

Appearing before the Independent Broad-based Anti-Corruption Commission (IBAC)

What do I do?

Preparation

Hearings

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Introduction

This brochure is intended to provide a broad overview and does not constitute legal advice. Anyone appearing before the Independent Broad-based Anti-corruption Commission should seek immediate legal advice, in person, from a lawyer.

Every case is different for each person. This document is designed to give you a general idea about appearing before IBAC.

The Authors



Andrew George Partner Accredited Criminal Law Specialist

“Using a consistent strategy to inform the Royal Commission of our client’s role is crucial in any engagement.”

Andrew George is a Director of Doogue + George with over 25 years of defence experience.

Andrew has developed a practice in international criminal law representing clients with interests overseas including in China and Vietnam. He also represents Australian based clients facing corruption and bribery charges involving overseas government officials. Andrew regularly participates at international criminal law conferences to ensure his client’s have access to the latest trends in the USA, UK, Europe and Asia.

Andrew represented an accused person in IBAC’s first major prosecution, Operation Fitzroy and is a member the Business Crime and Anti Corruption and Bribery sections of the International Bar Association.

Dee Giannopoulos Senior Associate

Senior Associate

“We pride ourselves on strategic and thorough planning of every matter to fight for our clients in order to achieve the best outcome in every situation.”

Dee Giannopoulos began her criminal law career at Doogue + George in 2012 whilst completing her post graduate studies and has recently been promoted to Senior Associate.

Dee does a lot of work assisting clients with pre-charge strategies, which often have led to clients being interviewed but not charged.

These are often collaboratively handled with Queen’s Counsel. This involves extensive investigation and statement compilation to ensure that our client’s narrative of events is taken into account before the decision to prosecute is made.



Appearing before IBAC

The Independent Broad-based Anti-corruption Commission (IBAC) aims to investigate and report on serious corrupt conduct and police misconduct within the Victorian public sector.

This includes members of parliament, the judiciary, State and local government and statutory authorities.

Powers of IBAC

In conducting its investigations, IBAC can compel you to do a number of things. These include

- Entry, search and seizure powers.
- Power to compel you to provide documents.
- Power to compel you to answer questions.

IBAC has the power to conduct a private examination or to hold a public hearing.

It has the power to summon you to give evidence.

You must attend unless you have a reasonable excuse for not attending. Otherwise, you can face a serious penalty.

If you fail to attend, you can be arrested and detained so that you can be forced to attend.

Your summons or letter may also require you to produce a document or documents.

You must do so unless you can show that you have a reasonable excuse for not providing the document. It is not a reasonable excuse that the document might tend to incriminate you.

This is because the privilege against self-incrimination is removed by section 144 of the Independent Broad-based Anti-Corruption Commission Act 2011.

Where Do They Get Their Powers?

The legislation which empowers IBAC is the Independent Broad-based Anti-corruption Commission Act 2011.

I Have Received a Summons From IBAC. What Do I Do?

Speak to a lawyer immediately. A lawyer can explain the process and help you to comply with the summons.

It is very likely that your summons will be accompanied by a confidentiality notice.

The confidentiality notice means you commit a criminal offence if you tell anyone about being summonsed.

You are not allowed to disclose the fact that you have received it or anything about it or your appearance before IBAC to anyone other than your lawyer.

If there is a confidentiality notice, it is absolutely vital that you obtain legal advice. Your lawyer will ensure that you fully understand the notice. If there are any issues your lawyer will make sure the issues are clarified.

This is very important as there are strict penalties (including prison time) that may apply to prohibited disclosures.



If someone approaches you to discuss an IBAC summons you should say the following;

“I am sorry but you are committing a criminal offence if you discuss this with me. I do not want to get you in trouble nor be called as a witness against you.”

You should call a lawyer at Doogue + George on 9670 5111 to discuss the summons immediately.

Preparing For Your Response To a Summons from IBAC

- What document should I produce?
- What information, if any, should I volunteer ?
- If they ask me to give them a statement should I do so?

The answer to all these questions is that you should immediately arrange to see a lawyer who handles IBAC matters and discuss the matter thoroughly.

It is your right to have a lawyer represent you.

