
No. 28/2012
s. 21 (as
amended by
No. 82/2012
s. 151(3)).

Pt 7 (Heading and ss 159–165) inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)).

S. 159 inserted by No. 13/2012 s. 9 (as amended by No. 82/2012 s. 148(3)), amended by No. 85/2012 s. 101.

PART 7—RECOMMENDATIONS, ACTIONS AND REPORTS

159 Recommendations

- (1) The IBAC may at any time make recommendations in relation to a matter arising out of an investigation about any action that the IBAC considers should be taken to one or more of the following—
 - (a) the relevant principal officer;
 - (b) the responsible Minister;
 - (c) the Premier.
 - (2) A recommendation under subsection (1) which is not contained in a report must be made in private.
 - (3) A recommendation under subsection (1), must not contain any information that is likely to lead to the identification of a person who has made an assessable disclosure.
 - (4) However, a recommendation under subsection (1) may contain information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.
 - (5) Subject to subsection (6), subsection (2) does not limit the power of the IBAC to make public a recommendation under section 162 or 165 if the IBAC considers there has been a failure to take appropriate action in relation to the recommendation.
 - (6) The IBAC may require a person (other than the Chief Commissioner of Police) who has received a recommendation under subsection (1) to give a
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report to the IBAC, within a reasonable specified time, stating—

- (a) whether or not he or she has taken, or intends to take, action recommended by the IBAC; and
 - (b) if the person has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.
- (7) The person who has received a recommendation under subsection (1) must comply with a requirement of the IBAC under subsection (6).

160 The IBAC may request the Chief Commissioner of Police to take certain actions

- (1) After receiving a report of the Chief Commissioner of Police, the IBAC may in writing request the Chief Commissioner of Police to take any action that the IBAC considers is appropriate—
- (a) in addition to any action taken or proposed to be taken by the Chief Commissioner of Police; or
 - (b) in substitution for any action taken or proposed to be taken by the Chief Commissioner of Police.
- (2) The IBAC may under subsection (1) request the Chief Commissioner of Police to conduct a further investigation under Part IVA of the **Police Regulation Act 1958** or, in the case of a protected disclosure complaint, Part IVB of that Act.

S. 160
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
Nos 28/2012
s. 22, 85/2012
s. 102.

161 Actions by Chief Commissioner of Police

If the IBAC has made a recommendation under section 159, or a request under section 160, to the Chief Commissioner of Police, the Chief Commissioner of Police must—

S. 161
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

- (a) adopt the recommendation or take the requested action; or
- (b) if the Chief Commissioner of Police has not adopted the recommendation or taken the requested action, or does not intend to adopt the recommendation or take the requested action, give a report to the IBAC stating the reason for not intending to adopt the recommendation or take the requested action.

S. 162
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 85/2012
s. 103.

162 Special reports

- (1) The IBAC may at any time cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions.
- (2) If the IBAC intends to include in a report under this section adverse findings about a public body, the IBAC must give the relevant principal officer of that public body an opportunity to respond to the adverse material and fairly set out each element of the response in its report.
- (3) If the IBAC intends to include in a report under this section a comment or an opinion which is adverse to any person, the IBAC must first provide the person a reasonable opportunity to respond to the adverse material and fairly set out each element of the response in its report.
- (4) If the IBAC intends to include in a report under this section a comment or an opinion about any person which is not adverse to the person, the IBAC must first provide that person with the relevant material in relation to which the IBAC intends to name that person.
- (5) If the IBAC is aware of a criminal investigation or any criminal proceedings or other legal proceedings in relation to a matter or person to be

included in a report under this section, the IBAC must not include in the report any information which would prejudice the criminal investigation, criminal proceedings or other legal proceedings.

- (6) The IBAC must not include in a report under this section a statement as to—
- (a) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or
 - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence.
- (7) The IBAC must not include in a report under this section any information that would identify any person who is not the subject of any adverse comment or opinion unless the IBAC—
- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
 - (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
 - (c) states in the report that the person is not the subject of any adverse comment or opinion.
- (8) The IBAC must not include in a report under this section any information that—
- (a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—
 - (i) Division 1 of Part 9 of this Act;
 - (ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

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- (b) is likely to lead to the identification of a person who has made an assessable disclosure.
- (9) However, the IBAC may in a report under this section include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.
- (10) The clerk of each House of the Parliament must cause the report to be laid before the House of the Parliament on the day on which it is received or on the next sitting day of that House of the Parliament.
- (11) If the IBAC proposes to transmit a report to the Parliament on a day on which neither House of the Parliament is actually sitting, the IBAC must—
- (a) give one business day's notice of intention to do so to the clerk of each House of the Parliament; and
 - (b) give the report to the clerk of each House of the Parliament on the day indicated in the notice; and
 - (c) publish the report on the IBAC's Internet website as soon as practicable after giving it to the clerks.
- (12) The clerk of each House of the Parliament must—
- (a) notify each member of the House of the Parliament of the receipt of the notice under subsection (11)(a) on the same day that the clerk receives that notice; and
 - (b) give a copy of the report to each member of the House of the Parliament as soon as practicable after the report is received under subsection (11)(b); and
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- (c) cause the report to be laid before the House of the Parliament on the next sitting day of the House of the Parliament.
- (13) A report that is given to the clerks under subsection (11)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (14) The publication of a report by the IBAC under subsection (11)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a document to which those sections applied and had been published by the Government Printer under the authority of the Parliament.

163 Advice to a complainant and other persons

- (1) Subject to subsection (4), the IBAC may provide a complainant with information about the results of an investigation including—
- (a) any action taken by the IBAC; and
 - (b) any recommendation by the IBAC that any action or further action be taken.
- (2) Subject to subsection (4), the IBAC must provide a complainant with the information referred to in subsection (1) if the investigation relates to—
- (a) a corrupt conduct complaint or police personnel conduct complaint in relation to a member of the police; or
 - (b) a protected disclosure complaint.
- (3) Subject to subsections (4) and (5), the IBAC may provide written information about the commencement, conduct or results of an investigation, including any action taken and any

S. 163
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 82/2012
s. 20, 85/2012
s. 104.

recommendation that any action or further action be taken, to one or more of the following—

- (a) the relevant principal officer;
 - (b) the responsible Minister;
 - (c) the Premier.
- (4) The IBAC must not provide any information under this section if the IBAC considers that the provision of the information would—
- (a) not be in the public interest or in the interests of justice; or
 - (b) put a person's safety at risk; or
 - (c) cause unreasonable damage to a person's reputation; or
 - (d) prejudice an investigation under this Act or an investigation by the police force; or
 - (e) be likely to lead to the disclosure of any secret investigative method used by the IBAC or members of police personnel; or
 - (f) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.
- (5) The IBAC must not provide any information under subsection (3) that is likely to lead to the identification of a person who has made an assessable disclosure.
- (6) However, the IBAC may provide information under subsection (3) to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

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- (7) This section does not apply to a police personnel conduct complaint if—
- (a) the complaint has been investigated as a protected disclosure complaint under Part IVB of the **Police Regulation Act 1958**; and
 - (b) the IBAC has, in relation to, or in relation to a matter arising out of, an investigation, decided not to—
 - (i) take further action; or
 - (ii) request the Chief Commissioner of Police to take action.
- (8) Information given to a complainant under subsection (1) or (2) must include a written statement advising the complainant that it is an offence under section 184 to disclose the information.

