

Review of Victoria's integrity and anti-corruption system

state**services**authority

public**sector**
standards**commissioner**

Review of Victoria's integrity and anti-corruption system

The Victorian Government has vested the State Services Authority with functions designed to foster the development of an efficient, integrated and responsive public sector which is highly ethical, accountable and professional in the ways it delivers services to the Victorian community.

The key functions of the Authority are to:

- identify opportunities to improve the delivery and integration of government services and report on service delivery outcomes and standards;
- promote high standards of integrity and conduct in the public sector;
- strengthen the professionalism and adaptability of the public sector; and
- promote high standards of governance, accountability and performance for public entities.

The Authority seeks to achieve its charter by working closely and collaboratively with public sector departments and agencies.

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executive summary

introduction

In November 2009, the Premier requested that the Public Sector Standards Commissioner, Peter Allen, and Special Commissioner, Elizabeth Proust, review the efficiency and effectiveness of Victoria's integrity and anti-corruption system. This includes the Auditor-General, Local Government Investigations and Compliance Inspectorate, the Office of Police Integrity, the Ombudsman and Victoria Police.

The Review involved consultation with a wide range of stakeholders, as listed at Appendix A. It also received 54 submissions in response to advertisements placed in one national and two state-wide newspapers. A list of submissions received is at Appendix B. In addition, a literature review and a survey on perceptions of corruption were conducted, as indicated in Appendix C and Appendix D.

This report presents the Review's findings and recommendations.

context

The Victorian community is entitled to expect that public officials will act with integrity, and that maladministration, misconduct and corruption are identified and addressed. While the primary duty to ensure integrity is upheld resides with individual public officials and their employers, this responsibility is supplemented by a range of external integrity bodies that scrutinise performance, ensure accountability and report transparently on any issues found during investigations. In Victoria, these integrity bodies include:

- **the Victorian Auditor-General's Office** – conducts financial statement audits and performance audits.
- **the Local Government Investigations and Compliance Inspectorate** – investigates compliance with conduct and other requirements under the *Local Government Act 1989*.
- **the Office of Police Integrity** – detects and investigates serious police misconduct and corruption.
- **the Office of the Ombudsman** – investigates complaints and conducts own motion enquires into administrative actions and decisions, and manages public interest whistleblower disclosures alleging serious misconduct or corruption.
- **Victoria Police** – investigates crime, including criminal misconduct in the public sector and local government sector.
- **Public Sector Standards Commissioner** – issues binding codes of conduct and employment standards and promotes high standards of integrity and conduct in the public sector.
- **other integrity bodies** – a range of specific watchdog and review functions (eg. Health Services Commissioner and Privacy Commissioner).

review findings

overview of findings

Given the essentially invisible nature of corruption, it is difficult to determine the extent of any underlying problem and to measure the effectiveness of interventions. While the Review focused on identifying opportunities to strengthen the integrity system rather than on specific instances of corruption, some contributors to the Review raised concerns about specific areas where corruption may be occurring or has been detected in the past. The Review also found that there is a comparatively high level of concern within the Victorian community regarding the effectiveness of current efforts in addressing corruption, despite international rankings that rate Australian jurisdictions as being amongst the least vulnerable to corruption in the world.¹

Victoria's integrity and anti-corruption bodies collectively hold broadly similar powers to those in other Australian states. They appear to be resourced reasonably and operate comparatively efficiently. However, there are opportunities to improve the comprehensiveness of the system, to ensure there are clearly defined responsibilities for implementing standards and for addressing maladministration, misconduct and corruption amongst all public officials. An effective integrity system should include independent and expert integrity bodies to both investigate complaints and maintain oversight of risks to public sector integrity.

Currently, there are gaps in the jurisdictions of Victoria's integrity bodies, particularly for members of parliament, staff employed by members of parliament and the judiciary. The integrity bodies are also unnecessarily constrained in their ability to work as an efficient, effective and coordinated system. There is also an opportunity to strengthen the role of intelligence gathering and analysis within the overall system, alongside well-established mechanisms for addressing complaints. This would strengthen the system's ability to detect and address serious misconduct and corruption.

Modernisation of the legislative underpinnings and the functions of the integrity bodies would support comprehensive and coordinated efforts to maintain high standards among all public officials. It would also improve responses to allegations of serious misconduct and corruption. This would include clearly defining responsibility for implementing standards and addressing transgressions across all public bodies and officials. Legislative modernisation should be accompanied by the establishment of rigorous oversight of all integrity bodies to instil accountability within the system.

gaps in jurisdiction

In a comprehensive integrity system, all classes of public officials should be subject to internal scrutiny and external investigations. The level of scrutiny should increase with the level of integrity risk and should be commensurate with public expectations.² Victoria's integrity system would be more comprehensive if coverage was extended over three classes of officials:

- judiciary;
- members of parliament; and
- publicly funded employees of members of parliament.

¹ See, for example, Transparency International 2009, *Corruptions perceptions index 2009*, viewed 9 May 2010, <http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table>.

² Griffith University & Transparency International 2005, *Chaos or coherence? Strengths, opportunities and challenges for Australia's integrity systems. National Integrity Systems Assessment Final Report*, Key Centre for Ethics, Law, Justice and Governance, Griffith University & Transparency International, Australia.

The Review notes that the Attorney-General is currently working with the judiciary to strengthen oversight arrangements. The Review also notes that the Members of Parliament (Standards) Bill 2010 was introduced to Parliament in March 2010. This Bill sets out a code of conduct for parliamentarians and amends requirements for a register of interests. Similarly, the Premier has recently released a code of conduct for ministerial staff.³ These initiatives should be complemented by a capacity within the integrity system to investigate alleged breaches of standards, including behaviour that may constitute misconduct or corruption.

coordination between integrity bodies

There are opportunities for Victoria's integrity bodies to operate as a more collective and cohesive system. Victoria's integrity infrastructure has evolved over time, with the creation of new integrity bodies, each undertaking valuable but disparate functions. The resulting fragmentation, system gaps and overlaps have been exacerbated by legislative restrictions on the capacity of integrity bodies to share information.

Barriers to coordination between integrity bodies have been highlighted by recent examples of different bodies investigating the same area. Findings of misconduct by one integrity body have been dismissed or not upheld by another due to different evidentiary requirements or different interpretations of what constitutes misconduct and corruption. The result is public confusion and uncertainty about whether the investigated person or body misbehaved. The removal of legislative barriers to coordination and the establishment of a coordination forum of integrity bodies should strengthen the efficiency and effectiveness of the integrity system as a whole.

intelligence gathering

Intelligence gathering and analysis, such as active data mining and monitoring trends, should be strengthened within Victoria's integrity system. These functions are established within the Office of Police Integrity. However, they are not explicit functions of other integrity bodies. Intelligence gathering complements complaints assessments as a way to establish a meaningful and comprehensive picture of integrity risks in the system.⁴ This improves the effectiveness of integrity bodies by enabling them to strategically prioritise operations based on the best available information.

legislative underpinnings of Ombudsman Victoria

The most widely identified concern by contributors to the Review was dissatisfaction with the conduct of investigations by the Office of the Ombudsman. Of the 54 submissions to the Review, 11 submissions raised issues about the procedural fairness of investigations.

The Review notes that the *Ombudsman Act 1973* is silent on how procedural fairness is to be afforded to investigations. The Review recommends that the Ombudsman Act be modernised to ensure that the rights of people involved in investigations – both citizens and public officials – are explicitly enshrined in legislation. A modernised Ombudsman Act should require the publication of guidelines on the conduct of investigations in accordance with legislated principles of procedural fairness. Furthermore, establishing an active parliamentary oversight function within the integrity system would support effective functioning of the Office of the Ombudsman.

³ Premier of Victoria 2009, Ministerial staff code of conduct, viewed 11 May 2010, <<http://www.dpc.vic.gov.au/CA256D8000265E1A/page/Guidelines+and+Procedures!OpenDocument&1=80-Guidelines%20and%20Procedures-&2=-&3=->>>.

⁴ Sparrow, M 2008, *The character of harms: Operational challenges in control*, Cambridge University Press, Cambridge.

Victorian Auditor-General's Office

Review consultations revealed a general level of satisfaction with the role and functions of the Auditor-General. They indicated a high level of satisfaction with financial audits, but some issues with performance audits, where processes and findings are more likely to be contested. However, the Review notes that the written right of reply to Auditor-General findings goes some way towards addressing this concern.

The Review also notes that the Public Accounts and Estimates Committee (PAEC) is conducting a review of the *Audit Act 1994*. The Auditor-General submitted to both this Review and the PAEC review that he is seeking capacity to extend the scope of audits into the private sector where public money is involved. The Review considers this matter to be more effectively addressed by Government after the completion of the PAEC review.

The Review proposes no major change to the role, functions and powers of the Auditor-General.

Local Government Investigations and Compliance Inspectorate

The Local Government Investigations and Compliance Inspectorate (LGICI) was established in 2009. As such, it has had limited time to demonstrate its effectiveness. The LGICI is an administrative office of the Department of Planning and Community Development. The head of the LGICI – the Chief Municipal Inspector – is appointed by the Premier. The Review recommends that the specialist integrity body responsible for the local government sector should be independent of executive government.

The LGICI is responsible for investigating compliance with the *Local Government Act 1989*. However, contributors to the Review noted that the Act is outdated, complex and difficult to follow. For example, the Act does not:

- clearly outline expected behaviours in addition to stating unacceptable behaviours;
- establish penalties for all breaches of the Act; and
- explicitly specify the responsibilities and powers of the LGICI and the Chief Municipal Inspector.

There is an opportunity to review the Act to strengthen the effectiveness of local government integrity and compliance investigations. Such a review should clarify the roles and responsibilities of elected councillors and council staff. The Review recommends amendments to the Local Government Act that should include clearer and more consistent standards of behaviour and codes of conduct, and penalties for breaches. State-wide standards and codes should be developed to apply to all councillors and local government employees.

Office of Police Integrity

Contributors to the Review identified two key areas to strengthen the effectiveness of the Office of Police Integrity (OPI):

- extending OPI jurisdiction to all employees of Victoria Police; and
- establishing a more comprehensive oversight of the OPI.

The changing nature of police work means that unsworn public servants now comprise 24 per cent of the Victoria Police workforce.⁵ These employees may be senior, work closely with sworn officers and have access to highly sensitive information and evidence. Under current arrangements, unsworn officers are not subject to OPI investigations; rather their conduct is subject to scrutiny by the Ombudsman. The Review considers that more comprehensive, seamless and effective investigations should be established by removing the distinction between investigations into sworn officers and unsworn employees of Victoria Police, and having the OPI cover all.

There is also an opportunity to improve oversight arrangements for the OPI. Currently, the Special Investigations Monitor oversees the OPI's exercise of powers, while the Ombudsman may investigate complaints into the administrative actions of OPI officers. This arrangement may be perceived as a conflict of interest, given the initial appointment of the current Ombudsman as the head of the OPI. Furthermore, integrating oversight of coercive powers and oversight of investigator conduct could make the current arrangements more comprehensive.

Victoria Police

Victoria Police's role in the integrity system is to investigate misconduct that is serious enough to constitute a criminal offence. This role is part of a broader police function to investigate crime. The Review considers that a more active investigatory role into serious public sector misconduct by a separate integrity body with intelligence gathering capacity should complement and enhance Victoria Police's role in the system.

The Review reaffirms the importance of Victoria Police's primary law enforcement role in the integrity system. It otherwise proposes no major change to the role, functions and powers of Victoria Police.

reform directions

overview of reform directions

There is no single 'best practice' model for structuring and operating an integrity and anti-corruption system. There is, nevertheless, strong support for the argument that anti-corruption legislation and measures need to be implemented and monitored through specialised bodies and personnel with adequate powers, resources and training. Integrity bodies should be collectively responsible for combating misconduct and corruption through intelligence gathering, investigations and law enforcement. This objective is achieved through a range of multi-disciplinary functions, including research, monitoring, coordination, investigation and prosecution. The responsibility for these functions should be clearly assigned to specific institutions.⁶

