

**IBAC**

**An Independent Broad-based Anti-corruption Commission  
for Victoria**

**November 2010**

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## **Executive Summary**

### **Context**

With the exception of Victoria and South Australia, every state in Australia has an independent, broad-based anti-corruption commission. The most recent is that set up in Tasmania (2010) and the oldest are those of Queensland and NSW, established over 20 years ago.

Over the past ten years, many across the political spectrum have called for an independent anti-corruption commission in Victoria. Liberal Nationals Coalition Leader, Ted Baillieu, called for an independent broad-based anti-corruption commission in 2007 and promised to establish such a body in government.

The Liberal Nationals Coalition believes that there are many issues concerning possible corruption in Victoria that need investigation and that there has been too little accountability under the Bracks/Brumby Government, which despite all its rhetoric to the contrary in Opposition, now stands accused of being the most secretive and least transparent government in the country.

After years of denials and claims that Victoria has an anti-corruption system “second to none”, interspersed with piece-meal and half-hearted attempts to appear to be doing something, the Labor Government was forced by public pressure into commissioning a review of Victoria’s integrity system in November 2009. The Proust review found gaping holes in jurisdiction in the present system. It found that only one group in the public sector, sworn police, are subject to a body with full investigatory powers.

### **Labor’s proposed integrity model**

The Labor Government’s plan for an anti-corruption commission of sorts, announced in June 2010, is quite unlike the international best practice anti-corruption commissions operating around Australia. Its unnecessary complexity and bureaucratic structure appears designed to fail. Nor does it fix holes in the present jurisdiction, instead ensuring that members of Parliament, ministers and their staff will not be subject to the same level of scrutiny as other parts of the public sector. Under Labor’s proposal the following bodies are not subject to the full range of investigative powers unless several different agency heads concur and the Parliamentary Integrity Commissioner decides to refer allegations involving members of Parliament, ministers and staff.

- Ministers
- Ministerial staff
- Members of Parliament
- Staff of Members of Parliament
- Local councillors
- Local council staff
- Judiciary
- Judicial staff
- Public servants

Labor's proposed model is a Clayton's anti-corruption commission from a government that depends on spin and secrecy and its purpose is a political one – to appear to match the Liberal Nationals Coalition's plan.

### **Independent Broad-based Anti-corruption Commission**

The Liberal Nationals Coalition has studied the Australian independent, broad-based anti-corruption commissions which are considered world's best practice and held a public anti-corruption conference in February 2010, drawing together experts from around Australia and the world.

While the Labor Government has been content to tack on more separate commissioners to an overly complex and unwieldy system, the Liberal Nationals Coalition believes that Victorians will be better assured of integrity in government with an independent, broad-based anti-corruption commission on the model of those in other Australian jurisdictions.

The Liberal Nationals Coalition's plan will give Victoria an international best practice anti-corruption commission, designed to expose corruption in the public sector and change public culture to help prevent corruption and serious misconduct from happening in the future.

The Liberal Nationals Coalition's independent broad-based anti-corruption commission, to be known as IBAC, is modelled most closely on NSW's Independent Anti-Corruption Commission which was one of the first of its kind to be established in the world. Unlike ICAC however, IBAC will also cover the police.

### **One stop shop**

The Liberal Nationals Coalition's IBAC will be a one-stop shop like other independent anti-corruption commissions in Australia including the Crime and Misconduct Commission (Queensland) and the Corruption and Crime Commission (Western Australia), covering the entire public sector including local government, the judiciary and the police, members of Parliament, ministers and staff. Experts believe that independent anti-corruption commissions are the more effective for being broad-based.

IBAC will investigate, expose and prevent corruption involving or affecting public authorities and public officials as well as educate public officials about its harmful effects on public administration and the community.

Corrupt conduct is defined as any conduct that adversely affects or could affect the honest or impartial exercise of official functions by any public official or any public authority. It may also involve the dishonest or partial exercise of a public official's functions. Corrupt conduct is not corrupt conduct unless it involves a criminal offence, a disciplinary offence or reasonable grounds for dismissal or a breach of a code of conduct.

## **Operation, structure and powers**

Any person can make a complaint to IBAC about corruption and IBAC will decide whether to investigate and can refer matters to other public authorities. IBAC itself will have own motion powers to conduct a corruption inquiry.

IBAC will have the powers of a standing royal commission to compel the testimony of witnesses, documents or other evidence. It will also have powers, subject to Commonwealth approval, for telephone interception and to carry out covert surveillance and controlled operations.

As in all best practice Australian independent broad-based anti-corruption commissions, the organisation will be headed up by a commissioner on a non-renewable, five year fixed term appointment. The fixed term helps to ensure the independence of an anti-corruption commission from the government executive and is noticeably lacking in Labor's proposed model.

The commissioner will be appointed by the Governor and must be qualified to be appointed as a judge of the Supreme Court. A deputy commissioner will assist the commissioner as required, also on a five year fixed term.

The function of IBAC is to investigate any allegation or complaint of corrupt conduct, including any matter referred by either House of Parliament. IBAC must communicate its results to the appropriate authorities and has the power to make findings and form opinions on the basis of its investigations whether or not these relate to corrupt conduct and can formulate recommendations for action in relation to these findings or opinions or results of investigations. IBAC's role is to assemble evidence admissible in a prosecution and submit it to the DPP. IBAC may also provide evidence to the Attorney General of another state, any public authority or the Commonwealth. IBAC will work cooperatively with the Auditor-General and the Ombudsman to provide a seamless coverage of the public sector from probity and maladministration issues to corruption.

Unlike Labor's proposed model which prohibits public hearings, IBAC as with every other independent, broad-based anti-corruption commission in Australia, will hold public or private hearings or a combination of both as required. Experts in the field believe that it is important for public confidence that an independent broad-based anti-corruption commission should have the discretion to hold public hearings. In determining whether it is in the public interest to conduct a public hearing, IBAC must consider the benefit of exposing the matter to the public to raise awareness of corrupt conduct, the seriousness of the allegation and the risk of undue prejudice to reputation to determine whether public interest is outweighed by private interest in preserving the privacy of the individual.

## **Oversight**

The independence of IBAC will be ensured by a robust oversight system. What is missing from the present system in Victoria is oversight and therefore accountability, notably for the Office of Police Integrity. The result has been a number of allegations of unethical behaviour and partiality which have gone untested.

The exceptional powers provided to IBAC demand that there be strong oversight as a check on potential abuse. It is acknowledged that the same type of oversight by parliamentary committees has worked well for 20 years in NSW and Queensland. At present, there is no genuine oversight of the OPI by Parliament.

Integral to the accountability of IBAC will be oversight by the Parliamentary Joint Committee on IBAC which will monitor the operation of IBAC. The IBAC commissioner must make an annual report to both Houses of Parliament. The committee will examine these and other IBAC reports. The committee cannot inquire into any matter relating to particular corrupt conduct or reconsider a decision to investigate or not investigate a particular complaint or to reconsider the findings or recommendations of IBAC concerning a specific matter. The committee has the power to veto the appointment of a commissioner. It can send for persons, papers and records. It will take all evidence in public, except where it relates to secret or confidential matters.

An inspector will be appointed to audit the operations of IBAC in order to monitor compliance with the law and to deal with complaints of abuse of power or other forms of misconduct through reports and recommendations. The inspector is not subject to IBAC in any way and will investigate the conduct of IBAC and its officers if they are considered contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based on improper motives. The inspector may investigate any aspect of IBAC's operations and has full access to the records of IBAC. The inspector may require officers of IBAC to attend before him or her and to produce documents. The inspector may also refer matters to other public authorities for consideration or action and may recommend disciplinary action or criminal prosecution against IBAC officers or IBAC. The inspector may also hold inquiries. The parliamentary IBAC committee will also have power to veto the appointment of the inspector and receive reports from the inspector.

### **Preventing corruption**

Like ICAC and the other broad-based independent anti-corruption commissions, IBAC will also have a strong prevention and education function. In order to prevent corruption, IBAC may, along with reporting matters to particular Government agencies, make recommendations as to specific ways of combating and preventing corruption in the future. Where appropriate, IBAC may refer misconduct to the relevant authority for the purposes of disciplinary hearings.

An independent anti-corruption commission also has an important prevention role, providing education to public officials about the principles of good governance. An anti-corruption commission, by its very nature, is a force for prevention as well as for the identification of existing misconduct and corruption in the public sector. Corruption hides behind institutional secrecy and there is no government in Australia so secretive as the current Labor Government.

### **Honesty and Integrity in Victoria**

Corruption matters because when decisions are not made in the public interest, government services may suffer, affecting most those who can least afford it. The Labor Government has presided over record waste and incompetence while ratcheting up taxes, fees and charges to record levels.

Decision-making needs to be transparent so that Victorians can be assured that the Government is spending their money wisely and well. For the first time in over ten years, Victorians will be guaranteed that honesty will be a keystone in public policy and a Liberal Nationals Coalition Government will govern for all.

## Introduction

### There's something wrong in Victoria

In February 2010, a misdirected email from a ministerial media adviser revealed that the Labor Government was proposing to hold a bogus public consultation to justify rejecting a 26 storey tower at the iconic Windsor Hotel. After this strategy became public, the Government reversed its position and approved the development. This attempted deceit and manipulation of the public confirmed the concern of both experts and Victorians generally that there is something very wrong with the integrity of government decision-making in Victoria.

