

Governance Charter

Governance arrangements of IBAC

Governance & Risk

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1 Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) was established in 2012 by the *IBAC Act 2011* (“*IBAC Act*”). The IBAC consists of one Commissioner to which IBAC may delegate any function or power of IBAC. IBAC must also appoint a Chief Executive Officer (CEO) who is the Special Body Head of IBAC under the *Public Administration Act 2004* (“*PA Act*”). Hence there are two key roles responsible for the internal governance of IBAC – the Commissioner and the CEO.

1.1 Governance

Governance refers to the ways in which the IBAC is directed, controlled and held to account, and includes internal and external aspects. External governance includes the roles, relationships and distribution of powers and responsibilities between Parliament, the Integrity and Oversight Committee, the Victorian Inspectorate, the Special Minister of State, the Department of Premier and Cabinet and the Victorian public sector. Internal governance includes IBAC’s internal accountability structures (organisational structure and committees), outcomes, delegations and policies, risk management, planning and performance management, compliance management, culture (leadership and behaviours) and assurance mechanisms.

1.2 Powers and functions

The Commissioner has been provided with powers and functions to undertake the roles given to IBAC by Parliament. These powers and functions are contained in the following legislation:

Independent Broad-based Anti-corruption Commission Act 2011

Victorian Police Act 2013

Confiscation Act 1997

Crimes (Assumed Identities) Act 2004

Crimes (Controlled Operations) Act 2004

Protected Disclosure Act 2012

Surveillance Devices Act 1999

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception) (State Provisions) Act 1988

Witness Protection Act 1991

Melbourne City Link Act 1995

Drugs, Poisons and Controlled Substances Act 1981

Sex Offenders Registration Act 2004

Charter of Human Rights and Responsibilities Act 2006 (Vic)

IBAC’s primary functions are to:

Identify, expose and investigate 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.

The full functions and powers of IBAC are referenced in sections 15 and 16 of the *IBAC Act*.¹

1.3 Vision, purpose and corporate plan

IBAC's vision is a Victorian public sector that actively resists corruption.² Its purpose is to prevent and expose public sector corruption and police misconduct in Victoria.

IBAC's Corporate Plan 2018-21 is focused on:

1. exposing and preventing corruption and police misconduct
2. a respected, trusted independent statutory agency
3. a highly capable and forward looking organisation
4. investing in our people.

For further information including performance indicators, please refer to IBAC's Corporate Plan 2018-21 (refer link in references section).

1.4 Victorian integrity system

IBAC is part of the Victorian integrity system, which is comprised of a number of agencies with distinct roles (Figure 1). While those roles are distinct, the agencies have inter-connected functions. They also have an overarching shared responsibility for protecting integrity in the Victorian public sector. IBAC works closely with the Victorian Ombudsman in managing complaints. The Integrity and Oversight Committee oversees the Victorian Inspectorate and IBAC. In turn the Victorian Inspectorate oversees IBAC, Victorian Ombudsman, Victorian Auditor-General's Office and the Office of the Victorian Information Commissioner.



Figure 1. Victoria's integrity system

2 Document purpose

This Charter describes the governance arrangements of IBAC. It articulates the operating context and the roles, responsibilities, decision making authorities and accountabilities of the organisation's key governance bodies and other relevant stakeholders.

Where there is any inconsistency between this Charter and any documents that it refers to, then those documents have precedence over this Charter. If any document referred to in this Charter is amended from time to time, then this Charter should be interpreted as referring to the amended document.

The Governance Charter describes the roles of the Commissioner, Deputy Commissioner and CEO, and outlines IBAC's role within the Victorian Integrity System and its relationship with the Victorian Government, Integrity and Oversight Committee and Victorian Inspectorate.

The Charter also explains the roles and functions of the IBAC Executive Committee, Audit and Risk Management Committee and IBAC staff.

Finally, it outlines the organisation's values and code of conduct.

3 Governance arrangements

3.1 IBAC's governance arrangements

IBAC's governance framework³ articulates the principles and elements in IBAC's approach to good governance. Refer to Appendix A for an overview of the framework.

3.2 External governance

3.2.1 Relationship with Parliament

IBAC exists to achieve objectives deemed by government to be in the public interest and operates using the powers conferred by Parliament. The Commissioner is an independent officer of the Parliament with complete discretion in the performance or exercise of his or her duties, functions or powers, subject to the *IBAC Act* and other laws of the State. IBAC is accountable to Parliament for its performance through the Integrity and Oversight Committee. IBAC is also subject to oversight via several other mechanisms including the Victorian Inspectorate, Victorian Auditor-General and Public Interest Monitor.

3.2.2 Relationship with the Integrity and Oversight Committee

The Integrity and Oversight Committee is a joint investigatory committee of the Parliament of Victoria.

3.2.2.1 Role and responsibilities

The Integrity and Oversight Committee is responsible for monitoring and reviewing the performance of the following Victorian agencies:

- the Independent Broad-based Anti-corruption Commission (IBAC)
- the Victorian Ombudsman (VO)
- the Office of the Victorian Information Commissioner (OVIC)
- the Victorian Inspectorate (VI).

3.2.2.2 Authority

The Integrity and Oversight Committee can examine reports produced by IBAC, OVIC, the VI and the VO, including their annual reports. The Committee also has the power to report to Parliament in relation to these agencies' performance of their duties and functions. In addition, the Committee can undertake inquiries into issues related to the work of these agencies and make recommendations for improvements.

While the Integrity and Oversight Committee can, in limited circumstances, investigate complaints about the Information Commissioner and OVIC, it does not have the power to investigate complaints about IBAC, the VI or the VO.

