Independent Broad-based Anti-
corruption Commission Bill 2011

Introduction Print

EXPLANATORY MEMORANDUM

General
The main purpose of this Bill is to establish the Independent Broad-based Anti-corruption Commission (IBAC) and to give it education and prevention functions.

The Bill also amends the **Parliamentary Committees Act 2003** to establish a new Joint House Committee of the Parliament of Victoria (IBAC Committee) to oversee the IBAC by undertaking functions including monitoring and reviewing the performance of the duties and functions of the IBAC and examining any reports made by the IBAC.

Clause Notes

**PART 1—PRELIMINARY**

Clause 1 sets out the purposes of the Bill, which are to establish the Independent Broad-based Anti-corruption Commission (IBAC) and to amend the **Parliamentary Committees Act 2003** to create a Joint House Committee to oversee the IBAC.

Clause 2 provides for the Bill to come into operation on a day or days to be proclaimed, or if not proclaimed sooner, on 1 July 2012.

Clause 3 sets out the definitions of key words or terms used in the Bill. **Australian legal practitioner** has the same meaning as it has in the **Legal Profession Act 2004**.
Commissioner means the person appointed under clause 14;

Deputy Commissioner means a person appointed under clause 17;

IBAC means the Independent Broad-based Anti-corruption Commission established under clause 6;

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

IBAC Officer means—

(a) the Commissioner;
(b) a Deputy Commissioner;
(c) the Chief Executive Officer appointed under clause 27;
(d) a member of staff employed under clause 29.

Clause 4 sets out the objects of the Act, which are to—

• assist in the prevention of corrupt conduct;
• facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and the ways in which corrupt conduct can be prevented;
• assist in improving the capacity of the public sector to prevent corrupt conduct;
• provide for the investigation and exposure of corrupt conduct.

Clause 5 provides that the Bill when passed will bind the Crown in all its capacities.

PART 2—THE IBAC

Clause 6 provides that the Independent Broad-based Anti-corruption Commission (IBAC) is established and that it does not represent the Crown.

Clause 7 provides that the IBAC is a body corporate that has perpetual succession and an official seal and may do and suffer all things a body corporate may do and suffer.
Clause 8 establishes that the IBAC consists of one Commissioner appointed by the Governor in Council in accordance with clause 14. The effect of this is that IBAC is a legal entity which is constituted by the Commissioner, and IBAC acts through the Commissioner.

Clause 9 Subclause (1) establishes that the IBAC has the functions conferred on it by the Bill or any other Act.

Subclause (2) establishes that the IBAC has an education and prevention functions for the purposes of achieving the objects of this Bill.

Subclause (3) specifies further functions. It does not limit the generality of subclause (2), but rather establishes the following functions through which the IBAC may meet the objects of the Act—

- to examine systems and practices in the public sector and public sector legislation;
- to provide information to, consult with and make recommendations to, the public sector;
- to assist the public sector to increase capacity to prevent corrupt conduct by providing advice, training and education services;
- 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;
- to publish information on ways to prevent corrupt conduct.

Clause 10 establishes that the IBAC has power to do all things that are necessary or convenient to be done in order to achieve the objects of the Bill and the performance of its duties and functions.

Clause 11 Subclause (1) provides that the IBAC may by instrument delegate to the Commissioner or a Deputy Commissioner any duty, function or power, other than the power of delegation.
Subclause (2) states that a delegation under this section to a former judge or Chief Magistrate does not affect any pension or other rights or privileges that the person has as a former judge or Chief Magistrate.

Clause 12 establishes that 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. This clause confirms the independence of the IBAC from the Executive Government.

Clause 13 establishes that the Commissioner is an independent officer of the Parliament. Subclause (6) establishes that the Commissioner has complete discretion in the performance or exercise of his or her functions or powers. Subclause (7) clarifies that the Commissioner is not subject to the direction or control of the Minister. This clause is modelled on the independent officer of Parliament provisions of the Constitution Act 1975.

Clause 14 establishes the process for the Governor in Council to appoint a Commissioner.

Subclause (1) establishes that the Governor in Council, on the recommendation of the Minister, may by instrument appoint an eligible person to be the Commissioner. This subclause is subject to clause 15.

Subclause (2) provides that an eligible person for appointment is one who has been, or is qualified for appointment as, a judge of the High Court, Federal Court, or the Supreme Court of Victoria or another State or Territory; and is not a member of the Parliament of Victoria, the Commonwealth or another State or Territory.