164 Outcome of investigation

- (1) After conducting an investigation, the IBAC may—
- (a) make a referral under Division 5 of Part 3;
 - (b) make a recommendation in accordance with section 159;
 - (c) transmit a special report under section 162;
 - (d) advise a complainant or other person in accordance with section 163;
 - (e) do any combination or all or none of the matters referred to in paragraphs (a) to (d);
 - (f) determine to make no finding or take no action following the investigation.

S. 164
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 82/2012
s. 21 (ILA
s. 39B(1)),
amended by
Nos 28/2012
s. 23, 82/2012
s. 21.

- (2) Without limiting subsection (1), after conducting an investigation, the IBAC may also take any other action that the IBAC is permitted to take under this or any other Act.

S. 165
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 85/2012
s. 105.

165 Matters to be included in annual report

- (1) The IBAC in its annual report for a financial year under Part 7 of the **Financial Management Act 1994** must include—
- (a) the prescribed information relating to the performance of its duties and functions;
 - (b) any recommendations for changes to any Act or law in force in Victoria or for specified administrative actions to be taken which the IBAC considers necessary as a result of the performance of its duties and functions;
 - (c) a description of its activities in relation to the performance of its duties and functions.
- (2) If the IBAC intends to include in its annual report adverse findings about a public body, the IBAC must give the relevant principal officer of that public body an opportunity to respond to the adverse material and fairly set out each element of the response in its report.
- (3) If the IBAC intends to include in its annual report a comment or an opinion which is adverse to any person, the IBAC must first provide the person a reasonable opportunity to respond to the adverse material and fairly set out each element of the response in its report.
- (4) If the IBAC intends to include in a report under this section a comment or an opinion about any person which is not adverse to the person, the IBAC must first provide that person with the relevant material in relation to which the IBAC intends to name the person.

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- (5) If the IBAC is aware of a criminal investigation or any criminal proceedings or other legal proceedings in relation to a matter or person to be included in its annual report, the IBAC must not include in the annual report any information which would prejudice the criminal investigation, criminal proceedings or other legal proceedings.
- (6) The IBAC must not include in its annual report a statement as to—
- (a) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or
 - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence or a disciplinary offence.
- (7) The IBAC must not include in its annual report any information that would identify any person who is not the subject of any adverse comment or opinion unless the IBAC—
- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
 - (b) is satisfied that it will not cause unreasonable damage to a person's reputation, safety or wellbeing; and
 - (c) states in the report that the person is not the subject of any adverse comment or opinion.
- (8) The IBAC must not include in its annual report any information that—
- (a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—
 - (i) Division 1 of Part 9 of this Act;
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(ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

(b) is likely to lead to the identification of a person who has made an assessable disclosure.

(9) However, the IBAC may in an annual report include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

Note

See also section 67 of the **Protected Disclosure Act 2012** for additional matters that are to be included in the IBAC's annual report.

S. 166
inserted by
No. 28/2012
s. 24.

166 Persons who receive reports or information prior to publication

(1) Subject to subsections (3), (4) and (5), a person who receives a proposed report, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, before the report is published by the IBAC in accordance with section 162 or 165 must not disclose any information contained in the proposed report or draft or part of the proposed report unless—

(a) the disclosure is permitted under subsection (2); and

(b) the advice required by subsection (6) is given at the same time the disclosure is made.

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

(2) For the purposes of subsection (1), a disclosure is permitted if the disclosure—

(a) is made in accordance with a direction or authorisation given by the IBAC; or

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- (b) is made by an officer of an entity to other officers of the entity for the purposes of enabling the entity to respond to the proposed report or draft or part of the proposed report; or
 - (c) subject to section 127(2) and (8), is made for the purposes of obtaining legal advice or representation in relation to the proposed report or draft or part of the proposed report; or
 - (d) is otherwise authorised or required to be made by or under this Act.
- (3) Despite subsection (1), a disclosure is permitted if the disclosure is made for the purposes of making a complaint to the Victorian Inspectorate about the conduct of the IBAC or of an IBAC Officer.
 - (4) Despite subsection (1), a disclosure is permitted if the disclosure is made for the purposes of complying with a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
 - (5) Despite subsection (1), a disclosure is permitted if the disclosure is made after the information is published by the IBAC in a report or has otherwise been made public in accordance with this Act.
 - (6) A person who makes a disclosure of information permitted by subsection (2) must advise any person to whom the disclosure is made that this section applies in relation to the subsequent disclosure of that information by the person to whom the disclosure is made.
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Pt 8 (Heading
and ss 167–
170)
inserted by
No. 82/2012
s. 258.

PART 8—MONITORING AND REVIEW

S. 167
inserted by
No. 82/2012
s. 258.

167 Definitions

In this Part—

member of the force has the meaning given by section 3(1) of the **Police Regulation Act 1958**;

relevant agency has the meaning given by section 69 of the **Melbourne City Link Act 1995**;

restricted tolling information has the meaning given by section 90 of the **Melbourne City Link Act 1995**;

the force has the meaning given by section 3(1) of the **Police Regulation Act 1958**.

S. 168
inserted by
No. 82/2012
s. 258.

168 Monitoring compliance with Division 3 of Part 4 of Melbourne City Link Act 1995

- (1) The IBAC is to monitor compliance by members of the force with Division 3 of Part 4 of the **Melbourne City Link Act 1995**.
 - (2) The IBAC must review the records of the force at least twice during each financial year to monitor compliance by members of the force with Division 3 of Part 4 of the **Melbourne City Link Act 1995**.
 - (3) Despite subsection (2), the IBAC may count any reviews done by the Ombudsman under section 13(2AB) of the **Ombudsman Act 1973** during the financial year in which this section comes into operation towards the number of reviews required
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to be done by the IBAC under subsection (2) during that year.

169 Powers in relation to monitoring compliance with Division 3 of Part 4 of Melbourne City Link Act 1995

S. 169
inserted by
No. 82/2012
s. 258.

- (1) An authorised officer may—
 - (a) enter at any time premises occupied by the force at which the authorised officer reasonably believes there are records that contain, or relate to, restricted tolling information; and
 - (b) enter the offices of a relevant agency (other than premises occupied by the force) during ordinary business hours to inspect or copy any records that contain, or relate to, restricted tolling information that relates, or that may relate, to any review being, or about to be, carried out under this Part; and
 - (c) inspect or copy any record or information found at any place entered under paragraph (a) or (b); and
 - (d) report the results of any inspections carried out under this section to the Minister; and
 - (e) do anything that it is necessary or convenient to do to enable an inspection to be carried out under this section.
 - (2) An authorised officer may exercise a power of entry under this section only after he or she has notified the following of the intended entry—
 - (a) in the case of entry to premises occupied by the force, the Chief Commissioner of Police;
 - (b) in the case of entry to the offices of a relevant agency, the chief executive officer (by whatever name called) of the relevant agency.
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s. 170

S. 170
inserted by
No. 82/2012
s. 258.

170 Police must provide reasonable assistance

The Chief Commissioner of Police must ensure that members of the force give the IBAC or an authorised officer any assistance the IBAC or an authorised officer reasonably requires to enable the IBAC or authorised officer to exercise the functions of the IBAC or an authorised officer under this Part.

PART 9—GENERAL

Division 1—Alcohol and drug testing of IBAC Officers

Pt 9
(Headings
and ss 171–
196)
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

171 Application of Division

- (1) This Division does not apply to the Commissioner.
- (2) In this Division, a reference to an *IBAC Officer* does not include a reference to the Commissioner.