This episode came after a series of scandals involving the Government. In particular a series of high profile failures by its chief watchdog, the Office of Police Integrity forced John Brumby to commission a review of Victoria's plethora of disparate anti-corruption agencies by former public servant, Elizabeth Proust and Public Sector Standards Commissioner, Peter Allen.

When the Proust review reported several months after the Windsor scandal, it claimed to have heard "credible evidence" of corruption in Victoria, confirming suspicions raised over the last decade regarding questionable actions and decisions across government. Those suspicions had already led Victorian State Opposition Leader, Ted Baillieu, to promise in 2007 to establish an independent broad-based anti-corruption commission if elected to government.

Victoria is one of the only states in Australia that does not have an independent, broad-based anti-corruption commission. The only other is South Australia. Tasmania's anti-corruption commission commenced operations on 6 October 2010. For over ten years, the Victorian Labor Government has resisted all calls for an anti-corruption commission. In June 2010, it finally bowed to pressure and proposed an anti-corruption model, made up of a network of bodies regarded by many experts as well as the Liberal Nationals Coalition, as so unwieldy, complex and bureaucratic, that it will fail.

### Corruption matters

A healthy functioning democracy needs a government that can be trusted to govern in the interests of the people. Democracy is about the rule of the people and this is subverted when power is exercised for a favoured few and staying in power is put before good policy.

Corruption in the public sector means that decisions are not made in the public interest. As retired judge, Tim Smith, puts it;

Where it [corruption] occurs, personal benefit becomes dominant and decisions are made to serve private interests rather than our public interest. Tim Smith, "Corruption – the Abuse of Entrusted Power in Australia" – **(The Australian Collaboration – a Consortium of National Community Organisations) 2010 p11**

In the various pieces of legislation governing anti-corruption commissions in the rest of Australia, public sector corruption is defined as perverting or attempting to pervert the proper, honest and impartial exercise of the official functions of a public official. It can be done by the official acting corruptly or by someone seeking or inducing the



official to act corruptly. Often, it will be associated with crimes like bribery, blackmail, secret commissions, violence or threats of violence such as murder, kidnapping, assault, arson and the like. It can also be associated with serious misconduct.

Public sector corruption can be direct – a public official acting dishonestly or partially in the discharge of official functions, or indirect – inducing or attempting to induce a public official to discharge official functions dishonestly or partially. Although in the vast majority of cases, the object of corruption is some sort of advantage or benefit to someone, either financial or non-financial, this is not always the case.

The Proust review sets out a generally agreed definition of corruption or lack of integrity in public office;

Integrity refers to the application of values, principles and standards by public officials in the daily operations of public sector organisations and institutions of government. It means action with honesty and transparency, using powers responsibly and striving to earn and sustain public trust. Integrity is undermined by behaviours that fail to uphold the values and principles of public office. This can cover a wide spectrum of behaviours, from simple mistakes in performing administrative tasks through to deliberate breaches of trust or criminal activity.  
**Elizabeth Proust and Peter Allen, 'Review of Victoria's integrity and anti-corruption system' 2010 p3**

Dishonesty or corruption in government can take many forms and degrees – lack of accountability by government for the conduct of government members, staff and public officials, the refusal of ministers to accept full responsibility for the delivery of services, secret deals, intimidation of whistle-blowers, stand-over tactics, abuse of process, misuse of public monies, concealment of waste and financial losses, or misrepresentation of data. Any or all of these amount to abuse of office and of public trust.

Deceit, fraud, bribery and unjust enrichment, personal violence and threats of violence are abhorrent but when they are associated with perversion of the public sector they take on an even greater significance because of the magnitude of the effect on the body politic.

There have been increasing calls for an independent anti-corruption commission in Victoria. After allegations of corruption going to the top of the Government by former police union chief Paul Mullett, and by former assistant police commissioner Noel Ashby, the former judge who oversaw the OPI, David Jones suggested Victoria needed a different model to deal with corruption. He commented;

But the situation with the Ombudsman is that apart from the Ombudsman really in my view, not being the sort of body or person to be investigating the type of corruption, the types of powers that the Ombudsman has are not the sort of powers that other corruption bodies have, and there's no oversight. **David Jones, ABC Stateline, 12 February 2010.**

Many leading Australians across the political spectrum have spoken out in favour of a Victorian independent anti-corruption commission.

There is an uneasy and growing suspicion in the community that the [Brumby] Government's [reluctance] to establish such a body in Victoria has more to do with protecting factional mates from scrutiny than meeting corruption head-on in Victoria. **Gavan O'Connor, former federal Labor frontbencher, The Age, 31 October 2007**

Why Victoria Police don't want and the Victorian Government will not have an independent wide-ranging judicial inquiry into police corruption, such as was had in Queensland and NSW is obvious. They know that it would reveal what they don't want revealed. **Don Stewart, former Supreme Court Judge, founder and inaugural head of the National Crime Authority and three times Royal Commissioner, The Australian, 11 January 2007**

Tony Fitzgerald QC who conducted the Queensland inquiry that led to the establishment of that state's anti-corruption commission, recently warned that democracy was 'being undermined by disregard for Westminster conventions, obsession with media management and the ability of well-connected individuals and groups to wield influence.' In a speech last year, he spoke about how secrecy was being 're-established by sham claims that voluminous documents were cabinet in confidence' and how 'access can now be purchased, patronage is dispensed, mates and supporters are appointed and retired politicians exploit their political connections to obtain success fees for deals between business and government.' [Tony Fitzgerald, QC, Speech, 28 July 2009] Each of these warnings sound like descriptions of 'business as usual' in Victoria under Labor.

On international standards, Australia rates highly on integrity levels. However, such measures are relative. Even in those Australian states which have had effective anti-corruption commissions for 20 years, corruption continues to be found and prosecuted in the public sector. There is no reason to believe that Victoria is corruption free simply because it is not being exposed. As Associate Professor Damien Kingsbury of Deakin University says,

You set up a watchdog for two reasons: one of which is to deal with problems that you've already uncovered and, of course, the other reason is to uncover problems that you're not aware of and perhaps if we had such a watchdog, we might know more about possible corruption in Victoria that we're currently not aware of. **Associate Professor Damien Kingsbury, Deakin University, Stateline, ABC Television, 18 July 2008**

Public confidence in integrity in Victoria is low after over 30 gangland murders, the murder of the State's highest profile prisoner in high security in prison and a series of failed prosecutions by the Office of Police Integrity. Political donations, cash for ministerial access, the regular calling in of planning decisions by government, effectively excluding local communities, lobbying by former members of Parliament, post-separation jobs for government members that draw on privileged information gained in government, excessive use of 'spin doctors' – (over 900 in the Labor Government) - and the secrecy that attaches to public private partnerships involving billions of dollars of taxpayer money, are all features of Victoria's government under Labor.

### **'Australia's least transparent state'**

Victoria has been described as 'Australia's least transparent state' [The Australian 18 May 2010]. The Government's failure to reveal details of BER (Building the Education Revolution) public tenders in Victoria; the failure to disclose over 40 contracts worth \$3 billion by six government departments; the failure to provide a business case before deciding on major infrastructure projects; the locking up of documents concerning the Southern Cross Station project for 30 and 50 years and continual refusal to reveal the financial details of major projects by pleading 'commercial in confidence' are just a few examples. The Government's attempts to block the release of police rosters and the original business case for the North-South Pipeline through legal challenges in the Supreme Court and record spending on government advertising by the Labor Government, making it one of the top ten advertisers in Australia, tell their own story.

What we have seen over the last 11 years of the Labor Government is a weakening of democracy. There have been repeated claims of interference by Labor Government ministers and staff in investigations, planning decisions and councils. There have been claims that Labor members of Parliament are involved in branch-stacking to shore up Labor factional interests. There have been numerous claims about the tendering processes.

Questions have arisen concerning:

- The activities of Labor mates and former ministers in securing these contracts.
- Issues with gaming and lottery licences.
- The conduct of ministers and government staff.
- The killing of the State's most protected prisoner in maximum security, Carl Williams.
- The subverting of proper planning processes.
- The falsification of data on hospital performance, revealed by an upper house inquiry.
- The inaccuracy of crime statistics which make it appear that fewer violent crimes are taking place and more crimes are being solved, as revealed by the Ombudsman.
- The inappropriate interference by Labor ministers and staff in local councils, notably Brimbank.
- The Police ICT system which is at risk of melt-down, the loss of up to \$89 million from the ICT budget and the improper signing off on multi-million dollar tenders.
- The alleged warning given by a Labor cabinet minister to former Victorian Police Assistant Commissioner, Noel Ashby, in April 2007 of a secret police investigation.

Secrecy does not necessarily entail corruption but it is regarded as a precondition for lack of integrity and corruption in government. Concealment of information about the spending of public money by government may be animated by a desire not to display the poor outcomes of government activities or downright incompetence. This is clearly an integrity issue because it means that the Opposition, the media and the voters cannot make informed decisions about the effectiveness of government policy.

The benefit that follows to the government from concealing pertinent public information that would reflect badly on its performance is that it is able to remain longer in government and for the members of government to be able to enjoy the financial and non-financial perks that come with government, including the ability to attract political donations.

