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The Victorian Independent Broad-based Anti-Corruption Commission (IBAC): A Toothless Tiger?

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Looking around the world we see, from time to time, examples of the corruption of electoral systems. But corruption is not something we associate with Australian electoral systems.

That is not to say that we do not associate corruption with other areas of government. In the last 12 -18 months, the media has reported an increased number of allegations of corrupt conduct in the conduct of government and publicly funded services in Victoria:

- Officers of a statutory corporation, Cenitex, being involved in the letting of IT contracts to their own companies;
- Officers of the Victorian Building Commission seeking and receiving kickbacks from hired sub-contractors and for stopping investigations and awarding licences and a history of audits revealing serious failures to meet standards;
- An officer of DOJ soliciting a bribe of \$20,000 from a tenderer for a contract to supply security services to IBAC itself and speaking of it to an officer in another department;
- Rorting of funding provided by the government for privatised TAFE education;
- Misuse for private profit of a publicly provided vehicle by business employees of an MP.

There is a similar picture federally. But our electoral management and regulatory systems appear to enjoy a reputation for integrity and have the confidence of our community, something we should value and protect.

Does that mean there is no corruption risk to our electoral system? We might be able to draw that inference from an absence of evidence of corruption if we had in place an independent body with the responsibility to monitor the public sector and prevent and investigate possible corrupt conduct. But until we do have such a body, we cannot infer that the absence of evidence means there is no corruption, or that there are not serious risks of it in our electoral system. To add weight to that point, there was a very recent report that some members of the Calabrian Mafia, convicted in Italy of drug trafficking, were active in Victoria. The Report noted that the Calabrian Mafia operates around the world and “controls voting and political candidates at a national and international level”¹. Further, to plagiarise Lord Acton, we should bear in mind

“If the pursuit of power tends to corrupt, the absolute pursuit of power corrupts absolutely “

But in Victoria, we now have IBAC. Will it fill the gap?

It is a body independent of government with functions defined in s9 of its legislation to include both the preventive and investigative functions. But while they are referred to separately, to be effective they

¹ The Age, McKenzie, Baker and McKenna, “ Italy convicts local Mafia” Saturday Age 16 June 2012

need to operate in tandem. An effective investigative IBAC will help to prevent corrupt conduct by deterring it and the insights received from its investigations will help inform its preventive programs and its recommendations. In addition, an effective investigative role will encourage people to take its preventive programs seriously and regard it as the one-stop shop to which they can go with their concerns.

Will IBAC be able to effectively investigate the public sector for corrupt activity? The definition of “public sector” is suitably wide and probably covers the outsourced public sector services.

There is a real question whether IBAC will be able to conduct any investigations under the legislation as presently drafted. But there have been serious concerns raised about limitations on IBAC’s investigative powers in the non-police public sector – in particular concerns about the very high threshold (must be “serious corrupt conduct” 41(2)) that has to be satisfied before an investigation can be conducted by IBAC, the exclusions of situations that would constitute the common law offence of misconduct in public office², and the consequential opportunities for legal challenges to investigations.

In the Accountability Round Table’s view, however, the situation is in fact significantly worse than has been suggested. To explain this conclusion, we must go to the 3 key provisions. Having done that, I will then attempt to apply them to some examples.

S 41 sets out the conditions on which IBAC can “conduct investigations”. It provides (quoting the critical parts)

S 41 (1). “... IBAC may conduct an investigation in accordance with its **corrupt conduct** investigative function” on a complaint, notification or own motion but

“(2) The IBAC must not conduct an investigation under subsection (1) unless it is reasonably satisfied that the conduct is serious corrupt conduct”

Thus, to be able to conduct an investigation, IBAC must be “reasonably satisfied” that there is “conduct”, that the conduct is “corrupt conduct” and that the “corrupt conduct” is “serious”. “Conduct” and “serious”³ are not defined so they will presumably be given their ordinary meaning. But “corrupt

² The http://en.wikipedia.org/wiki/Crown_Prosecution_Service elements of the offence are; a public officer acting as such, without reasonable excuse or justification, so wilfully neglects to perform his/her duty and/or wilfully misconducts himself / herself as to commit an abuse of the public's trust in the office holder.

³ Will relevant matters include; the reasons or motives for the conduct, mental state, the consequences, whether it is systemic or an isolated event, whether the persons concerned had already been alerted or warned about such conduct, the level of government concerned, the level of the position of the person concerned, the experience and training of the person or persons concerned and the nature and extent of the responsibilities of the person for personnel, and/or resources, and/or the exercise of legal authority?

conduct” is defined and the factual elements on which IBAC must be reasonably satisfied are set out in the following two provisions:

s3A . "3A Corrupt conduct⁴

(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**.