S. 171
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

172 Alcohol and drug testing of IBAC Officers

- (1) The IBAC may direct an IBAC Officer to test for the presence of alcohol or a drug of dependence if the IBAC reasonably believes that—
 - (a) the test result is relevant to the capacity of the IBAC Officer to perform his or her duties or exercise his or her powers; or
 - (b) the IBAC Officer has been involved in a critical incident.
- (2) A direction under subsection (1) must specify whether the IBAC Officer is required to do one or more of the following—
 - (a) provide a sample of breath;
 - (b) provide a sample of urine;
 - (c) allow a registered medical practitioner or an approved health professional to take from the officer a sample of the officer's blood.
- (3) A direction under subsection (1) must be—
 - (a) in writing; and
 - (b) made in accordance with the regulations.

S. 172
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

- (4) Nothing in this section affects the operation of Part 5 of the **Road Safety Act 1986**.

S. 173
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 28/2012
s. 25.

173 The IBAC may have regard to evidence in certain circumstances

The IBAC may have regard to evidence derived from a sample obtained in accordance with a direction made under this Division in—

- (a) managing the performance of the duties or the exercise of the powers of the IBAC Officer; or
- (b) conducting any disciplinary process or action against the IBAC Officer relating to the performance of the duties or the exercise of the powers of the IBAC Officer as an IBAC Officer under this Act.

S. 174
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 28/2012
s. 26.

174 Taking a sample when an IBAC Officer is unconscious or otherwise unable to comply with direction

- (1) If an IBAC Officer is unconscious or otherwise unable to comply with a direction and the IBAC reasonably believes that the IBAC Officer was involved in a critical incident, the IBAC may direct a registered medical practitioner to take from the IBAC Officer a sample of blood to test for the presence of alcohol or a drug of dependence.
- (2) If a sample of blood is taken under subsection (1), the IBAC must, upon the IBAC Officer regaining consciousness or otherwise becoming able to comply with a direction, advise the IBAC Officer—
 - (a) of the taking of the sample; and
 - (b) that he or she may refuse to consent to the use of any evidence derived from the sample; and

- (c) that a refusal to consent to the use of the evidence may constitute grounds for a disciplinary process or action against the IBAC Officer.
- (3) A direction under subsection (1) must be—
 - (a) in writing; and
 - (b) made in accordance with the regulations.
- (4) The IBAC must destroy any evidence derived from a sample of blood taken under subsection (1) if the IBAC Officer refuses to consent to the use of that evidence in the circumstances set out in subsection (2).
- (5) The IBAC must destroy any sample of blood taken under subsection (1) in respect of which consent is refused.
- (6) Nothing in this section affects the operation of Part 5 of the **Road Safety Act 1986**.

175 Admissibility of test result in certain proceedings

- (1) Evidence derived from a sample obtained in accordance with a direction made under this Division is inadmissible in any proceeding in a court, tribunal or before a person or body authorised to hear and receive evidence.
- (2) Subject to subsection (3), subsection (1) does not apply—
 - (a) in a proceeding under the **Accident Compensation Act 1985** to rebut or support an allegation that the presence of alcohol or a drug of dependence contributed to the injury in respect of which the proceeding was commenced; or

S. 175
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 28/2012
s. 27.

- (b) in a prosecution under the **Occupational Health and Safety Act 2004** to rebut or support an allegation that the presence of alcohol or a drug of dependence contributed to the occurrence of the act, matter or thing constituting the offence in respect of which the prosecution is brought; or
 - (c) in a proceeding arising out of, or connected with, a critical incident; or
 - (d) in a proceeding to the extent that the evidence is relevant to the defence of a person, other than the IBAC Officer who provided the sample, to rebut or support an allegation that the presence of alcohol or a drug of dependence affected the performance of the duties or the exercise of the powers of the IBAC Officer as an IBAC Officer; or
 - (e) to any disciplinary process or action against the IBAC Officer relating to the performance of the duties or the exercise of the powers of the IBAC Officer as an IBAC Officer under this Act.
- (3) Subsection (2) does not apply to evidence derived from a sample obtained in accordance with a direction made under section 174(1) if the IBAC Officer from whom the sample was taken refuses to consent to the use of that evidence in the circumstances set out in section 174(2).
- (4) In this section, *proceeding* includes a coronial inquest or inquiry.

176 Handling and confidentiality of test results

The IBAC must ensure that the result of any test conducted in accordance with a direction given under this Division is handled in accordance with the regulations.

S. 176
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

177 Offence to disclose identifying information

A person must not disclose to any person the identity of a person to whom or in respect of whom a direction is given under this Division other than as required or authorised by—

- (a) this Act; or
- (b) the regulations.

Penalty: 60 penalty units.

S. 177
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

178 No action against registered medical practitioner or approved health professional

No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or health professional in the course of taking any sample which the practitioner or health professional believes on reasonable grounds was required or allowed to be taken from any IBAC Officer under this Division.

S. 178
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

Division 2—Offences and Proceedings

179 Offence to impersonate IBAC Officer

A person who is not an IBAC Officer must not, in any way, hold himself or herself out to be an IBAC Officer.

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

S. 179
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

180 Offence to hinder or obstruct an IBAC Officer

A person must not, without reasonable excuse, hinder or obstruct an IBAC Officer who is performing a function or exercising a power under Part 4 or 5.

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

S. 180
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

S. 181
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

181 Compliance with direction or requirement

A person must not, without reasonable excuse, refuse or fail to comply with a direction or requirement made of the person in the exercise of a power by an IBAC Officer under this Act or the regulations.

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

S. 182
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

182 Statement which is false or misleading

A person must not wilfully make a statement that the person knows to be false or misleading in a material particular or mislead or attempt to mislead the IBAC or an IBAC Officer in the exercise of its, his or her powers under this Act or the regulations.

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

S. 183
inserted by
No. 82/2012
s. 22.

183 Disclosure of transferred restricted matter

- (1) A person must not disclose a transferred restricted matter except as permitted by this section.

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

- (2) Unless the IBAC orders otherwise, a transferred restricted matter may be disclosed if that matter has already been disclosed as part of an examination that was open to the public.
- (3) A transferred restricted matter may be disclosed—
 - (a) in accordance with a direction of the IBAC;
or
 - (b) subject to 127(2), to a legal practitioner for the purpose of obtaining legal advice or representation relating to a witness summons or matter; or

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- (c) to a person for the purpose of obtaining legal assistance relating to a witness summons or matter; or
 - (d) to an officer or agent of a body corporate by the body corporate or another officer or agent of the body corporate for the purpose of ensuring compliance with a witness summons; or
 - (e) to the Ombudsman in connection with a complaint to the Ombudsman that relates to a function of the Ombudsman under section 13 or 13AA of the **Ombudsman Act 1973**; or
 - (f) to the Victorian Inspectorate for the purpose of, or in connection with, a complaint to the Victorian Inspectorate; or
 - (g) by a legal practitioner for the purpose of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with a client; or
 - (h) by a legal practitioner referred to in paragraph (b) for the purpose of giving legal advice, making representations, or obtaining legal aid, relating to the witness summons or matter; or
 - (i) by a person referred to in paragraph (c) for the purpose of obtaining legal aid relating to a witness summons or matter; or
 - (j) if that disclosure is otherwise authorised or required under this Act.
- (4) This section does not apply to an IBAC Officer.
- (5) Nothing in this section prevents the IBAC from issuing a confidentiality notice in relation to a transferred restricted matter.
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(6) In this section—

Director means the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** as in force immediately before its repeal;

transferred restricted matter means any of the following which, immediately before the repeal of the **Police Integrity Act 2008**, was a restricted matter within the meaning of section 23 of that Act as in force immediately before its repeal and which, by virtue of the Schedule, has become subject to this Act—

- (a) any evidence given before the Director;
- (b) the contents of any statement of information or document, or a description of any thing, produced to the Director;
- (c) the contents of any document, or a description of any thing, seized under the **Police Integrity Act 2008**;
- (d) any information that might enable a person who has been, or is about to be, examined before the Director to be identified or located;
- (e) the fact that a person had been, or was about to be, examined before the Director;
- (f) the existence of a witness summons under the **Police Integrity Act 2008**;
- (g) the subject matter of an investigation under the **Police Integrity Act 2008** in relation to which a witness summons under that Act had been issued.