3.2.2.3 Accountability

The Integrity and Oversight Committee reports to, and is accountable to, Parliament.

3.2.2.4 Appointment

As soon as practicable after the commencement of each Parliament, the members of the Integrity and Oversight Committee must be appointed according to the practice of Parliament relating to the appointment of members to joint select committees.

3.2.3 Relationship with the Victorian Inspectorate

3.2.3.1 Role and responsibilities

In relation to IBAC, it is the role of the Victorian Inspectorate to:

- monitor the compliance of IBAC and IBAC personnel with the IBAC Act and other laws
- oversee the performance by IBAC of its functions under the *Protected Disclosure Act 2012*
- assess the effectiveness and appropriateness of IBAC's policies and procedures which relate to the legality and propriety of IBAC's activities
- receive complaints about the conduct of IBAC and IBAC personnel
- investigate and assess the conduct of the IBAC and IBAC personnel in the performance or exercise or purported performance or purported exercise of their duties, functions and powers
- monitor the interaction between IBAC and other integrity bodies to ensure compliance with relevant laws.

3.2.3.2 Authority

The Victorian Inspectorate has the power to receive certain complaints made to it about IBAC, conduct investigations, including own motion investigations, and obtain information.

The Victorian Inspectorate may report on and make recommendations concerning the complaints it receives, including any action it considers should be taken by a particular body or person and to recommend further investigation or enforcement action be taken by other agencies, including Victoria Police and the Director of Public Prosecutions.

3.2.3.3 Accountability

The Victorian Inspectorate is responsible directly to Parliament and is not subject to the direction or control of the government in respect of the performance of its duties and functions and the exercise of its powers.

3.2.3.4 Appointment

The Victorian Inspectorate consists of one Inspector appointed by the Governor in Council on the recommendation of the Minister¹ in accordance with the *Victorian Inspectorate Act 2011*.

3.2.4 Relationship with the Public Interest Monitors

3.2.4.1 Role and responsibilities

The Public Interest Monitor provides accountability around the IBAC's application for use of covert and coercive powers, such as telephone intercepts and surveillance devices to safeguard the privacy and civil liberties of community members.

3.2.4.2 Authority

To fulfil its functions, the Public Interest Monitor may appear at any hearing of a relevant application for covert or coercive powers, can ask questions of any person giving information in relation to the application to test the content and sufficiency of the information relied on and the circumstances of the application and may make submissions about whether the application should be granted. The Public Interest Monitor does not receive complaints.

¹ Special Minister of State.

3.2.4.3 Accountability

The Principal Public Interest Monitor provides an annual report to Parliament with details of the number of applications IBAC has made for an order, warrant or approval and the number that have been granted, refused or withdrawn.

3.2.4.4 Appointment

The Governor in Council may appoint an eligible person as the Principal Public Interest Monitor, in accordance with the *Public Interest Monitor Act 2011*.

3.2.5 Relationship with Government

The elected Victorian Government does not direct IBAC in the use of its powers and functions.

The Premier, by General Order, determines the Minister responsible for administering the IBAC Act.

IBAC was established as a Special Body by an Order in Council made by the Governor in Council under section 6 of the PA Act. This means it is not subject to review by the Victorian Public Sector Commission and may not be subject to some Public Sector Values.

The Governor in Council, on the recommendation of the Minister, appoints the Commissioner (and Deputy), subject to Cabinet approval.

Parliament makes amendments to the IBAC Act, subject to Cabinet approval.

IBAC operations are subject to scrutiny by various federal bodies, including:

- Commonwealth Ombudsman – inspects IBAC’s use of stored communications warrants
- Commonwealth Attorney-General – receives reports on IBAC’s telecommunications interception and stored communications warrants.

3.2.6 Relationship with the Special Minister of State and Attorney-General

The Special Minister of State oversees government transparency, integrity, accountability and public sector administration and reform, and is responsible for administering the IBAC Act.

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.

The Minister receives reports on telecommunications interception warrants.

IBAC is subject to scrutiny by the Victorian Attorney-General who receives reports on IBAC:

- telecommunications interception warrants
- surveillance device warrants
- assumed identities.

3.2.7 Relationship with the Department of Premier and Cabinet

The Department of Premier and Cabinet (DPC) supports the administrative functions of a number of portfolio agencies, including IBAC.

Unlike IBAC, departments are not created by statute but by orders of the Governor in Council on recommendations of the Government. By convention, departments can be considered as extensions of their responsible Minister(s). Pursuant to that relationship, IBAC works with DPC on reporting of IBAC’s administrative affairs to the Special Minister of State.

IBAC was declared a Special Body, via amendment to the *PA Act*, on 29 November 2011 (for commencement on 1 July 2012). As a Special Body, IBAC is not a public entity (s5 (1)(f) *PA Act*) and therefore not bound by the conditions of operation of public entities specified in the *PA Act*. In practical terms, this means the IBAC CEO, as Special Body Sector Head (s4 (1) *PA Act*), does not

report to the DPC Secretary and is not required to provide advice to the Government or implement Government policies and programs equitably (s7 (3) *PA Act*).

IBAC reports annually on its performance against Budget Paper 3 measures to DPC, with the results published in the DPC Annual Report.

3.2.8 Relationship with public officers, public bodies and the public sector

The Victorian public sector supports the government of the day in serving the Victorian community by providing public services, supporting Ministers in developing and implementing policies and legislation, building and maintaining physical and social infrastructure, managing resources and administering state finances.