You can make an application for legal assistance if you need it. There may also be coverage for your fees if you are a Union Member.

IBAC is also required to pay to you expenses incurred in attending an examination or public hearing according to a specified scale.

How Many Hearings Will There Be?

It is common for witnesses summonsed by IBAC to be required to attend an examination initially and then later, to attend to give evidence at a public hearing.

They may also call you to a hearing on more than one occasion. Particularly if their investigation turns up other information.

Often, your appearance at an initial examination is designed to get you to adopt a lie or a particular version of events. You may not be challenged on the first occasion but you may then be called back on a later occasion and challenged about the lie or version of events. You may also be called back on a second occasion where another witness has contradicted your evidence.

You should ensure that you are represented throughout the process by a competent lawyer who has experience appearing at these sort of hearings.

Do IBAC Follow Witnesses or Record Their Conversations?

You should assume that you may be the subject of surveillance and that your telephone conversations are being listened to in the lead up to an examination or public hearing. Do not breach the confidentiality notice. Also, you should not discuss anything that might be misunderstood at a later time.

Giving Evidence at an Examination or Public Hearing

In addition to IBAC having powers to force you to attend, it has the power to compel you to give evidence.

That is the case even when that evidence would tend to implicate you in a crime, unless you have a reasonable excuse for not giving that evidence. Again, the fact that an answer might tend to incriminate you will not amount to a reasonable excuse.

You may, however, also be able to resist giving information or providing a document to IBAC on the basis of legal professional privilege. Conversely, you will not be able to rely on any ground of privilege arising out of:

- your status as a police member; or
- any duty of secrecy particular to your role as a public official or authority.

Your lawyers are best placed to advise you about whether you can benefit from any claim of privilege.

Having a lawyer with you can also help you to ensure that the questions that you are being asked and the manner in which they are being asked remains appropriate. If your lawyer is present with you, she can provide advice to you about going to the Supreme Court for an injunction. This can happen if any of your rights are being taken beyond what is permissible.

If you claim legal professional privilege over a document, IBAC will either determine your privilege claim or refer the matter to the Supreme Court for a determination.

Use of Your Evidence Given to IBAC

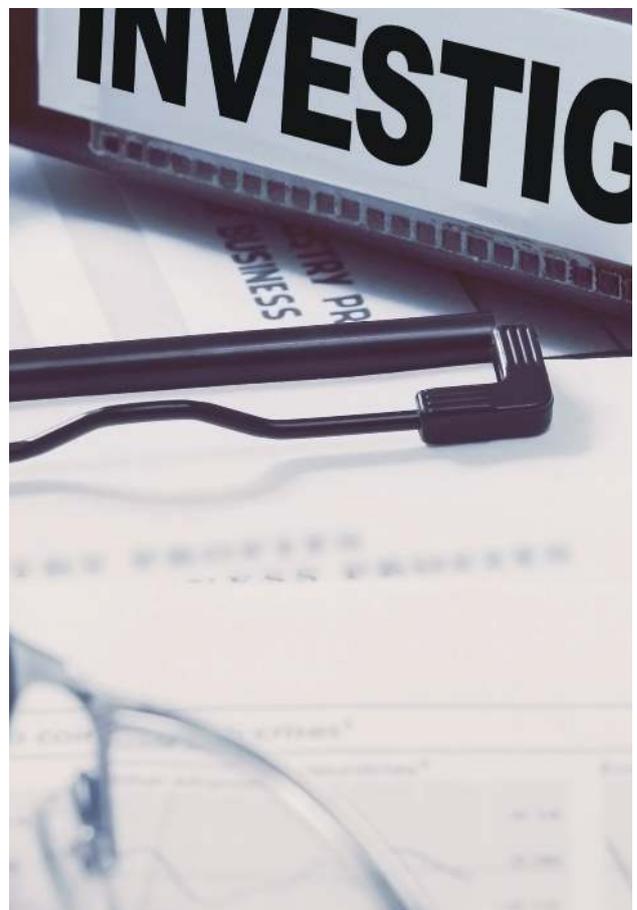
There are limits on what your evidence can be used for.

