

From the Office of the Commissioner

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Policy Reform & Legislation
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Review of Model Defamation Provision – Stage 2 Discussion Paper

Thank you for the opportunity to provide submissions in response to the Stage 2 Discussion Paper regarding the Review of the Model Defamation Provisions (MDPs).

The Independent Broad-based Anti-corruption Commission (IBAC) has reviewed Part B of the Discussion Paper regarding the extension of absolute privilege. IBAC does not propose to provide answers to the 12 discussion questions posed in Part B of the Discussion Paper but instead makes the following general submission.

The key legislative enactments that are relevant to IBAC in the context of this review are the *Independent Broad-based Anti-corruption Commission Act 2011* (the IBAC Act) and the *Public Interest Disclosures Act 2012* (the PID Act). Both the IBAC Act and the PID Act provide certain levels of protection to individuals making complaints about allegedly corrupt or improper conduct.

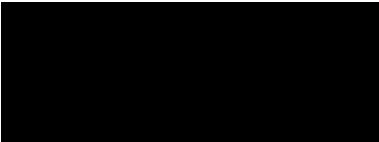
For instance, the PID Act protects persons who make public interest disclosures against civil liability and defamation proceedings. Whilst these protections are not explicitly replicated in the IBAC Act, s149 of the IBAC Act and clause 27 of the MDPs appear to provide absolute privilege to a person giving evidence as a witness at an examination before the IBAC.

However, complaints made to IBAC under the IBAC Act about alleged corrupt conduct, as opposed to public interest disclosures made to IBAC under the PID Act or evidence provided to IBAC during examination, are not afforded the same level of protection or absolute privilege.

It is IBAC's submission that, should the Attorneys-General see fit to extend the defence of absolute privilege to statements made to police related to alleged criminal conduct, or to statements made to statutory investigative agencies related to criminal conduct, this defence also be extended to include statements made to IBAC in relation to allegations of corrupt conduct, police personnel misconduct or improper conduct.

IBAC already has safeguards in place under section 182 of the IBAC Act and sections 72 and 73 of the *Public Interest Disclosures Act 2012* (the PID Act) to discourage the making of false and misleading statements to IBAC. IBAC does not believe that additional safeguards would be needed to further prevent deliberately false or misleading reports.

Yours sincerely



The Honourable Robert Redlich AM, QC
Commissioner