For present purposes, it is sufficient⁵ to focus on the concluding proviso in s3A, “being conduct... **relevant offence**”

The word “facts” is a critical term. It does not appear to be defined or qualified in any way in the legislation. I suggest that the ordinary meaning would be that “facts” would refer to the factual information in IBAC’s possession at the particular relevant times - e.g. when it is deciding whether to commence an investigation and, for such a purpose, must decide if the conduct to be investigated is corrupt conduct. That interpretation, however, appears to create major difficulties. They are discussed below.

What is a **relevant offence**? It is defined:

“**relevant offence**” means

⁴ This definition can be compared with ICAC’s significantly wider definition in the attached table.

⁵ But note, for example, the absence from (1)(a) of “could affect” – included in the ICAC legislation- see attached

- (a) an indictable offence against an Act
- (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;”

In combination, these provisions define the power of IBAC to conduct investigations. How will these provisions operate?

In combination they require that, to be able to conduct an investigation, IBAC must be reasonably satisfied that “the facts” of the conduct to be investigated, assuming that they were found proved beyond reasonable doubt, at a trial, would constitute corrupt conduct as defined in s3A and it is a serious form of corrupt conduct.

Thus IBAC, before commencing any investigation, must, from the “facts” in its possession, identify the conduct it wishes to investigate, including both the physical acts and their mental elements (the “relevant offence” requirement). It must then be reasonably satisfied that that conduct comes within the definition of “corrupt conduct” and was “serious corrupt conduct”.

It should be noted that IBAC must decide whether it is reasonably satisfied as to all those matters in circumstances where it has not commenced its investigation and, therefore cannot be satisfied that it has all the relevant information.

To take this analysis further, it is necessary to attempt to apply these provisions in practical situations.

Let us start with the abovementioned allegation of the DOJ officer soliciting a bribe of \$20,000 and mentioning it to an officer in another department. I proceed on the basis that the information of that incident that was publicised would constitute the “facts” that IBAC would have before it in deciding whether it could start an investigation. That was in essence the information that the Secretary of DOJ gave the Estimates Committee earlier this year. Before starting investigations, it will not be uncommon for IBAC to have the barest of details.

It appears to be a simple case involving the alleged soliciting of a bribe. But it was solicited from a person tendering for the provision of security services for IBAC, of all bodies. Is that not remarkable? If the allegation is true, what is the explanation for it? On the one hand, perhaps it was an isolated incident and there were special and mitigating circumstances such as the person’s mental capacity being affected because of mental illness or some sort of mental breakdown or was on drugs or had a gambling addiction and was in a desperate financial position with a family to support and no-one else was involved. On the other hand, had he or she got used to behaving in that way without getting caught? If so, might there be some systemic issues? Why speak to another person in another department about it?

Before going any further, it is necessary to change the “facts” to an allegation of actual bribery involving a payment of \$20,000 so that it clearly comes within the definition of relevant offence and corrupt conduct; for soliciting a bribe is a common law offence and is not expressly included in the list of relevant common law offences?⁶

To be able to investigate that conduct, IBAC must be **reasonably satisfied** under s 41(2) that what the facts revealed is **serious corrupt conduct**. But if all it knows is that a DOJ officer received a bribe of \$20,000, is that enough information about the conduct for IBAC to be able to be **reasonably satisfied** that the conduct is “**serious corrupt conduct**”? Does it need more information about the circumstances, including the intent and state of mind of the DOJ officer, before IBAC can have reasonable satisfaction that it is serious corruption?

The requirement of reasonable satisfaction that the conduct is “serious corrupt conduct” is a major problem. Any doubt left by the lack of information before IBAC is a problem

The DOJ example highlights a further point. The situation described is the sort of situation where an IBAC should be able to investigate not only the conduct of the person in that incident but whether there was other similar conduct of that person and whether others were involved. But IBAC cannot do that because it must first have information of identifiable, and identified, conduct to investigate.

Another of the above examples raises another issue. How is the threshold test to be applied where IBAC, when deciding whether to start an investigation, has information that the alleged offender denies the allegations. That issue is thrown up in the matter of the member of Parliament alleged to have directed staff at his hardware company to use his publicly funded car for trips outside Victoria. For present purposes let us assume that, if the driver’s account is accepted, the facts stated by him would constitute an indictable offence by the member of Parliament.