184 Offence to disclose certain information received from the IBAC

S. 184
inserted by
No. 82/2012
s. 22.

- (1) A person who made a complaint who is notified by the IBAC under section 59(1) or (2) of the taking of action referred to in section 58(b) or (c) by the IBAC must not disclose that action except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (2) A complainant who receives information under section 163(1) or (2) must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (3) A person who receives information referred to in subsection (1) or (2) in any circumstance specified in subsection (5) must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (4) A person other than a person referred to in subsection (3) who receives information referred to in subsection (1), (2) or (3) from a person referred to in those subsections must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

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- (5) For the purposes of this section, the specified circumstances are—
- (a) disclosure to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42 or to comply with this section, including if the person—
 - (i) does not have a sufficient knowledge of the English language to understand the nature of the witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice under section 42 or this section, to an interpreter;
 - (ii) is a person under the age of 18 years, to a parent, guardian or independent person;
 - (iii) is a person who is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons, a confidentiality notice, a notice cancelling a confidentiality notice, an order extending a confidentiality notice under section 42 or this section without assistance, to an independent person;
 - (b) disclosure for the purposes of obtaining legal advice or representation in relation to—
 - (i) a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice, an order extending a confidentiality notice under
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section 42 or compliance with this section;

- (ii) the person's rights, liabilities, obligations and privileges under this Act or the **Protected Disclosure Act 2012**;
- (c) disclosure by an Australian legal practitioner who receives a disclosure in the circumstances specified in paragraph (b), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;
- (d) disclosure for the purposes of making a complaint to the Victorian Inspectorate;
- (e) disclosure for the purposes of complying with a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**;
- (f) disclosure of information that has been published by the IBAC in a report or has otherwise been made public in accordance with this Act;
- (g) disclosure to a person's spouse or domestic partner;
- (h) disclosure to a person's employer or manager or both;
- (i) disclosure as is otherwise authorised or required to be made by or under this Act.

S. 185
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

185 Offences by corporations

- (1) If a corporation is guilty of an offence against this Act or the regulations, any officer of the corporation knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (2) If in a proceeding for an offence against this Act or the regulations it is necessary to establish the intention of a corporation, it is sufficient to show that an employee or agent of the corporation had that intention.
- (3) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or the regulations.
- (4) In this section, *officer*—
 - (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
 - (b) in relation to an entity that is neither an individual nor a corporation within the meaning of the Corporations Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation.

S. 186
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

186 Maximum fine for body corporate

- (1) If a body corporate is found guilty of an offence against this Act or the regulations and the court has power to fine the body corporate, it may, unless the contrary intention appears, impose on the body corporate a fine not greater than 5 times the amount of the maximum fine that could be imposed by the court on a natural person found guilty of the same offence committed at the same time.

- (2) This section has effect despite—
- (a) anything to the contrary in the **Sentencing Act 1991**; and
 - (b) the prescription of a maximum fine for the offence applicable to all offenders.

187 Responsible agency for the Crown

- (1) If proceedings are brought against the Crown for an offence against this Act or the regulations, the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) In this section, the responsible agency in respect of an offence is the agency of the Crown—
 - (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the leave of the court.

S. 187
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

188 Proceedings against successors to public bodies

Proceedings for an offence against this Act or the regulations that were commenced against a public body before its dissolution, or that could have been commenced against a public body if not for

S. 188
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

s. 189

its dissolution, may be continued or commenced against its successor if the successor is a public body.

S. 189
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

189 Power to bring proceedings

Proceedings for an offence under this Act or the regulations may be brought by—

- (a) the IBAC;
- (b) a sworn IBAC Officer who is authorised by the Commissioner;
- (c) a member of the police force who is authorised by the Commissioner.

S. 190
inserted by
No. 28/2012
s. 28.

190 Power for the IBAC to bring criminal proceedings

Proceedings for an offence in relation to any matter arising out of an IBAC investigation may be brought by—

- (a) the IBAC;
- (b) a sworn IBAC Officer who is authorised by the Commissioner;
- (c) a member of the police force.

S. 191
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

191 Service of document

(1) Subject to sections 42, 124 and 125, any document under this Act or the regulations required or authorised to be given or served to or upon any person (other than a body corporate) may be served by—

- (a) giving it or serving it personally on the person; or
- (b) sending it by post or electronic communication to the person at that person's usual or last known place of residence or business; or

- (c) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently at least 16 years old; or
 - (d) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently at least 16 years old.
- (2) Any document under this Act or the regulations required or authorised to be given or served to or upon a body corporate may be served by—
- (a) giving it or serving it on; or
 - (b) sending it by post or electronic communication to—
- the body corporate at the head office, registered office or principal office of the body corporate.
- (3) This section is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.

192 Validity and effect of notices, orders and other documents and deemed service

- (1) The validity of any notice, order or other document given or made under this Act, other than Divisions 2 and 3 of Part 2 and Part 6, or of the service of the notice, order or other document is not affected by any error, misdescription or irregularity which in the opinion of a court is not likely to mislead or which in fact does not mislead.
- (2) If due service of a notice, order or other document required under this Act or the regulations to be given or served on any owner or occupier has been once made on any owner or occupier, the notice, order or other document is binding on all persons claiming by, from or under that owner or

S. 192
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 28/2012
s. 29.

occupier and on all subsequent owners or occupiers to the same extent as if served on each of those persons respectively.

Division 3—Miscellaneous

193 Immunity of the IBAC and IBAC Officers

S. 193
inserted by
No. 28/2012
s. 30.

- (1) The IBAC or an IBAC Officer is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
 - (a) in the performance of a duty or a function or the exercise of a power under this Act or the regulations made under this Act; or
 - (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act or the regulations made under this Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to the IBAC or an IBAC Officer attaches instead to the State.

194 Exemption from Freedom of Information Act 1982

S. 194
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 82/2012
s. 23.

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of any person or body to the extent to which the document discloses information that relates to—
 - (a) a complaint; or
 - (b) an investigation conducted under this Act; or
 - (c) a recommendation made by the IBAC under this Act; or
 - (d) a report, including a draft report, on an investigation conducted under this Act; or

- (e) information received by the IBAC under section 56; or
 - (f) a notification made to the IBAC under section 57.
- (2) In this section, *document* has the same meaning as it has in the **Freedom of Information Act 1982**.