For the purposes of the *IBAC Act*, the public sector means the sector comprising all public bodies and officers (s6 (1)). This includes state government departments and administrative offices, public entities (e.g. public health sector, government schools, TAFEs and other education entities, Victoria Police and emergency services agencies, water and land management, arts, finance, transport) local councils, the judiciary² and Parliament³.

The public sector is obliged to provide its public services free of corrupt conduct and Victoria Police is also obliged to be free of police personnel misconduct, as defined under s4 and s5 of the *IBAC Act* respectively. Public officers must report to an appropriate authority workplace behaviour that violates any law, rule or regulation or represent corrupt conduct. Relevant principal officers must notify IBAC of all instances of matters suspected by them, on reasonable grounds to involve corrupt conduct (s57 (1)). Relevant principal officers include heads of state government departments and many government agencies and local council CEOs.

The Chief Commissioner of Police must notify IBAC of any complaints he or she has received about corrupt conduct or police personal misconduct by Victoria Police employees or recruits (s57(2) *IBAC Act*).

IBAC's work covers the whole Victorian public sector, excluding IBAC, the Public Interest Monitor, the Office of the Special Investigations Monitor, the Victorian Inspectorate and the courts (s6(2) *IBAC Act*). This includes:

- receiving complaints from the public, notifications (from agencies) and protected disclosures and assessing these matters for allegations of corruption or misconduct
- referring matters to other appropriate agencies (such as public sector bodies and integrity agencies) for action
- investigating serious or systemic public sector corruption and police misconduct
- informing the public sector and wider community about corruption and police misconduct and ways it can be prevented.

In carrying out investigations IBAC must consider the impact on human rights (see section 4.3 for further detail) and provide procedural fairness in relation to investigation results (s163 *IBAC Act*).

Complaints about IBAC and IBAC personnel conduct in respect of the performance or exercise of duties, functions or powers can be made to the Victorian Inspectorate.

² With limitations.

³ With limitations

3.3 Internal governance

3.3.1 IBAC Commissioner

3.3.1.1 Role and responsibilities

The Commissioner constitutes IBAC under s14 of the *IBAC Act* and is responsible for:

- undertaking the strategic leadership of IBAC for the purpose of achieving the objects of the *IBAC Act*
- the duties delegated to the Commissioner by IBAC
- any other duties conferred on the Commissioner under the *IBAC Act* or any other Act (s22 *IBAC Act*).

Other Acts relating to IBAC operations for which the Commissioner may have duties conferred are listed in section 1.2.

Under the *Standing Directions of the Minister for Finance 2018* (made pursuant to the *Financial Management Act 1994 [FM Act]*) the Commissioner is the Responsible Body, with governance responsibilities for financial management. Pursuant to Direction 2.2, the Responsible Body must:

- ensure that government objectives and priorities, and relevant statutory purposes and functions, are furthered in a financially efficient, effective and economical way
- establish appropriate and effective financial governance and oversight arrangements and regularly review the effectiveness of those arrangements
- ensure the agency implements Victorian government policy frameworks relating to the requirements of the *FM Act* and the associated directions issued under section 8 of the *FM Act* (including the Directions, the Instructions and the Financial Reporting Directions)
- keep the Responsible Minister informed of agency activities and strategic issues with potential financial implications for the State. Note: For the purpose of the Standing Directions, the Commissioner is the Responsible Minister.

Under section 3.1.1 of the Victorian Government Risk management framework (VGRMF) the Responsible Body must be satisfied that:

- IBAC has a risk management framework in place consistent with *AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines*
- the risk management framework:
 - is reviewed annually to ensure it remains current and is enhanced, as required; and
 - supports the development of a positive risk culture within the agency.
- the risk management processes are effective in managing risks to a satisfactory level
- it is clear who is responsible for managing each risk
- inter-agency risks are addressed and the agency contributes to the management of shared risks across government, as appropriate
- the agency contributes to the identification and management of state significant risks, as appropriate
- risk management is incorporated in the agency's corporate and business planning processes
- adequate resources are assigned to risk management
- the agency risk profile has been reviewed within the past 12 months.

Under section 3.1.2 of the VGRMF the Responsible Body of an agency is required to insure with the Victorian Managed Insurance Authority (VMIA) and must:

- arrange all its insurance with VMIA unless exempted by the responsible Minister or where VMIA cannot offer insurance for a specific risk
- as part of its annual insurance renewal process:
 - determine the appropriate level of insurance in consultation with VMIA

- maintain a register of all insurance and indemnities and make this available to VMIA on request
- provide information on claims management capability, resources, structures and processes for any self-insured retained losses to VMIA, including the basis for valuation of self-insured retained losses.
- in relation to managing below deductible claims:
 - maintain adequate claims management capability and processes where the agency has opted to manage below deductible claims
 - provide required below deductible claims data for self-managed claims to VMIA.

Under section 3.2 of the VGRMF, the Responsible Body is responsible for the accuracy and completeness of the annual attestation of compliance with the VGRMF under Ministerial Standing Direction 3.7.1, and should utilise audit committees or other internal governance bodies, where available, to support the view expressed.

3.3.1.2 Authority

The Commissioner has the functions and powers of IBAC (refer to section 1.2) delegated to the Commissioner by IBAC (s22(c) *IBAC Act*).

In accordance with s 32(3) of the *IBAC Act*, the Commissioner may delegate to a Deputy Commissioner, the CEO, Senior IBAC Officer or a person (*consultant*) appointed under section 36 any duty, function or power of the Commissioner, with some exceptions. Such delegations are made by instrument, maintained by the Director Legal.

