

Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission(National Policing Information Charges) Bill 2015

**Submission to the Senate Legal and Constitutional Affairs
Legislation Committee**

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1 Introduction

The Independent Broad-based Anti-corruption Commission (**IBAC**) is Victoria's anti-corruption agency responsible for identifying, exposing and preventing serious public sector corruption and police misconduct. IBAC's jurisdiction includes state government departments and agencies, local councils, Victoria Police, the judiciary, and Members of Parliament.

IBAC's main functions are to:

- investigate and expose serious public sector corrupt conduct and Victoria police misconduct
- prevent serious corrupt conduct and police misconduct by informing the public sector, police and the community about the risks and impacts on public administration.

In the performance of these functions, IBAC has significant powers to combat corruption under the *Independent Broad-based Anti-Corruption Act 2011 (IBAC Act)*, including the ability to:

- compel the production of documents and objects
- enter and search premises
- seize documents and objects
- hold private and public hearings, and
- require people to give evidence at a hearing.¹

Following an investigation, IBAC has the power to bring criminal proceedings for an offence², make recommendations to the relevant principal officer of a body, a Minister or the Premier,³ and can refer any matter to the Office of Public Prosecutions or another entity for consideration of disciplinary or other action.⁴

Such extraordinary powers are essential due to the complexities involved in detecting, investigating and preventing serious corrupt conduct.

IBAC is defined as a law enforcement agency (or similar) in a number of Australian legislative instruments.⁵ A crucial component of the IBAC's work involves law enforcement. An application to

¹ IBAC Act, see Part 4- Investigative Powers, and Part 6- Examinations

² IBAC Act s 190

³ IBAC Act 159 (1)

⁴ See IBAC Act s 73 and s 74

⁵ See *Privacy and Data Protection Act 2014* (Vic) s 3, *Surveillance Devices Act 1999* (Vic) s 3, *Privacy Act 1988* (Cth) s 6(1), and *Telecommunications (Interception and Access) Act 1979* (Cth) s 5

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become an Approved External Agency (**AEA**) was made by IBAC to CrimTrac in 2014. At the time of making this submission the application is still pending.

IBAC welcomes an opportunity to see legislative change which will improve access and share national policing information to further strengthen its intelligence and law enforcement capabilities.

There are, however, some desirable inclusions that IBAC respectfully draws the Committee's attention to, which are outlined below.

2 Submission

IBAC will limit its submission to matters directly relevant to its main functions and responsibilities under the IBAC Act.

The Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015 (**the Bills**) seek to amend *the Australian Crime Commission Act 2002 (Cth)* (**ACC Act**).

Relevantly, the Bills will merge CrimTrac with ACC to operate under one banner. IBAC supports such a step in ensuring that law enforcement agencies throughout Australia are afforded the best possible opportunity to prevent and detect criminal activity and share national policing information.

IBAC has power under section 72 of the IBAC Act to conduct coordinated investigations with any integrity body or law enforcement agency. This includes the power to disclose and receive information from another integrity body or law enforcement agency.

As stated above, IBAC is not an approved AEA with CrimTrac, and the application process has been fraught with delay.

Section 59AA(1B) in the Bills propose a list of agencies that the ACC CEO may disclose national policing information to that would not be subject to Board approval. It reads:

(1A) in deciding whether to disclose national policing information under subsection (1), the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.

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(1B) The CEO must obtain the approval of the Board before disclosing national policing information under subsection (1) to a body that is not one of the following:

- (a) The Australian Federal Police;
- (b) A Police Force of a State;
- (c) The Department administered by the Minister who administers the *Australian Border Force Act 2015*;
- (d) The Australian Securities and Investments Commission;
- (e) The Australian Security Intelligence Organisation;
- (f) The Australian Taxation Office;
- (g) A body prescribed by the regulations.

IBAC's primary submission is that as a law enforcement agency, it should expressly list in this proposed section IBAC as a prescribed body. In the alternative, it should be listed as a body prescribed by the regulations so it could fall under section 59AA (1B)(g). This will mean that if IBAC was a prescribed body pursuant to section 59AA (1B), it would negate the need for it to be subject to an often lengthy review procedure before disclosure of national policing information. The categorisation of IBAC as a prescribed body will undoubtedly enhance the effectiveness and efficiency of the investigative and operational work conducted by IBAC.

There are many contemporary challenges that IBAC faces in uncovering and investigating corruption. Suspected criminal activity is becoming increasingly complex and sophisticated in tactics and methodologies implemented by individuals. As this provides a strong rationale for the extraordinary coercive powers IBAC has in performing its functions, it is also a compelling reason for IBAC to have access to all available information holdings when conducting investigations. Due to the changing landscape of crime and corruption, the activities that IBAC investigates are not confined to Victorian borders. They may involve conduct at national and international levels.⁶

In addition, incorporating IBAC as prescribed body under section 59AA (1B) would further serve the core objective of the Bills. As articulated by Senator Scullion in the Second Reading Speech, Australia has first-rate police and intelligence agencies, and we need to make sure that these agencies continue to have access to the tools and information they need to do their job.⁷

⁶ For further discussion, see 'Strengthening Victoria's anti-corruption agencies?' Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, published February 2016, at pp 12.

⁷ Australian Crime Commission Amendment (National Policing Information) Bill 2015, Second Reading Speech, Parliament of Australia, 22 February 2016

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Secondly, IBAC notes the absence of any transitional provision which expresses the fate of pending applications to be an Approved External Agency that are yet to be approved (or refused) by CrimTrac. As noted by some of our interstate counterparts, this process has been frustrated with delay, and it is not clear what the intention is with respect to active applications. IBAC is concerned that those active applications may be required to repeat the lengthy application process, thereby causing further delays to respective agencies to access national policing information. It is submitted by IBAC that importantly, active applications are carried over without the need to restart the application process, and further, that this is stipulated in the transitional provisions under the Bills.

3 Conclusion

IBAC seeks to be included as a body which can access national policing information without having to obtain prior written approval of the Board of the ACC. It submits that a new subsection is inserted expressly stating this pursuant to proposed new section 59AA (1B). In the alternative, IBAC seeks to be a body prescribed by the regulations under proposed new section 59AA (1B)(g).

IBAC further draws attention to the lack of a clear transitional provision that provides guidance as to what will happen to pending applications currently before CrimTrac once the Bill is enacted. It submits that current applications should not have to repeat the application process as a result of the merger.

IBAC would welcome any legislative change to enable it to effectively participate in the access to and sharing of national policing information with other law enforcement agencies, in a framework that is structured to enhance the quality and timeliness of obtaining information to assist its primary functions of investigating, exposing and preventing corruption. IBAC firmly believes that the core objectives and goals sought with the enactment of these reforms would be further reached by the inclusion of IBAC as a prescribed body.

IBAC otherwise supports the legislative changes proposed by the Government.