Subclause (3) provides that 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. This subclause is intended to ensure that the Commissioner does not hold any position which would create an actual or perceived conflict of interest with his or her role as the Commissioner.
Clause 15 establishes a process whereby the IBAC Committee may veto the proposed appointment of a Commissioner. Subclause (1) requires the Minister to submit details of a proposed recommendation as to the appointment of a Commissioner under clause 14 to the IBAC Committee, and allow it the opportunity to veto the recommendation within the timeframe set out in subclause (2), which is 30 days. Subclause (3) holds that the IBAC Committee must notify the Minister in writing of its decision within the period specified in subclause (2). Subclause (4) provides for a special process for the making of a recommendation as to the appointment of the Commissioner under clause 14 for the first time, whereby the only requirement before the Minister makes a recommendation for the appointment of the first Commissioner is that the Premier has consulted with the Leader of the Opposition. The requirement for consultation does not require the Premier to obtain the approval of the Leader of the Opposition.

Clause 16 sets out the duties, functions and powers of the Commissioner. It clarifies that the Commissioner constitutes the IBAC under clause 8, and states that the Commissioner is responsible for undertaking the strategic leadership of the IBAC, and has the duties, functions and powers delegated by the IBAC, or conferred by this Bill or any other Act.

Clause 17 enables the Governor in Council on the recommendation of the Minister to appoint by instrument one or more persons as Deputy Commissioners, whom the Minister considers have the experience and qualifications necessary to enable the IBAC to achieve the objects of the Bill and perform its duties and functions. Subclause (2) provides that a person to be appointed as a Deputy Commissioner must be an Australian lawyer within the meaning of the Legal Profession Act 2004. Subclause (3) requires the Minister to obtain the concurrence of the Commissioner before appointing a Deputy Commissioner. Subclause (4) provides that 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 as a Deputy Commissioner. This subclause is intended to ensure that the Deputy Commissioner does not hold any
position which would create an actual or perceived conflict of interest with his or her role.

Clause 18 Subclauses (1) to (5) set out the terms and conditions of the appointment of the Commissioner or a Deputy Commissioner. The Commissioner or a Deputy Commissioner will hold office for a period not exceeding 5 years. The instrument of appointment will govern the terms and conditions of the appointment. The remuneration of the Commissioner or a Deputy Commissioner cannot be reduced during his or her term unless he or she consents to the reduction. The Commissioner is not eligible for reappointment, but a Deputy Commissioner is eligible for reappointment.

Subclauses (6) to (10) establish the Commissioner or Deputy Commissioners’ rights and entitlements in relation to pensions and other matters arising out of their previous employment as a judge of the Supreme or County Court, or the Chief Magistrate, or an officer within the meaning of the State Superannuation Act 1988.

Subclauses (11) to (12) prohibit the Commissioner or a Deputy Commissioner from engaging in any employment, business or community activity, or from entering into a contract to provide services, that may create an actual or perceived conflict of interest with his or her role.

Subclause (13) requires the Commissioner or a Deputy Commissioner to seek the approval of the Governor in Council to apply for or hold any professional, trade or business licence (including a legal practising certificate under the Legal Profession Act 2004), and to conduct any trade, business or profession, or accept any other employment.

Subclause (14) establishes that the Public Administration Act 2004 does not apply to the commissioner or a Deputy Commissioner in respect of that office. This clause will ensure that the independence of the Commissioner and the Deputy Commissioner is maintained, by exempting them from provisions of that Act which could compromise their autonomy from the Executive Government.
Clause 19 establishes the circumstances in which the Commissioner ceases to hold office. Those are if he or she—

- resigns by writing to the Governor in Council;
- becomes an insolvent under administration;
- is convicted or found guilty of an indictable offence;
- nominates for election to Parliament;
- is appointed to judicial office;
- becomes a represented person within the meaning of the Guardianship and Administration Act 1986.

Subclause (2) provides that the Commissioner ceases to hold office if he or she is removed in accordance with clause 20.

Clause 20 establishes a process for suspension and removal from office of the Commissioner.

Subclause (1) holds that the Governor in Council may suspend the Commissioner from office on the grounds of misconduct, neglect of duty, or inability to perform the duties of the office; or any other ground on which the Governor in Council is satisfied the Commissioner is unfit to hold office.