Pursuant to Direction 2.2 of the *Standing Directions of the Minister for Finance 2018* (Standing Directions), the Commissioner (as Responsible Body) has the authority to:

- set IBAC's strategic direction and priorities
- approve related plans, budgets and policies
- approve major decisions related to strategic initiatives and policies
- authorise the IBAC Annual Report.

Under Direction 2.5, the Commissioner can delegate authorisation of expenditure of IBAC funds for specified amounts and activities to designated IBAC staff, and does so via the following instruments, maintained by the Chief Financial Officer:

- Instrument of Financial Authorisation⁴
- Delegation Instrument Standing Directions.⁵

3.3.1.3 Accountability

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 (s18 *IBAC Act*) and the Commissioner is an independent officer of the Parliament (s19(1) *IBAC Act*).

The Commissioner is accountable to Parliament, through the Integrity and Oversight Committee.

3.3.1.4 Appointment

Subject to s 20 and 21 of the *IBAC Act*, and Cabinet approval, the Governor in Council, on the recommendation of the Minister, appoints the Commissioner.

3.3.2 Deputy Commissioners

3.3.2.1 Role and responsibilities

The duties and functions of the Deputy Commissioners are not specified in the *IBAC Act*. However, the Deputy Commissioners may hold any duty and perform any function formally delegated by the Commissioner (s 32(1) *IBAC Act*).

For the benefit of IBAC, the Deputy Commissioners participate in all of the functions of IBAC, including operations, communications and prevention and consideration, input and advice on corporate services matters of strategic or significant operational importance. The Deputies are involved both at a strategic level as members of the Executive Team and operationally through the exercise of functions under delegation.

3.3.2.2 Authority

Under the *IBAC Act*, the Deputy Commissioners:

- may have any duty, function or power of the Commissioner under the *IBAC Act* or any other Act delegated to him or her by the Commissioner (in accordance with s 32(1))
- has the power to delegate to, a senior IBAC Officer or a person (*consultant*) appointed under section 36, any duty, function or power of the Deputy Commissioner under the *IBAC Act* (including any duty, function or power delegated to the CEO under s 17 of the *IBAC Act*) or any other Act other than the power of delegation.

Although Deputy Commissioners regularly engage with staff across the organisation on operational matters, they are not involved in managing staff, who are managed and directed through reporting lines established within each division.

3.3.2.3 Accountability

The Deputy Commissioners are accountable to the Commissioner.

3.3.2.4 Appointment

Subject to s 23 of the *IBAC Act*, and Cabinet approval, the Governor in Council, on the recommendation of the Minister, and concurrence of the Commissioner, appoints the Deputy Commissioners.

3.3.3 IBAC Executive Committee

The IBAC Executive Committee (IEC) is an executive management committee that comprises the Commissioner (Chair), CEO, Deputy Commissioners and IBAC Directors.

3.3.3.1 Role and responsibilities

The IEC's role and responsibilities cover:

- setting the strategic direction of IBAC and implementation of strategy – corporate planning and financial strategy, strategic risk appetite and management and strategic stakeholder engagement management
- providing advice and oversight of IBAC core functions –including complaints and notifications (by exception) reviews, investigations, corruption prevention, education, stakeholder engagement, and communication, strategic intelligence and IBAC legal affairs
- providing advice and oversight of IBAC corporate functions – business planning and organisational performance, risk and compliance management, financial management, people

management and organisational culture/structure, information management and business systems, internal communications.

3.3.3.2 Authority

Through approval by the Commissioner, the IEC has authority to make decisions on the matters set out in the *IBAC Executive Committee Terms of Reference*,⁶ and any other matter the Chair approves to come before the committee. The IEC also supports the statutory appointees – commissioners and CEO – to make decisions required by the *IBAC Act 2011*, its satellite legislation and legislation relevant to public sector governance, such as the *Public Administration Act 2004* and the *Financial Management Act 1994*.

The IEC's preferred approach to making decisions and providing advice and support to statutory appointees is by way of consensus. Where consensus cannot be reached, the decision will be made by:

- In the case of decisions required by legislation – the relevant statutory appointee
- In the case of matters falling within the authority of the CEO under relevant legislation, such as the *Public Administration Act 2004* – the CEO
- In the case of any other strategic and operational decisions – the Commissioner or his nominee

The existence of the IEC does not diminish the Commissioner's or the CEO's accountabilities under the *FM Act*, *PA Act*, *IBAC Act* and any other relevant legislation.

3.3.3.3 Accountability

The IEC is accountable to the Commissioner.

3.3.3.4 Appointment

IBAC Executive Committee members are appointed automatically by way of their position and specification of the committee's membership in its terms of reference.

3.3.4 Audit and Risk Management Committee

Under Direction 3.2.1.1 of the *Standing Directions of the Minister for Finance 2018*, the Responsible Body (Commissioner) must establish an audit committee. IBAC's Audit and Risk Management Committee (ARMC) is an advisory committee with at least three members, the majority being independent and an independent member as Chair.

3.3.4.1 Role and responsibilities

The role of the ARMC is to provide independent assurance and advice to the Responsible Body (IBAC Commissioner) on the effectiveness of IBAC's internal control, risk management and compliance management frameworks, and its financial statement responsibilities.

The ARMC's responsibilities cover oversight and review of IBACs:

- financial reporting
- internal audit function
- external audit
- risk management
- legislative and policy compliance in relation to the *Financial Management Act*.