The Government's integrity review identified that many of these concerns are shared by the Victorian public. According to the Proust review:

The Review found that there is a level of concern within the Victorian community regarding the effectiveness of current efforts to address corruption. A survey commissioned by the Review indicates a high level of perceived ineffectiveness in addressing corruption... Almost 40 per cent of respondents perceived the State Government to be either 'quite ineffective' or 'very ineffective' at fixing corruption where it had been identified. **Elizabeth Proust and Peter Allen, 'Review of Victoria's integrity and anti-corruption system' 2010 p. 10**

Given these concerns, allegations, scandals and unanswered questions, it is unrealistic to think that Victoria alone among the major states in Australia is free of corruption in government.

## **'Second to none' - Victoria's creaking anti-corruption system**

For years Labor Premier John Brumby and his predecessor, Steve Bracks have denied the need for an anti-corruption commission in Victoria. Indeed Premier Brumby has claimed repeatedly that Victoria's anti-corruption mechanisms are the best in Australia saying in July 2008:

The point is that our model and all the mechanisms we have got in place -- the powers of the Ombudsman, the powers of the OPI and the powers of the Auditor-General -- amount to the most successful of any measures anywhere in Australia. **John Brumby, Hansard, 31 July 2008**

As recently as September 2009, the Premier was still declaring in the face of all evidence to the contrary:

I believe that the systems that we have got in place, they are proving themselves again to be better than any systems in places elsewhere across Australia. **John Brumby, The Age, 16 September 2009.**

Again in November 2009, two days after commissioning Elizabeth Proust to review Victoria's integrity system in response to political pressure, the Premier was stating as a matter of fact that:

We have a degree of accountability, transparency and scrutiny in this state which is second to none – as it should be. **John Brumby, Hansard, 25 November 2009.**

Following the murder of Carl Williams unnoticed by security in the highest security prison in the state in April 2010, the Premier was again protesting against the need for an anti-corruption commission;

I know there's been some calls today for a Royal Commission. To be honest, what occurred in the prison was obviously unacceptable, but the person concerned was a serial killer. I think it'd be quite unnecessary and quite inappropriate use of taxpayers' money to have a Royal Commission. **John Brumby, 7.30 Report, ABC TV, 21 April 2010.**

After the revelation that Carl Williams lay dying for 25 minutes before he was found, the Premier said:

If I had the choice of putting tens of millions into an ICAC (Independent Commission Against Corruption) or put it into hospitals or bushfire (prevention) or more police I would choose the latter. **John Brumby, Herald Sun, Melbourne 21 April 2010**

However, putting money into basic services is not an either/or choice for modern democratic, western governments, which are concerned to govern as transparently as possible in the best interests of all rather than sectional interests. Indeed, as the Proust report revealed when it was released in June 2010, Victoria's present system of integrity checks has many gaping holes.

Notwithstanding the Premier's boasts, Victoria's government integrity and anti-corruption system falls far short of those operating in the other major states in Australia. This is because it has no single over-arching anti-corruption body with jurisdiction over the entire public sector.

The Proust review identified critical gaps in the jurisdiction of Victoria's existing integrity and anti-corruption system that must be addressed. Currently in Victoria the only group of people subject to all available anti-corruption investigative powers are sworn members of Victoria police. This is because in Victoria only the Office of Police

Integrity (OPI) has the full complement of powers to investigate serious misconduct and corruption.

### **Office of Police Integrity (OPI)**

In Victoria only the OPI has the full set of coercive powers, including the power to obtain warrants for telephone intercepts, the use of surveillance devices, and the conduct of covert operations and to coercively question witnesses.

The OPI was created following intense political pressure and a series of allegations of links between police officers and underworld figures.

However, the OPI was flawed in both its conception and operations. Unlike the full-blown anti-corruption bodies in the other major Australian states, Victoria's OPI has limited jurisdiction and almost no oversight. The OPI can only investigate sworn members of Victoria Police.

Despite receiving the full range of anti-corruption investigative powers, including the power to intercept telephone communications and to question witnesses coercively, the OPI alone among Australia's major anti-corruption bodies has no standing parliamentary oversight. Its sole oversight body, the Special Investigations Monitor (SIM), was given a limited remit to ensure adequate legal procedural standards are met but has no power to investigate or consider substantive decision making within the body itself.

The OPI itself was the product of much Government bungling, necessitating nearly a dozen pieces of legislation to establish it and coming after the Government's abortive attempt to empower a Police Ombudsman for the task. Had Labor simply drawn from the model of NSW's Police Integrity Commission, few of these problems would have occurred. Piecemeal and begrudging reforms by the Bracks and Brumby Governments under political pressure have tended to belie any real commitment to an effective integrity system.

A series of failed investigations with major prosecutions withdrawn because of technical errors, serious security breaches and claims of ethical breaches have all undermined public confidence in the OPI.

Allegations of impropriety and inappropriate motivations levelled against the OPI over its investigations into former assistant commissioner, Noel Ashby, and former Police Association secretary, Paul Mullett, have done OPI's reputation considerable harm. Following the collapse of the OPI's case against those two officers, allegations against the OPI are yet to be addressed. Because there is no capacity for substantive oversight of the OPI in Victoria, it is unlikely those allegations or others like them will ever be satisfactorily answered.

The OPI has also suffered from a lack of any supporting anti-corruption structure. Many of its investigators have been Victoria Police officers and from its earliest stages, the OPI has been required to rely significantly on Victoria Police for support and guidance.

By failing to follow best practice in other states and refusing to create adequate oversight for the OPI, Labor has created a fatally flawed integrity watchdog and undermined its ability to function effectively to fulfil the purpose for which it was created, rooting out corruption in the police force.

## **Auditor-General**

In accordance with the Audit Act 1994, the Auditor-General's role is to examine the management of resources within the public sector. The Auditor-General ensures that public funds "are properly raised, protected from loss and spent with maximum efficiency and effectiveness for the purposes approved by Parliament." The Auditor-General states that "government programs should be managed in a way which represents value for money for the taxpaying community." [VAGO webpage July 2020]

The Auditor-General audits around 600 public sector organisations, including Parliament. Two types of audits are undertaken – financial statement audits and performance audits. Financial statement audits provide independent assurances that the information contained in the financial statements of public sector entities is presented fairly in accordance with Australian accounting standards and applicable legislation. A performance audit evaluates whether an organisation or government program is achieving its objectives effectively, and doing so economically and efficiently, and in compliance with all relevant legislation.

## **The Ombudsman**

Under the Ombudsman Act 1973 the Ombudsman is appointed by the Governor-in-Council for a fixed, non-renewable 10 year term. The Ombudsman's statutory role is to investigate and resolve complaints concerning the administrative actions taken by or on behalf of government departments and other authorities. Service delivery is the key component of basic administration and relates to such issues as prompt and professional customer service, timely and efficient delivery of services, sound and transparent decision-making practices, and accurate and detailed record-keeping systems.

The Ombudsman's role has always been to review and resolve complaints about administrative decisions made by government. These concerns embrace issues such as response times by departments, failure to respond to complaints, unreasonable decision-making and failure to provide accurate information. The Ombudsman in Victoria also manages and investigates whistleblower disclosures.

The Ombudsman's office has increasingly taken responsibility for investigating corruption in Victoria in recent years. Own motion investigations by the Ombudsman have increased substantially, underlining his role as the default anti-corruption agency in Victoria. Neither the Ombudsman nor any public commentator has suggested that the office is suited to fighting serious corruption due to that office's limited powers of investigation.

## **Labor's Local Government Investigations and Compliance Directorate (LGICI)**

The newly created Local Government Investigations and Compliance Directorate is a recent, ad hoc response to revelations of corrupt conduct in some Victorian councils, notably Brimbank.

The LGICI was established in 2009 as an administrative unit within the Department of Planning and Community Development. The body is not independent of the executive branch of government. It functions in a similar form to the Ombudsman's office but with partial jurisdiction over councillors as well as council staff.

As a unit within a government department, the body lacks independence and this serves to weaken its ability to function effectively in Victoria's integrity system. The Inspectorate has limited powers to investigate corruption and misconduct. With regard to councillors, its primary focus is on the relationship between councillors and council staff.

According to the Government's own review of Victoria's integrity system, the LGICI relies on powers and functions which are poorly specified and which create confusion about the roles and responsibility of the unit and those over whom it exercises its jurisdiction.

### **Gaps in jurisdiction**

Under the present integrity system which according to John Brumby is "second to none" and "the most successful" in the country, the following groups do not fall within the jurisdiction of a dedicated anti-corruption body with full investigative powers:

- Ministers
- Ministerial staff
- Members of Parliament
- MP staff
- Public servants
- Unsworn staff of Victoria Police
- Judicial officers
- Local government officers and councillors

Ministers, Members of Parliament and their staff

Victorian ministers and members of Parliament enjoy enormous protection from scrutiny.

Other than limited circumstance, members of Parliament and ministers can only be investigated via the Parliament itself, following a referral or complaint to the Privileges Committee by either House. It should be noted that though the Parliament enjoys some capacity to sanction its members, it has access to no significant investigative powers and has no investigative capacity with regard to the Executive.

Traditionally, the staff of members and ministers were seen as accountable to the people through their respective minister or member of Parliament. The lack of scrutiny of ministerial staff was highlighted recently when the Attorney-General, Rob Hulls, forbade ministerial staff to appear before the upper house inquiry into a government plan for a sham public consultation on the development of the Windsor Hotel. The Government argued that it is ministers not staff who are accountable. However, when the Planning Minister, Justin Madden, finally appeared before the committee he said he knew nothing about his media adviser's media plan and had questioned none of his staff, only speaking to the staffer who wrote it to wish her well.