195 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or class of persons;
 - (d) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified;
 - (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;
 - (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued,

S. 195
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)).

prescribed (whether under this or any other Act) or published by any person—

- (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed (whether under this or any other Act) or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed (whether under this or any other Act) or published from time to time;
- (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (3) Any regulations made under sections 36 and 37 of this Act as in force before the commencement of section 9 of the **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012** which are in operation immediately before that commencement are deemed to have been made under this Act as amended by that section 9.

S. 196
inserted by
No. 13/2012
s. 9 (as
amended by
No. 82/2012
s. 148(3)),
amended by
No. 28/2012
s. 31.

196 Regulations—specific matters

Without limiting the generality of section 195, the regulations may prescribe—

- (a) a body or entity to be a public body;
- (b) an office to be a public office;
- (c) a person or body for the purposes of the definition of *integrity body* in section 3;
- (d) a person or body for the purposes of the definition of *law enforcement agency* in section 3;

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- (e) a person or body for the purposes of the definition of *prosecutorial body* in section 3;
 - (f) the content and form of a confidentiality notice;
 - (g) a person or body for the purposes of section 73(2)(j);
 - (h) the content and form of a witness summons;
 - (i) matters which constitute proof of age for the purposes of section 123(2);
 - (j) content and form of a direction under section 127;
 - (k) for the purpose of section 130(1)(e), actions which the IBAC is to take before questioning a witness at an examination or requiring a witness to produce a document or other thing;
 - (l) scales of expenses payable to witnesses for the purposes of section 150;
 - (m) for the purposes of section 151, persons who can approve legal assistance;
 - (n) a person or body for the purposes of section 151(5);
 - (o) security checks for IBAC Officers;
 - (p) requirements relating to the issue of identity cards to IBAC Officers and the use of the identity cards;
 - (q) requirements for the disclosure and reporting of pecuniary interests by IBAC Officers, including providing for the manner of disclosure (whether by statutory declaration or otherwise) and the compilation, maintenance and publication of registers of pecuniary interests;
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- (r) the information to be included by the IBAC in its annual report;
 - (s) an appropriate course of training in the use of defensive equipment;
 - (t) an appropriate course of training in the use of firearms;
 - (u) the persons authorised to analyse samples for the purpose of detecting the presence of alcohol or drugs of dependence;
 - (v) the circumstances in which a breath sample, a urine sample or a blood sample may be taken;
 - (w) the procedure for the taking of samples of breath, urine or blood;
 - (x) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices;
 - (y) the requirements relating to the accreditation of persons conducting analyses for the presence of drugs of dependence;
 - (z) the procedure for the handling and analysis of samples of urine or blood;
 - (za) offences relating to interference with test results or the testing procedure;
 - (zb) the requirements in relation to the handling and confidentiality of test results;
 - (zc) the form of notice for the purposes of section 100(4);
 - (zd) forms for the purposes of this Act.
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197 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act or the **Integrity and Accountability Legislation Amendment Act 2012**.
- (2) Regulations made under this section may—
- (a) have a retrospective effect to a day on or from 29 November 2011, being the day on which this Act received the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or things or a class of persons or things from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary—
- (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
 - (b) in any subordinate instrument.
- (4) This section is repealed on the second anniversary of the day on which it comes into operation.

S. 197
inserted by
No. 82/2012
s. 24.

198 Schedule

The Schedule has effect.

S. 198
inserted by
No. 82/2012
s. 24.

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Sch.
inserted by
No. 82/2012
s. 25.

SCHEDULE

SAVINGS AND TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

commencement day means the day on which section 16 of the **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012** comes into operation;

Director means the Director, Police Integrity under section 7 of the PIA as in force immediately before its repeal;

OPI means the Office of Police Integrity continued by section 5 of the PIA as in force immediately before its repeal;

PIA means the **Police Integrity Act 2008** as in force immediately before its repeal;

property means any legal or equitable estate or interest (whether present or future or whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

2 General transitional provisions

- (1) Unless the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a repealed provision of the PIA continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—

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- (a) any other repealed provisions of the PIA necessary to give effect to that continued provision; and
 - (b) any regulations made under the PIA for the purposes of that continued provision.

3 Office of Police Integrity and office of Director abolished

- (1) On the commencement day, the Office of Police Integrity is abolished.
- (2) On the commencement day, the office of Director is abolished and the Director goes out of office.

4 IBAC succeeds Office of Police Integrity

On the commencement day—

- (a) all rights, property and assets that, immediately before the commencement day, were vested in the OPI or the Director are, by force of this clause, vested in the IBAC;
- (b) all debts, liabilities and obligations of the OPI or the Director existing immediately before that day become, by force of this clause, debts, liabilities and obligations of the IBAC;
- (c) the IBAC is, by force of this clause, substituted as a party to any proceeding pending in any court or tribunal to which the OPI or the Director was a party immediately before that day;
- (d) the IBAC is, by force of this clause, substituted as a party to any arrangement or contract entered into by or on behalf of the OPI, or by or on behalf of the Director, as a party and in force immediately before that day;

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- (e) any reference to the OPI in any Act (other than this Act), subordinate instrument, agreement, deed or other document must be construed as a reference to the IBAC—
 - (i) so far as it relates to any period on or after that day; and
 - (ii) if not inconsistent with the context or subject matter.

5 Superseded references to Director

A reference in any Act (other than this Act), subordinate instrument, agreement, deed or other document to the Director must be construed as a reference to the IBAC or the Commissioner (as the case requires)—

- (a) so far as the reference relates to any period on or after the commencement day; and
- (b) if not inconsistent with the subject matter.

6 Transfer of records, information and documents

All information, documents, reports, records and equipment in the possession or control of the OPI immediately before the commencement day, whether held under the PIA, any other Act or otherwise (including any information, document or other thing seized or otherwise obtained under a warrant)—

- (a) are transferred to the custody of the IBAC on the commencement day; and
 - (b) are taken to be information, documents, reports, records and equipment in the possession or control of the IBAC on and from that commencement day.
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7 Transferred protected information

If anything referred to in clause 4, 6, 10(2) or 11(2) is *protected information* within the meaning of section 30D of the **Surveillance Devices Act 1999**, on and from the commencement day—

- (a) the IBAC may only use that protected information in accordance with section 30F of that Act for the IBAC's corrupt conduct investigative functions or its police personnel conduct investigative functions; and
- (b) the IBAC must not disclose or communicate that protected information to any person or body for any other purpose.

8 Confidentiality

(1) A reference in section 38 of this Act—

- (a) to a person employed or engaged under section 35 or engaged under section 36 includes a reference to a person who was a member of OPI personnel immediately before the commencement day and who is, on and from the commencement day, an IBAC Officer; and
- (b) to the administration of this Act or the performance of duties and functions or the exercise of powers by the IBAC includes a reference to—
 - (i) the administration of the PIA; or
 - (ii) the performance of duties and functions or the exercise of powers by the OPI or the Director under the PIA.

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- (2) A reference in section 40 of this Act—
- (a) to an IBAC Officer includes a reference to a person who was a member of OPI personnel immediately before the commencement day and who is, on and from the commencement day, an IBAC Officer; and
 - (b) to information acquired in the course of, or as a result of, the performance of duties and functions or the exercise of powers of the IBAC under this Act includes a reference to—
 - (i) information obtained or received by the person referred to in paragraph (a) before the commencement day in the course of, or as a result of, the performance of duties and functions or the exercise of powers of the OPI or the Director under the PIA; or
 - (ii) a restricted matter within the meaning of section 23 of the PIA as in force immediately before the commencement day.