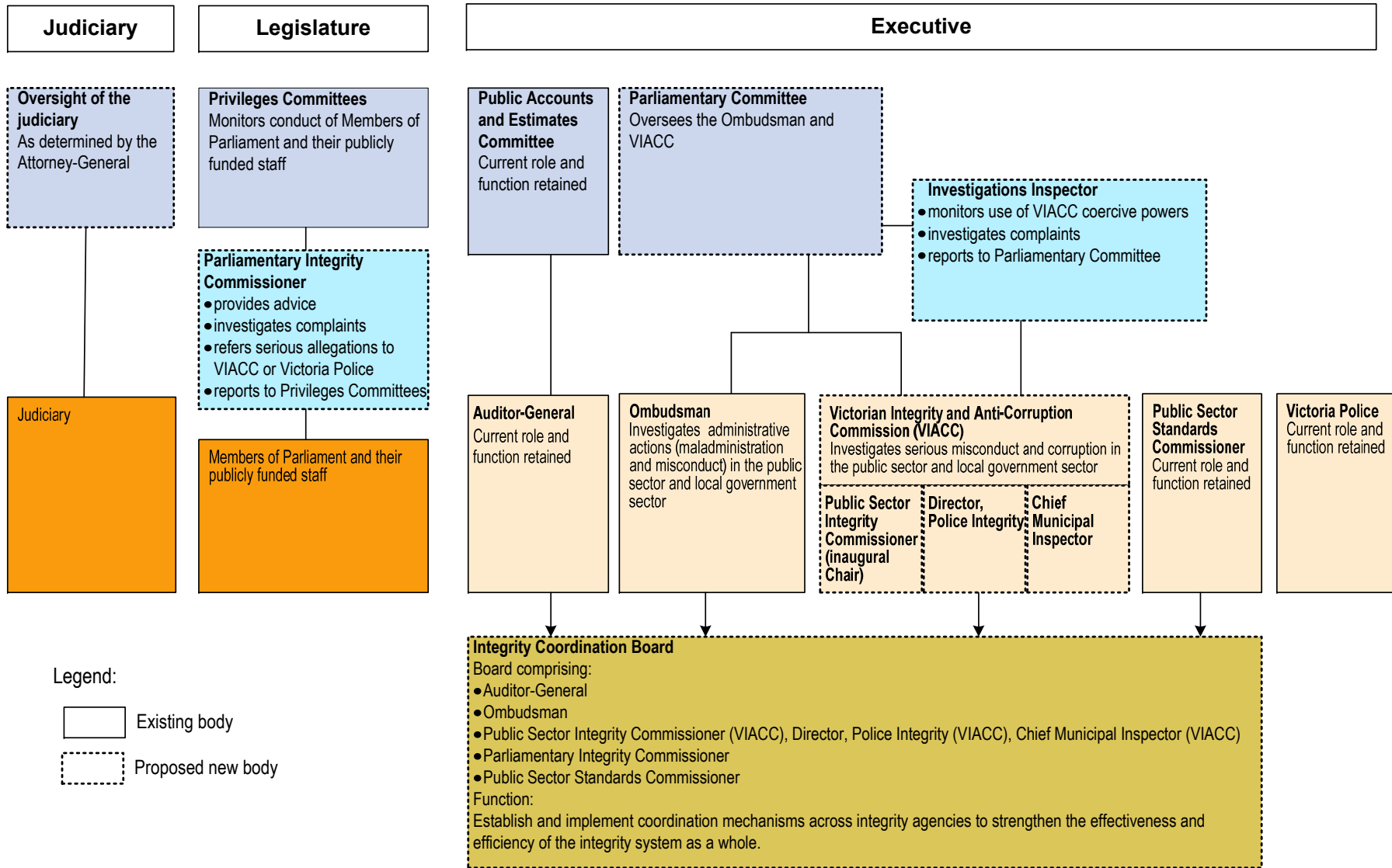
Throughout Australia, there is variation in integrity system models, which have evolved to respond to each jurisdiction's needs. This Review provides an opportunity to reconsider Victoria's integrity arrangements and the distribution of responsibilities, functions, and powers across the system. This is a chance to address gaps in jurisdiction, strengthen the coherence of the integrity system, and lay the foundations of a more cooperative and coordinated approach to promoting high standards of integrity and addressing inappropriate conduct.

⁵ State Services Authority 2009, 'Workforce Data Collection', unpublished report.

⁶ OECD 2007, *Specialised anti-corruption institutions review of models*, viewed 9 May 2010, <<http://www.oecd.org/dataoecd/7/4/39971975.pdf>>.

The Review proposes reform to Victoria's integrity and anti-corruption system, as shown in Figure 1. This reform aims to establish a more comprehensive, coherent and coordinated integrity system. The reform model locates functions of the OPI and LGICI within a broad-based Victorian Integrity and Anti-Corruption Commission (VIACC), which would also manage public sector investigations and whistleblower coordination. It also seeks to delineate between Ombudsman and VIACC investigations, with the Ombudsman investigating matters involving maladministration and misconduct and the VIACC investigating more serious misconduct and corruption. The Review proposes parliamentary oversight of all integrity bodies as well as a statutory Integrity Coordination Board to strengthen cooperation and coordination between integrity bodies.

Figure 1, model for reform to Victoria's integrity system



addressing gaps in jurisdiction

The Review proposes comprehensive integrity system coverage of all types of public officials. This includes addressing existing jurisdictional gaps involving the judiciary, members of parliament and publicly funded staff employed by members of parliament. The Review understands that the Attorney-General and judiciary are currently considering how to strengthen oversight of judicial conduct. In this context, the Review has noted and supports the current work.

parliamentary integrity commissioner

The Review recommends the appointment of an independent Parliamentary Integrity Commissioner as the specialist integrity agent with primary responsibility for members of parliament and their publicly funded employees, including ministerial officers, parliamentary advisers and electorate officers. The creation of such a specialist integrity function is in keeping with Westminster traditions of government and the separation of powers between the executive, legislature and judiciary.

Under the Westminster system, members of parliament are accountable to the Parliament and ultimately to the public, which may express its satisfaction or dissatisfaction at the ballot box. A core principle of the system is that the Parliament has the authority to discipline its members and that parliamentarians should be held answerable to the Parliament. Nevertheless, the operation of Westminster systems and its traditions do not preclude members for Parliament from being subject to rigorous scrutiny of their conduct.

The Review proposes that a Parliamentary Integrity Commissioner be appointed as an independent officer of Parliament. The Parliamentary Integrity Commissioner should report to the Privileges Committees of the Legislative Assembly and the Legislative Council. He or she should be responsible for receiving and investigating complaints about the conduct of members of parliament and breaches of the Members of Parliament (Standards) Bill 2010, once enacted. In addition, he or she should have a function to support and advise members of parliament in fulfilling their obligations outlined in the Bill. Where the Parliamentary Integrity Commissioner considers there is prima facie evidence of more serious misconduct or corruption, the matter should be referred to integrity bodies with specialist investigations powers and capability (ie, police or the VIACC).

The Parliamentary Integrity Commissioner's role to investigate breaches of standards should extend to publicly funded employees of members of parliament. In particular, contributors to the Review supported the extension of accountability arrangements to ministerial officers, noting that such officers are paid with public money and can exercise considerable authority. These officers perform functions as a direct extension of ministers and should be subject to investigations from the same integrity body with oversight of ministers. The Review proposes that the Parliamentary Integrity Commissioner has the power to investigate the conduct of publicly funded employees of members of parliament in accordance with the *Ministerial Staff Code of Conduct* and the *Code of Ethics for Electorate Officers*.

The Parliamentary Integrity Commissioner would report on the findings of his or her investigations to the Privileges Committees in both Houses of Parliament.

Victorian integrity and anti-corruption commission

The Review proposes establishing a Victorian Integrity and Anti-Corruption Commission (VIACC) with a dedicated focus on serious misconduct and corruption. This should strengthen the system by clarifying roles and providing a clear oversight of integrity risks. One of the VIACC's roles would be active intelligence gathering and analysis, which is essential for detecting the often hidden behaviour that constitutes serious misconduct and corruption (as opposed to maladministration, which is less severe and easier to detect and address). Intelligence gathering already constitutes a significant part of the work of Victoria Police and the OPI. Systematic scanning, intelligence gathering and analysis through a broad-based integrity body would complement already well established mechanisms for addressing complaints about the conduct of various classes of public officials.

The primary jurisdiction of the VIACC should be:

- **police** – including the transition of the functions of the OPI as well as extending jurisdiction to unsworn employees of Victoria Police;
- **local government** – including the transition of the functions of the LGICI; and
- **public sector officials** – including serious misconduct and corruption involving public servants, public sector directors and employees.

There are also circumstances in which the VIACC should have jurisdiction over members of parliament and their publicly funded staff. This should include referrals from the Parliamentary Integrity Commissioner where he or she considers there to be prima facie evidence of serious misconduct or corruption. It should also include investigation of whistleblower complaints involving members of parliament or their staff.

The VIACC would be designated as the central integrity body for the administration of the *Whistleblowers Protection Act 2001*. This reflects the role of whistleblowing as an important intelligence gathering mechanism to identify serious misconduct and corruption. Section 4.3.2 of the Review report outlines the requirement for review and modernisation of this Act in light of recent findings of a review of whistleblower protection in the Commonwealth public sector.

The Review proposes a board governance model for the VIACC. The benefits of a board governance model include senior-level expertise and knowledge of different classes of officials; efficiencies derived from shared services across the commission; and additional checks on the exercise of powers. The VIACC should comprise the:

- Public Sector Integrity Commissioner – who would also be the inaugural Chair of the VIACC.
- Director, Police Integrity
- Chief Municipal Inspector.

The three members of the VIACC should each be independent officers of the Parliament. They should also have operational independence to exercise their legislated functions and powers. Collectively, the three members would govern the VIACC. The Chair would have the authority, in consultation with the other members, to appoint Deputy Commissioners or Assistant Commissioners. A chief executive officer would be responsible for the administration of the organisation and would report to the Chair.

Each of the members of VIACC should have powers necessary to identify and investigate serious misconduct and corruption. They should have powers to summons witnesses, compel witnesses to answer questions, override privileges (eg. self-incrimination), enter premises occupied by a public authority, and conduct searches and seizures (upon application to a Supreme Court judge for a warrant). However, the Public Sector Integrity Commissioner and Chief Municipal Inspector's powers should not extend to holding public hearings given the potential for significant reputation damage to witnesses. The checks and balances, including oversight arrangements, for the exercise of these powers should be outlined in legislation. The exercise of powers would be subject to principles of procedural fairness that could be abrogated only insofar as necessary and appropriate for VIACC's effective functioning.

The Director, Police Integrity should retain additional powers that may not be independently exercised by the other two members of VIACC, reflecting the distinct challenges of investigating corrupt police. This includes powers to apply to a magistrate to enter private premises or a vehicle; apply to a Supreme Court judge to use a surveillance device; apply to a federal judicial officer to use telephone interception; authorise controlled operations; possess and use defensive equipment and firearms; and hold public hearings in exceptional circumstances, defined by a public interest test. Each of these powers should continue to have strict use and monitoring requirements. Except for the power to possess and use defensive weapons and firearms, these powers should apply to investigations involving sworn officers or unsworn employees of Victoria Police. The use of defensive weapons, including firearms, should be restricted to operations involving sworn officers.

The exercise of stronger powers, including covert powers, should be restricted to extraordinary situations that justify the abrogation of individual liberties. In rare circumstances the Public Sector Integrity Commissioner or the Chief Municipal Inspector may require access to powers otherwise restricted to the Director, Police Integrity. In these circumstances they should be able to refer an investigation to the Director, Police Integrity; conduct a joint investigation with the Director, Police Integrity; or draw on the expertise of the Director, Police Integrity's investigators. Additional requirements would need to be satisfied to access stronger powers. The proposed requirements are outlined in section 4.3 of the Review report.

modernising the Ombudsman Act

Modernising the Ombudsman Act would provide an opportunity to establish a clear locus of responsibility for the Office of the Ombudsman within a broader integrity system. This would enable the Ombudsman to focus on investigating citizen complaints and concerns (including own motion enquiries) into administrative actions. With Ombudsman investigations focused on maladministration and misconduct and VIACC investigations focused on serious misconduct and corruption, each integrity body can tailor its investigations practice in accordance with the type of behaviour concerned. Coordination between bodies would be required to address potential overlap.

Modernising the Ombudsman Act should encompass:

- clarifying the locus of responsibility for Ombudsman within the integrity system;
- explicitly codifying principles of procedural fairness to apply during Ombudsman investigations;
- specifying oversight arrangements for the Ombudsman. Oversight of the Ombudsman should respect the Ombudsman's status as a constitutionally enshrined independent officer of the Parliament; and
- considering whether to codify in the Act the Ombudsman's current practice of using patterns of complaints to trigger own motion enquiries and investigations.

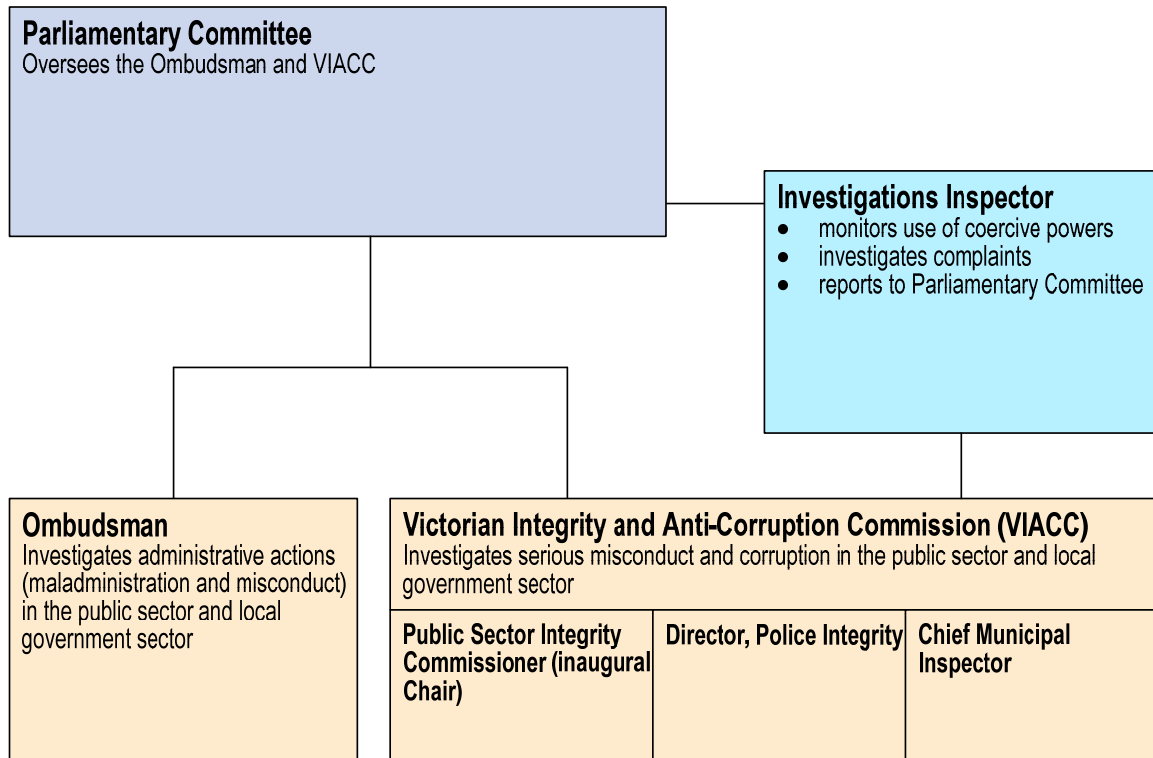
integrity agency oversight

The Review proposes active oversight arrangements for all integrity bodies holding coercive powers. Oversight instils accountability in the integrity system and strengthens the system's effectiveness by holding integrity bodies to account for their actions. The Review proposes maintaining existing Public Accounts and Estimates Committee (PAEC) oversight of the Auditor-General.