The Judiciary

Currently the Auditor-General has jurisdiction to examine the administrative functions of the courts. Under the Victorian Constitution the Attorney-General has the power to convene a judicial panel to investigate misbehaviour and incapacity as a prelude to



an address in both Houses of Parliament. Such a panel has yet to be convened. Complaints and issues of concern about judicial officers, including magistrates and tribunal members, can be examined by the relevant heads of jurisdiction but there is no provision for subjecting judicial officers to scrutiny for corruption.

### Public Servants

Complaints about government service delivery or the conduct of public servants are generally made to either the relevant department or agency, or to the Ombudsman. The Ombudsman's office may make inquiries into public servants following a complaint or via an own motion, which means that the Ombudsman does not have to receive a reference from any other quarter. The Ombudsman's statutory role is to investigate and resolve complaints concerning the administrative actions taken by or on behalf of government departments and other authorities.

Although the Ombudsman's investigations turn on maladministration and procedural fairness, they may also uncover serious misconduct or corruption. As the Ombudsman makes clear in his 2010 annual report, what begins as a routine investigation of relatively minor misconduct may throw up serious acts of corruption that would otherwise have never been exposed. This is what makes the Ombudsman an essential and extremely effective part of an anti-corruption system even though his mission concerns the administrative activities of government.

### Unsworn Staff of Victoria Police

Unsworn staff in Victoria Police are currently excluded from the jurisdiction of the Office of Police Integrity. Complaints against these staff can be made to the Ombudsman's office. Despite these staff members potentially having access to large amounts of sensitive and operational police information, the Labor Government's desire to avoid acknowledging the risk of corruption beyond sworn police officers meant that the OPI was never given jurisdiction over these staff.

### Local Government

Local councillors in Victoria are subject to limited oversight by the Ombudsman. While the Ombudsman's jurisdiction extends to public servants working in local government, the Ombudsman's office can only investigate councillors following a complaint under whistleblower legislation. The Ombudsman has no power to implement own motion investigations into councillors. Even under the Ombudsman's whistleblowers' powers, he cannot access the full range of anti-corruption investigative powers during these investigations.

The LGICI within the Department of Planning and Community Development inspects and monitors compliance with relevant legislation among councillors and council staff. According to the Proust review, the governing legislation prohibits a range of behaviours without specifying any penalties and implies rather than explicitly states what is appropriate and inappropriate conduct between councillors and council staff.

The present integrity system is therefore troubled by gaping holes in jurisdiction. This means that whole sectors of the government are free from scrutiny by a dedicated anti-corruption agency.

## Designed to Fail - The Government's new integrity regime

As the result of the Proust review, the Labor Government has proposed a new integrity regime for Victoria. Far from offering solutions the proposed model is deeply flawed. The Liberal Nationals Coalition, along with many experts, believes that the system proposed by the Labor Government is designed to fail.

The Proust proposals, which were accepted by Labor have been described by senior commentators in the field as enormously complicated and fragmented.

This really is such a complicated model. I've never seen anything this complicated in any of my time of examining anti-corruption bodies. This is very much a bureaucratic answer to an anti-corruption issue. **Associate Professor Colleen Lewis, Monash University, 7.30 Report, ABC TV, 3 June 2010**

The flow chart presented to attempt to explain the workings of this new model has understandably been compared to a bowl of spaghetti.

To a system already rendered ineffective through fragmentation, duplication, overlapping jurisdictions and generally no teeth, John Brumby has added six new bodies. The flow chart he has provided looks like spaghetti. **Peter Faris, former head of the National Crime Authority, The Australian, 3 June 2010**

The existing system of multiple fractured public agencies with disparate anti-corruption functions has been further complicated with the addition of a Public Sector Integrity Commissioner and a Parliamentary Integrity Commissioner, an Investigation Inspector, a parliamentary committee to oversight the Ombudsman, two fora and a judicial commission. Under Labor's proposed model the new Victorian Integrity and Anti-Corruption Commission (VIACC) relies on a 'board governance model' consisting of the Public Sector Integrity Commissioner, the Director of Police Integrity and the Chief Municipal Inspector who take it in turns to be chair. Alongside VIACC sits the Integrity Coordination Board which includes the Ombudsman, the Auditor-General, the Public Sector Integrity Commissioner, the Director of Police Integrity, the Chief Municipal Inspector, the Parliamentary Integrity Commissioner and the Public Sector Standards Commissioner. There are different powers for each part of the spaghetti bowl.

Under Labor's model the independence and powers of the Ombudsman have been reduced by the removal of his role in managing public disclosures under the Whistleblowers Act. It should be remembered that the Ombudsman has produced scathing reports into the Labor Government's service delivery record. Labor's version of an anti-corruption commission also gives special treatment to MPs, ministers and their staff, appearing to protect the Premier's cabinet colleagues from direct investigation by VIACC.

There is, significantly in Labor's proposed model, a prohibition on public hearings, rationalised by the claim that public hearings cause often unnecessary harm to reputations. One point on which most proponents of a broad-based, independent anti-corruption commission are agreed is that there should be discretion to have public hearings if it is considered in the public interest. The former ICAC Commissioner, Jerrold Cripps, canvassed the issue in his speech to the Liberal Nationals Coalition's Anti-corruption Conference.

It was a problem always – do we go public or don't we go public? And I thought , if you have to go public, if you are in an institution like this, it is no good saying we will have a report and then make the report public. People have got to see what you are doing, how you are doing it and why you are doing it and what the results are. Because if you want to get public confidence, you have got to be able to say well, you could have come into [the hearing] and listened to everything that's happened and you will fully understand why we've come to this conclusion. So I am very much in favour of public inquiries. But I am also very much aware of the fact that you have to be very careful that you do not unnecessarily damage reputations. **Jerrold Cripps, Coalition Anti-Corruption Commission, 21 February 2010, Melbourne**

Given that secrecy is an element in which corruption flourishes, the discretion to hold public hearings is important to the functioning of an effective independent broad-based anti-corruption commission. Therefore VIACC's prohibition on public hearings fails a fundamental test. It is inconsistent with the spirit of transparency traditionally promoted by anti-corruption commissions and exposes the Government to the suspicion that VIACC is a politically expedient but empty gesture to address concerns about corruption in Victoria.

Questions also remain about the extent to which Labor's proposed model would allow retrospective investigations. The Premier has failed to clarify this issue stating only that:

Inevitably there's got to be some element of retrospectivity in any commission that looks at these things because these things don't happen in the future. They are based on events that have happened in the past. There will be debate about how far back you go. Do you go back ten years? Do you go back 15 years? Do you investigate things that occurred under our Government, under the Kennett Government? All these things will be considered as we draft that legislation and introduce it. **Keith Moor, 'Ted Baillieu sounds alarm over corruption-busters', Herald-Sun 4 June 2010**

Commissioners appointed under the Government's proposed model will serve renewable terms at the discretion of the Government, which is dangerous and contrary to the ethic traditionally governing independent, broad-based anti-corruption commissions. Fixed terms for commissioners and senior executive officers of an anti-corruption commission are essential to ensure independence from Government and to stop the commission from becoming complacent or jaded.

## **Gaps in jurisdiction under Labor's proposed model**

### Ministers, Members of Parliament and Staff

Under the Government's model a new body, separate to the VIACC, called the office of the Parliamentary Integrity Commissioner (PIC) would be created to monitor the integrity of members of Parliament, including ministers and their staff. According to Labor the Parliamentary Integrity Commissioner is charged with investigating complaints about members of Parliament and their staff, and where there is evidence of corruption deciding whether to refer complaints to a separate central body, the Victorian Integrity and Anti-Corruption Commission (VIACC). Labor's proposed PIC will also have a role advising members of Parliament about their duties and obligations.

Labor's proposed PIC does not however enjoy any specific investigative powers beyond those of the Ombudsman. While its jurisdiction appears to cover parliamentarians in a way that the Ombudsman's does not, that jurisdiction does not extend to either own motion investigations or investigations into apparent corruption.

Under Labor's model any serious corruption investigation of ministers, their staff, members of Parliament and their staff appears to require at least four steps. Firstly there must be a complaint or referral to the PIC. The PIC must then use his or her limited investigative powers to uncover "prima-facie" evidence of corruption. He or she must then refer the matter to one of the three agency heads within a separate anti-corruption body (VIACC). In order to access the most significant anti-corruption investigative powers, that agency head must then secure the support of the other agency heads before handing control of that investigation over to the Director of Police integrity.

In the absence of either a complaint or "prima-facie" evidence of corruption, it is not possible under Labor's proposed model to investigate alleged corruption by a member of Parliament or their staff, or a minister or their staff. Furthermore, an investigation is at the sole discretion of the Parliamentary Integrity Commissioner. If there is both a complaint and "prima-facie" evidence of corruption and the Parliamentary Integrity Commissioner agrees to refer the matter to Labor's proposed anti-corruption agency, VIACC, there is still no guarantee that the three agency heads in VIACC, will agree on the use of the most significant anti-corruption investigative powers, including telephone intercepts or covert operations.

The lack of commitment by the Labor Government to scrutiny of members of Parliament and significantly, members of the Government, is underlined in the discussion paper on the role of the Parliamentary Integrity Commissioner (PIC), released in October 2010. This paper confirms that the Government is trying to exclude ministers and their advisers from investigation by their anti-corruption commission. No complaint against a minister, ministerial adviser or MP can be investigated by the anti-corruption commission, VIACC, unless it has first been screened by the PIC. More than this, the discussion paper is backing away from the Proust report recommendations that whistleblower complaints can go directly to VIACC. Further, it is also proposed not to make it mandatory for the PIC to refer corruption matters to the anti-corruption commission.