9 Annual reports and other reports

- (1) If, before the commencement day, the Director had not prepared any report required by section 28(1) of the PIA or under Part 7 of the **Financial Management Act 1994** for the financial year ending before the commencement day, the IBAC must prepare that report.
 - (2) If, before the commencement day, the Director has prepared any report required by section 28(1) of the PIA or under Part 7 of the **Financial Management Act 1994** but that report has not been transmitted to each House of the Parliament under section 29 of the PIA or under the **Financial Management Act 1994**, the IBAC
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must transmit that report to each House of the Parliament in accordance with the applicable requirements of section 29 of the PIA or the **Financial Management Act 1994**, as the case requires.

- (3) For the purposes of subclause (1)—
- (a) if the report relates to a whole financial year completed before the repeal of the PIA, the IBAC may prepare a report referred to in those provisions as a separate report and transmit the report to each House of the Parliament in accordance with section 29 of the PIA as in force immediately before its repeal or the **Financial Management Act 1994**, as the case requires; or
 - (b) if the report relates to a partial financial year completed before the repeal of the PIA, the IBAC may prepare a report referred to in those provisions as part of its own annual report under section 165.
- (4) If, before the commencement day, the Director has prepared a report under section 28(2) of the PIA but that report has not been transmitted to each House of the Parliament under section 29 of the PIA before its repeal, the IBAC may transmit that report to each House of the Parliament in accordance with section 162(1) as if it were a special report under that section and for that purpose, the IBAC may include in a special report any matter arising in connection with the Director's functions under the PIA as in force immediately before its repeal.
- (5) If, before the commencement day, the Director has commenced preparing but has not completed a report under section 28(2) of the PIA before its repeal, the IBAC may complete that report and transmit it to each House of the Parliament in
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accordance with section 162(1) as if it were a special report under that section and for that purpose, the IBAC may include in a special report any matter arising in connection with the Director's functions under the PIA as in force immediately before its repeal.

- (6) If, before the commencement day, the Director has completed an investigation under the PIA but has not given a report under section 50 of the PIA before the commencement day, on and from the commencement day, the IBAC may make a recommendation under section 159 of this Act in relation to that investigation completed by the Director and section 159 applies as if the investigation completed by the Director had been an investigation by the IBAC under this Act.

10 Complaints

- (1) If, before the commencement day, the Director had received a complaint under section 86L of the **Police Regulation Act 1958** and—
- (a) had not commenced an investigation into the complaint under Division 2 of Part 3 of the PIA; or
 - (b) had commenced but not completed an investigation under Division 2 of Part 3 of the PIA—

the IBAC may investigate or complete the investigation of that complaint on and from the commencement day in accordance with this Act as if it were a complaint made in accordance with section 52 of this Act.

- (2) In an investigation referred to in subclause (1), the IBAC may use or rely upon any evidence given or document or other thing produced to or obtained by the Director or the OPI in relation to that

investigation under Part 3 or 4 of the PIA or under any other Act.

- (3) If, before the commencement day, the Director had completed an investigation under the PIA into the complaint but had not advised the complainant of the outcome of the complaint, section 163 applies to the complaint as if the complaint were made under this Act.

11 Own motion investigations

- (1) An investigation initiated by the Director under section 44 of the PIA before the commencement day that had not been completed before the commencement day may be continued and completed by the IBAC, on and from the commencement day, under this Act as if it were an investigation conducted under section 64(1)(c) of this Act.
- (2) In an investigation referred to in subclause (1), the IBAC may use and rely upon any evidence given or document or other thing produced to the Director or the OPI in relation to that investigation under Part 3 or 4 of the PIA or any other Act.
- (3) The IBAC may undertake any investigation that could have been undertaken under section 48 of the PIA as if it were an own motion investigation.

12 Chief Commissioner of Police to respond to the IBAC

A request made before the commencement day by the Director under Part 3 of the PIA for the Chief Commissioner of Police to take any action, or to conduct a further investigation, to which the Chief Commissioner of Police had not (in accordance with section 49 of the PIA) provided a written response before the commencement day, is taken, on and from that day, to be a request made under section 160 of this Act.

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13 Direction to require answers etc. of police

A direction given to a person under section 47 of the PIA for the purposes of an investigation under the PIA that was in force immediately before the commencement day is taken, on and from the commencement day, to be a direction given to the person under section 84 of this Act for the purposes of an investigation under Part 3.

14 Witness summonses and related matters

- (1) A witness summons issued under section 53 of the PIA (other than a summons issued to a person who is 16 years of age or older but who is less than 18 years of age) that was in force immediately before the commencement day continues in force, on and from the commencement day, as if—
 - (a) Division 2 of Part 4 of the PIA had not been repealed; and
 - (b) a reference in that Division to the Director were a reference to the IBAC.
 - (2) For the purposes of subclause (1), Part 4 of the PIA (other than section 68 and Divisions 6, 7, 8 or 9) continues to apply, despite its repeal—
 - (a) to that witness summons; and
 - (b) in relation to the person to whom that witness summons is directed; and
 - (c) as if any reference to—
 - (i) the Director were a reference to the IBAC; and
 - (ii) to the Special Investigations Monitor were reference to the Victorian Inspectorate; and
 - (iii) a member of staff of the OPI were a reference to an IBAC Officer.
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- (3) A witness summons issued under section 53 of the PIA to a person who is 16 years of age or older but who is less than 18 years of age that was in force immediately before the commencement day ceases to have any force or effect on and from the commencement day.
 - (4) On and from the commencement day, a person to whom a witness summons referred to in subclause (1) has been issued may be dealt with under section 135, 136, 137 or 138, Division 2 of Part 6 or Division 5 of Part 6 of this Act, as the case requires, as if the person had been issued with a witness summons under this Act.

15 Examinations

- (1) If, immediately before the commencement day, a person was attending an examination under Division 3 of Part 4 of the PIA and had not been excused from attendance, on and from the commencement day—
 - (a) Part 4 of the PIA (other than section 68 and Divisions 6, 7, 8 or 9) continues to apply to that examination despite its repeal; and
 - (b) that Part applies as if a reference in that Part to—
 - (i) the Director were a reference to the IBAC; and
 - (ii) the Special Investigations Monitor were a reference to the Victorian Inspectorate; and
 - (iii) a member of staff of the OPI were a reference to an IBAC Officer.
 - (2) On and from the commencement day, sections 135, 136, 137 and 138, Division 2 of Part 6 and Division 5 of Part 6 of this Act apply to a person referred to in subclause (1) as if that
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person had been summoned to attend an examination under Part 6.

16 Legal assistance for witnesses

- (1) A person to whom legal assistance has been granted under section 76 of the PIA immediately before its repeal is entitled to continue to receive that assistance.
- (2) An application under section 76 of the PIA before the commencement day that had not been determined before the commencement day may be determined under section 151 of this Act as if it were an application under section 151 of this Act.
- (3) An approval given under section 76 of the PIA before the commencement day in connection with an appearance that had not commenced, or that had commenced but had not concluded, before the commencement day, is taken, on and after the commencement day, to be an approval given under section 151.
- (4) A person to whom a witness summons under Part 4 of the PIA has been issued immediately before the repeal of that Act who has not applied for legal assistance under section 76 of the PIA before that repeal may apply, on and after the commencement day for legal assistance in accordance with section 151 as if the person had been issued with a witness summons under this Act.