Subclause (2) requires the Minister to present to each House of Parliament, within 7 sitting days of the suspension, a full statement of the grounds of suspension. If both Houses of Parliament, within 7 sitting days of that statement, declare by resolution that the Commissioner ought to be removed from office, the Governor in Council must remove the Commissioner. Otherwise the Governor in Council must remove the suspension and restore the Commissioner to office.

Subclause (5) clarifies that the Commissioner can only be removed from office in accordance with this section.

Clause 21 establishes the circumstances in which a Deputy Commissioner ceases to hold office. Those are if he or she—

- resigns by writing to the Governor in Council;
- becomes an insolvent under administration;
- is convicted or found guilty of an indictable offence;
- nominates for election to Parliament;
• is appointed to judicial office;
• becomes a represented person within the meaning of the Guardianship and Administration Act 1986.

Subclause (2) provides that a Deputy Commissioner ceases to hold office if he or she is removed in accordance with clause 22.

Clause 22 provides that the Governor in Council may remove a Deputy Commissioner for misconduct, neglect of duty, or inability to perform the duties of the office; or any other ground on which the Governor in Council is satisfied renders the Deputy Commissioner unfit to hold office.

Clause 23 enables the Commissioner or a Deputy Commissioner to declare himself or herself unable to act in respect of a particular matter by reason of an actual or perceived conflict of interest.

Clause 24 establishes a process by which the Governor in Council may, on the recommendation of the Minister, appoint a person to act in the office of Commissioner or Deputy Commissioner upon a vacancy or absence from duty. An acting appointment under this clause may not exceed 6 months. This will guard against the clause being used as a de facto appointment process for a Commissioner. However, an acting Commissioner appointment may be made for up to 12 months if the person or persons so appointed are a Deputy Commissioner.

Subclause (5) requires a vacancy in the office of the Commissioner to be filled by a person appointed in accordance with clause 14 within 12 months after the vacancy occurred.

An acting Commissioner or Deputy Commissioner may be removed at any time by the Governor in Council.

Clause 25 requires a Commissioner or Deputy Commissioner or a person acting in the office of the Commissioner or Deputy Commissioner, before taking office, to have taken an oath or made an affirmation to the Speaker of the Legislative Assembly that he or she—
  • will faithfully and impartially perform the functions and exercise the powers of the office; and
  • will not disclose, except as authorised by law, any information received while in office.
The requirement under clause 25 is that the oath or affirmation referred to therein must have been taken, that is, it is sufficient that such an oath or affirmation be made once, rather than each time that person is appointed to such a position.

Clause 26  
Subclause (1) establishes that the Commissioner may delegate to a Deputy Commissioner, Chief Executive Officer, member of staff or consultant any of his or her duties, functions or powers, except the power of delegation.  
Subclause (2) establishes that the Deputy Commissioner may delegate to the Chief Executive Officer, a member of staff or a consultant any of his or her duties, functions or powers, except the power of delegation.

Clause 27  
requires the IBAC to appoint and employ a Chief Executive Officer, who is to be the public service body Head of the IBAC for the purposes of section 16 of the Public Administration Act 2004.  
Subclauses (2) to (4) provide for the terms and conditions of office, removal and suspension, and resignation of the Chief Executive Officer. Subclauses (5) to (6) set out how an acting Chief Executive Officer appointment may be made and the terms of such an appointment.  
Subclause (8) states that the Chief Executive Officer is the public service body Head of the IBAC for the purposes of the Public Administration Act 2004.

Clause 28  
requires the Chief Executive Officer or a person acting in the office of the Chief Executive Officer, before taking office, to have taken an oath or made an affirmation to the Commissioner that he or she—  

- will faithfully and impartially perform the duties and functions and exercise the powers of the office; and  

- will not disclose, except as authorised by law, any information received while in office.

The requirement under clause 28 is that the oath or affirmation referred to therein must have been taken, that is, it is sufficient that such an oath or affirmation be made once, rather than each time that person is appointed to such a position.
Clause 29 enables the IBAC to employ staff as necessary, and establishes that those staff may be employed under the Public Administration Act 2004. The IBAC may also enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

Clause 30 enables the IBAC to engage persons with suitable qualifications and experience as consultants, including an Australian legal practitioner.

Clause 31 requires a person employed by IBAC under clause 29 to take an oath or affirmation, administered by the Commissioner, that he or she—

- will faithfully and impartially perform their duties and functions and exercise their powers; and
- will not disclose, except as authorised by law, any information received in the performance of their duties and functions or the exercise of their powers.