3.3.4.2 Authority

The ARMC has no executive powers, except those expressly provided by the *Standing Directions of the Minister for Finance 2018* or delegated to it by the Responsible Body through the *ARMC Charter*⁷.

Direction 3.1.1.1(b) of the Standing Directions empowers ARMC to:

- approve IBAC's Internal Audit Charter
- approve IBAC's internal audit strategy and plan.

The Responsible Body authorises the Committee, within the scope of its responsibilities, to:

- perform activities within the scope of its Charter
- seek explanations and additional information from any IBAC officer and obtain any information it needs relevant to its responsibilities
- have access to the Accountable Officer (CEO), the Chief Finance Officer (Manager Finance), internal auditors and external auditor in carrying out the ARMC's responsibilities
- request the attendance of any IBAC officer, including the Responsible Body, at ARMC meetings
- obtain legal or other professional advice, as considered necessary to meet its responsibilities.

3.3.4.3 Accountability

The ARMC must:

- report to the Responsible Body⁴
- exercise independent judgement and be objective in its deliberations, decisions and advice
- self-assess its performance annually and report this assessment to the Responsible Body
- have its performance formally reviewed by the Responsible Body at least once every three years.

3.3.4.4 Appointment

The Accountable Officer (CEO) appoints ARMC members as consultants as defined under section 36 of the *IBAC Act*, in line with the Victorian Department of Premier and Cabinet's *Appointment and Remuneration Guidelines*.⁸

3.3.5 Chief Executive Officer

3.3.5.1 Role and responsibilities

The duties and functions of the CEO are not specified in the *IBAC Act*. However, the CEO may hold any duty and perform any function formally delegated by the Commissioner (s 32(3)).

The CEO is the Special Body Head of IBAC for the purposes of s 16 of the *PA Act*. In this role, the CEO:

- has all the duties of an employer in respect of IBAC and its employees (PA Act s 20(1))
- must promote the public sector values to IBAC Officers and ensure that any statement of values adopted or applied by IBAC is consistent with the public sector values (s 7(2))
- must establish employment processes in line with the public sector employment principles (s 8).

The CEO's responsibilities as an employer includes:

⁴ Direction 3.2.1.3(a) of the Standing Directions of the Minister for Finance 2016.

- ensuring employee pay rates and conditions are met, including associated financial obligations such as payroll tax, PAYG, and superannuation payments
- establishing leave policies and flexible work arrangements
- ensuring equal opportunity of employment
- maintaining staff records
- maintaining a safe working environment and adequate workers compensation insurance.

Specific employer responsibilities are set out in the relevant legislation listed in section 4.6.

The CEO has financial management responsibilities, as the Accountable Officer under the *FM Act*. Pursuant to Direction 2.3.1 of the *Standing Directions of the Minister for Finance 2018*, the CEO's financial management responsibilities include:

- promoting and regularly reviewing the proper use and management of public resources for which the IBAC is responsible
- establishing and maintaining an effective internal control system
- identifying and managing IBAC's risks
- managing IBAC's financial information
- ensuring IBAC plans and manages performance to achieve financial sustainability
- ensuring IBAC's financial management compliance
- meeting internal and external reporting and information provision requirements
- providing assurance to IBAC's Audit and Risk Management Committee on:
 - the integrity of information relevant to financial management, performance and sustainability in the Annual Report
 - compliance with relevant legislation, standards and government requirements for attesting in the Annual Report
- consulting with the Responsible Body in relation to the appointment or the dismissal of the CFO
- providing assurance to the Audit and Risk Management Committee on the integrity of IBAC's budgets and financial projections and financial and performance reports
- providing the CFO, Audit and Risk Management Committee and internal audit function with access to the Accountable Officer, to enable those positions to carry out their responsibilities
- ensuring that exemptions from these Directions and Instructions are sought and dealt with appropriately.

Specific financial management responsibilities are set out in the relevant legislation listed in section 4.6. The CEO may also have responsibilities delegated under the *Delegations of Standing Directions Instrument*.⁴

The CEO as Special Body Head must ensure that IBAC information is managed in compliance with the Victorian Protective Data Security Standards enacted under the *Privacy and Data Protection Act 2014* (s 88). Specific information management responsibilities are set out in the relevant legislation listed in section 4.6. The CEO may also have additional responsibilities under 'Other' legislation listed in section 4.6.

3.3.5.2 Authority

Under the IBAC Act, the CEO:

- has all the rights and powers of the CEO (s 33(6)(a))
- may have any duty, function or power of the Commissioner or Deputy Commissioner under the IBAC Act delegated to him or her by the Commissioner or Deputy Commissioner (in accordance with section 32(3))

- has the power to delegate to a senior IBAC Officer any duty, function or power of the CEO under the IBAC Act (including any duty, function or power delegated to the CEO under section 32 of the IBAC Act) or any other Act other than the power of delegation.

Under the PA Act, the CEO:

- may delegate his or her functions under the PA Act (s 18)
- has all the rights, powers and authorities of an employer in respect of IBAC and its employees (s 20)
- may assign an employee in IBAC, duties consistent with his or her employment classification, skills and capabilities (s 31A)
- may terminate the employment of a non-executive employee (s 33) and executives (s 34).

Under Direction 2.5 of the *Standing Directions of the Minister for Finance 2018*, the CEO may delegate most of his or her powers and responsibilities under the Directions and subsidiary Instructions.

The CEO may also have additional authority under legislation listed in section 4.6 below.

3.3.5.3 Accountability

The CEO is accountable to the Commissioner for the purposes of the *IBAC Act*.