The claim that a separate integrity commissioner, the PIC, is needed due to the independence of the Parliament is simply wrong. An anti-corruption commission answers to Parliament and is established by legislation. So there is no question of interference with the independence of MPs. Ministers and MPs can already be investigated for criminal offences. The proposed model also infringes the separation of powers by treating ministers and their staff as being part of the Parliament rather than the Executive. The proposal in Labor's discussion paper for the PIC to dispense advice and investigate complaints will compromise both roles.

### The Judiciary

Under Labor's proposed model, a new body, the judicial commission, will also be created separate from the rest of Labor's proposed integrity and anti-corruption system. According to legislation introduced into the Parliament in late 2010 which lapses at the state election, the judicial commission would inquire into all complaints against judges, including any allegations of corruption. Yet the judicial commission proposed by Labor has no serious investigative powers and there has been no real commitment by the Government to adequate resourcing of the judicial commission for its work.

## Public servants

Under Labor's proposed model, public servants would be one of the few groups in Victoria to fall under the direct jurisdiction of Labor's VIACC, its primary anti-corruption body. One of the three agency heads making up the board of governance for that body would have direct responsibility for the public service. However that agency head does not have access to the most wide-ranging anti-corruption investigative powers.

In order for the full set of powers to be made available for an investigation into a public servant other than a sworn or unsworn member of Victoria Police, all three agency heads must agree to the use of those powers and that investigation must be handed over to the Director of Police Integrity.

## Unsworn staff of Victoria Police

Labor's proposed anti-corruption model will extend the Director of Police Integrity's jurisdiction to include unsworn members of Victoria Police. As a result, these staff members will be subject to the most serious anti-corruption investigative powers under Labor's proposed integrity and anti-corruption system.

## Local Government

Under Labor's proposed model local councillors and local council staff would be moved under the auspices of VIACC, with the Chief Municipal Inspector (CMI) becoming one of the three agency heads making up that body's board of governance. Both councillors and council staff will, under Labor's model, be subject to investigations by the Chief Municipal Inspector via a limited range of investigative powers. To access the full suite of investigative powers, the Chief Municipal Inspector would need the consent of the other agency heads of VIACC and hand control over that investigation to the Director of Police Integrity.

## **Coordination between integrity bodies**

It is unclear how Labor's proposed model will improve coordination between disparate integrity organisations. Under Labor's proposed model, legislative barriers to information sharing will be reviewed with a view to increasing the flow of information among these agencies. However the number of agencies will increase under Labor's proposed model increasing the complexity of the network of integrity and anti-corruption bodies. To address this complexity, Labor has proposed a further new body made up of the other agency heads in the hope of better coordination. Under Labor's model the system becomes a more complex hodge podge of separate agencies without a unified direction or single leadership which means there will remain separate agendas and turf wars among agencies, serving to reduce information-sharing, even with legislative tinkering.

## The Ombudsman

In the absence of an independent broad-based anti-corruption commission, the Ombudsman's office has increasingly taken responsibility for investigating corruption in Victoria in recent years. It is perhaps a sign of the times in Victoria that whistleblower complaints were up by 81 per cent in the last financial year. [Ombudsman Victoria Annual Report 2010]

As the Ombudsman has increasingly sought to respond to allegations of serious misconduct and corruption in Victoria, a number of complaints have been raised about the investigative methods employed by that office. These complaints make up much of the Government's review of Victoria's integrity system and have resulted in proposals for the Ombudsman's office to be restricted in its power. Tighter legislative controls proposed by Labor will severely limit the Ombudsman's powers of investigation and reduce transparency across government. According to the Ombudsman in his submission to the Proust review of Victoria's integrity system:

...observations asserting a lack of procedural fairness tend to come from those who have had adverse findings made against them and seek to undermine the Office **Elizabeth Proust and Peter Allen, 'Review of Victoria's integrity and anti-corruption system' 2010 p. 16**

The point which is missed by the Proust review and which is used to justify a diminution in the Ombudsman's powers is that inquiries such as those of the Ombudsman and indeed any royal commission are designed to find the truth rather than find guilt. As the Ombudsman says:

In integrity investigations, it has long been recognised in legislation throughout Australia and overseas, that the evidentiary restrictions that apply in adversarial proceedings are not applicable in investigations by Royal Commissions, anti-corruption and integrity bodies as they would work against finding the truth. It is important to note that when communities are faced with serious issues of integrity and corruption, they turn to bodies with inquisitorial powers to deal with the matters which could not be dealt with by adversarial legal processes where process hampers achieving expeditious outcomes **Ombudsman Victoria Annual Report 2010 p22**

Natural justice is provided in this setting by advising individuals of any adverse comments to be made about them in a report so that they can respond and that response can be included in the report. This is the procedure in all Ombudsman investigations and other inquisitorial bodies. Suggestions made to notify witnesses in advance of an investigation of adverse material, the Ombudsman says, would only lead to the fabrication of evidence. Codification would likely dissuade informants from coming forward with information about maladministration.

Allegations of excessive zeal in investigating corruption in Victoria, which are made by some of those against whom the Ombudsman has found, constitute a reasonable indication that the Ombudsman's office is fulfilling its mission with considerable effectiveness. It is noteworthy that the Ombudsman also has to struggle against the resistance of government departments, unwilling to accept his recommendations to change their processes or address concerns identified by his investigations. The Liberal Nationals Coalition believes that recent criticisms of the Ombudsman reflect his effectiveness. The criticisms, made in the Proust report, such as the allegation that witness interviews were conducted in a room without windows are not substantiated and ironically could have been easily rebutted if the opportunity to respond had been provided to the Ombudsman.

The irony of Labor's criticism of the Ombudsman's office, however, is that there is no body in Victoria capable of responding to allegations of non-police corruption except the Ombudsman. In Victoria the Ombudsman has increasingly battled against apparently

corrupt officials and those engaging in possible misconduct solely because Labor has refused to establish an appropriate body with appropriate oversight mechanisms.

### Auditor-General

The Auditor-General recently protested plans by Labor to effectively make him subject to ministerial direction through the *Public Finance and Accountability Bill*, a change which would have diminished the independence of his office. While the bill has not been passed, the Government may well re-introduce it in the next Parliament if re-elected.

### Local Government Investigations and Compliance Inspectorate

Under Labor's proposed model, the Chief Municipal Inspector (CMI) would be one of the three agency heads constituting the board of management of the Government's primary anti-corruption body, VIACC. In order to access the full range of anti-corruption investigative powers, the CMI would need to secure the consent of the two other agency heads comprising that board of management and control over the investigation would need to be passed to the Director of Police Integrity.

### Office of Police Integrity

Labor's proposed model bows to repeated calls for OPI's jurisdiction to be expanded to include the power to investigate unsworn staff within Victoria Police. However, the larger and more important problem of recognising that corruption is not uniquely a police matter, has not been addressed in Labor's proposed model. Under that model the OPI will survive as an agency within Labor's anti-corruption model, fighting with other agency heads over jurisdiction.

The Liberal Nationals Coalition believes the OPI has lost the confidence of Victorians and in its current form has 'run its race'. Instead of a fragmented and disjointed anti-corruption regime relying on the cooperation of disparate and competing bodies in a coordination forum, police corruption, as with all government corruption, must be subject to the investigative power and jurisdiction of a single body, capable of investigating corruption wherever it leads.

### Summary

The Government is attempting to put in place a Clayton's anti-corruption commission. In response to the problem of a plethora of separate integrity organisations with separate cultures and agendas, and only partial coverage, the Government is creating yet more separate bodies, covering different bits of jurisdiction and treating them differently through their access to different powers.

This band-aid solution offers neither unity nor coherence and certainly gives no confidence that corruption will not continue to fall between the cracks. It appears to have been thrown together to appear to be doing something about corruption. Problems with Labor's OPI, similarly constructed under political pressure, underscore the risk of Labor's proposed anti-corruption model.

As Phil Dickie has put it, speaking of international research on preventing corruption,

a charade of corruption control can be more harmful than no mechanisms of corruption control at all. **Speech, 21 February 2010, Coalition Anti-Corruption Conference, Melbourne**



## **The Liberal Nationals Coalition Plan: A strong and cohesive anti-corruption system for Victoria**

The Liberal Nationals Coalition believes that Victorians will be better assured of integrity in government with an independent, broad-based anti-corruption commission based on the model of those in other Australian jurisdictions which are considered to be international best practice.

This body will have a dedicated focus on serious misconduct and corruption consistent with similar bodies operating in Western Australia, Queensland, New South Wales and now Tasmania. Such a body will act as a “one stop-shop” for complaints and allegations of corruption throughout the Victorian Government. In so doing, IBAC will remove all gaps in jurisdiction in Victoria’s current and proposed anti-corruption models and guarantee the coherence and cooperation that only a single central body can provide. As with the other major anti-corruption bodies operating across Australia, the IBAC will have three main functions:

- to investigate and expose serious misconduct and corruption in the public sector;
- to prevent serious misconduct and corruption in the public sector; and
- to educate Victorians about corruption in the public sector

IBAC will be most closely modelled on NSW’s ICAC which was one of the first of its type to be established anywhere and has been a world leader in fighting corruption for more than 20 years. Unlike NSW’s ICAC, IBAC will also cover Victoria Police.