17 Witness already held in custody

If, immediately before the commencement day, a direction given under section 57(2) of the PIA in respect of a person who is held in a prison or police gaol was in force, on and after the commencement day—

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- (a) section 57 of the PIA continues to apply in respect of that direction despite its repeal; and
 - (b) that section applies as if any reference in that section to the Director were a reference to the IBAC.

18 Confidentiality notices

If a confidentiality notice issued under section 58 of the PIA is in force immediately before the commencement day, on and from the commencement day—

- (a) that notice continues in force as if Division 2 of Part 4 of the PIA had not been repealed; and
- (b) Division 2 of Part 4 of the PIA continues to apply in respect of that confidentiality notice despite its repeal; and
- (c) Division 2 of Part 4 of the PIA applies as if any reference in that Part to—
 - (i) the Director were a reference to the IBAC; and
 - (ii) the Special Investigations Monitor were a reference to the Victorian Inspectorate.

19 Legal professional privilege

If a claim of privilege under section 71 of the PIA that was made before the commencement day had not been determined before the commencement day, the claim is to be determined, on and from the commencement day, in accordance with sections 71 to 73 of the PIA—

- (a) as if those sections had not been repealed; and

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- (b) as if a reference in those sections to the Director were a reference to the IBAC.

20 Arrest of recalcitrant witness

- (1) If, before the commencement day—

- (a) the Director applied to a magistrate under section 84(1) of the PIA for a warrant to arrest a person; and
(b) the magistrate had not determined the application—

the application is to be determined, on and from the commencement day, under Division 7 of Part 4 of the PIA as if that Division had not been repealed and as if a reference in that Division—

- (c) to the Director were a reference to the IBAC; and
(d) to the Special Investigations Monitor were a reference to the Victorian Inspectorate.
- (2) If a warrant to arrest a person issued under section 84(2) of the PIA is in force immediately before the commencement day—
- (a) that warrant continues in force in accordance with its terms on and from that commencement day as if that section had not been repealed; and
(b) subject to any conditions or limitations on an authorised officer's appointment under section 81, an authorised officer is authorised to do anything that a person named in the warrant is authorised to do pursuant to that warrant or in the execution of that warrant; and
(c) Division 7 of Part 4 of the PIA continues to apply in relation to the person arrested and held in custody pursuant to that warrant; and

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- (d) for those purposes, a reference to the Director in Division 7 of Part 4 of the PIA is taken to be a reference to the IBAC.

21 Powers of entry, search and seizure

- (1) Section 90 of the PIA as in force immediately before its repeal continues to apply, on and from the commencement day, in respect of a document or thing seized under section 89 of the PIA as if—
- (a) a reference to an authorised officer were a reference to an authorised officer within the meaning of this Act; and
 - (b) a reference to the Director were a reference to the IBAC.
- (2) If an application under section 91 of the PIA in relation to a document or thing seized under section 89 of the PIA had not been determined before the commencement day—
- (a) the application is to be determined, on and from the commencement day, under section 91 of the PIA as if that section had not been repealed; and
 - (b) for the purposes of paragraph (a), a reference in section 91 of the PIA to the Director is taken to be a reference to the IBAC.
- (3) Section 92 of the PIA as in force immediately before its repeal continues to apply in respect of a document or thing seized under section 89 of the PIA—
- (a) until the document or thing is returned in accordance with section 92 of the PIA; and
 - (b) as if a reference in section 92 of the PIA to the Director were a reference to the IBAC.

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- (4) An application for a search warrant made under section 93 of the PIA before the commencement day that had not been determined before the commencement day is to be determined, on and from that commencement day, under section 93 of the PIA as if—
- (a) that section had not been repealed; and
 - (b) a reference in that section to the Director were a reference to the IBAC.
- (5) If a search warrant issued under section 93 of the PIA before the commencement day is in force immediately before the commencement day, on and from that commencement day, the search warrant—
- (a) continues in force in accordance with its terms; and
 - (b) subject to any conditions or limitations on an authorised officer's appointment under section 81, an authorised officer is authorised to do anything that a person named in the warrant is authorised to do pursuant to that warrant or in the execution of that warrant; and
 - (c) sections 94 to 101 of the PIA continue to apply to the warrant and anything done under that warrant, as if—
 - (i) those sections had not been repealed; and
 - (ii) a reference in those sections to the Director were a reference to the IBAC.
- (6) Without limiting section 14(2) of the **Interpretation of Legislation Act 1984**, despite the repeal of sections 94 to 101 of the PIA, on and from the commencement day, those sections continue to apply in relation to a search warrant
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issued under section 93 of the PIA (as in force immediately before its repeal) which has been executed before the commencement day as if—

- (a) those sections had not been repealed; and
- (b) a reference in those sections to the Director were a reference to the IBAC.

22 Protection of persons, documents and other things

- (1) A reference in Division 4 of Part 2 to a document or other thing that has come into a person's possession or control in the performance of the duties and functions or the exercise of the powers of the person or the IBAC under this Act includes a reference to a document or other thing that has come into a person's possession (whether before, on or after the commencement day) in the performance of functions under the PIA.
- (2) A person who was a *protected person* under the PIA as in force immediately before its repeal, is taken, on and from the commencement day, to be a protected person within the meaning of section 45.
- (3) A document or other thing which was a *protected document or other thing* with the meaning of section 105 of the PIA as in force immediately before its repeal, is taken, on and from the commencement day, to be a protected document or other thing within the meaning of section 46.
- (4) A reference in section 46—
 - (a) to an investigation includes a reference to an investigation under Division 2 of Part 3 of the PIA;
 - (b) to a person who has been summoned, or who has appeared, as a witness in an examination, includes a reference to a person who has been summoned, or who has appeared, as a

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witness in an investigation under Division 2 of Part 3 of the PIA;

- (c) to a person who has provided the IBAC with information relating to an investigation includes a person who has provided information to the Director relating to an investigation under Division 2 of Part 3 of the PIA as in force immediately before its repeal;
 - (d) to any evidence given or information provided to the IBAC relating to an investigation includes any evidence given or information provided to the Director relating to an investigation under Division 2 of Part 3 of the PIA as in force immediately before its repeal.
- (5) A certificate given by the Director under section 106(2) or 109A(2) of the PIA that was in force immediately before the commencement day continues in force, on and from that commencement day, as if it were a certificate given by the IBAC under section 47(2) or 50(2), as the case requires.
- (6) An objection made before the commencement day under section 107 of the PIA to the production or inspection of a document or other thing that has not been determined under section 107 of the PIA before that commencement day is to be determined, on and from the commencement day, under section 48.

23 Investigations completed but proceedings not commenced

- (1) The IBAC or a sworn IBAC Officer who is authorised by the Commissioner under section 189(b) or 190(b) may commence criminal proceedings in relation to any matter for which the

Director or a member of staff of the OPI authorised under section 51A(2) of the PIA was entitled to commence criminal proceedings under section 51A of the PIA as if that section had not been repealed.

- (2) The IBAC or a sworn IBAC Officer authorised by the Commissioner under section 189(b) or 190(b) may continue criminal proceedings commenced under section 51A of the PIA by the Director or a member of staff of the OPI authorised under section 51A(2) of that Act.

