



Attorney-General

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The Hon Tim Smith QC
Chair
Accountability Round Table
15 Loch Street
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Dear Mr Smith

Independent Broad-based Anti-corruption Commission

I am writing in response to correspondence received by the Government from the Accountability Round Table regarding the Integrity Legislation Amendment Bill 2014 and various assurances that the ART has sought.

Integrity Legislation Amendment Bill 2014

As you will be aware, the Coalition Government established for the first time in Victoria an independent, broad-based anti-corruption commission with power to investigate serious corruption in the Victorian public sector wherever it may occur. This is in stark contrast to the former Labor government's failure to do so in their eleven years in office.

IBAC has already demonstrated its valuable role in educating about, preventing and investigating possible corruption.

The Integrity Legislation Amendment Bill builds on what IBAC has described as the solid initial framework for Victoria's new integrity regime and makes a range of improvements based on experience and feedback from the operation of the new regime.

As you would also be aware, the Bill was not passed by Parliament before the Parliament was prorogued, and has therefore lapsed. However, a re-elected Napthine Government intends to reintroduce into Parliament the measures contained in the Bill.

The Bill's key measures include:

- including misconduct in public office as one of the common law offences that can constitute corrupt conduct
- empowering IBAC to undertake preliminary investigations before determining whether to dismiss, investigate or refer a complaint or notification
- amending the specification of the threshold for the exercise of IBAC's full investigative powers
- introducing a uniform requirement for public sector bodies to notify IBAC of any matter that they suspect on reasonable grounds involves corrupt conduct
- streamlining provisions for investigation of complaints by the Ombudsman, including greater power for the Ombudsman to discontinue investigations where the Ombudsman considers further investigation is not warranted.

The Bill's changes to the threshold for investigation make clear that IBAC can undertake an investigation whenever

- IBAC is satisfied (that is, as a subjective rather than an objective test) that the conduct would, if proven, constitute serious corrupt conduct, and
- IBAC suspects on reasonable grounds that the relevant conduct is occurring or has occurred.

The Government has, from the establishment of IBAC, considered it appropriate that the extensive and far-reaching coercive powers vested in IBAC be focussed on serious corruption, and we remain of that view. Other instances of possible corruption can be referred by IBAC to other integrity bodies for investigation.

You have suggested that it may be more appropriate for the basis for the exercise of IBAC's coercive powers to be similar to the basis for authorisation to use surveillance devices under the Surveillance Devices Act 1999. That Act provides in s.15 that a law enforcement officer may apply for the issue of a surveillance device warrant if the law enforcement officer on reasonable grounds suspects or believes that an offence has been, is being, is about to be or is likely to be committed. Under s.17, a judge or magistrate has a discretion to issue a warrant if satisfied, inter alia, that there are reasonable grounds for the suspicion or belief. The judge or magistrate must have regard to, inter alia, the nature and gravity of the alleged offence, the extent to which the privacy of any person is likely to be affected, the existence of alternative means of obtaining the evidence or information sought, and the evidentiary or intelligence value of any information sought to be obtained. Furthermore, the Public Interest Monitor is entitled to be involved in the application and the judge or magistrate must have regard to any submissions made by the PIM.

It would thus seem that, while the threshold test for seeking a warrant for a surveillance device is similar in many respects to the threshold test for IBAC conducting an investigation, applying the regime of the Surveillance Devices Act 1999 to IBAC would be more restrictive of IBAC than the provisions proposed in the Bill.

The ART also refers to the fact that IBAC is not proposed to be authorised to exercise coercive powers for the purposes of a preliminary investigation. The provisions relating to preliminary investigation were inserted in the legislation at IBAC's suggestion (as set out in IBAC's report to Parliament on its first year of being fully operational) to make it clear that IBAC is entitled to make initial inquiries in

order to determine whether a matter should be investigated by IBAC, referred to another body, or dismissed. Thus, such initial inquiries were proposed as an antecedent to any decision regarding the use of coercive powers.