Former NSW Liberal Premier, the Hon. Nick Greiner, who created ICAC, recently described the importance of having a broadly-based anti-corruption commission to reduce the risk of corruption remaining undiscovered due to gaps in jurisdiction.

I think that ICAC in NSW has broadly been successful and I certainly think that the model – not the specific detailed model but the notion of a broadly based anti-corruption commission – [is the one that] has clearly been followed in other Australian states...and I think, every instinct tells me that it’s better than having a hotch-potch of individual agencies that by definition have interfaces. Where they are interfacing...all the obvious things happen. **Nick Greiner, Coalition Anti-corruption Conference, 21 February 2010.**

Former Public Interest Monitor and Acting Parliamentary Commissioner to the Crime and Misconduct Commission (CMC) in Queensland, Richard Perry, has reinforced the need for an effective anti-corruption system to be a unified whole with no gaps in jurisdiction.

You can provide in the legislation as broad or as narrow a structure as you wish. It needs in my view to be very broad and have jurisdiction across various aspects. You can’t have something which I think Mr Greiner described as a hotch-potch of separate agencies. That just doesn’t work. You get left hand right hand problems. You need a single combined routine in place. **Richard Perry, Coalition Anti-corruption Conference, 21 February 2010**

### **Broad-based and cohesive - jurisdiction**

The strength of the anti-corruption system proposed by the Liberal Nationals Coalition is that it is independent, broad-based and cohesive. Instead of a plethora of competing agencies with fragmented anti-corruption responsibilities and with differing powers, IBAC will be a one-stop shop for fighting corruption in the public sector and

building integrity awareness and best practice in our public agencies, including the police, local government, the Parliament and the judiciary.

A one-stop shop provides for a unified direction, under strong leadership from a single commissioner, allowing for a holistic view within the organisation.

In contrast to Labor's proposed model of a board of three equal agency chiefs of three separate bodies, sharing the role of chair in turns, a single body allows for decisive leadership.

Under the Liberal Nationals Coalition's IBAC, for the first time in Victoria the public sector will be subject to investigation for corruption, including members of Parliament, ministers and their staff. This is unlike Labor's existing and proposed anti-corruption models which scrutinise parliamentarians much less rigorously than other groups in the public sector by dividing up jurisdiction over corruption and providing differing powers of investigation.

Under the IBAC model, there can be no disputes over which agency has jurisdiction over corruption investigations. There will, for the first time, be no risk of a public official or member of the Government slipping through the gaps in jurisdiction and avoiding investigation.

#### Victoria Police

The coverage of police by IBAC is in line with the anti-corruption commissions in Queensland and WA rather than NSW's ICAC. However, as former Premier Greiner has stated, the creation of a separate body in NSW was due to an historical accident for although ICAC, as originally created, had jurisdiction over the police, the first ICAC commissioner did not pursue police corruption and it was left to the Wood Royal Commission to recommend that a separate body be established to deal with corruption in the NSW police force. **[Hon. Nick Greiner, former Premier of NSW, Coalition Anti-corruption Conference, 21 February 2010]**

Many expert commentators believe that there is no rationale for dividing corruption into police corruption and non-police corruption. Police, they point out, are not corrupt in isolation from the rest of the community. Corruption expert Associate Professor Colleen Lewis says that although police "work in an environment that presents many temptations and opportunities to be corrupt or to abuse power", so do local councils. She says the 'one-stop shop' approach has the advantage of facilitating "an intimate understanding within the one organisation of the extent of the problems and the network and hydra-headed nature of organised crime." **[Associate Professor Colleen Lewis, Coalition Anti-corruption Conference, 21 February 2010]**. Phil Dickie corroborates this view,

Most Australian anti-corruption bodies are formed or spend most of their time focused on police corruption. This is fair enough if you believe that police are the most corrupt public servants, or if you believe that public police corruption is the worst of corruptions. I would suggest, however, that police are rarely significantly corrupt in isolation. They take their cues from the conduct around them, lower ranks from senior ranks and senior ranks from what they believe about the political standards of their political masters and also their equivalent levels in government and business. **Phil Dickie, Coalition Anti-Corruption Conference, 21 February 2010**

The inclusion of police in the jurisdiction of IBAC will involve the disbandment of the Labor Government's OPI, which, as has been discussed, has been plagued by

failures. IBAC will follow the NSW model in ensuring that investigators are not and have never been serving members of Victoria Police. The police, like everyone else, deserve to be investigated by impartial investigators.

IBAC will have the ability to carry on joint operations with Victoria Police or to request that Victoria Police undertake covert operations on behalf of IBAC. However, IBAC will always stand at arm's length from Victoria Police and the Executive to maintain impartiality.

### Members of Parliament, including Ministers

Experts have dismissed claims that members of Parliament should not come under the jurisdiction of an anti-corruption commission because electors have a chance to register their vote every few years.

But this argument is flawed for it fails to take account of matters such as state factors that influence the person's vote, the amount of money a particular party is able to spend on an election campaign in an effort to influence swinging voters and the fact that approximately seventy per cent of people will always vote for one of the two major political parties, regardless of their behaviour while in office. **Associate Professor Colleen Lewis, Anti-corruption Conference, 21 February 2010**

Many matters concerning ministerial conduct under Labor have never been investigated and there are concerns that Labor's proposed model will protect its own ministers by only allowing investigations of members of Parliament under limited circumstances. Under IBAC, all members of Parliament will be subject to scrutiny by IBAC just like everyone else in the public sector, as they are in other independent, broad-based anti-corruption systems in Australia.

The Privileges Committee of each House will be required to draft codes of conduct for ministers as well as members of the Legislative Assembly and the Legislative Council and publicly funded staff (these codes of conduct must be formally adopted by the Legislative Assembly and Legislative Council.) This means that unlike the Labor Government's model, it will be the elected officials of the Parliament, not the Government, who will be determining what is an appropriate standard of conduct for elected officials (including ministers) and their staff.

### The Judiciary

For some time the judiciary in Victoria have been requesting that government provide them with a mechanism for dealing with complaints about members of the judiciary in an independent and transparent way. The Liberal Nationals Coalition has supported some form of judicial complaints body. However, following the release of the Proust review, the Government announced that a judicial commission would not only handle minor complaints but would also deal with complaints of corruption by members of the judiciary, albeit with only limited powers

Judges, magistrates and tribunal members can be investigated by Victoria Police for a crime. Likewise, judicial officers should be capable of being investigated for corruption. Accordingly, the Liberal Nationals Coalition will give jurisdiction to IBAC investigators to investigate members of the judiciary for corruption.

The Liberal Nationals Coalition notes that there is a difference between complaints about judges being dealt with by a transparent and independent complaints body, and a full-blown anti-corruption inquiry by IBAC.

IBAC cannot prosecute or dismiss a member of the judiciary. Prosecutions will be the role of the DPP. While IBAC can investigate a judge for allegations of corruption, importantly a judge should only be dismissed by the Governor, following an address to both Houses of the Parliament.

### **Comprehensive and Independent - powers and obligations**

While funded by government, IBAC will be entirely independent of the Executive. A truly independent anti-corruption commission must have the powers of a standing royal commission. The United Nations Convention Against Corruption which came into force in 2005 recognises the need for anti-corruption commissions to have special powers. [UN Convention Against Corruption 2005, p41] Former ICAC Commissioner, Jerrold Cripps, says it is important to recognise that these powers which are greater than those of the police, were given to that commission because it was “essentially undertaking an administrative non-law enforcement agency function, that is, to expose corruption.” [Jerrold Cripps, Coalition Anti-Corruption Conference, 21 February 2010] Therefore, IBAC will be provided with the following powers to undertake its investigations.

- Compellability of witnesses
- Coercive questioning
- Search and seizure power for all documents or materials related to the inquiry.
- Telephone interception – subject to Commonwealth approval.
- Covert surveillance, including recording and video-taping.
- Assumed identities.
- Controlled operations whereby an IBAC officer is allowed to commit an illegal act in order to uncover another crime.

### **Investigations**

Often it is the private sector that will seek to corrupt the public sector. It is impractical to limit an IBAC investigation to just the public sector when corruption is directed to facilitating or protecting the interests of the private sector. Therefore, IBAC must have jurisdiction to investigate corruption of the public sector even if it leads to the private sector.

IBAC will have the ability to investigate serious misconduct which may involve or is suspected of being corrupt even though there is no actual evidence of the official decision-making being tainted by financial advantage or by unlawful threats. The threshold or test for IBAC to commence an investigation is that IBAC must be able to articulate the general nature of the corruption being investigated even if the identity of the precise perpetrator or perpetrators is unknown or the exact particulars or extent of corruption (or criminality) cannot be specified.

IBAC will be able to call any person or persons who may have information concerning an inquiry into corruption to an examination. A finding or recommendation could be made against any person or any body, private or public, as long as it relates to corrupt activities in the public sector. While it does not have a role in general criminal law per se, IBAC's role is to investigate criminal offences, including organised crime, where they concern corruption of the public sector. Even where an investigation into misconduct is commenced by another government agency, if there is a suggestion of corruption, IBAC will monitor that investigation and may become involved in the investigation. IBAC will also be able to refer matters to Victoria Police or other government agencies, or even Parliament for further investigation.