The Review's reform directions include new oversight arrangements for the VIACC and the Ombudsman as shown in Figure 2. This includes general oversight of both integrity bodies via a new parliamentary committee, which would fulfil a similar role to that performed by PAEC in overseeing the effective functioning of the Auditor-General. Parliamentary committee oversight of the VIACC and the Ombudsman should include three-yearly performance audits, reviewing reports, examining trends and issues in conduct investigated by the integrity bodies, and monitoring and reviewing the exercise of their functions. Parliamentary committee oversight should not extend to operational matters or re-investigation of complaints. This would risk unduly undermining the independence of the VIACC and the Ombudsman.

Given the strong powers proposed for members of VIACC, particularly the Director, Police Integrity, additional oversight is proposed via an Investigations Inspector. The Investigations Inspector would absorb and extend the functions currently performed by the Special Investigations Monitor to monitor the OPI's exercise of powers. It would have powers to receive and investigate complaints about the conduct of investigations as well as monitor and report on the exercise of powers and conduct of VIACC officers. The Investigations Inspector would report to the Victorian Parliament via the Parliamentary Committee that oversees VIACC's general functioning.

Figure 2, oversight arrangements for the Office of the Ombudsman and the Victorian Integrity and Anti-Corruption Commission



integrity coordination board

The Review recommends establishment of an Integrity Coordination Board (the Board) to strengthen cooperation and coordination across the integrity system. The Board should be established in legislation, comprising a membership of core integrity bodies. This includes the Auditor-General, Ombudsman, Public Sector Integrity Commissioner (VIACC), Director, Police Integrity (VIACC), Chief Municipal Inspector (VIACC), Parliamentary Integrity Commissioner and the Public Sector Standards Commissioner. Additional membership could be extended by the Board as required. For example, the Chief Commissioner of Police and the Director of Public Prosecutions might be invited to join the Board for special purpose projects.

The Board should be empowered to share information and conduct joint investigations. Its legislation should establish an obligation for members to refer matters that come to their attention to the appropriate body for investigation. This should override provisions in integrity bodies' Acts that currently restrict information sharing. Consideration should also be given to whether individual integrity bodies' Acts require amendments to enable information sharing and joint investigations.

The Board would provide a forum for integrity bodies to strengthen the effective operation of the integrity system as a whole. The Board could conduct joint research, education and promotion functions; develop consistent definitions of terms and investigation processes; and develop referral and joint investigation protocols. The Board should also address potential overlap of the jurisdiction between integrity and anti-corruption bodies. For example, there will be a degree of overlap between the Office of the Ombudsman and the VIACC in investigating misconduct. This overlap is a strength of the system rather than a weakness. So long as effective coordination and working relationships are achieved, this arrangement protects against system gaps. The Board would play a key role in transforming Victoria's integrity infrastructure from a collection of individual integrity bodies to an integrity system.

recommendations

Recommendation 1 – That the Premier propose legislation to establish a Victorian Integrity and Anti-Corruption Commission responsible for identifying and investigating serious misconduct and corruption, such that:

- 1.1 The Victorian Integrity and Anti-Corruption Commission (VIACC) comprises three independent officers of Parliament:
 - a Public Sector Integrity Commissioner (who is also the inaugural Chair of the VIACC), responsible for gathering intelligence and investigating serious misconduct and corruption in the Victorian public sector (excluding Victoria Police);
 - the Director, Police Integrity, with an extended jurisdiction to include both sworn officers and unsworn employees of Victoria Police; and
 - the Chief Municipal Inspector, responsible for gathering intelligence and investigating misconduct and corruption involving local government councillors and employees.
- 1.2 Each member of VIACC is appointed for a renewable five-year term by the Governor in Council upon recommendation of the Premier, following consultation with a VIACC parliamentary oversight committee;
- 1.3 The Governor in Council may remove a member of VIACC from office on recommendation of a VIACC parliamentary oversight committee in cases of incapacity, incompetence or misbehaviour. Members of VIACC may otherwise be removed from office only by resolution of both Houses of Parliament;
- 1.4 The VIACC must appoint a chief executive officer, who reports to the Chair, and may appoint Deputy Commissioners and Assistant Commissioners;
- 1.5 The VIACC has functions under a modernised *Whistleblowers Protection Act 2001* to operate as a central point for coordinating whistleblower disclosures, including education and guidance, receiving all disclosures, referring disclosures to the appropriate body for investigation as required, undertaking investigations that best fit within VIACC's jurisdiction, and reporting to Parliament on the operation of the whistleblower protection system;
- 1.6 The VIACC may receive referrals from the Parliamentary Integrity Commissioner (see recommendation 5) and conduct investigations involving members of parliament, and publicly funded employees of members of parliament, where the Parliamentary Integrity Commissioner advises that he or she believes there is prima facie evidence of serious misconduct or corruption;
- 1.7 The VIACC has research, prevention and education functions;
- 1.8 Each member of VIACC has powers that may be independently exercised, including powers to:
 - summons witnesses
 - compel witnesses to answer questions
 - override privileges (eg self-incrimination)
 - enter premises occupied by a public authority
 - apply to a Supreme Court judge for a warrant to conduct searches and seizures.
- 1.9 The Director, Police Integrity retains existing additional powers (including covert powers), which with the exception of powers to carry defensive weapons and firearms, may be exercised in relation to investigations involving either sworn officers or unsworn employees of Victoria Police;
- 1.10 In exceptional circumstances where the Public Sector Integrity Commissioner or the Chief Municipal Inspector may require powers otherwise vested only in the Director, Police Integrity, the VIACC may:
 - refer an investigation to the Director, Police Integrity;
 - establish a joint investigation with the Director, Police Integrity; or

- authorise the use of technical expertise from the Director, Police Integrity investigators and apply as 'the Commission' to the appropriate judicial authority for warrants to: enter private premises and conduct searches and seizures; use telephone intercepts; or use surveillance devices.

1.11 VIACC's exercise of coercive powers must be proportionate to the nature of the matter under investigation and consistent with codified principles of procedural fairness that should be abrogated only insofar as necessary and appropriate for VIACC's effective functioning; and

1.12 the VIACC is subject to active oversight from a parliamentary committee and an Investigations Inspector.

Recommendation 2 – That the Premier propose amendments to modernise legislation governing the Ombudsman, such that:

2.1 the Ombudsman is subject to active oversight by a parliamentary committee;

2.2 the Ombudsman does not investigate complaints or conduct own motion enquiries into Victoria Police;

2.3 the Ombudsman must base investigation policies and procedures on codified principles of procedural fairness and publish detailed guidelines on how investigations are conducted in accordance with these principles;

2.4 persons subject to any investigation procedures conducted by the Ombudsman have the right to seek legal advice and a right of a published reply;

2.5 functions under the *Whistleblowers Protection Act 2001* transfer from the Ombudsman to a Victorian Integrity and Anti-Corruption Commission (VIACC) (see recommendation 1); and

2.6 consideration is given to codifying the Ombudsman's current practice of using patterns of complaints to trigger own motion enquiries and investigations.

Recommendation 3 – That the Attorney-General complete a review of the *Whistleblowers Protection Act 2001* such that:

3.1 amendments proposed to the Act transition functions from the Ombudsman to the Victorian Integrity and Anti-Corruption Commission to:

- determine whether disclosures are public interest disclosures;
- investigate public interest disclosures;
- prepare and publish guidelines for the procedures to be followed by public bodies relating to disclosures and investigations; and
- review the implementation procedures of public bodies relating to disclosures and investigations.

3.2 amendments proposed to the Act establish the Victorian Integrity and Anti-Corruption Commission as the central point for coordinating and referring whistleblower disclosures;

3.3 the review considers whether broader amendments to the Act are required in areas including:

- the type of conduct covered and whether the Act should be extended to cover maladministration;
- potential simplification of processes for making complaints (eg removing 'public interest disclosure' and 'protected interest disclosure' distinctions);
- clarifying the roles of those involved in complaint handling and investigations; and
- potential expansion of the protections available to whistleblowers.

Recommendation 4 – That the Minister for Local Government review and propose legislative amendments to modernise the *Local Government Act 1989* such that:

- 4.1 clear and consistent standards of conduct for councillors and employees are established;
- 4.2 penalties for breaches of the Act are reviewed; and
- 4.3 mechanisms for investigating compliance with the Act are clearly identified.

Recommendation 5 – That the Premier propose legislation to establish a Parliamentary Integrity Commissioner, such that:

- 5.1 the Governor in Council appoints a Parliamentary Integrity Commissioner for a renewable five-year term upon recommendation by the responsible Minister, who must consult with the Privileges Committees of both Houses of Parliament before making the recommendation;
- 5.2 the Parliamentary Integrity Commissioner may receive and investigate complaints about the conduct of members of parliament and compliance with standards in the Members of Parliament (Standards) Bill 2010, once enacted;
- 5.3 the Parliamentary Integrity Commissioner may issue advice and guidance to members of parliament about standards of conduct;
- 5.4 the Parliamentary Integrity Commissioner may receive and investigate complaints about the conduct of publicly funded employees of members of parliament, including compliance with the *Ministerial Staff Code of Conduct* and the *Code of Ethics for Electorate Officers*;
- 5.5 the Parliamentary Integrity Commissioner may refer matters where there is prima facie evidence of serious misconduct or corruption to Victoria Police or to the Victorian Integrity and Anti-Corruption Commission; and
- 5.6 the Parliamentary Integrity Commissioner reports to the Privileges Committee of the Legislative Assembly and the Privileges Committee of the Legislative Council.

Recommendation 6 – That the Premier propose legislation to establish an Integrity Coordination Board, such that:

6.1 Integrity Coordination Board membership comprises the Ombudsman, Auditor-General, Public Sector Integrity Commissioner (VIACC), Director, Police Integrity (VIACC), Chief Municipal Inspector (VIACC), Parliamentary Integrity Commissioner, Public Sector Standards Commissioner, and other members upon invitation of the Integrity Coordination Board;

6.2 the objective of the Integrity Coordination Board is to strengthen coordination and effective operation of Victoria's integrity system;

6.3 the Integrity Coordination Board must operate a regular forum to address coordination matters;

6.4 the Integrity Coordination Board:

- conducts joint research, education and promotion functions;
- refers investigations to the appropriate body;
- develops referral and joint investigation protocols; and
- develops memoranda of understanding to govern inter-agency coordination.

6.5 nothing in integrity bodies' governing legislation prohibits the necessary and appropriate sharing of information, joint investigations or referrals between the members of the Integrity Coordination Board.

abbreviations

DOJ	Department of Justice
DPCD	Department of Planning and Community Development
DTF	Department of Treasury and Finance
ICAC	Independent Commission Against Corruption
LGICI	Local Government Investigations and Compliance Inspectorate
NSW	New South Wales
OECD	Organisation for Economic Co-operation and Development
OPI	Office of Police Integrity
PAEC	Public Accounts and Estimates Committee
PSSC	Public Sector Standards Commissioner
QLD	Queensland
SA	South Australia
SIM	Special Investigations Monitor
SSA	State Services Authority
VEC	Victorian Electoral Commission
VIACC	Victorian Integrity and Anti-Corruption Commission (proposed)
WA	Western Australia

A glossary of terms is at Appendix I.

1 introduction

1.1 terms of reference

In November 2009, the Premier requested that the Public Sector Standards Commissioner review the efficiency and effectiveness of Victoria's integrity and anti-corruption system. This includes the Ombudsman, Auditor-General, Office of Police Integrity, Victoria Police and the Local Government Investigations and Compliance Inspectorate. This report presents the findings and recommendations of the Review.

The Terms of Reference for the Review of Victoria's Integrity and Anti-corruption System are presented in Box 1 below.

Box 1, Terms of Reference

The Public Sector Standards Commissioner is asked to consider whether any reforms are needed to enhance the efficiency and effectiveness of Victoria's integrity and anti-corruption system, including the powers, functions, coordination and capacity of the Ombudsman, Auditor-General, Office of Police Integrity, Victoria Police and the Local Government Investigations and Compliance Inspectorate.

A report is due to the Premier on 31 May 2010.

1.2 review methodology

Public Sector Standards Commissioner Peter Allen and Special Commissioner Elizabeth Proust led the Review. They were supported by a State Services Authority Review team. Dr A J Brown, John F Kearney Professor of Public Law at Griffith University, provided expert advice to the Review.

In conducting the Review, consultations were held with key stakeholders, including the five agencies in the Review's terms of reference, Victorian Government departments and agencies, integrity and anti-corruption bodies in other Australian jurisdictions and academic experts. A list of consultations is at Appendix A.