Any information, document or thing that would tend to incriminate you cannot be used against you in subsequent proceedings, except where those proceedings relate to:

- An offence against the Independent Broad-based Anti-Corruption Commission Act 2011 (see 'Offences' section);
- An offence of perjury or contempt;
- An offence against the Victorian Inspectorate Act 2011;
- An offence against section 72 or 73 of the Protected Disclosure Act 2012; and/or
- A disciplinary process of action.

So, IBAC cannot use your transcript of evidence against you on another occasion, such as criminal charges that are not in that list.

However, the IBAC Act does not expressly prohibit derivative use of any information, document or thing that you have provided. Therefore, arguably, that material can be used by the authorities to investigate further matters and obtain further evidence that could then potentially be used against you in later proceedings.



Limits on The Use of The Evidence

In a separate context, the Victorian Supreme Court has held that where evidence has been obtained from a witness at a compulsory examination, even a derivative use of that evidence will not be permitted where:

- a) the evidence elicited from the interrogation could not have been obtained; or
- b) the significance of it could not have been appreciated;

but for the evidence given at the examination.

In other words, the Court held that derivative use of evidence obtained pursuant to compelled testimony must not be admissible against a witness unless the evidence is discoverable through alternative means.

This decision related to the application of the *Victorian Charter of Human Rights and Responsibilities*. Since it was handed down, there has been a further High Court authority on the operation of the *Charter*. Whilst this decision has not been directly overturned, it is now unlikely to be good law. Further, Parliament issued a statement, which confirms that the IBAC Act is incompatible with the *Charter* as the IBAC Act does not preserve a privilege against self-incrimination - this has implications for whether a derivative use immunity exists under the IBAC Act. These are complicated matters that are largely unresolved by the courts. Your lawyer will play a vital role in arguing against future derivative use of any evidence that you have given.

These are, unfortunately, extremely complex legal issues.

You Can Go to Prison For Failing to Comply With The IBAC Examiner

It is important to know that there are strict penalties that apply for refusal to take an oath or make an affirmation and for failure to answer questions before the Examiner. There are lengthy prison sentences that can be given to you, for example up to two years in prison for failing to appear at IBAC.

You can be charged with contempt of Court for not complying with IBAC.

In addition to these penalties, you may be held in contempt if you:

- Fail to attend;
- Fail to produce a document;
- Fail to take an oath or affirmation;
- Fail to answer questions;
- Engage in threatening or obstructive behaviour; or
- Engage in other conduct that would constitute contempt in the Supreme Court.

In this instance, IBAC can apply to the Supreme Court to have it deal with you as if you were in contempt of Court.

Offences

The following table sets out an overview of the offences that a person who is summonsed by IBAC can face:

Offence	Maximum Penalty
Being present at an examination when not authorised	120 penalty units or 12 months imprisonment or both
Impersonating an IBAC officer	120 penalty units or 12 months imprisonment or both
Wilfully provide false or misleading information	120 penalty units or 12 months imprisonment or both
Hindering or obstructing and IBAC officer	120 penalty units or 12 months imprisonment or both
Failing to comply with directions of an IBAC officer	120 penalty units or 12 months imprisonment or both
Without reasonable excuse, failing to produce a document or thing	240 penalty units or 2 years imprisonment or both
Without reasonable excuse, failing to attend	240 penalty units or 2 years imprisonment or both
Failing to make an oath or take an affirmation	240 penalty units or 2 years imprisonment or both
Without reasonable excuse, failing to answer a question	240 penalty units or 2 years imprisonment or both
Making a prohibited disclosure	60 penalty units or 6 months imprisonment or both



What findings will IBAC make?

The IBAC may refer any matter, even before it has concluded its investigation, to the Office of the Director of Public Prosecutions in Victoria or any other prosecutorial body.

As such, your appearance before the Examiner may be followed by traditional criminal proceedings. Ultimately, it will be up to the Director of Public Prosecutions to determine whether to lay criminal charges.

IBAC will also prosecute matters itself.