The member of Parliament, however, has denied giving any such direction or authority and says that he was not aware that this use of the car had occurred. That information, if accepted, denies the knowledge and intent necessary for the member of Parliament’s conduct to constitute an offence and be “corrupt conduct”? So while the conduct to be investigated has been identified, could IBAC be reasonably satisfied that it is “corrupt conduct”?

S 3A requires that the “facts” be treated as “proved beyond reasonable doubt at a trial”.⁷ It does not, however, define the meaning of “facts” and otherwise restrict the meaning, for example, to those that

⁶ Note s 175,176 Crimes Act 1958 re agents seeking secret commissions, may cover the situation (see also s 2B of that Act.)

⁷ The formula may have been derived from the discussion in Greiner v ICAC (1992)28NSWLR, 125,186B, where findings of fact had been made by ICAC on the basis of which it decided that there was corrupt conduct. That decision was reviewed by the Court of Appeal and a similar test applied in that situation. But here, the words have to be interpreted in an entirely different context – whether IBAC can start an investigation not what findings were open at the end of an investigation.

would be relied on by a prosecutor. The “facts” in this case will, therefore, include the facts referred to in the denials of the Member of Parliament.

That being so, faced with the employee’s statement and the MP’s denial, IBAC would have to make a choice between them before it could be “reasonably satisfied that the conduct is serious corrupt conduct” on the part of the Member of Parliament. But how can IBAC make any choice without a thorough investigation of the information and then choosing between the competing version? Only then could it reach reasonable satisfaction that the conduct is corrupt conduct?

If that analysis is correct, IBAC and the Victorian community have a serious problem. Anyone can avoid being the subject of an investigation because all that person need do is deny the adverse information.

Is there some way to interpret the legislation to avoid that result? For example, might “facts” be read to mean the facts alleged in a complaint or notification to IBAC or publicly stated by IBAC as constituting the conduct it proposes to investigate.

The Act doesn’t say that and there are difficulties in implying words into legislation which establishes an investigator with draconian powers to enable those powers to be exercised. In addition, that approach does not fit comfortably with the requirement of s 41(2) that IBAC “must not conduct an investigationunless it is reasonably satisfied that the conduct is serious corrupt conduct”. Further, might such an interpretation of “facts “ also mean that IBAC would be able to avoid the intended limitations by careful drafting of its public statement of the conduct it proposed to investigate?

Another option might be to interpret “facts” to mean the factual information before IBAC that is not in dispute. But that is unlikely to assist. In the motor car case, the only fact not in dispute appears to be that the car was unlawfully used by an employee in the business of the Member of Parliament. There would be no factual information enabling IBAC to be reasonably satisfied that there was corrupt conduct on the part of the Member of Parliament.

If a way can be found through these issues, the reality remains that very significant limits have been placed on the investigative power of IBAC because of the very narrow definition of corrupt conduct and the requirement that it only investigate serious corrupt conduct. Experience has shown that investigations into what appear to be minor matters will often reveal serious corrupt conduct. The legislation will prevent IBAC conducting such investigations.

There are other points to note.

First, the impact of the threshold is not confined to the commencement of an investigation. S 41 applies to the “conduct” of an investigation, not just its commencement. The reasonable satisfaction requirement must therefore be met at each step in an investigation. Suppose that IBAC has been able to lawfully commence an investigation, what happens If, for example, the key witness recants? If “facts”

refers to the information before IBAC, the required reasonable satisfaction that the conduct is serious corrupt conduct can no longer exist and the investigation will have to stop. IBAC could not even investigate why the witness recanted.

There are other repercussions of the threshold test. The statutory protections to witnesses and others and the power to examine and obtain warrants and other powers given in respect of the conduct of investigations can only be validly exercised if, at the time of their exercise, the investigation is lawful.

Why have these difficulties been created? And why has IBAC been given less power to investigate than the police or the Ombudsman.

The Coalition's election promises were that in setting up IBAC, it would adopt best practice being that employed for the Australian anti-corruption bodies and that the New South Wales' ICAC would be the model. But the differences between the investigative powers given to IBAC and those that ICAC had at the time the promises were made could not be wider (see attached table). Unlike IBAC, ICAC can investigate and proceed to the end of its investigation before it needs to make any findings of fact or law of the type that IBAC must decide before it can start an investigation.

The foregoing analysis may be wrong. Trying to accurately understand the legislation is extremely difficult because there are three inter-acting Bills totalling 216 pages. But if the analysis is accurate, and it reflects the government's intentions, it is difficult to avoid the conclusion that the government decided not only to extract the teeth of IBAC but to effectively muzzle it. Alternatively, if the government did intend IBAC to be able to be an effective investigator of serious corrupt conduct, the drafting of the provisions to confine IBAC's power to investigate to serious corrupt conduct appears to be open to serious legal argument. Bearing in mind the skilled and knowledgeable people available for that work, the explanation for the plainly arguable difficulties may be that it is too difficult to draft the provisions required for legislation.