A public call for submissions was issued on 5 December 2009 and closed on 1 March 2010. Advertisements calling for submissions were placed in one national and two state-wide newspapers. The Review received 54 submissions from a wide range of organisations and individuals. A list of submissions received is at Appendix B.

The Review also conducted a literature review, covering legislation and policy documents, government reports and guidelines, international best practice guides and standards, and academic research papers. A bibliography is at Appendix C.

The Review also commissioned research on public perceptions of corruption and efforts to address corruption in government. Surveys were conducted by Newspoll on 12–14 February and 19–21 March 2010. Details of the survey method are at Appendix D.

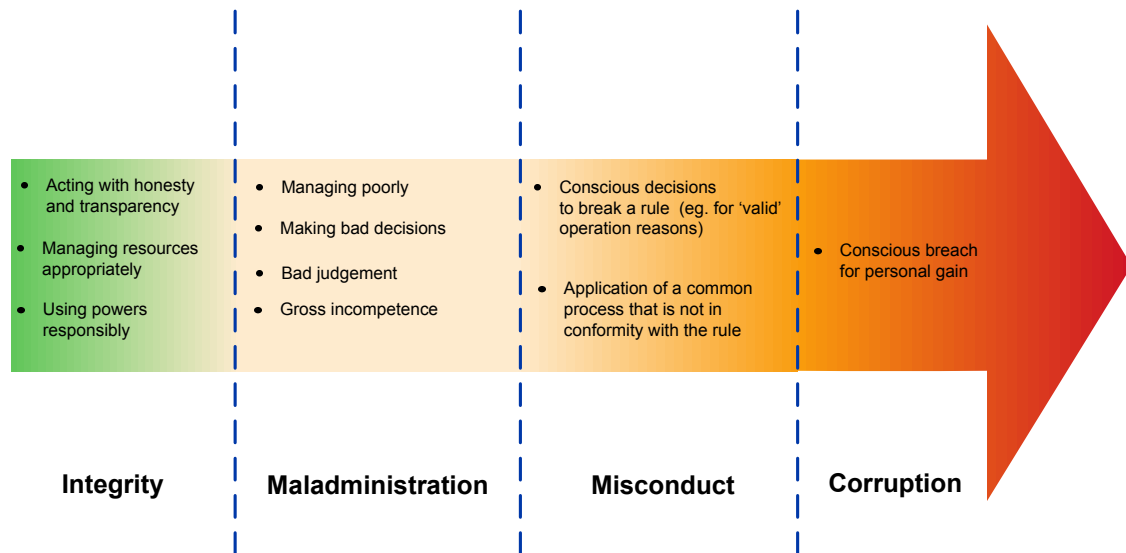
2 background

2.1 what is integrity and corruption?

'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.⁷ It means acting with honesty and transparency, using powers responsibly and striving to earn and sustain public trust.⁸

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. Figure 3 illustrates the continuum of behaviours.

Figure 3, integrity system spectrum of behaviour⁹



This spectrum can be grouped into three main types of undesirable behaviours: maladministration, misconduct and corruption.

2.1.1 maladministration

Maladministration refers to administrative tasks that are not performed properly or appropriately. It can encompass inefficiency, incompetence and poorly reasoned decision making. Remedies for cases of maladministration are likely to be administrative, with warnings or admonitions the likely sanctions.

⁷ For the purpose of this report a 'public official' is a person holding a legislative, executive, administrative or judicial office, whether appointed or elected, or a person employed to perform a public function or provide a public service.

⁸ Integrity Coordinating Group 2009, *Integrity in the WA public sector*, viewed 15 March 2010, <http://www.opssc.wa.gov.au/ICG/Integrity_in_the_WA_public_sector/Integrity_and_conduct.php>; OECD, 2009, *OECD: Integrity framework*, viewed 15 March 2010, <<http://www.oecd.org>>.

⁹ Adapted from Treasury Board of Canada 2005, *The Financial Administration Act: Responding to Non-compliance*, Treasury Board, Canada.

2.1.2 misconduct

Misconduct is more serious than maladministration. There is an additional level of recklessness or intent beyond maladministration – misconduct is more than not paying attention or exercising due diligence. It can involve breaches of codes of conduct and there may be an element of dishonesty involved. Sanctions can include demotion, removal of privileges or removal of the person from the position. In Victoria, misconduct in public office is a common law offence. Details about the elements of this offence and other definitions of misconduct in Victorian statutes can be found in Appendix E.

2.1.3 corruption

Corruption goes beyond misconduct and involves different forms of the ‘misuse of power or the misuse of office’. In its widely used definition, the World Bank also adds the element of personal gain, describing corruption as ‘the abuse of public power for private benefit’.¹⁰ The precise boundaries of corruption are difficult to define but the term is usually used to describe serious wrongdoing such as bribery, embezzlement, fraud and extortion. Typically, corruption undermines public trust, has a major impact on an organisation’s reputation and has serious implications for an individual’s future employability or electability. Sanctions for corruption generally involve termination of employment and possible penalties arising from a successful criminal prosecution.

2.2 why integrity is important

The public is entitled to expect that public officials will act with integrity and that corruption or misconduct is identified and addressed. Citizens expect public officials to uphold values such as honesty and truthfulness and to act in the public’s interest in performing their duties. Fair, reliable and systematic decision-making in public services engenders public trust and creates a level playing field for interactions with public agencies. Integrity is necessary for government to be legitimate, trusted and effective and is thus a key element of good governance.¹¹

In contrast, maladministration, misconduct and corruption can be seen as a systemic failure in public administration and an indication of poor governance. This lack of integrity can have a significant negative impact on public perceptions and public trust in decision making by public officials.

2.3 what is an integrity and anti-corruption system?

An integrity system is a series of institutions and practices that, collectively, aim to build integrity, transparency and accountability in the public sector. The system is a mix of institutions, laws, regulations, codes, policies and procedures that provide a framework of checks and balances, to foster an environment of high quality decision making, and to identify and address inappropriate behaviour including corruption.¹²

The system’s role is to promote high standards of integrity throughout the public sector as well as to identify, investigate and respond to maladministration, misconduct, and corruption. Key functions of integrity and anti-corruption systems include:

¹⁰ Kaufman, D 1997, *Corruption: The facts*, World Bank working paper, viewed 2 February 2010, <www.worldbank.org>.

¹¹ OECD 2009, *OECD: Integrity framework*, viewed 15 March 2010, <<http://www.oecd.org>>.

¹² Pope, J 2000, *TI Sourcebook 2000. Confronting corruption: The elements of a national integrity system*, Transparency International, Berlin.

- setting the expected standards of behaviour for public officials, through legislation, regulation and codes of conduct;
- education, training and guidance on expected behaviours and standards for public officials;
- internal and external oversight of compliance with standards and codes, through audits, investigations and reviews;
- responding to and monitoring complaints about administrative decisions and actions; and
- investigating and prosecuting maladministration, misconduct and corruption.¹³

2.3.1 role of public officials and employers in the integrity system

Many of the measures designed to promote integrity and prevent corruption in the public sector depend on successful integration into daily work at the organisational level. This means public sector organisations and their employees are a crucial part of the integrity and anti-corruption system.¹⁴

Public officials have a moral and legal obligation to perform their duties with integrity, dealing with public affairs efficiently and without bias or maladministration.¹⁵ To do this, public officials must recognise their duty to:

- discharge public functions reasonably and according to the law;
- apply the values and employment principles of the public sector in their work; and
- adhere to the ethical standards governing their profession.

In Victoria, the *Public Administration Act 2004* outlines the values that underpin the public sector and reflect the public sector employee behaviours essential for good relationships within the sector, and with government and the community. These are shown in Box 2.

Box 2, the Victorian public sector values, Public Administration Act 2004

<ul style="list-style-type: none"> • responsiveness • integrity • impartiality • accountability 	<ul style="list-style-type: none"> • respect • leadership • human rights
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Public sector employers' responsibilities include:

- promoting instruments, such as the code of conduct for Victorian public sector employees, to employees about expected standards and behaviours;
- providing guidance towards integrity, through activities such as effective induction, ongoing training and counselling;
- monitoring integrity and detecting breaches in their organisation, through effective line management, whistleblowing and complaints policies and procedures, internal audits, inspections, informal probing of issues and so on;

¹³ OECD 2009, *Components of integrity: Data and benchmarks for tracking trends in government*, OECD GOV/PFC/GF(2009)2.

¹⁴ OECD 2009, *Components of integrity: Data and benchmarks for tracking trends in government*, OECD GOV/PFC/GF(2009)2.

¹⁵ Pope, J 2000, *TI Sourcebook 2000. Confronting corruption: The elements of a national integrity system*, Transparency International, Berlin.

- identifying and managing high risk activities and areas, through tools such as the Victorian Government Risk Management Framework; and
- enforcing integrity through investigations and sanctions for maladministration and misconduct.

Under the *Financial Management Act 1994* and ministerial directions, public sector body heads are accountable for the sound financial management of their organisation. This includes:

- ensuring proper accounts and records are kept to explain their organisation's financial operations and financial position;
- establishing an audit committee and an internal audit function;
- auditing and reporting on compliance with supply policies and ministerial directions to the Victorian Government Purchasing Board;
- ensuring that risk is managed appropriately and effectively; and
- providing any financial information that their Minister or the Minister for Finance requests.

In December 2009, the Minister for Finance introduced the Public Finance and Accountability Bill 2009 to Parliament. This legislation includes proposals, such as monitoring of all public bodies by portfolio departments, that are designed to strengthen the transparency and accountability of public sector financial management.

There are also mechanisms to promote integrity of elected officials in the form of a legislated code of conduct for Members of Parliament and compliance requirements in the *Local Government Act 1989* for local government councillors.

2.3.2 integrity and anti-corruption bodies

While public officials and employers form one part of the integrity and anti-corruption system, public sector bodies charged with oversight and investigation of standards and behaviours form another. Across Australian jurisdictions, these bodies can include:

- the Ombudsman, who investigates complaints about administrative actions (all jurisdictions);
- the Auditor-General, who oversees the management of resources in the public sector (all jurisdictions);
- a police oversight agency, charged specifically with overseeing the standards and behaviours of police (Commonwealth, South Australia, New South Wales and Victoria);
- an anti-corruption commission, responsible for investigating and exposing misconduct and corruption (New South Wales, Queensland and Western Australia); and
- a crime commission, responsible for reducing the incidence of organised and other crime (New South Wales, Queensland, Western Australia and the Commonwealth). This may be combined with the anti-corruption commission (as is the case in Queensland and Western Australia).

A list of the integrity and anti-corruption bodies in Australian jurisdictions is at Appendix F. While there are many differences in the powers, jurisdictions and legislated functions across these bodies, there are aspects of these bodies that are similar:

- the primary focus of the body is to expose misconduct and corruption to public scrutiny (rather than prosecute);
- the body adopts an inquisitorial rather than adversarial approach;
- the body has strong coercive powers to support investigatory functions; and

- the body has a role in prevention and education.

In Victoria, there are five core integrity bodies specified in the Review's terms of reference. These are:

- the Auditor-General, established in 1891 to examine the management of public resources in the public sector;
- the Local Government Investigations and Compliance Inspectorate, established in 2009 to detect and enforce breaches of the Local Government Act;
- the Office of Police Integrity, established in 2004 to detect and investigate serious misconduct and corruption among police officers;
- the Ombudsman, established in 1973 to investigate the integrity of administrative actions and (since 2001) manage whistleblower disclosures about serious misconduct or corruption; and
- Victoria Police, established in 1853 with responsibility for investigating crime.

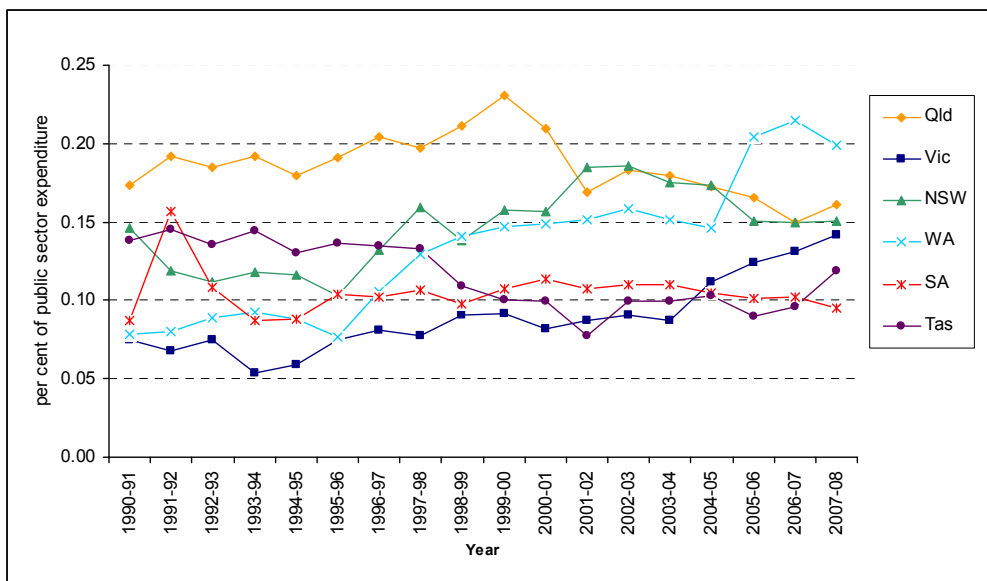
Details of the functions, enabling legislation, jurisdiction, powers and level of independence of these core integrity agencies can be found in Appendix G.