As Special Body Head under the *PA Act*, the CEO is accountable to the Special Minister of State for IBAC's administrative affairs, but is not subject to direction in relation to the exercise of his or her employer powers (s 15(1) *PA Act*).

In exercising a right, power, authority or duty under the *PA Act*, the CEO is accountable for conforming to the public sector values, any binding code of conduct, the public sector employment principles, standards issued by the Victorian Public Sector Commissioner and any provisions of the *PA Act* or the regulations (s 20(3)).

As Accountable Officer under the *FM Act*, the CEO is accountable to the Commissioner as the Responsible Body. On behalf of the Commissioner, the CEO reports IBAC's financial affairs to the Special Minister of State or the Minister responsible for the *FM Act*.

Pursuant to Direction 2.3.2 of the *Standing Directions of the Minister for Finance 2018*, the CEO must, as soon as practicable:

- provide the Responsible Minister any information related to financial management, performance and sustainability required by the Responsible Minister
- notify the Responsible Minister of any significant issue of which the Accountable Officer is aware that has affected or may affect IBAC's or the State's financial management, performance, sustainability or reputation.

For the purposes of this direction, the Responsible Minister is the Responsible Body (IBAC Commissioner).

The CEO may also have additional accountabilities under legislation listed in section 4.6 below.

3.3.5.4 Appointment

The Commissioner appoints the CEO in accordance with s 33 of the *IBAC Act*.

3.3.6 IBAC staff

3.3.6.1 Role and responsibilities

IBAC staff are employed under the *VPS Workplace Determination 2016*⁹ which empowers the CEO to use the services of IBAC staff and facilities to perform its functions.

3.3.6.2 Authority

Senior IBAC Officers⁵ may have decision making authority under the *IBAC Act*, subordinate legislation and other Acts. These powers may be delegated by IBAC to the Commissioner (s 32(1)), and subsequently to Senior IBAC Officers (s 32(3)). Such delegations are made by instrument and maintained by the Director Legal.

As specified in s 18 of the *PA Act*, the CEO, as Special Body Head, can delegate his or her (employer) rights, powers, authorities and duties to IBAC staff. Such delegations are made via the *Instrument of Delegation – People Management*,¹⁰ maintained by the Manager People & Culture.

3.3.6.3 Accountability

IBAC staff are ultimately accountable to the CEO.

IBAC employees are part of the Victorian Public Sector (VPS) and are bound by the *PA Act*, the *VPS Workplace Determination 2016* and any standards issued by the Victorian Public Sector Commissioner.

It is a condition of employment that all IBAC employees comply with the *Code of Conduct for Victorian Public Service Employees of Special Bodies*,¹¹ and disciplinary action may be taken if the Code of Conduct is breached.

3.3.6.4 Appointment

Staff may be employed by the CEO, as Special Body Head, under Part 3 of the *PA Act*.

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 (s 35(2)) and engage consultants (s 36) under the *IBAC Act*.

⁵ Defined under s 3 of the *IBAC Act* as 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.

4 Values and Code of Conduct

4.1 IBAC values

IBAC's values are:

- Fairness: We are objective, consistent and impartial in everything we do demonstrating the highest standards of integrity and independence.
- Professionalism: We are responsive and accountable for our actions. We strive for excellence and take pride in our work.
- Courage: We are committed and tenacious in realising our purpose.
- Respect: We work in a spirit of cooperation and understanding, drawing on the skills and expertise of others. We are open and responsive, valuing the view of others.
- Trust: We promote and sustain public confidence through the quality of our work. We implicitly trust the competence of people we work with.

4.2 VPS values

IBAC employees are part of the VPS and are bound by the *PA Act*.

Section 7 of the *PA Act* outlines the Public Sector Values which underpin and reflect the behaviours essential to the relationship between:

- the public sector and the Government
- the public sector and the community
- those who work in the public sector.

The values are:

Responsiveness

- providing frank, impartial and timely advice to the Government (IBAC may be exempt as a special body)
- providing high quality services to the Victorian community
- identifying and promoting best practice.

Integrity

- being honest, open and transparent in their dealings
- using powers responsibly
- reporting improper conduct
- avoiding real or apparent conflicts of interest
- striving to earn and sustain public trust at the highest level.

Impartiality

- making decisions and providing advice on merit without bias, caprice, favouritism or self-interest
- acting fairly by objectively considering all relevant facts and applying fair criteria
- implementing Government policies and programs equitably (IBAC may be exempt as a special body).

Accountability

- working to clear objectives in a transparent manner
- accepting responsibility for their decisions and actions
- seeking to achieve best use of resources
- submitting themselves to appropriate scrutiny.

Respect

- treating others fairly and objectively
- ensuring freedom from discrimination, harassment and bullying
- using their views to improve outcomes on an ongoing basis.

Leadership

- actively implementing, promoting and supporting these values.

Human Rights

Public servants should also respect and promote the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* by:

- making decisions and providing advice that is consistent with human rights; and
- actively implementing, promoting and supporting human rights.

These values are reflected and complemented by the *Code of Conduct for VPS employees of Special Bodies* and employment principles.

4.3 Human rights

The *Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter Act)* s 38(1) makes it unlawful for public authorities to:

- 'act in a way that is incompatible' with a human right (the conduct obligation)
- in making a decision, to fail to give 'proper consideration' to a relevant human right (the procedural obligation).

IBAC is a public authority for the purpose of s 38(1) of the *Charter Act* and, accordingly, is required to conform to it. Failure to do so will be unlawful.