Anyone may lodge an allegation about corruption in the public sector with IBAC. The current Whistleblowers' powers, exercised by the Ombudsman or Parliamentary Presiding Officer, will also be extended to IBAC. IBAC legislation will include the statutory requirement for the heads of public sector organisations and ministers to report suspected corruption to IBAC. Such allegations form an important source of the complaints received by the existing anti-corruption commissions in other parts of Australia.

IBAC may also receive anonymous allegations. This forms a significant part of allegations received by existing anti-corruption commissions in other parts of Australia. For example, in 2007-2008 16 per cent of allegations from the public to ICAC were anonymous and 30 per cent of allegations from public officials were anonymous. [ICAC, NSW Annual Report 2008-2009]

As in NSW, IBAC will also be empowered to investigate corruption retrospectively. The Leader of the Opposition, Ted Baillieu, has said,

Any new anti-corruption commission will have to be retrospective to investigate the vast array of corruption issues that have been neglected or covered up by John Brumby. **Keith Moor, 'Ted Baillieu sounds alarm over corruption-busters', 4 June 2010**

Where corruption is found and is supported by the evidence sufficiently to permit prosecution, IBAC will not undertake the prosecution itself but will be required to refer the matter to the DPP for prosecution. IBAC is primarily an investigative or intelligence gathering agency. IBAC will be permitted to share information with other law enforcement agencies such as State and Commonwealth Agencies, for example Fisheries, Customs, the Australian Tax Office or the Australian Securities and Investment Commission.

Neither the Ombudsman nor the Auditor-General will lose their existing powers to investigate financial probity and administrative fairness and competence. Both are guaranteed their continued independence under the Liberal Nationals Coalition's anti-corruption system in sharp contrast to the risks to the independence of their offices presented by Labor's plan.

Under the Liberal Nationals Coalition's plan for a more integrated and transparent integrity system, the Ombudsman will be given access to a Parliamentary Committee and both the Auditor-General and Ombudsman will be given the ability to address their respective committees as of right. This power is not currently available to either body. This deficiency was underlined recently when the Auditor-General was unable to address the committee to which he reports formally to protest the Government's planned changes to the independence of his office. Similarly when the Ombudsman's recommendations are stonewalled by the Government, he has no

avenue to address this under the present and proposed models of the Labor Government.

In contrast to Labor's proposed model the Liberal Nationals Coalition does not accept unsubstantiated criticisms levelled at the present Ombudsman who has been extremely successful in investigating misconduct in the public sector. Under the Liberal Nationals Coalition's plan and in contrast to the Government's proposal, he will continue to manage public disclosures under the Whistleblowers Act.

Importantly IBAC's function will also be remedial. As Nick Greiner told the Liberal Nationals Coalition's Anti-corruption Conference, the goal of an effective anti-corruption commission must be to change culture in the public sector.

At the end of the day, despite the fact that the media likes heads on sticks, what this is all about is changing behaviour and changing the culture, and if you don't do that, whether you actually send some people to jail or not, is really not a high-level outcome. It's a necessary by-product but the real purpose of having a broadly based corruption commission, has to be the view of the body politic that it will, in fact, improve behaviour in terms of tangible outcomes in the public sector. **Hon. Nick Greiner, former Premier of NSW and founder of ICAC, NSW, Anti-corruption Conference, 21 February 2010**

In order to prevent corruption, IBAC may, along with reporting matters to particular Government agencies, make recommendations as to specific ways of combating and preventing corruption in the future. Where appropriate, IBAC may refer misconduct to the relevant authority for the purposes of disciplinary hearings. For example, IBAC may report corruption involving members of Victoria Police to the Chief Commissioner of Police to enable the Chief Commissioner to undertake disciplinary proceedings.

IBAC must report at least annually to Parliament on corruption investigations completed and the measures considered necessary or desirable to prevent corruption in any part of the public sector.

These matters may be reported to Parliament together with specific recommendations or in IBAC's annual report. There will be legislation requiring a government response within a specified time frame and an explanation as to what remedial action government has taken or specific reasons why action has not been taken.

## Public Hearings

Public hearings are important to maintaining public confidence in an organisation charged with improving government transparency. As in the other Australian jurisdictions with broad-based anti-corruption commissions, there is discretion for holding private hearings to reduce the risk of damage to the reputation of people who may or may not be charged with a crime. Experts and practitioners in the field state that the function of a broad-based anti-corruption commission may also be to clear the air by demonstrating that public allegations are not true. However, as in other jurisdictions in Australia with independent broad-based anti-corruption commissions, the ability of IBAC to conduct public hearings will be circumscribed by the governing legislation.

Generally, an IBAC inquiry will not be held in public except where the commissioner of IBAC is satisfied that public hearings are in the public interest. As with ICAC in NSW, the commissioner of IBAC will determine to hold a public hearing in full or in part where there is a demonstrable benefit in exposing corrupt activities to the public after considering the seriousness of the allegations, the risks of undue prejudice to a person's reputation and the ability to hold a fair trial. Any decision by the commissioner to hold hearings in public will be subject to the routine scrutiny of the Parliamentary IBAC Committee, the joint all-party committee to which IBAC will be accountable and which will be empowered to examine the commissioner and other officers of IBAC.

## Structure

IBAC will be headed by a full-time commissioner who will be chairman and chief executive officer of the commission and appointed by the Governor-in-Council. As with Queensland's CMC (Crime and Misconduct Commission) and NSW's ICAC (Independent Commission Against Corruption), the qualifications for a commissioner are to have been or to be qualified to be a judge of the Supreme Court. This was a recommendation of Tony Fitzgerald QC for Queensland's anti-corruption commission. Associate Professor Colleen Lewis from Monash University's Department of Criminology, strongly favours the Queensland approach.

In making this recommendation, Fitzgerald would have been acutely aware of the many legal matters the chairperson of anti-corruption bodies would be making on a daily basis. **Associate Professor Colleen Lewis, Coalition Anti-corruption Conference, 21 February 2010.**

Commissioner appointments will be for a fixed five year term. The non-renewability of this position is an essential probity check. Renewable terms are an important deficiency in the Government's proposed model. Fixed terms guard against the relationship between the Government Executive and the head of the anti-corruption commission, charged with investigating the Government, becoming too cosy or creating the potential for the Executive to be able to influence the commissioner. It will also help to mitigate against complacency or atrophy in the IBAC's leadership. The full-time commissioner will be assisted by a full-time deputy commissioner.

IBAC should be a clearing-house for all complaints or allegations about the public sector. There will be several divisions concerned with anti-corruption activities.

In the assessments section, complaints are assessed and directed to other agencies where appropriate, or to the investigations division if the matters are assessed as likely to involve corruption.

The investigations division will inquire into allegations of corruption, using both traditional methods – interviews and hearings – as well as covert methods. Evidence will be referred to Victoria Police and the DPP for prosecution.

The research and prevention capacity of an anti-corruption commission is also crucial to changing public sector culture. As Colleen Lewis has said,

A reactive only approach would be to punish after the event [but this] tends to concentrate on the rotten apple in the barrel rather than the barrel itself. **Associate Professor Colleen Lewis, Coalition Anti-corruption Conference 21 February 2010**

In the research and prevention division, research will be conducted into trends in corruption activities and best practice models to provide intelligence that may be used to direct future investigations and inform capacity building programs in the public sector. Training in awareness of integrity issues will be provided to public sector agencies by IBAC to promote a more positive relationship with the public sector and help to prevent misconduct and corruption before it happens.

## **Oversight**

### Parliamentary Committee for IBAC

The exceptional powers provided to IBAC demand that there be strong oversight as a check on potential abuse. It is acknowledged that the same type of oversight by parliamentary committees has worked well for 20 years in NSW and Queensland.

At present, there is no genuine oversight of the OPI by Parliament. The OPI reports to Parliament and successive Directors of Police Integrity have been happy to brief individual MPs about the general nature of the OPI's work. The Special Investigations Monitor oversees only the exercise of the OPI's coercive powers and then reports to Parliament. This limited scrutiny is completely unsatisfactory and totally inconsistent with other jurisdictions in Australia. IBAC will be truly accountable to Parliament.

A Liberal Nationals Coalition Government will provide effective parliamentary scrutiny of IBAC. The Parliament will establish a Joint Standing Committee (made up of at least one member from all parties represented in the Parliament) to scrutinise IBAC - "the IBAC Committee". Under this model individual MPs can develop a significant degree of knowledge about the workings and operation of IBAC.

The IBAC Committee at other times may examine IBAC, provided examination is restricted to investigations that have been completed. However, IBAC will not be obliged to divulge any information about current investigations. Information may be disclosed to the IBAC Committee at the absolute discretion of the commissioner of IBAC.

The IBAC Committee will only be entitled to examine the conduct of an IBAC inquiry, particularly with relation to the exercise of coercive powers by IBAC or other agencies, after the completion of that inquiry. The IBAC commissioner will be required to make an annual report to both Houses of Parliament. The IBAC committee will examine these and other IBAC reports prior to their tabling. The committee will also have the power to veto the appointment of a commissioner or inspector as is the case in NSW.

### IBAC Inspector

The position of inspector is common to other Australian independent, broad-based anti-corruption commissions – for example, the equivalent position is inspector for ICAC (Independent Commission Against Corruption, NSW) and the CCC (Corruption and Crime Commission, Western Australia), and parliamentary commissioner for the CMC (Crime and Misconduct Commission, Queensland).