24 Contempt of Director

- (1) If, before the commencement day, the Director issued a certificate of charge under section 79(1) of the PIA and the charge has not been determined, the charge is to be determined, on and from the commencement day, by the Supreme Court under section 82 of the PIA as if sections 79 and 82 had not been repealed.
- (2) If, before the commencement day, the Director issued a certificate of charge under section 79(1) of the PIA and an arrest warrant under section 79(1)(b) of that Act, on and from the commencement day—
- (a) a person to whom section 80 of the PIA applies may elect to apply for bail in accordance with that section as if sections 79 and 80 had not been repealed; and
 - (b) Division 6 of Part 4 of the PIA continues to apply in relation to the person arrested and held in custody pursuant to that warrant; and
 - (c) for those purposes, a reference to the Director in Division 6 of Part 4 of the PIA is taken to be a reference to the IBAC.

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**25 Exemption from Freedom of Information Act 1982
under section 51 of the PIA**

Despite the repeal of the PIA, section 51 of that Act continues to apply to any document specified in that section.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 October 2011

Legislative Council: 10 November 2011

The long title for the Bill for this Act was "A Bill for an Act to establish the Independent Broad-based Anti-corruption Commission, to amend the **Parliamentary Committees Act 2003** and certain other Acts, and for other purposes."

The **Independent Broad-based Anti-corruption Commission Act 2011** was assented to on 29 November 2011 and came into operation on 1 July 2012: section 2(2).

Independent Broad-based Anti-corruption Commission Act 2011
No. 66 of 2011

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Independent Broad-based Anti-corruption Commission Act 2011** by Acts and subordinate instruments.

Victorian Inspectorate Act 2011, No. 70/2011

Assent Date: 29.11.11
Commencement Date: S. 43 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012, No. 13/2012 (as amended by No. 82/2012)

Assent Date: 20.3.12
Commencement Date: Ss 3–9 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Act 2012, No. 28/2012 (as amended by No. 82/2012)

Assent Date: 29.5.12
Commencement Date: S. 10 on 1.7.12: Special Gazette (No. 222) 29.6.12 p. 1; ss 3–9, 11–31 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

Evidence Amendment (Journalist Privilege) Act 2012, No. 52/2012

Assent Date: 18.9.12
Commencement Date: Ss 17–19 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 3
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

Commission for Children and Young People Act 2012, No. 79/2012

Assent Date: 18.12.12
Commencement Date: S. 81 on 1.3.13: Special Gazette (No. 27) 29.1.13 p. 1
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

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Endnotes

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: Ss 3–25, 253–258 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; ss 298, 299 on 11.2.13: s. 2(5)
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

Protected Disclosure Act 2012, No. 85/2012

Assent Date: 18.12.12
Commencement Date: Ss 84–105 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013

Assent Date: 26.2.13
Commencement Date: S. 62 on 17.4.13: Special Gazette (No. 141) 16.4.13 p. 1
Current State: This information relates only to the provision/s amending the **Independent Broad-based Anti-corruption Commission Act 2011**

3. Explanatory Details

¹ The provisions of this Act have been renumbered and relettered according to sections 298 and 299 of the **Integrity and Accountability Legislation Amendment Act 2012**, No. 82/2012.

S. 298 reads as follows:

298 Renumbering of sections of the Independent Broad-based Anti-corruption Commission Act 2011

The sections of the **Independent Broad-based Anti-corruption Commission Act 2011** set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

Table

<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
1	1
2	2
3	3
3A	4
3B	5
3C	6
3D	7
4	8
5	9
5A	10
5B	11
6	12
7	13
8	14
9	15
10	16

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
11	17
12	18
13	19
14	20
15	21
16	22
17	23
18	24
19	25
20	26
21	27
22	28
23	29
24	30
25	31
26	32
27	33
28	34
29	35
30	36
31	37
32	38
33	39
33A	40
33B	41
33C	42
33D	43
33E	44

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
33F	45
33G	46
33H	47
33I	48
33J	49
33K	50
34	51
35	52
36	53
37	54
38	55
39	56
40	57
40A	58
40B	59
41	60
42	61
43	62
44	63
45	64
46	65
46A	66
47	67
47A	68
48	69
49	70
49A	71
49B	72

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
49C	73
49D	74
49E	75
49F	76
49G	77
49H	78
49I	79
49J	80
50	81
51	82
52	83
53	84
54	85
55	86
56	87
57	88
58	89
59	90
60	91
61	92
62	93
63	94
64	95
65	96
66	97
67	98

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
67A	99
Note	
This section inserted by the Evidence Amendment (Journalist Privilege) Act 2012	
68	100
69	101
70	102
71	103
72	104
73	105
74	106
75	107
76	108
77	109
78	110
79	111
80	112
81	113
82	114
82A	115
82B	116
82C	117
82D	118
82E	119
82F	120
82G	121
82H	122
82I	123

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
82J	124
82K	125
82L	126
82M	127
82N	128
82O	129
82P	130
82PA	131
82Q	132
82R	133
82S	134
82T	135
82U	136
82V	137
82W	138
82X	139
82Y	140
82Z	141
82ZA	142
82ZB	143
82ZC	144
82ZCA	145
Note	
This section inserted by the Evidence Amendment (Journalist Privilege) Act 2012	
82ZD	146
82ZE	147
82ZF	148

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
82ZG	149
82ZH	150
82ZI	151
82ZJ	152
82ZK	153
82ZL	154
82ZM	155
82ZN	156
82ZO	157
82ZP	158
83	159
84	160
85	161
86	162
87	163
88	164
89	165
89A	166
89B	167
89C	168
89D	169
89E	170
90	171
91	172
92	173
93	174
94	175
95	176

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<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
96	177
97	178
98	179
99	180
100	181
101	182
101A	183
101B	184
102	185
103	186
104	187
105	188
106	189
106A	190
107	191
108	192
108A	193
109	194
110	195
111	196
112	197
113	198

S. 299 reads as follows:

**299 Renumbering of other provisions of the Independent
Broad-based Anti-corruption Commission Act 2011**

- (1) The Parts of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive Arabic numerals starting with "1".

- (2) The Divisions of each Part of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive Arabic numerals starting with "1".
 - (3) The subsections of each section of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive Arabic numerals enclosed in parentheses starting with "(1)".
 - (4) The paragraphs of each section or subsection, or of each definition, of the **Independent Broad-based Anti-corruption Commission Act 2011** are relettered so that they bear lower-case letters in alphabetical order enclosed in parentheses starting with "(a)".
 - (5) The subparagraphs of each paragraph of each section or subsection, or of each paragraph of each definition, of the **Independent Broad-based Anti-corruption Commission Act 2011** are renumbered so that they bear consecutive lower-case Roman numerals enclosed in parentheses starting with "(i)".
 - (6) The sub-subparagraphs of each subparagraph of each paragraph of each section or subsection, or of each subparagraph of each paragraph of each definition, of the **Independent Broad-based Anti-corruption Commission Act 2011** are relettered so that they bear upper-case letters in alphabetical order in parentheses starting with "(A)".
 - (7) Each provision of the **Independent Broad-based Anti-corruption Commission Act 2011** that refers to a provision that has been renumbered or relettered under section 298 or this section is amended by substituting a reference to the provision as renumbered or relettered.
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(8) In this section, *provision* includes paragraph, subparagraph and sub-subparagraph.