The IBAC may also require a person engaged under clause 29(2) or a consultant engaged under clause 30 or their officer, sub-contractor, agent or employee to take such an oath or make such an affirmation.

Clause 32 states that a person employed or engaged by the IBAC under clause 29 must not—

- publicly comment upon the administration of the IBAC Act or the performance of functions or the exercise of powers by the IBAC;
- make use of, or disclose, any information in the course of their employment or engagement, except in the course of the performance of their functions or the exercise of their powers.

Clause 33 requires an IBAC Officer to 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.
PART 3—REPORTS

Clause 34 provides that the IBAC in its annual report must include—

- prescribed information relating to the performance of its duties and functions;
- 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;
- a description of its activities in relation to the performance of its duties and functions.

Clause 35 provides that IBAC may at any time report to Parliament on any matter relating to the performance of its duties and functions. This clause enables the IBAC to make special reports, separate from its annual report.

Subclauses (2) to (4) outline the processes for the transmission of any such report and for it to be laid before each House of Parliament. Subclause (3) provides that if neither House of Parliament is sitting on the day on which it transmits a report, that IBAC must give one day's notice to the clerk of each House, and publish the report on the IBAC's Internet website. A report given under this subclause is taken to be published under the authority of Parliament. The publication of a report by the IBAC on its Internet website in accordance with this subclause carries absolute Parliamentary privilege.

PART 4—GENERAL

Division 1—Regulations

Clause 36 enables the Governor in Council to make regulations for or with respect to any matter or thing required or permitted by the Bill to be prescribed or necessary to be prescribed to give effect to the Bill.
Clause 37 provides that, without limiting the generality of clause 36, the regulations may prescribe—

- security checks for IBAC Officers and other persons engaged under clause 29 or 30;
- requirements relating to the issue of identity cards IBAC Officers and the use of the identity cards;
- 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;
- the information to be included by IBAC in its annual report.

The clause will ensure that regulations may be made to prescribe prerequisites, procedures and other matters to ensure the probity of persons employed or engaged by the IBAC, and to ensure that such persons do not have an actual or perceived conflict of interest by their pecuniary interests.

Division 2—Amendment of the Parliamentary Committees Act 2003

Clause 38 amends the Parliamentary Committees Act 2003 to include the following definitions—

*Commissioner* has the same meaning as it has in section 3 of the Independent Broad-based Anti-corruption Commission Act 2011;

*IBAC* means the Independent Broad-based Anti-corruption Commission established under the Independent Broad-based Anti-corruption Commission Act 2011; and

*IBAC Committee* means the Independent Broad-based Anti-corruption Commission Committee established under section 5(fa).

Clause 39 Amends the Parliamentary Committees Act 2003 to establish a new Joint House Committee under that Act called the Independent Broad-based Anti-corruption Commission Committee.
Clause 40  Amends the *Parliamentary Committees Act 2003* to insert a new section 12A, which establishes the functions of the IBAC Committee. Those functions are—

- to monitor and review the performance of the duties and functions of the IBAC;
- to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament;
- to examine any reports made by the IBAC;
- to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the Bill;
- to carry out any other function conferred on the IBAC Committee by that Act or the Bill.

**Division 3—Miscellaneous**

Clause 41  amends the *Juries Act 2000* to establish that the Commissioner of the IBAC, and any other IBAC Officer, are ineligible for jury service.

Clause 42  amends the *Ombudsman Act 1973* to provide that the Ombudsman has no jurisdiction in relation to the IBAC, including any IBAC Officer or a consultant.

Clause 43  Amends the *Public Administration Act 2004* to hold that—

- the IBAC is a special body for the purposes of that Act;
- the Chief Executive Officer of the IBAC is a public service body Head for the purposes of that Act in relation to employees of the IBAC;
- the IBAC cannot be subject to a special inquiry under section 52 of that Act.

This clause will mean that IBAC Officers will not be subject to usual requirements for the public sector under this Act, including the requirement to follow Ministerial directions. Designation as a special body and exemption from the special inquiry provisions will assist in maintaining the independence the IBAC from the Executive Government.
Clause 44 Amends the **Whistleblowers Protection Act 2001** to establish that the IBAC an IBAC Officer or any other person engaged under clause 29 or 30 of the Bill is not a public body or a public officer for the purposes of that Act. This clause will ensure that the IBAC is not subject to that Act.

Clause 45 Repeals Division 2 and 3 of Part 4 of the Bill as of 1 July 2013.