Assuming a Commissioner is appointed and IBAC attempts to commence investigations, it will have to proceed with great care to ensure that each investigation is validly commenced and carried out. It will need independent top quality legal advice at each step.

The process of finding out whether, and in what circumstances, IBAC can lawfully conduct investigations is likely to be slow, painful, very expensive and wasteful. For, whatever may prove to be the correct interpretation of the key provisions, it is likely to require trips to the Trial Division and Court of Appeal of the Supreme Court and to the High Court over a considerable period of time to resolve these issues.

It would be in the best interests of the community, and the government, if the government were to revisit its legislation to address these issues now and ensure that IBAC can conduct investigations into corrupt activity in government in Victoria in the same way that ICAC can in New South Wales and so honour its election commitments. If it had done so, we and the government would not have these problems on our hands.

Comparison of IBAC and ICAC legislation (summary)

Topic	IBAC legislation	ICAC Legislation ⁸
<p>“Corrupt conduct”</p>	<p>"3A Corrupt conduct</p> <p>(1) For the purposes of this Act, corrupt conduct means conduct—</p> <p>(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</p> <p>(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</p> <p>(c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</p> <p>(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</p> <p>(e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d)</p> <p>being conduct that would, if the facts were found proved beyond</p>	<p>8 General nature of corrupt conduct</p> <p>(1) Corrupt conduct is</p> <p>(a) any conduct of any person (whether or not a public official) that adversely affects, or <i>that could adversely affect, either directly or indirectly,</i> the honest <i>or impartial</i> exercise of official functions by any public official, any group or body of public officials or any public authority, or</p> <p>(b) any conduct of a public official that constitutes or involves the dishonest <i>or partial</i> exercise of any of his or her official functions, or</p> <p>(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or</p> <p>(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.</p> <p>(2) <i>Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the</i></p>

⁸ Significant differences in the ICAC legislation from the IBAC legislation are highlighted in bold italics

Topic	IBAC legislation	ICAC Legislation ⁸
	reasonable doubt at a trial, constitute a relevant offence.	<p><i>following matters:</i></p> <ul style="list-style-type: none"> <i>(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),</i> <i>(b) bribery,</i> <i>(c) blackmail,</i> <i>(d) obtaining or offering secret commissions,</i> <i>(e) fraud,</i> <i>(f) theft,</i> <i>(g) perverting the course of justice,</i> <i>(h) embezzlement,</i> <i>(i) election bribery,</i> <i>(j) election funding offences,</i> <i>(k) election fraud,</i> <i>(l) treating,</i> <i>(m) tax evasion,</i> <i>(n) revenue evasion,</i> <i>(o) currency violations,</i> <i>(p) illegal drug dealings,</i> <i>(q) illegal gambling,</i> <i>(r) obtaining financial benefit by vice engaged in by others,</i> <i>(s) bankruptcy and company violations,</i> <i>(t) harbouring criminals,</i> <i>(u) forgery,</i> <i>(v) treason or other offences against the Sovereign,</i>

Topic	IBAC legislation	ICAC Legislation ⁸
		<p><i>(w) homicide or violence,</i></p> <p><i>(x) matters of the same or a similar nature to any listed above,</i></p> <p><i>(y) any conspiracy or attempt in relation to any of the above.</i></p>
<p>Limits on definition of corrupt conducts</p>	<p>As noted above, to come within the definition of “corrupt conduct” the conduct must <u>also be</u></p> <p>“... conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a “relevant offence”</p> <p>“ relevant offence” means</p> <p>(c) an indictable offence against an Act</p> <p>(d) any of the following common law offences committed in Victoria-</p> <p>(iv) attempt to pervert the course of justice;</p> <p>(v) bribery of a public official</p> <p>(vi) perverting the course of justice;”</p>	<p>9 Limitation on nature of corrupt conduct</p> <p>(1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:</p> <p><i>(a) a criminal offence, or</i></p> <p><i>(b) a disciplinary offence, or</i></p> <p><i>(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or</i></p> <p><i>(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.</i></p> <p><i>(2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.</i></p> <p><i>(3) For the purposes of this section: applicable code of conduct means, in relation to:</i></p> <p><i>(a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or</i></p> <p><i>(b) a member of the Legislative Council or of the Legislative Assembly (including</i></p>