Generally speaking, in relation to the conduct obligation IBAC will Act 'incompatibly' with a human right if its conduct has the effect of limiting a person's enjoyment of a right, and that limitation is unable to be justified under s 7(2) of the *Charter Act*. As such, where IBAC's conduct limits a particular human right, IBAC must be able to demonstrate upon clear evidence that the limitation was demonstrably justified based on factors including:

- the nature of the right
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Under the procedural obligation, IBAC is required to give 'proper consideration' to people's human rights when making decisions. In order to discharge this obligation IBAC is required to understand in general terms:

- which of the rights of the person affected by the decision may be relevant
- whether, and if so how, those rights will be interfered with by the decision that is made.

As part of the exercise of justifying any intrusion into people's rights, proper consideration by IBAC will involve it balancing competing private and public interests.

4.4 Employment principles

Section 8 of the *PA Act* outlines the principles for employment in the public sector. These principles reflect and complement the Public Sector Values. IBAC is required to establish processes to ensure:

- employment decisions are based on merit
- employees are treated fairly and reasonably
- equal employment opportunity is provided
- human rights, as set out in the *Charter of Human Rights and Responsibilities Act 2006*, are upheld
- employees have a reasonable avenue of redress against unfair or unreasonable treatment
- in the case of public service bodies, the development of a career public service is fostered.

4.5 Code of conduct

The *Code of Conduct for VPS Employees of Special Bodies* is based on and reinforces public sector values. It prescribes how, as public servants, we are required to conduct our business and treat:

- the public
- our clients
- each other as colleagues.

It is a condition of employment that all VPS employees comply with the Code of Conduct, and disciplinary action may be taken if the Code of Conduct is breached.

4.6 Other legislation

In addition to the legislation relating to IBAC's powers and functions listed in section 1.2, additional legislation that applies to IBAC includes, but is not necessarily limited to, the following:

Employment

AusCheck Act 2007
Australian Human Rights Commission Act 1986
Charter of Human Rights and Responsibilities Act 2006
Disability Discrimination Act 1992 (Cth)
Disability Act 2006 (Vic)
Equal Opportunity Act 1995
Equal Opportunity Act 2010
Fair Work (Commonwealth Powers) Act 2009
Independent Contractors Act 2006 (Cth)
Long Service Leave Act 1992
Paid Parental Leave Act 2010 (Cth)
Public Administration Act 2004
Public Administration (review of Actions) Regulations 2005
Racial and Religious Tolerance Act 2001
Racial Discrimination Act 1975 - Victoria (Cth)
Racial Discrimination Regulations - Victoria (Cth)
Sex Discrimination Act 1984 - Victoria (Cth)

Financial management

Financial Management Act 1994
State Superannuation Act 1988
A New Tax System (Goods and Services Tax) Act 1999 (Cth)
Income Tax Assessment Act 1997 (Cth)
Fringe Benefits Tax Act 1986 (Cth)
Payroll Tax Act 2007 (VIC)

Information

Audit Act 1994
Freedom of Information Act 1982
Health Records Act 2001
Ombudsman Act 1973
Privacy Act 1988 (Cth)
Privacy and Data Protection Act 2014
Public Records Act 1973

Occupational Health and safety

Accident Compensation (Work Cover Insurance) Act 1993
Accident Compensation Act 1985
Dangerous Goods Act 1985
Dangerous Goods (Storage and Handling) Regulations 2012
Occupational Health & Safety Act 2004
OHS Act 2004 - Section 21(1) Compliance Code - WorkSafe Victoria
Occupational Health & Safety Regulations 2007
Occupational Health & Safety (Confined Spaces) Regulations 1996
Occupational Health & Safety (Manual Handling) Regulations 1999