Victoria's integrity and anti-corruption system also includes other public bodies, legislation and regulation that have a role in promoting integrity, accountability and transparency in the public sector. This broader integrity infrastructure is outlined in Appendix H.

3 findings

Victoria's integrity bodies hold, collectively, broadly similar functions and powers to those in other Australian states. They appear to be resourced reasonably and operate comparatively efficiently. Figure 4 shows that Victoria's expenditure on integrity bodies, as a proportion of public sector expenditure, has increased over time, and by 2008, it was comparable to expenditure in New South Wales and Queensland. The reviewed integrity bodies did not submit that they were insufficiently resourced to perform their existing functions. However, the Ombudsman required additional funding during 2008-09 as a result of a higher than expected workload. The Auditor-General also required additional funds in 2008-09.

Figure 4, core integrity body resourcing as a proportion of public sector expenditure 1990-2008^{16 17}



Given the essentially invisible nature of corruption, it is difficult to determine the extent of any underlying problem and measure the effectiveness of interventions. Internationally, Australia performs well on integrity measures and indicators. In 2009, Transparency International ranked Australia in equal eighth position on their annual Corruption Perception Index, along with Canada and Iceland. New Zealand was ranked number one, while the United Kingdom and United States of America were ranked 17th and 19th, respectively.¹⁸ Similarly, the World Bank scored Australia's 'control of corruption' as 96.1 out of 100 in 2008.¹⁹

¹⁶ The Griffith University research included the Auditor-General's Office, the Ombudsman's Office and the Office of Police Integrity as 'core' integrity bodies for Victoria. The LGICI expenditure is not included, as it did not yet exist in 2008. The public sector integrity function of Victoria Police is also not included in the estimates for Victoria. Across jurisdictions, various integrity bodies are considered 'core' and the dataset is not fully comparable. Public sector expenditure' is taken from ABS 2009, Government Finance Statistics, Australia, 2007-08. Cat. No. 5512.0

¹⁷ Brown, AJ and Bruerton, M 2010, 'Staffing, financial resourcing, and averaged overall resourcing for select core integrity agencies – all Australian federal and state jurisdictions compared 1990-2009', unpublished report, Griffith University.

¹⁸ Transparency International 2009, *Corruptions perceptions index 2009*, viewed 9 May 2010, <http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table>.

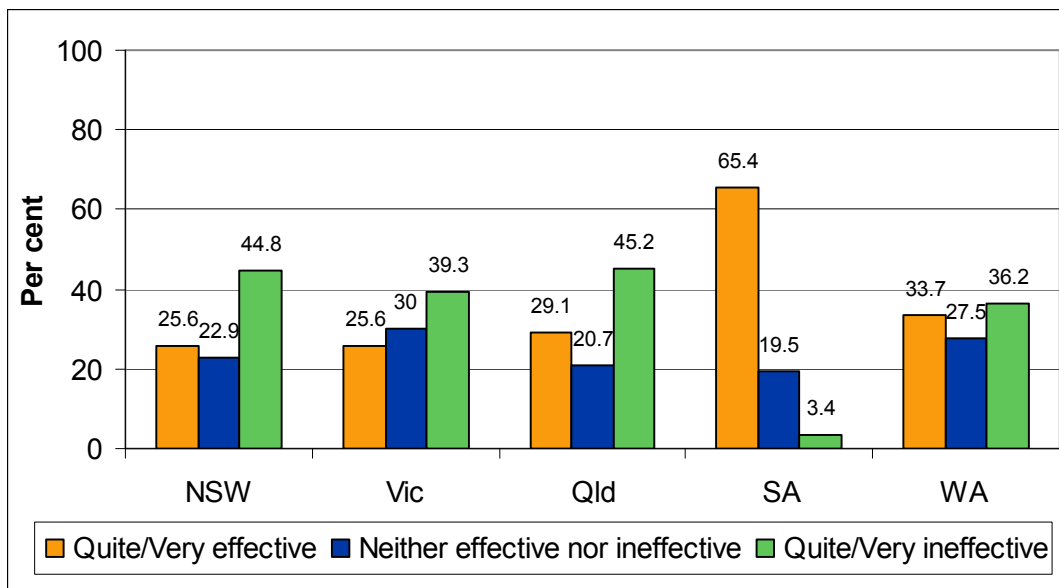
¹⁹ Kaufmann, D, Kraay, A & Mastruzzi, M 2009, *Governance matters VIII: Aggregate and individual governance indicators, 1996-2008*, World Bank Policy Research Working Paper No. 4978.

However, Victoria has not been free from corruption. The Review was reminded of cases of corruption uncovered in intellectual disability services in the late 1980s to early 1990s, at Victoria University in the late 1990s, and in Victoria Police in the 2000s. In the months since the Review was commissioned, a steady stream of integrity and anti-corruption issues have been canvassed in the media. These include questions about the legality of OPI investigations involving a former Assistant Commissioner of Police and former Secretary of the Police Association; allegations of political party branch stacking; conduct of a ministerial adviser in relation to a planning consultation and – within the private sector – breaches of salary cap rules by Melbourne Storm rugby league club.

Ongoing public commentary and debate about claims of impropriety and corruption drives a high degree of community awareness and concern about integrity issues. In addition, the Review heard credible allegations about serious misconduct and corruption currently occurring in Victoria.

The Review’s inquiries reinforced the importance of an effective integrity and anti-corruption system to maintain community confidence that government agencies exercise their authority free of corruption. 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. As shown in Figure 5, 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. This figure is comparable to perceptions in New South Wales, Queensland and Western Australia. It suggests considerable room to improve public confidence in Victoria’s integrity system.

Figure 5, survey perceptions of state governments’ effectiveness in fixing corruption, 2010²⁰



Submissions and representations to the Review have also highlighted opportunities to strengthen Victoria’s integrity system. In particular:

- addressing gaps in the jurisdiction of integrity bodies – particularly the judiciary, members of parliament and publicly funded employees of members of parliament;
- strengthening coordination between integrity bodies;

²⁰ Newspoll omnibus survey conducted for the Review, 19-21 March 2010. Full question: “In general, thinking about occasions where corruption has been identified in your state. How effective would you say the state government has been in fixing the problem?”

- strengthening the role of active intelligence gathering; and
- modernising the legislative underpinnings of integrity bodies, including making provision for rigorous oversight of the use of investigative powers.

Opportunities to improve the effectiveness of Victoria's integrity and anti-corruption system are outlined below.

3.1 gaps in jurisdiction

In a comprehensive integrity system, all classes of public officials are subject to internal disciplinary procedures and external investigations. The level of scrutiny should increase with the level of integrity risk and should be commensurate with public expectations.²¹ Victoria's integrity system would benefit from extending coverage over three classes of officials:

- judiciary;
- members of parliament; and
- publicly funded employees of members of parliament.

3.1.1 judiciary

In Victoria, the conduct of members of the judiciary is subject to scrutiny via:

- the Auditor-General's power to conduct performance audits of the administrative functions of the judiciary, but not judicial functions;
- Victoria Police's power to investigate matters that may be criminal offences; and
- the Attorney General's power to appoint a Judicial Panel of retired judges to investigate 'misbehaviour' or 'incapacity' in accordance with the *Constitution Act 1975*.

In other states, a variety of approaches exist to investigate concerns with judicial conduct. These include:

- Queensland – the Crime and Misconduct Commission has jurisdiction over the judiciary for matters of serious misconduct and criminal offences. The Chief Justice approves the method of investigation.
- New South Wales – the Independent Commission Against Corruption investigates corruption of 'public officials', which includes judges, magistrates or holders of other judicial offices. There is also a separate judicial commission to consider lesser misconduct.
- Western Australia – the Crime and Corruption Commission has jurisdiction over judicial officers where an allegation, if proven, constitutes grounds for removal from office.

The Review understands that the Victorian Attorney-General is currently working with the judiciary to strengthen oversight arrangements.²² This is a positive step with potential to balance independence with accountability. Given the independent status of the judiciary under a Westminster system of government, the Review supports scrutiny arrangements for the judiciary that are separate from scrutiny of the executive and legislature.

²¹ Griffith University & Transparency International 2005, *Chaos or coherence? Strengths, opportunities and challenges for Australia's integrity systems. National Integrity Systems Assessment Final Report*, Key Centre for Ethics, Law, Justice and Governance, Griffith University & Transparency International, Australia.

²² Department of Justice 2009, *Investigating complaints and concerns regarding judicial conduct: Discussion Paper*, Department of Justice, Melbourne.

3.1.2 members of parliament

Victoria's integrity system would be strengthened by an active complaints function and own motion inquiry function to investigate the integrity and conduct of parliamentarians. Members of parliament are currently subject to investigation in a limited set of circumstances. These include:

- Ombudsman investigation if the President of the Legislative Council or the Speaker of the Legislative Assembly refers a matter to him or her under the *Whistleblowers Protection Act 2001*;
- the Ombudsman may make comments on the conduct of a member of parliament who has been a witness to an investigation;
- members of the Legislative Assembly may raise concerns about alleged breaches of register of interests requirements with the Speaker and vote to refer the matter to the Assembly's Privileges Committee;
- members of the Legislative Council may move a motion for the Council to consider alleged breaches of register of interests requirements or to refer the matter to the Council's Privileges Committee;
- the Legislative Council may establish special purpose Select Committees to scrutinise the conduct of government; and
- Victoria Police investigation if the alleged conduct is a criminal offence.

Members of parliament are not subject to a similar degree of independent scrutiny as other public officials. Capacity to investigate whistleblower complaints about members of parliament should be improved. Currently, the Ombudsman can only investigate a complaint about a member of parliament if the matter is referred by the President of the Legislative Council or the Speaker of the Legislative Assembly.

The gap in scrutiny of members of parliament does not meet reasonable public expectations regarding transparency and accountability. There is evidence of a degree of public concern regarding this gap. The Review contracted two surveys of public perceptions of the extent to which different classes of public officials are involved in corruption. Table 1 shows the results for state politicians in the two surveys. The first survey coincided with the media coverage of the collapse of the OPI case against a former Assistant Police Commissioner, and produced a higher perception of corruption among Victorians than recorded by the second survey. This variability highlights the extent to which public awareness and perceptions about corruption may be influenced by media coverage and resulting public debate.

However, in both surveys, a third or more of Victorian respondents thought that at least 'some' politicians were involved in corruption. While this appears to be a lower proportion than in NSW and Queensland, it remains substantial. It indicates that Victorians do not regard members of parliament to be somehow free of the risks of corruption and emphasises the importance of closing current gaps in the jurisdiction of the integrity system.

Table 1, perceptions of how many state politicians in survey respondents' states are involved in corruption, February and March 2010²³

Answer category		Vic		NSW		Qld		SA		WA	
	%	Feb 2010	Mar 2010	Feb 2010	Mar 2010	Feb 2010	Mar 2010	Feb 2010	Mar 2010	Feb 2010	Mar 2010
Almost none / A few	%	55.6	57.3	34.1	47.9	46.1	39.4	53.7	57.1	57.0	53.3
Some	%	21.4	26.4	33.4	26.6	34.8	37.0	27.3	26.1	21.5	24.9
Quite a lot / Almost all	%	17.4	7.4	25.6	17.8	14.8	10.2	12.0	6.2	16.5	13.1
Don't know	%	5.6	8.8	6.8	7.7	4.3	13.3	7.0	10.6	5.1	8.8
<i>Total</i>	%	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

Measures are currently underway to improve scrutiny of the integrity of members of parliament. In March 2010, the Members of Parliament (Standards) Bill 2010 was introduced to Parliament. The purpose of the Bill is to promote trust and confidence in members of parliament by:

- establishing a statement of values;
- setting out a code of conduct; and
- making amendments to requirements for a register of interests.

Under the Bill, wilful contravention by members of parliament of the Code or the Register requirements is considered contempt of Parliament. Presiding Officers of either House of Parliament can impose sanctions, including fine of approximately \$4000 and requirements for remedial action. If fines are not paid within the time ordered by the House, a member's seat is to be declared vacant.

In December 2009, the Victorian Parliament's Law Reform Committee recommended renaming the Privileges Committees in the Legislative Assembly and Legislative Council as the 'Privileges and Standards Committees' and giving them a more active role to monitor and review adherence to a code of conduct and register of interests.²⁴ This would include functions to:

- receive, investigate and report on complaints about members of parliament and breaches of the Members of Parliament (Standards) Bill; and
- advise members of parliament on integrity standards and their obligations.

The Law Reform Committee's recommendation has potential to strengthen scrutiny of members of parliament. However, this scrutiny is limited in that it constitutes a form of self regulation rather than independent inquiry. This means that members of parliament do not subject themselves to the same level of scrutiny as other public officials. This is somewhat countered by the operation of an election cycle, whereby voters have the opportunity to remove members of parliament from office. However, in the absence of an independent investigatory function, matters of integrity may not be brought to public attention.

²³ Newspoll 2010, *Corruption studies conducted over the periods 12-14 February and 19-21 March 2010*, Newspoll, Sydney.

²⁴ Law Reform Committee 2009, *Review of the Members of Parliament (Register of Interests) Act 1978*, Parliament of Victoria, Melbourne.

3.1.3 publicly funded employees of members of parliament

Publicly funded employees of members of parliament include:

- ministerial officers – pursuant to section 98 of the Public Administration Act, they provide advice and assistance to the Premier and ministers;
- parliamentary advisers – pursuant to section 99 of the Public Administration Act, they provide advice and assistance to non-government members of parliament, including the Leader of the Opposition; and
- electorate officers – pursuant to section 30 of the *Parliamentary Administration Act 2005*, they assist members of parliament in their electorate offices.