Topic	IBAC legislation	ICAC Legislation ⁸
		<p><i>a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.</i></p> <p><i>criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.</i></p> <p><i>disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.</i></p> <p><i>(4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.</i></p> <p><i>(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.</i></p> <p><i>(6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the <u>Local</u></i></p>

Topic	IBAC legislation	ICAC Legislation ⁸
		<u><i>Government Act 1993</i></u> , but does not include a reference to any other breach of such a requirement.
Power to “conduct investigations”	<p>S 41 (1). “... IBAC may conduct an investigation in accordance with its corrupt conduct investigative function” on a complaint, notification or own motion but</p> <p>(1) “The IBAC must not conduct an investigation under subsection (1) unless it is reasonably satisfied that the conduct is serious corrupt conduct”</p>	<p>13 Principal functions</p> <p>(1) The principal functions of the Commission are as follows:</p> <p>(a) to investigate any allegation or complaint that, or any circumstances which <i>in the Commission’s opinion imply that:</i></p> <p><i>(i) corrupt conduct, or</i></p> <p><i>(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or</i></p> <p><i>(iii) conduct connected with corrupt conduct,</i></p> <p><i>may have occurred, may be occurring or may be about to occur,</i></p> <p>b) to investigate any matter referred to the Commission by both Houses of Parliament,</p> <p>c) to communicate to appropriate authorities the results of its investigations,</p> <p>(2) The Commission is to conduct its investigations with a view to determining:</p> <p>(a) whether any corrupt conduct, or any other conduct referred to in subsection (1) (a), has occurred, is occurring or is about to occur, and</p> <p>(b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and</p> <p>(c) whether any methods of work, practices or procedures of any public authority or public official did or could</p>

Topic	IBAC legislation	ICAC Legislation ⁸
		<p>allow, encourage or cause the occurrence of corrupt conduct.</p> <p>(2A) Subsection (2) (a) does not require the Commission to make a finding, on the basis of any investigation, that corrupt conduct, or other conduct, has occurred, is occurring or is about to occur.</p> <p><i>(3) The principal functions of the Commission also include:</i></p> <p><i>(a) the power to make findings and form opinions, on the basis of the results of its investigations, in respect of any conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corrupt conduct, and</i></p> <p><i>(b) the power to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations.</i></p> <p>(3A) The Commission may make a finding that a person has engaged or is engaging in corrupt conduct of a kind described in paragraph (a), (b), (c) or (d) of section 9 (1) only if satisfied that a person has engaged in or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.</p> <p>(4) The Commission is not to make a finding, form an opinion or formulate a recommendation which section 74B (Report not to include findings etc of guilt or recommending prosecution) prevents the Commission from including in a report, but section 9 (5) and this section are the only restrictions imposed by this Act on the Commission’s powers under subsection (3).</p>

Topic	IBAC legislation	ICAC Legislation ⁸
		<p>(5) The following are examples of the findings and opinions permissible under subsection (3) but do not limit the Commission’s power to make findings and form opinions:</p> <p>(a) findings that particular persons have engaged, are engaged or are about to engage in corrupt conduct,</p> <p>(b) opinions as to:</p> <p>(i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or</p> <p>(ii) whether consideration should or should not be given to the taking of other action against particular persons,</p> <p>(c) findings of fact.</p> <p>Division 2 Investigations</p> <p>20 Investigations generally</p> <p>(1) The Commission may conduct an investigation on its own initiative, on a complaint made to it, on a report made to it or on a reference made to it.</p> <p><i>(2) The Commission may conduct an investigation even though no particular public official or other person has been implicated.</i></p> <p>(3) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation (other than in relation to a matter referred by both Houses of Parliament), have regard to such matters as it thinks fit, including whether or not (in the Commission’s opinion):</p> <p>(a) the subject-matter of the investigation is trivial, or</p> <p>(b) the conduct concerned occurred at</p>

Topic	IBAC legislation	ICAC Legislation ⁸
		<p>too remote a time to justify investigation, or</p> <p>(c) if the investigation was initiated as a result of a complaint—the complaint was frivolous, vexatious or not in good faith.</p> <p>(4) (Repealed)</p> <p>(5) If the Commission decides to discontinue or not to commence an investigation of a complaint or report made to it, the Commission must inform the complainant or officer who made the report in writing of its decision and the reasons for it.</p> <p>20A Preliminary investigations</p> <p><i>(1) An investigation may be in the nature of a preliminary investigation.</i></p> <p><i>(2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:</i></p> <p><i>(a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or</i></p> <p><i>(b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.</i></p> <p>(3) Nothing in this section affects any other provision of this Act.</p>