Legal Support

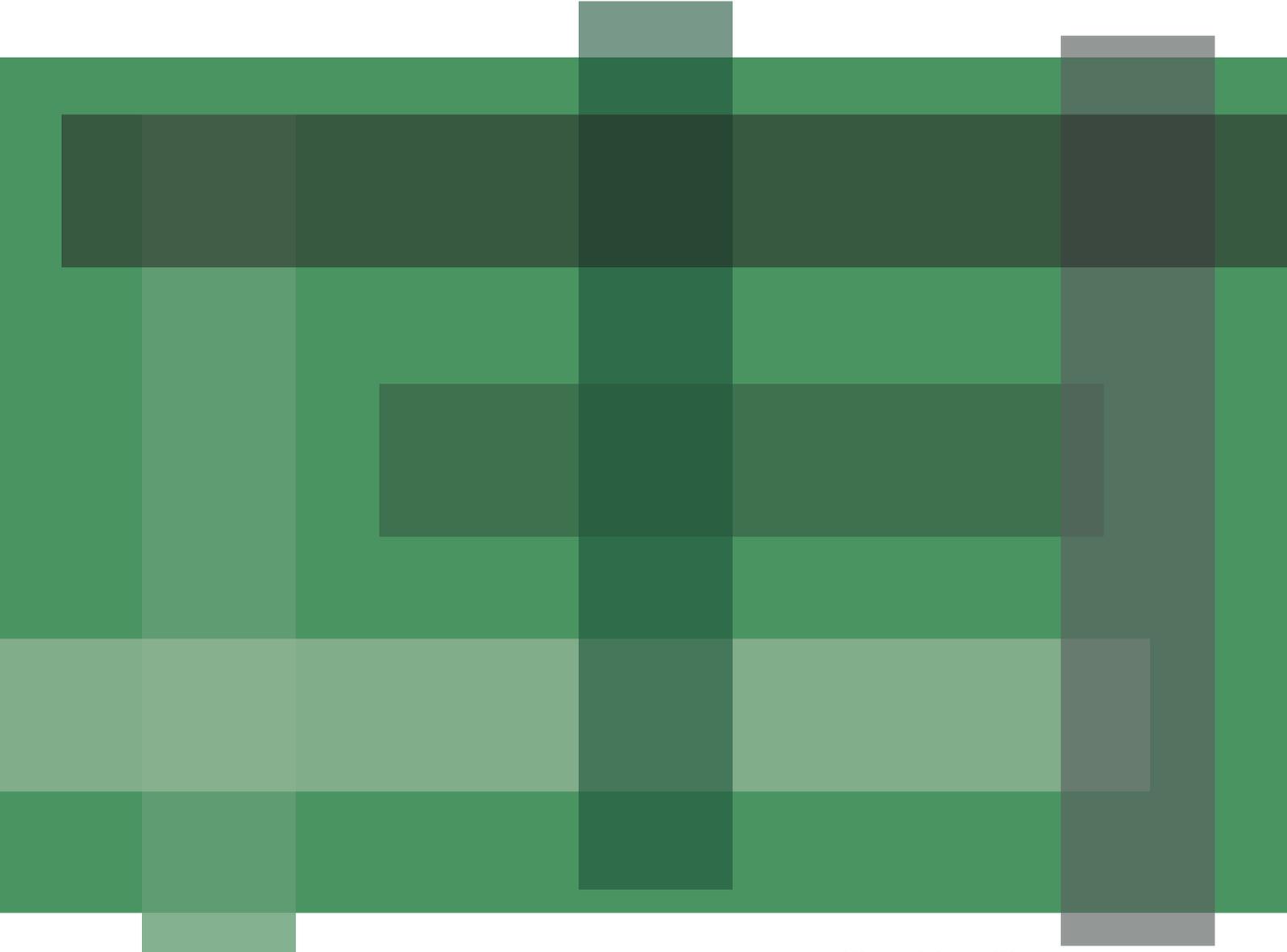
Doogue + George defence lawyers have been involved in the first very large prosecution that is going through the Courts from IBAC. We have also appeared a number of times in IBAC hearings, both public and private.

If you need expert advice regarding IBAC, visit www.dobg.com.au or call **03 9670 5111** for more information.

You will need
proper advice and support
if you are appearing before the
Independent Broad-based
Anti-corruption Commission.

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