Ministerial officers are a category of publicly funded staff of ministers. Under section 98 of the Public Administration Act, ministerial officers are employees of the Premier. Their terms of employment are governed by employment contracts under the *Ministerial Staff Collective Agreement 2007*, which includes a *Ministerial Staff Code of Conduct*. Ministers or their chiefs of staff oversee the conduct of staff and any disciplinary action resulting from misconduct.

Traditionally, ministerial officers have been considered accountable through the convention of individual ministerial responsibility, rather than subject to the same external scrutiny as public servants.²⁵ However, in recent years the number of ministerial officers has increased considerably.²⁶ This makes the traditional approach of ministerial accountability for the actions of their staff increasingly challenging and increases the likelihood that ministers could distance themselves from the actions (or inactions) of their staff. It has resulted in suggestions that ministerial officers should be more directly subject to scrutiny.²⁷

As ministerial officers, parliamentary advisers and electorate officers are publicly funded, the Review considers that they should be subject to external scrutiny to ensure they act with integrity.

3.2 coordination between integrity bodies

There are opportunities for Victoria's integrity bodies to operate as a more collective and cohesive system. Fora for inter-agency coordination operate in New South Wales, Queensland, Western Australia, and Tasmania. The membership of these fora comprise ombudsmen, auditors-general, heads of anti-corruption bodies, heads of police integrity bodies and public sector standards commissioners. They meet regularly to ensure activities do not overlap, that matters are referred properly and effectively between agencies and that similar language and methods are used across investigations. Review consultations indicate that these arrangements work well.

In Victoria, there is currently no collective forum for integrity bodies to coordinate their activities or share information. The Review was advised that informal communication occurs, on a one-to-one basis. One of the current constraints on coordination is legal requirements not to share information, including:

- Sections 16 F and 20 A of the *Audit Act 1994* put restrictions on the sharing of information gained during the course or conduct of an audit. There is no power in the Act to cooperate in investigations with other independent officers or other audit offices.

²⁵ Public Accounts and Estimates Committee 2010, *Inquiry into Victoria's Audit Act 1994: Discussion Paper*, Parliament of Victoria, Melbourne.

²⁶ Strangio, P 2006, Incumbency dominance: An unhealthy trend? *Papers on Parliament*, no. 46, pp. 97–110.

²⁷ Griffith University & Transparency International 2005, *Chaos or coherence? Strengths, opportunities and challenges for Australia's integrity systems. National Integrity Systems Assessment Final Report*, Key Centre for Ethics, Law, Justice and Governance, Griffith University & Transparency International, Australia, p. 86.

- Section 20 of the *Ombudsman Act 1973* and section 13 of the Whistleblowers Protection Act preclude the Ombudsman from disclosing information during, or resulting from, investigations and information resulting from protected disclosures about misconduct. There is no power in the Acts to cooperate in investigations with other independent officers of Parliament.
- Division 4 of the *Police Integrity Act 2008* limits sharing of information between the OPI to other law enforcement agencies, the Ombudsman and the Auditor-General.
- There is no power under the Local Government Act for municipal inspectors to cooperate with other integrity bodies, such as the Auditor-General or the Ombudsman.

The problem of a lack of coordination between integrity bodies has been highlighted by recent examples of different agencies investigating the same area. Findings of misconduct by one integrity body have been dismissed or not upheld by another, either due to different evidentiary requirements or different interpretations of what constitutes misconduct and corruption between the agencies.

In these cases, the original investigating body may argue that their investigation had the intended effect of exposing bad behaviour – their remit is not to achieve public prosecutions. However, the public perception is one of confusion, as the end result is uncertainty about whether the investigated person or body misbehaved. The removal of legislative barriers to coordination and the establishment of a coordination forum of integrity bodies has potential to strengthen the efficiency and effectiveness of the integrity system as a whole.

3.3 intelligence gathering

Intelligence gathering and analysis, such as active data mining and monitoring trends, could be strengthened within Victoria's integrity system. While these functions are established within the Office of Police Integrity, they are not explicit functions of integrity bodies with jurisdiction over wider classes of officials. Intelligence gathering is important because it complements complaints assessments as a way to establish a meaningful and comprehensive picture of integrity risks in the system.²⁸ This improves the effectiveness of integrity bodies by allowing them to strategically prioritise operations based on the best available information.

3.4 Office of the Ombudsman

3.4.1 Investigations practice

The most widely identified concern by contributors to the Review was the conduct of investigations by the Office of the Ombudsman. Of the 54 submissions to the Review, 11 submissions raised issues about the procedural fairness of investigations. This includes claims that:

- witnesses have been denied legal representation or the ability to consult with a lawyer;
- some witnesses with influence or standing may have greater opportunity to convince the Office of the Ombudsman of the need for representation;
- interview procedures are intimidating (for example, interviews had been recorded while interviewees were not permitted to receive a copy of the recording or take notes; and interviews had been conducted in windowless rooms with the investigator seated between the witness and the door);

²⁸ Sparrow, M 2008, *The character of harms: operational challenges in control*, Cambridge University Press, Cambridge.

- summonses have been routinely issued to witnesses for all manner of investigations, which causes stress for those in receipt of summonses who cannot discuss their circumstances with their employer or family;
- witnesses are shown only the parts of draft reports that relate to them and are therefore not shown the broader context of these reports; and
- witnesses are unsure whether requirements not to discuss their involvement in an investigation continue to apply indefinitely, even when the investigation has been finalised and a report is tabled in Parliament.

In contrast, the Ombudsman submits that:

- 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;
- he is required to give individuals an opportunity to present their views on adverse comments, which he does by providing a copy of the draft adverse comments and the context of those comments;
- where he determines to retain the adverse comments, he is required to fairly set forth the individual's defence in his report; and
- he allows witnesses to be accompanied by lawyers unless there is a conflict of interest or it is not otherwise in the public interest and that every witness who has sought legal representation over the past five years has been granted legal representation during an interview.²⁹

The Review notes that in a February 2010 report on *Ombudsman's Recommendations*, the Ombudsman writes:

Individuals named in my reports are given the opportunity to provide a response which is then reflected in my report. I may also allow individuals to be legally represented. My practice is to allow witnesses to have legal representation when requested provided the legal representative does not have any interest in the matter investigated and does not represent any other person or body which has any interest in that matter.

My reports to Parliament speak for themselves and are backed up in detail by the evidence which is set out in each report and which forms the basis for my recommendations. Attempts are made from time-to-time by people or associations with vested interest who have been found out, to attack and undermine the office or its investigators. This is not surprising and is experienced by bodies worldwide. My ability to report to the Parliament as a whole is an effective safeguard against any such attempts.³⁰

The Ombudsman Act is silent on how procedural fairness is to be afforded in either complaints-based or own motion investigations. However, the Ombudsman currently publishes guidelines on his website on the role and processes of his Office. The Review considers that the Ombudsman Act should be modernised to ensure the rights of people involved in investigations – both citizens and public officials – are explicitly enshrined in legislation. Principles of procedural fairness that should apply to Ombudsman investigations are outlined in Box 3.

²⁹ Ombudsman submission (1b), p.16.

³⁰ Ombudsman Victoria 2010, *Ombudsman's recommendations – Report on their implementation*, Ombudsman Victoria, Melbourne.

Box 3, principles of procedural fairness proposed by the Review

- **the right to notice of the matter under investigation** – for example, a requirement to provide specific information about the nature of matters under investigation, including particulars to individuals about whom allegations have been made.
- **the right to disclosure of adverse material** – for example, affording individuals the right to be advised of evidence presented against them.
- **the right to notice of, and an opportunity to answer, adverse findings** – for example, providing full context of adverse findings (rather than ‘parts of the report that related to the adverse comment’) and an opportunity to comment on adverse findings prior to the end of the investigation.
- **the right of publication of written reply to allegations** – for example, an opportunity to publish a written reply to adverse findings rather than current entitlements ‘that a person is given an opportunity of being heard’ and their ‘defence is fairly set forth in the report’.
- **the right to legal advice** – for example, an entitlement to legal advice, with the choice of lawyer restricted only when the integrity body identifies potential conflicts of interest.
- **the right to be informed when an investigation has concluded** – for example, advising if and when non-disclosure provisions cease to apply.
- **the necessary and appropriate exercise of coercive powers** – for example, pursuing cooperative approaches to investigations and conducting investigations in a manner that is proportionate to the matter under investigation.³¹

3.4.2 whistleblower functions

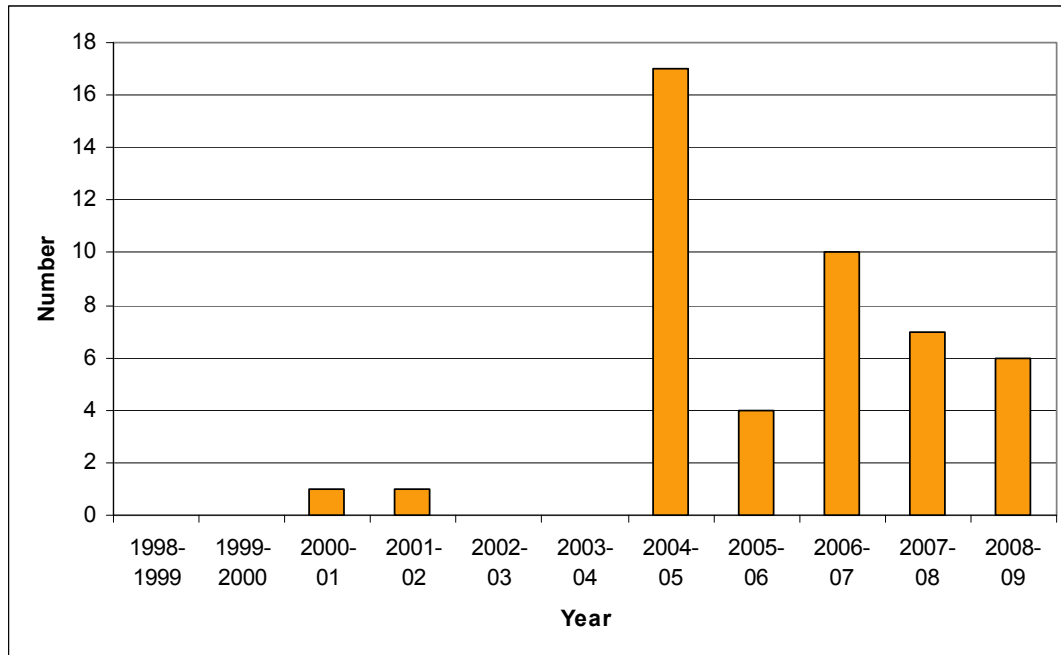
The emergence of concerns about investigations practice may be related to the Ombudsman’s functions under the Whistleblowers Protection Act. Disclosures under this Act necessarily relate to allegations of behaviour involving corruption; a substantial mismanagement of public resources; or a substantial risk to public health, safety or the environment. This has explicitly extended the Ombudsman’s jurisdiction beyond a more traditional role of examining complaints about administrative actions, identifying shortcomings and making recommendations for improvements. This may have contributed to the Ombudsman, with the powers of a standing Royal Commission, evolving as a de facto anti-corruption body.

3.4.3 own motion enquiries

A growth in the volume of own motion enquiries has further contributed to the emergence of the Ombudsman as a de facto anti-corruption body. The Ombudsman has increasingly made use of the own motion powers granted under s.13 and 14 of the Ombudsman Act. As shown in Figure 6, in the five years between 1998-99 and 2003-04, only two own motion investigations were undertaken. Between 2004-05 and 2008-09, this had grown to an average of nine, peaking at 17 in 2004-05.

³¹ For example, where possible making requests for attendance at meetings rather than the issue of summonses or making requests to employers for information rather than seeking information from third parties.

Figure 6, number of Ombudsman own motion enquiries and investigations undertaken and completed, 1998-99 to 2008-09³²



3.4.4 oversight

The Review considers that the independent status of the Office of the Ombudsman must be maintained alongside accountability to the Parliament. At present, concerns about conduct by the Office of the Ombudsman may be addressed to the Ombudsman himself, by letter to the Presiding Officers of Parliament, or by citizens seeking that their local member raise the matter in Parliament. However, the Presiding Officers of Parliament do not have the dedicated support of investigation staff or formal evidence gathering capacity. Provision under the Ombudsman Act for complainants to appeal to the Supreme Court is on the grounds that the Ombudsman conducted an investigation in ‘bad faith’ is financially prohibitive and designed for exceptional circumstances rather than for general complaints.³³

The Review believes that, as an officer of Parliament, it is appropriate that the Ombudsman has a level of accountability back to the Parliament.

3.5 Victorian Auditor-General’s Office

Review consultations revealed a general level of satisfaction with the role and functions of the Auditor-General. They indicated a stronger satisfaction with financial audits than with performance audits, the processes and findings of which were more likely to be contested by senior public servants. However, the Review notes that the written right of reply to Auditor-General findings goes some way towards addressing this concern.

³² Ombudsman Victoria, *Annual Reports*, 1998-99 to 2008-09.

³³ Section 29 of the Ombudsman Act protects the Ombudsman or his officers from civil or criminal prosecution unless the Supreme Court grants leave on evidence the Ombudsman conducted the investigation in ‘bad faith’ – that is, the investigation was conducted for some ulterior motive or unlawful purpose.