Political funding

The ART has also raised the issue of political funding in Victoria.

In 2011, the Coalition Government adopted and published a new Fundraising Code of Conduct, including provisions that:

- a Minister or Parliamentary Secretary or Government Member must not solicit or receive direct donations;
- Ministers, Parliamentary Secretaries and Government Members are not permitted to operate any bank accounts for the receipt and distribution of campaign or political fundraising proceeds;
- neither Ministerial offices nor department facilities can be used for political fundraising purposes; and
- corporate fundraising events must not represent or claim privileged access to Ministers or other decision makers.

In addition, the Code requires public disclosure to the Australian Electoral Commission within one month of receipt of any donation of more than \$100,000 or when aggregate total receipts from a donor equal or exceed \$100,000 in any one financial year.

The Coalition Government has applied the Code to its Ministers, Parliamentary Secretaries and MPs. So far as the Government is aware, the Labor Party has not adopted the Code or any similar code of conduct.

More recently, the Royal Commission into Trade Union Governance and Corruption has received disturbing evidence of 'slush funds' and other similar funds and entities established by, or related to, trade unions and used for political purposes.

Many aspects of the regulation of trade union conduct come within the responsibility of the Commonwealth, and the Victorian Coalition Government has made submissions to the Royal Commission recommending a range of changes to Commonwealth legislation.

However, a re-elected Coalition Government will carefully consider the reports of the Royal Commission with a view to determining whether there are matters raised that indicate a need for issues relating to political funding to be referred to the Victorian Electoral Matters Committee.

Freedom of Information

The ART has also raised the issue of freedom of information.

The Coalition Government has already made major reforms to the Freedom of Information Act, including:

- establishment of Victoria's first independent FOI Commissioner;
- introduction of professional standards; and
- establishment of the Parliamentary Accountability and Oversight Committee.

The Coalition Government for the first time introduced an independent Freedom of Information Commissioner, the most significant reform to Victoria's freedom of information regime in 30 years.

Victorians now have access to an independent umpire if they are dissatisfied with the initial result of a FOI application to a department or agency.

The Coalition Government has backed our commitment to an FOI Commissioner with substantial additional resources compared with the position under Labor, where reviews were usually undertaken by departmental officers as a side role in addition to their main jobs.

In addition, the Government has further strengthened the work of the FOI Commissioner with the recent appointment of two Assistant Commissioners to assist in handling reviews and complaints.

We have also established the bi-partisan Accountability and Oversight Committee of the Parliament, providing oversight of accountability offices including the Freedom of Information Commissioner.

In relation to the Solomon Report, as you would be aware, the Solomon Report in 2008 recommended increased proactive and routine release of information and maximum disclosure of non-personal information.

The *Victorian Government ICT Strategy Update: 2014 to 2015* was released on 20 May 2014 and set new targets for data release by departments and agencies falling under the Coalition Government's new DataVic Access Policy.

This has laid the foundations for promoting open access to Victorian public sector data to the community, and has been a significant policy reform away from the closed approach under the previous Labor government.

A target was set to achieve a total of 3,000 data sets online at data.vic.gov.au by December 2014. This target has already been achieved well ahead of schedule.

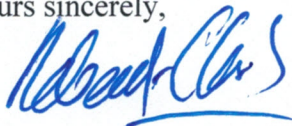
There are close to 3,500 Government data sets and tools freely available in re-usable formats to the Victorian public at data.vic.gov.au. This has been enabled by comprehensive whole-of-government policies, guidelines, standards and targets launched over the last two years.

The principles of the DataVic Access Policy, in summary, are that data will be:

- released;
- free or at minimal cost;
- able to be used and re-used;
- easy to find and in accessible formats; and
- released consistently across government.

Continuing data release combined with industry partnerships and initiatives will see open data become part of business-as-usual for the Victorian public sector, and delivering more value to Victorians wanting to use it.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Robert Clark', with a stylized flourish at the end.

ROBERT CLARK MP
Attorney-General

16/11/14