An inspector will be appointed by the Governor to audit the operations of IBAC in order to monitor compliance with the law and to deal with complaints of abuse of



power or other forms of misconduct through reports and recommendations. The inspector is not subject to IBAC in any way and will investigate the conduct of IBAC and its officers if they are considered contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based on improper motives. The inspector may investigate any aspect of IBAC's operations and has full access to the records of IBAC. The inspector may require officers of IBAC to attend before him or her and to produce documents. The inspector may also refer matters to other public authorities for consideration or action and may recommend disciplinary action or criminal prosecution against IBAC officers or IBAC.

## Conclusion

Under the Liberal Nationals Coalition plan, IBAC will be able to provide Victorians with an anti-corruption watchdog that will genuinely be "second to none" in Australia in contrast to Labor's national worst practice alternative. With the establishment of the Liberal Nationals Coalition's IBAC model, Victorians will be assured that Victoria has a world's best practice anti-corruption commission to ensure honesty and transparency in government decision-making.

## Recommendations

Recommendation No.	IBAC model
1	Legislation be proposed to establish an Independent Broad-based Anti-corruption Commission (IBAC) responsible for identifying, investigating and preventing serious misconduct across the entire Victorian public sector.
1.1	IBAC be headed by a Commissioner.
1.2	<p>The Commissioner will be appointed for a fixed non-renewable 5 year term.</p> <p>The Parliamentary Committee overseeing IBAC will have power to veto any candidate proposed by the Government.</p>
1.3	The Governor-in-Council may remove an IBAC Commissioner from office following an address in both Houses of Parliament.
1.4	The IBAC Commissioner will be the Chair of IBAC. A Deputy Commissioner may be appointed by Governor-in-Council.
1.5	<p>IBAC has functions under an amended <i>Whistleblowers Protection Act 2001</i>.</p> <p>The Ombudsman will not lose any of his existing powers under the Act.</p>
1.6	<p>IBAC can investigate MPs, ministers and their staff at any time via its own motion.</p> <p>IBAC does not need a referral to commence such an inquiry.</p> <p>There will be no Parliamentary Integrity Commissioner.</p>
1.7	IBAC has research, prevention and education functions.
1.8	<p>The IBAC Commissioner can deploy the full suite of anti-corruption investigative powers without reference to any other anti-corruption agency or body.</p> <p>The OPI will be abolished.</p>
1.9	IBAC's exercise of coercive powers must be proportionate to the nature of the matter under investigation.
1.10	IBAC will be subject to active oversight from a parliamentary committee and an Investigations Inspector.
2	The Ombudsman's legislation be retained in its current form.
2.1	<p>The Ombudsman will report to a parliamentary committee and the Ombudsman will have a right to address that committee.</p> <p>The Auditor-General will be given a right to appear before the Public Accounts and Estimates Committee.</p>
3	The Minister for Local Government reviews and proposes legislative amendments to modernise the <i>Local Government Act 1989</i> such that

	<p>clear and consistent standards of conduct for councillors and employees are established.</p> <p>Penalties for breaches of the Act are reviewed.</p> <p>Mechanisms for investigating compliance with the Act are clearly identified.</p>
<b>4</b>	<p>IBAC can investigate</p> <p>Ministers  Ministerial staff  Members of Parliament  Members of Parliament staff  Local councillors  Council staff  Judiciary  Judicial staff  Public servants  Sworn members of Victoria Police  Unsworn staff of Victoria Police</p> <p>via its own motion.</p> <p>IBAC does not need a referral to commence such an inquiry.</p> <p>There will be no PIC but the Privileges Committee can employ a parliamentary ethics adviser.</p>
<b>5.1</b>	<p>IBAC may receive and investigate complaints about the conduct of members of Parliament including compliance with requirements to disclose financial interests.</p>
<b>5.2</b>	<p>A parliamentary ethics adviser may provide advice to members of Parliament about standards of conduct.</p>
<b>5.3</b>	<p>IBAC may receive and investigate complaints about ministerial staff and parliamentary staff.</p>
<b>5.4</b>	<p>IBAC reports to a joint standing committee of the Parliament.</p>
<b>6</b>	<p>All ministers, principal officers of government departments and agencies will notify IBAC of any evidence of corruption or serious misconduct.</p>
<b>6.1</b>	<p>IBAC will be responsible for advising the government on any formal arrangements which may be required to ensure adequate communication between IBAC and other integrity agencies.</p>
<b>6.2</b>	<p>IBAC may refer investigations to another body; develop referral and joint investigation protocols; and develop memoranda of understanding to govern inter-agency co-ordination.</p>

## Implementation

The Liberal Nationals Coalition's proposed IBAC model is the most significant reform to Victoria's anti-corruption and integrity system since the establishment of the Ombudsman in 1973. These reforms will see every member of the Victorian Government including ministers, subject to international best practice anti-corruption investigation powers for the first time. It is important that this level of scrutiny be developed without unnecessary delay.

In Government the Liberal Nationals Coalition will:

- draft and propose legislation establishing the creation of the IBAC;
- draft and propose legislation for the establishment of an IBAC Inspector;
- draft and propose legislation for the establishment of a joint standing committee of the Parliament overseeing the IBAC;
- transfer budget funds from the Office of Police Integrity to the control of the IBAC commissioner;
- transfer budgets to the IBAC inspector from the Special Investigations Monitor; and
- establish legislative amendments where required, obliging the principal officers of government departments and agencies, including the Ombudsman and the Auditor-General, to notify IBAC of any suspicion of corruption or serious misconduct.

Transition planning for implementing the IBAC model should provide for the continued operation of the OPI and SIM until IBAC, the IBAC inspector and IBAC committee are established and operating.

The Liberal Nationals Coalition will plan to have IBAC established with an appropriately appointed commissioner to begin operations on 1 July 2011.

## **Summit presenters and topics**

# Anti-Corruption Conference Program

Introduction – Independent moderator

**Peter Meehan**

Conference opening Ted Baillieu

## SESSION I

Turning a blind eye

What are the warning signs for the development of corruption in a state?  
Lack of transparency in government? Is mismanagement a by-product of corruption? Is prevention better than prosecution?

Speakers

**Greg Smith SC**

**Colleen Lewis**

**Phil Dickie**

Presentations from each speaker followed by panel discussion and questions

## KEYNOTE ADDRESS

**Nick Greiner**

Corruption Watchdogs and Cultural Change: a NSW Perspective

## SESSION 2

The Watchmen

How do we stop corruption in government? Anti-corruption commissions – what works and what doesn't? The role of parliamentary oversight.

Speakers

**Jerrold Cripps QC**

**Richard Perry SC**

## Speaker biographies



### **Greg Smith**

Greg Smith is Liberal Member for Epping, Shadow Attorney-General and Shadow Minister for Justice. Greg was a Senior Counsel and Deputy Director of Public Prosecutions in New South Wales. As Counsel assisting, he was seconded to ICAC on the Operation Milloo investigation into police corruption.

Greg Smith will comment on how an ICAC or ICAC/Police Integrity Commission combination would improve Victorian society, and warn that statutory investigative commissions are not a panacea for all evil as there will always be some public officials who can be bribed or influenced.



### **Colleen Lewis**

An Associate Professor in Criminology at Monash University, Colleen Lewis's research interests cover criminal justice and public policy. She has written 'Complaints against Police: the Politics of Reform' and co-edited five books on counter terrorism, modern Labor and civilian oversight of policing.

Colleen Lewis will describe the best anti-corruption model for Victoria and explain the problems for society with not having such a body.



### **Phil Dickie**

Described by the ABC as 'one of the few people who can genuinely claim to have brought down a government', Phil Dickie received a gold Walkley Award for his stories for the Courier-Mail, leading to the Fitzgerald inquiry. He subsequently worked as special adviser to the newly-formed Criminal Justice Commission.

Phil Dickie will draw on his experience investigating corruption and organised crime to spell out what works, what doesn't, and what might work better in achieving cleaner and better government. He argues anti-corruption commissions must be a force for prevention, not just prosecution.

## **Nick Greiner**

Nick Greiner was Premier and Treasurer of New South Wales from 1988 until 1992. Highlighting allegations of corruption against the Wran Government, he reduced significantly the Labor majority in the Legislative Assembly in 1984 and in 1988 achieved a landslide over Labor. One of his first acts as Premier was to establish the Independent Commission Against Corruption.



Title of address – Corruption Watchdogs and Cultural Change: a NSW Perspective

## **Jerrold Cripps QC**

Chairman of Transparency International Australia and former Commissioner of the Independent Commission Against Corruption (NSW) (to November 2009), Jerrold Cripps was a member of the judiciary for 15 years, during which he served as a judge of the New South Wales Supreme Court and Court of Appeal.



Jerrold Cripps will comment on the fact that fears a Standing Royal Commission would lead to abuse have not been realised, and because of an ICAC, corruption has been exposed that would never otherwise have been revealed, much less prosecuted.

## **Richard Perry**

A member of the Queensland bar for more than 20 years, Richard Perry took silk six years ago. He was the inaugural Public Interest Monitor for three years and Acting Parliamentary Commissioner for 12 months, and in both positions he served in the oversight regime of the Crime and Misconduct Commission. Richard has also appeared in numerous Criminal Justice Commission inquiries.

Richard Perry will speak about the role of the Crime and Misconduct Commissioner in combating and reducing major crime and improving integrity in the government sector in Queensland.