The Review also notes that the Public Accounts and Estimates Committee (PAEC) is conducting a review of the Audit Act. The Auditor-General has submitted to both this Review and the PAEC review that he is seeking capacity to extend the scope of audits into the private sector where public money is involved. The Review considers this matter to be more effectively addressed by Government after completion of the PAEC review.

The Review proposes no major change to the role, functions and powers of the Auditor-General.

3.6 Local Government Investigations and Compliance Inspectorate

The Local Government Investigations and Compliance Inspectorate (LGICI) was established in 2009. As such, it has had limited time to demonstrate its effectiveness. The LGICI is an administrative office of the Department of Planning and Community Development. The Head of the LGICI – the Chief Municipal Inspector – is appointed by the Premier. The Review has concluded that the impact of the LGICI would be enhanced by reconstituting it independently from executive government.

Consistent with a recurring theme that the relevant legislation must set out roles and responsibilities clearly, the Review has also concluded that the Local Government Act requires amendment to more clearly identify the roles and responsibilities of elected councillors and council staff. Contributors to the Review noted that standards of conduct in the Local Government Act are complex and difficult to follow. In 2008, the Ombudsman noted that conflict of interest provisions were ‘complex and many councillors and local government professionals struggle to understand and apply them.’³⁴ The Minister for Local Government subsequently proposed amendments to these provisions. The Review understands that following release of a 2009 discussion paper, these provisions are once more under consideration and further refinement may result.

The Review considers that amendments to the Local Government Act should establish clearer standards of conduct in local government and mechanisms for investigating failure to meet these standards. For example, the Local Government Act prohibits ‘improper direction’ of local government employees by councillors. However, the Act is silent on what constitutes ‘proper direction’, suggesting that any action that is not specifically prohibited may be acceptable. Appropriate relationships between councillors and employees are implied rather than explicitly articulated. The Act also prohibits a range of behaviours but does not establish penalties for all breaches.

The functions and powers of the LGICI and the Chief Municipal Inspector should be more explicitly specified in legislation. Currently, the Act specifies appointment processes, functions and powers of ‘municipal inspectors’. This makes it unclear as to whether the Chief Municipal Inspector has any investigatory powers or whether his role is limited to that of the Head of an Administrative Office. In the absence of a clearly defined status for the LGICI and its Head, there is confusion about its role and relationship with councillors and local government employees.

³⁴ Ombudsman Victoria 2008, *Conflicts of interest in local government*, Ombudsman Victoria, Melbourne, p. 8.

3.7 Office of Police Integrity

Contributors to the Review identified two key areas to strengthen the effectiveness of the Office of Police Integrity:

- extending OPI jurisdiction to all employees of Victoria Police; and
- establishing more comprehensive oversight of the OPI.

The changing nature of police work means that unsworn public servants now comprise 24 percent of Victoria Police's workforce.³⁵ These employees may be senior, work closely with sworn officers and have access to highly sensitive information and evidence. Under current integrity arrangements, unsworn officers are not subject to OPI investigations; rather their conduct is subject to scrutiny by the Ombudsman. The Review considers that more comprehensive, seamless and effective investigations should be established by removing the distinction between investigations into sworn officers and unsworn employees of Victoria Police. The extension of coercive powers currently held by the OPI to potentially apply to public servants working for Victoria Police would need to be balanced through active external oversight, procedural fairness checks, and requirements that such powers are exercised only as necessary and appropriate.

There is an opportunity to improve oversight arrangements for the OPI. Currently, the Special Investigations Monitor (SIM) oversees the OPI's exercise of powers, while the Ombudsman may investigate complaints into the administrative actions of OPI officers. This arrangement may be perceived as a conflict of interest, given the initial appointment of the current Ombudsman as the head of the OPI. Furthermore, the current arrangement risks creating unnecessarily disjointed oversight, by separating scrutiny of OPI officers' conduct from scrutiny of their exercise of powers.

3.8 Victoria Police

Victoria Police's role in the integrity system is to investigate public sector misconduct that is serious enough to amount to a criminal offence, such as public sector fraud. This role is part of a broader function to investigate crime. The Review considers that a more active investigatory role into serious misconduct in the public sector and local government sector by a separate integrity body should complement Victoria Police's role in the system.

The Review reaffirms the importance of Victoria Police's primary law enforcement role in the integrity system. It otherwise proposes no major change to the role, functions and powers of Victoria Police.

³⁵ State Services Authority 2009, 'Workforce Data Collection', unpublished report.

4 reform directions

The primary objectives of the reform directions outlined in this section of the Review report are to improve the efficiency and effectiveness of the integrity and anti-corruption system by:

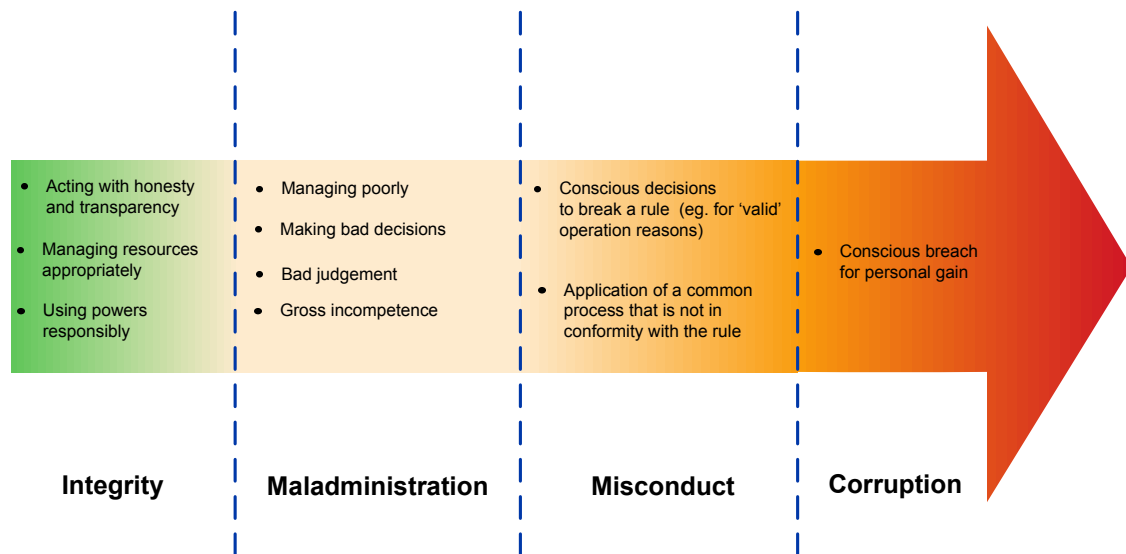
- closing gaps in classes of officials covered by specialist integrity bodies;
- establishing clear institutional responsibilities for different types of functions within the integrity system;
- placing greater emphasis on intelligence gathering and analysis to identify and investigate serious misconduct and corruption;
- ensuring rigorous oversight of integrity bodies, including oversight of the exercise of coercive powers in accordance with principles of procedural fairness; and
- improving cooperation and coordination across the system.

There is no agreed 'best practice' model for structuring and operating an integrity and anti-corruption system. There is, nevertheless, consensus within the international community that anti-corruption legislation and measures need to be implemented and monitored through specialised bodies and personnel with adequate powers, resources and training. Integrity bodies should be collectively responsible for combating misconduct and corruption through intelligence gathering, investigations and law enforcement. This objective is achieved through a range of multi-disciplinary functions, including research monitoring and coordination; and investigation and prosecution. The responsibility for these functions should be clearly assigned to specific institutions.³⁶

Throughout Australia, there is variation in integrity system models, which have evolved to respond to each jurisdiction's needs. This Review has provided an opportunity to reconsider Victoria's integrity arrangements and the distribution of responsibilities, functions, and powers across the system. Reform directions include addressing gaps in jurisdiction, strengthening the coherence of the integrity system, and laying the foundations of a more cooperative and coordinated approach to promoting high standards of integrity and addressing inappropriate conduct. An effective integrity system requires coverage of all types of public officials across a full spectrum of behaviour, extending from behaviour that demonstrates the highest standards of integrity to behaviour that constitutes maladministration, misconduct and corruption. This spectrum is shown in Figure 7.

³⁶ OECD 2007, *Specialised anti-corruption institutions review of models*, viewed 9 May 2010, <<http://www.oecd.org/dataoecd/7/4/39971975.pdf>>.

Figure 7, integrity system spectrum of behaviour³⁷



The challenge for the Review was to propose institutional reforms that would lead to a coherent system with appropriate coverage, functions and powers, along with necessary oversight and protection of individual rights. The Review considered a number of different options for institutional arrangements. Given the issues discussed in section 3 of the Review report, the status quo is not a recommended option. The lack of cohesiveness of the system as a whole means that some institutional changes are necessary.

The Review considered an option to expand the roles of existing institutions, such as the Ombudsman and Office of Police Integrity (OPI), combined with removing the statutory and administrative impediments to cooperation and sharing information. In particular, the role of the Ombudsman could be expanded to cover all members of parliament and local government councillors. In effect, this would formalise the Ombudsman as Victoria's anti-corruption body. However, it would risk overshadowing the important task of conducting enquiries into administrative actions and investigating complaints about maladministration. Experience in other jurisdictions also points to problems in locating a wide range of responsibilities in a single body, and the importance of recognising the significant differences in both the nature and responses to maladministration and corruption, including different investigatory techniques that appear most effective in tackling these distinctively different issues.

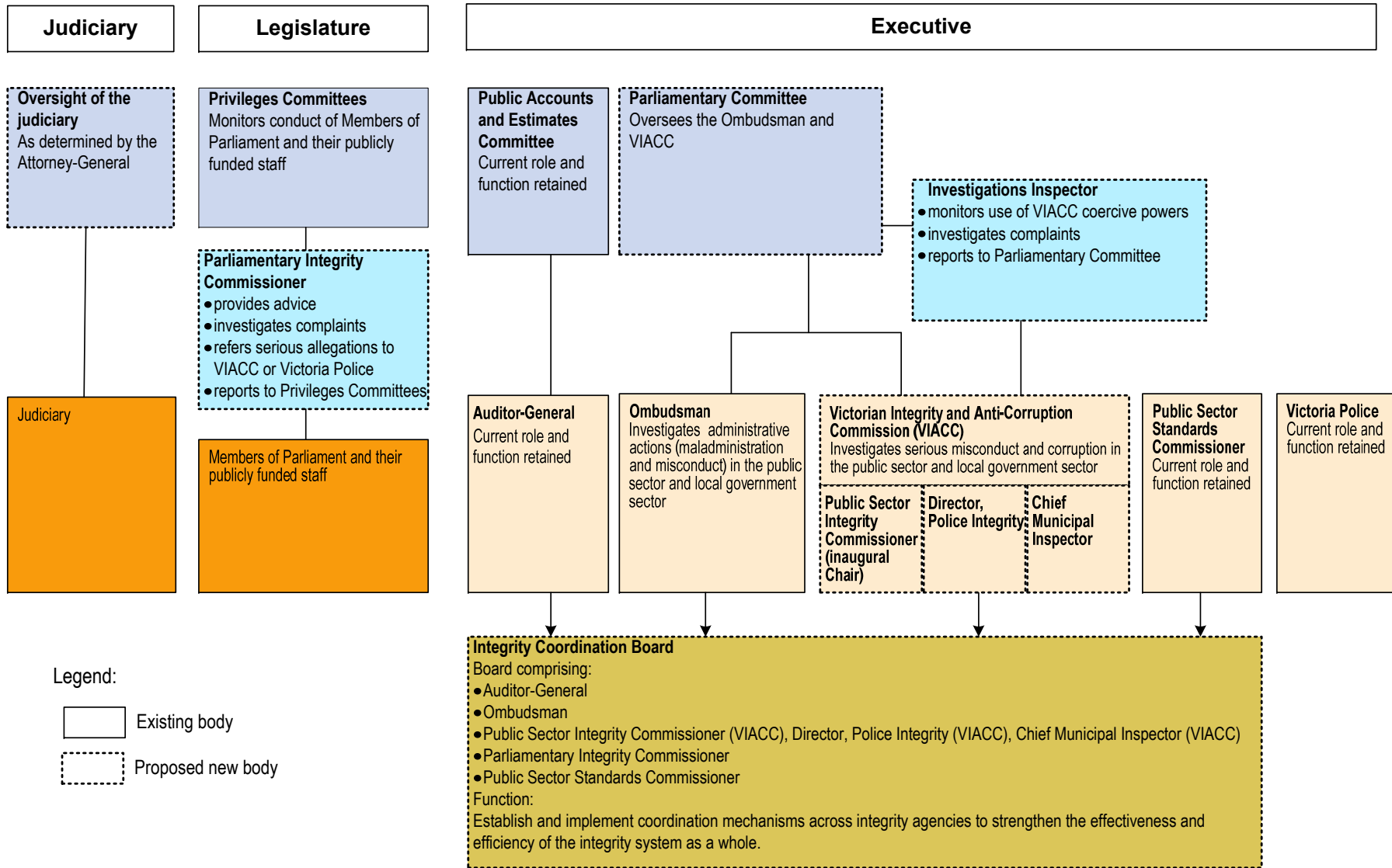
The Review therefore recommends establishing a separate body with a dedicated focus on serious misconduct and corruption, equipped with the required specialised investigatory skills.

³⁷ Adapted from: Treasury Board of Canada 2005, *The Financial Administration Act: Responding to non-compliance*, Treasury Board, Canada.

