

From the Office of the Commissioner

Our ref: CD/22/44660

31 May 2022

The Hon. David Davis MP
Leader of the Opposition in the Legislative Council
Shadow Treasurer, Shadow Minister for the Arts and Creative Industries
Level 1, 670 Chapel Street
South Yarra VIC 3141

Dear Mr Davis

Notice of Motion

I refer to an email from your office dated 24 May 2022 attaching a Notice of Motion.

The Notice of Motion suggests that if IBAC were to receive more funding, it would enable IBAC to expedite the tabling of special reports related to several investigations. As I have explained below, it is not funding but other issues that have lead to delays in the completion of investigations and the tabling of a report.

As you are probably aware, IBAC's governing legislation, the *Independent Broad-based Anti-corruption Act 2011* (the IBAC Act), provides that any claim of privilege made to the production of documents, or the giving of particular evidence must be referred to the Supreme Court for adjudication. The IBAC Act also requires IBAC to undertake a natural justice process in the process of finalising a report to be tabled in Parliament. The IBAC Act provides that, if IBAC intends to make an adverse comment about a person, it must first provide that person with a reasonable opportunity to respond and then fairly set out each element of that person's response in the report. The prescribed procedures provide individuals with the opportunity to challenge these aspects of the investigation process. While these challenges can be for a variety of different reasons, the speed with which the litigation is determined is largely under the control of the court and dependent upon the priority which individual judges are prepared to give to the particular litigation.

A recent example of a challenge which is in the public domain arose in IBAC's Operation Sandon. In that matter, Mr Woodman is challenging aspects of the natural justice process and IBAC has undertaken not to table the report until the matter is resolved. As a result, despite the importance of the recommendations that are likely to be made arising out of that investigation, the completion of the report has stalled. The tabling of the special report in Parliament has been delayed until the litigation has concluded and any findings by the court have been addressed.

As such, the timeframe for the tabling of the Sandon IBAC report is now beyond IBAC's control.

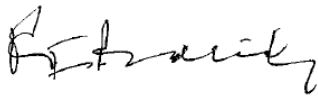
An amendment to the IBAC Act that provided for the expedition of the determination of questions of privilege would aid a much more timely completion of investigations. It is also of interest to note that challenges based on natural justice grounds are limited in the case of at least one interstate integrity agency. For example, section 64 of the Northern Territory *Independent Commission Against Corruption Act 2017* provides that "*an action does not lie against the ICAC... (c) to restrain the ICAC from doing anything under Division 7, or to compel the ICAC to do something under that Division*". Division 7 contains the provisions regarding reports, public statements, and recommendations.

Given recent challenges, these would be useful amendments to IBAC's governing legislation.

As I have canvassed legislative change in this letter, I have copied in the Attorney-General as the Minister responsible for IBAC's legislation. It is hoped that there would be a bipartisan approach to consideration of amendments of this nature

You have raised some issues concerning the manner in which the IOC conducts its proceedings. How the IOC regulates those proceedings is a matter for the Parliamentary Committee and accordingly I do not consider it appropriate that I comment on those aspects of your Notice of Motion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Redlich', with a stylized flourish at the end.

The Honourable Robert Redlich AM, QC Commissioner

Cc. Hon. Jaclyn Symes MP, Attorney-General