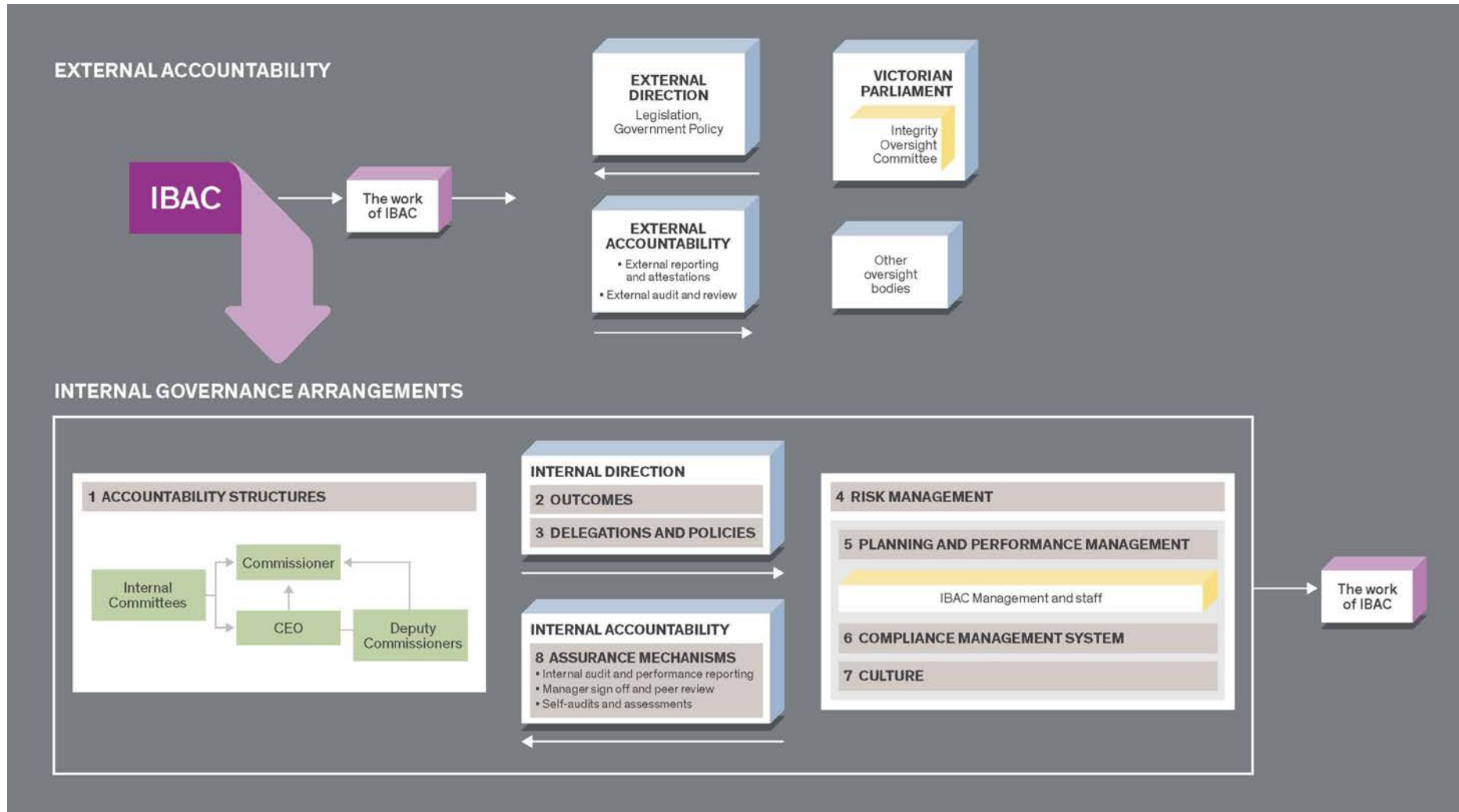
Operational

Victorian Inspectorate Act 2011
Service & Execution of Process Act 1992 (Cth)
Court Security Act 1980
Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)
Australian Crime Commission Act 2002

Other

Fair Trading Act 1985
Planning and Environment Act 1987
WorkCover and Occupational Health legislation
Victorian Managed Insurance Authority Act 1996

Attachment A – IBAC’s governance framework



Attachment B – Appointees as at 1 July 2019

External Governance

Governance entity	Position	Name
Victorian Parliament	Members	http://www.parliament.vic.gov.au/about/people-in-parliament/members
Integrity and Oversight Committee	Chair	Mr Steve McGhie
	Deputy Chair	Mr Brad Rowswell
	Member	Mr Stuart Grimley
	Member	Mr Dustin Halse
	Member	Ms Harriet Shing
	Member	Mr Jackson Taylor
	Member	The Hon. Kim Wells
Victorian Inspectorate	Inspector	Mr Eamonn Moran PSM QC
Public Interest Monitor	Principal Public Interest Monitor	Mr Brendan Murphy QC
The Minister	Special Minister of State	Mr Gavin Jennings
Department Secretary	Secretary Department Premier and Cabinet	Mr Chris Eccles

Internal Governance

Governance entity	Position	Name
IBAC (Commissioner)	Commissioner	The Honourable Robert Redlich QC
Deputy Commissioner	Deputy Commissioner	Mr Simon Heath
Deputy Commissioner	Deputy Commissioner	Ms Katie Miller
IBAC Executive Committee (IEC)	Chair (Commissioner)	The Honourable Robert Redlich QC
	Member (Deputy Commissioner)	Mr Simon Heath
	Member (Deputy Commissioner)	Ms Katie Miller
	Member (CEO)	Mr Alistair Maclean
	Member (Director Prevention and Communication)	Ms Veronica McGowan
	Member (Director Operations)	Mr Robert Sutton
	Member (Director Legal)	Ms Helen Fatouros
	Member (Director Corporate Services)	Ms Kerry Ellis
Audit and Risk Management Committee (ARMC)	Chair	Ms Sara Watts
	Member	Vacant
	Member	Mr Geoff Harry
	Member	Mr Barry O'Connor
Chief Executive Officer (CEO)	Chief Executive Officer	Mr Alistair Maclean

References

- ¹ *Independent Broad-based Anti-corruption Commission Act 2011* - http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/a12f6f60fbd56800ca256de500201e54/163c80e9ec3f2473ca257fdf00742cd6%21OpenDocument
- ² IBAC Corporate Plan 2018-21 – <https://www.ibac.vic.gov.au/publications-and-resources/article/corporate-plan-2018-21>
- ³ Governance framework – internal document only - CD/17/51612*
- ⁴ Instrument of Financial Authorisation - Internal document only – CD/18/40063*
- ⁵ Delegations Instrument Standing Directions - Internal document only – CD/17/29942*
- ⁶ IBAC Executive Committee Terms of Reference – Internal document only – CD/19/34867*
- ⁷ Audit and Risk Management Committee Charter – Internal document only – HPRM: CD/17/55422*
- ⁸ Appointment and Remuneration Guidelines – <https://www.dpc.vic.gov.au/index.php/policies/governance/appointment-and-remuneration-guidelines>
- ⁹ Victorian Public Service Workplace Determination 2016 - <http://www.dtf.vic.gov.au/Publications/About-publications/Victorian-Public-Service-Enterprise-Agreement-2016>
- ¹⁰ Instrument of Delegation – People Management - Internal document only – HPRM: CD/16/44773
- ¹¹ *Code of Conduct for VPS Employees of Special Bodies* - <https://vpsc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-of-special-bodies/>