The Review's proposed reform directions are outlined in the remainder of this section of the Review report. The key integrity bodies for Victoria's integrity and anti-corruption system, as shown in Figure 8, are:

- a new judicial integrity body;
- a new Parliamentary Integrity Commissioner (overseen by the Privileges Committees);
- the Auditor-General – no major changes to current role and functions (overseen by the Public Accounts and Estimates Committee);
- the Ombudsman – underpinned by a modernised Ombudsman Act to clarify functions and apply principles of procedural fairness to investigations (overseen by a parliamentary committee);
- a new Victorian Integrity and Anti-Corruption Commission (VIACC) – incorporating the OPI and Local Government Investigations and Compliance Inspectorate (LGICI), in a broad-based jurisdiction over serious misconduct and corruption in the public sector, and functions under a modernised Whistleblowers Protection Act;
- a new Parliamentary Committee to oversee the Ombudsman and the VIACC. The Parliamentary Committee would be supported by an Investigations Inspector to monitor the VIACC;
- Victoria Police – current role as Victoria's primary law enforcement agency retained; and
- a new Integrity Coordination Board – establishing system-wide coordination between integrity bodies.

Figure 8, model for reform to Victoria's integrity system



4.1 individual and employer roles

Public officials and their employers are the foundation of public administration operating with high standards of integrity. It is incumbent on individuals to demonstrate integrity and report unethical behaviour. Employer responsibilities extend from promoting high standards of integrity to identifying and addressing maladministration, misconduct and corruption in their organisations. Employers need to regularly reinforce the importance of high standards of conduct within their organisations, demonstrating leadership through their own actions as well as through documented policies and procedures.

The Public Sector Standards Commissioner is responsible for promoting public sector values and supporting employers by issuing codes of conduct and guidance material. Inappropriate conduct is most effectively and efficiently addressed at the local organisational level, with specialised integrity bodies becoming involved when additional checks and balances are necessary.

Employers are best placed to sponsor activities, allocate resources, clarify expectations and provide an example for others to follow. The system of policies, procedures and practices they introduce can include:

- evaluating organisational performance – monitoring information from surveys, turnover data and other sources;
- building commitment – informing and involving staff in discussions about values;
- written guides to acting ethically – developing policies and procedures in consultation with staff;
- developing ethical skills – incorporating values in induction and other staff development programs;
- reinforcing ethical behaviour – rewarding, recognising and promoting staff who exemplify the values; and
- reporting breaches – enabling staff to raise concerns about application of the values.³⁸

When day to day management practices that promote the values are integrated into an organisation's approach to doing business, their influence on outcomes can be significant.³⁹ For example, employees are more likely to report unethical behaviour to their managers if they are treated fairly.⁴⁰

4.2 addressing gaps in jurisdiction

The Review proposes comprehensive integrity system coverage of all types of public officials. This includes addressing existing jurisdictional gaps involving the judiciary, members of parliament and publicly funded staff employed by members of parliament. The Review understands that the Attorney-General and judiciary are currently considering how to strengthen oversight of judicial conduct. As such, the Review does not detail arrangements for judicial oversight, but supports the current work underway in this area.

³⁸ State Services Authority 2005, *An ethics framework*, State Services Authority, Melbourne.

³⁹ Treasury Board of Canada Secretariat 2006, *Report on governance structures for values and ethics*, Treasury Board of Canada Secretariat, Canada.

⁴⁰ OECD 2009, *Towards a sound integrity framework: Instruments, mechanisms, actors and conditions for implementation*. OECD, GOV/PGC/(2009)1.

4.2.1 parliamentary integrity commissioner

The Review recommends the establishment of an independent Parliamentary Integrity Commissioner as the specialist integrity agent with primary responsibility for members of parliament and their publicly funded employees. The creation of such a specialist integrity function is in keeping with Westminster traditions of government and the separation of powers between the executive, legislature and judiciary.

Under the Westminster system, members of parliament are accountable to the Parliament and ultimately to the public, which may express its satisfaction or dissatisfaction at the ballot box. A core principle of the system is that the Parliament has the authority to discipline its members and that parliamentarians should not be held answerable to an unelected body outside the Parliament itself. Nevertheless, the operation of Westminster systems and its traditions do not preclude members of parliament from being subject to rigorous scrutiny of their conduct.

The Review proposes that a Parliamentary Integrity Commissioner be appointed as an independent officer of Parliament. The responsible minister would consult with the privileges committees in both Houses of Parliament before making a recommendation to the Governor in Council to appoint a Parliamentary Integrity Commissioner for a renewable five-year term.

The Parliamentary Integrity Commissioner should report to the Privileges Committees of the Legislative Assembly and the Legislative Council. He or she should be responsible for receiving and investigating complaints about the conduct of members of parliament and breaches of the Members of Parliament (Standards) Bill. In addition, he or she should have a function to support and advise members of parliament in fulfilling their obligations to demonstrate integrity, comply with the code of conduct and register of interests.

The coverage of the Parliamentary Integrity Commissioner's functions would concentrate on the 'integrity-maladministration' end of the behavioural spectrum shown in Figure 7. Where the Parliamentary Integrity Commissioner considers there is prima facie evidence of more serious misconduct or corruption, the matter should be referred to integrity bodies with specialist investigations expertise, such as Victoria Police or a Victorian Integrity and Anti-Corruption Commission (see section 4.3 of the Review report).

The Parliamentary Integrity Commissioner's role to investigate breaches of standards should extend to publicly paid employees of members of parliament, including ministerial officers. Contributors to the Review supported the extension of accountability arrangements to ministerial officers, noting that such officers are paid with public money and are potentially highly influential. They may determine the flow of information reaching ministers, and represent ministers to the public via the media. These officers perform functions as a direct extension of ministers and should be subject to investigations from the same integrity body investigating ministers. The Review proposes that the Parliamentary Integrity Commissioner should have the power to investigate the conduct of publicly paid employees of members of parliament in accordance with the *Ministerial Staff Code of Conduct* and the *Code of Ethics for Electorate Officers*.

The Parliamentary Integrity Commissioner should report on findings of his or her investigations to the Privileges Committees of both Houses of Parliament.

4.3 Victorian Integrity and Anti-Corruption Commission

The Review proposes establishing a Victorian Integrity and Anti-Corruption Commission (VIACC) with a dedicated focus on serious misconduct and corruption. This should strengthen the effectiveness of the integrity system by providing a dedicated locus for systematically scanning, analysing and investigating identified and high risk areas. This active intelligence gathering and analysis capacity is essential for identifying behaviour at the ‘serious misconduct-corruption’ end of the behavioural spectrum (see Figure 7). Intelligence gathering already constitutes a significant part of the work of Victoria Police and the OPI. Systematic scanning, intelligence gathering and analysis through a broad-based integrity body would complement already well established mechanisms for addressing complaints about the conduct of various classes of public officials.

4.3.1 jurisdiction

The primary jurisdiction of the VIACC should be:

- **police** – including the transition of the functions of the OPI as well as extending jurisdiction to unsworn employees of Victoria Police; and
- **local government** – including the transition of the functions of the LGICI;
- **public sector officials** – including suspected serious misconduct and corruption involving public servants and public sector directors and employees.

The responsibilities of the LGICI to investigate serious misconduct and corruption involving local government councillors and employees would transition to the VIACC. The effectiveness of the new office should be strengthened by amendments to Local Government Act to more clearly articulate standards of conduct, as suggested in section 3.6 of the Review report. The VIACC would have jurisdiction over both councillors and local government employees.

The VIACC’s jurisdiction over police as well as employees in the wider public and local government sectors means that the functions of the Office of Police Integrity would transition into the new body. Specialist expertise to independently investigate police would be retained through the appointment of the Director, Police Integrity to the VIACC, who would lead the operations of dedicated police anti-corruption investigators within the Commission. These investigators would gather intelligence and investigate serious misconduct and corruption involving unsworn employees of Victoria Police as well as sworn officers.

There are also circumstances in which the VIACC should have jurisdiction over members of parliament and their publicly funded employees. This should include referrals from the Parliamentary Integrity Commissioner where he or she considers there to be prima facie evidence of serious misconduct or corruption. It should also include investigation of whistleblower complaints involving members of parliament or their publicly funded employees.

4.3.2 whistleblower disclosure functions

VIACC should be designated as the body responsible for the administration of the Whistleblowers Protection Act.

However, the Review considers that the Whistleblowers Protection Act requires modernisation alongside transition of administration functions to the VIACC. In 2007, the Department of Justice commenced a review of the Act. This review was deferred in anticipation of a Commonwealth parliamentary committee report outlining the preferred model for legislation to protect whistleblowers in the Commonwealth public sector. As the committee's report and the Commonwealth Government's response have now been released, it is opportune for the Department of Justice to complete its review of the Act. The review should note best practice principles recommended in the Commonwealth report in key areas for consideration in Victoria, including:

- the type of conduct covered and whether the Act should be extended to include maladministration;
- potential simplification of processes for making complaints (eg. removing 'public interest disclosure' and 'protected interest disclosure' distinctions);
- clarifying the roles of those involved in complaint handling and investigations; and
- potential expansion of the protections available to whistleblowers.

Consistent with recommendations of the Commonwealth review,⁴¹ considerations should be given to how VIACC might be designated functions such as:

- setting standards for investigation, reconsideration, review and reporting of disclosures;
- referring disclosures to other appropriate bodies for investigation;
- receiving referrals of disclosures from other bodies;
- conducting investigations or referrals of investigations where appropriate;
- providing assistance to agencies in implementing the disclosure system including employee assistance, education and awareness training;
- receiving data on the use and performance of the disclosure system; and
- reporting to Parliament on the operation of the system.

4.3.3 governance

The Review proposes a collective governance model for the VIACC. The benefits of a collective model include senior level expertise and knowledge of different classes of officials; efficiencies derived from shared services across the commission; and additional checks on the exercise of powers. The commission should comprise:

- Public Sector Integrity Commissioner – who would also be the inaugural Chair of the Commission;
- the Director, Police Integrity; and
- the Chief Municipal Inspector.

The three members of the VIACC should each be independent officers of the Parliament and report directly to the Parliament. They should have operational independence to exercise their legislated functions and powers. Collectively, the three members would govern the VIACC. The Chair should have the authority, in consultation with other Commissioners, to appoint Deputy Commissioners or Assistant Commissioners as required. A chief executive officer should be responsible for the administration of the organisation and report to the Chair.

⁴¹ House of Representatives Standing Committee on Legal and Constitutional Affairs 2009, *Whistleblowers protection: A comprehensive scheme for the Commonwealth Public Sector*, Commonwealth of Australia, Canberra, p. 137.

4.3.4 powers

Each of the three members of VIACC should have powers necessary to identify and investigate serious misconduct and corruption. They should each have powers to summons witnesses, compel witnesses to answer questions, override privileges (eg. self-incrimination), enter premises occupied by a public authority, and conduct searches and seizures (upon application to a Supreme Court judge for a warrant). However, powers should not extend to holding public hearings given the potential for significant reputation damage to witnesses. The checks and balances for the exercise of these powers would be outlined in legislation. The exercise of these powers should be subject to principles of procedural fairness that could be abrogated only insofar as necessary and appropriate for VIACC's effective functioning.

The Director, Police Integrity should have additional powers that may not be independently exercised by the other two members of VIACC. Police should be subject to additional powers because, in the words of the Wood Royal Commission report:

The powers entrusted to police to carry arms, to use coercive force in the proper course of their duties (and, in extreme circumstances, to take lives), to inquire into personal affairs and to eavesdrop (pursuant to a warrant) on private conversations, to deprive citizens of their liberty, to enter and search their premises, to seize and hold their property, and to initiate proceedings that will require them to defend themselves before the courts, are very substantial powers – possessed by no other class of employee.⁴²

Investigating potentially corrupt police is a particularly complex task as they:

- know the system and potentially have early warning of interest in their activities;
- are skilled in investigation techniques and counter-surveillance;
- may have corrupt associates willing to cover for them;
- are not easily fazed by interview and are experienced in giving evidence;
- are readily assumed to be credible by jurors and tribunals; and
- can exert considerable influence over internal informants and investigators, particularly if they hold senior rank.⁴³

The powers of the Director, Police Integrity, include powers to apply to a magistrate to enter private premises or a vehicle; apply to a Supreme Court judge to use a surveillance device; apply to a federal judicial officer to use telephone interception; authorise controlled operations; possess and use defensive equipment and firearms; and in exceptional circumstances conduct public hearings, subject to a public interest test. Each of these powers has strict use and monitoring requirements. With one exception, these powers should apply to VIACC investigations involving sworn officers or unsworn employees of Victoria Police. The use of defensive weapons, including firearms, should be restricted to operations involving sworn officers.

The exercise of stronger powers, including covert powers, should be restricted only to extraordinary situations that justify the abrogation of individual liberties. In rare circumstances, the Public Sector Integrity Commissioner or Chief Municipal Inspector may require access to additional powers. Where this relates to potentially criminal conduct, the matter may be referred to Victoria Police for investigation. Where referral to Victoria Police for a criminal investigation is not appropriate, the Public Sector Integrity Commissioner and Chief Municipal Inspector may seek access to powers otherwise restricted to the Director, Police Integrity. They may:

⁴² Wood, JRT 1997, *Royal Commission into the New South Wales Police Service, Final Report, volume 1: Corruption*, New South Wales Government, Sydney, p. 22.

⁴³ Wood, JRT 1996, *Royal Commission into the New South Wales Police service: Interim report, February*, New South Wales Government, Sydney, p. 48 – 49.

- refer an investigation to the Director, Police Integrity for investigation;
- conduct a joint investigation with the Director, Police Integrity; or
- in circumstances limited in legislation, continue to lead an investigation and draw on technical expertise from the police investigators in the VIACC.

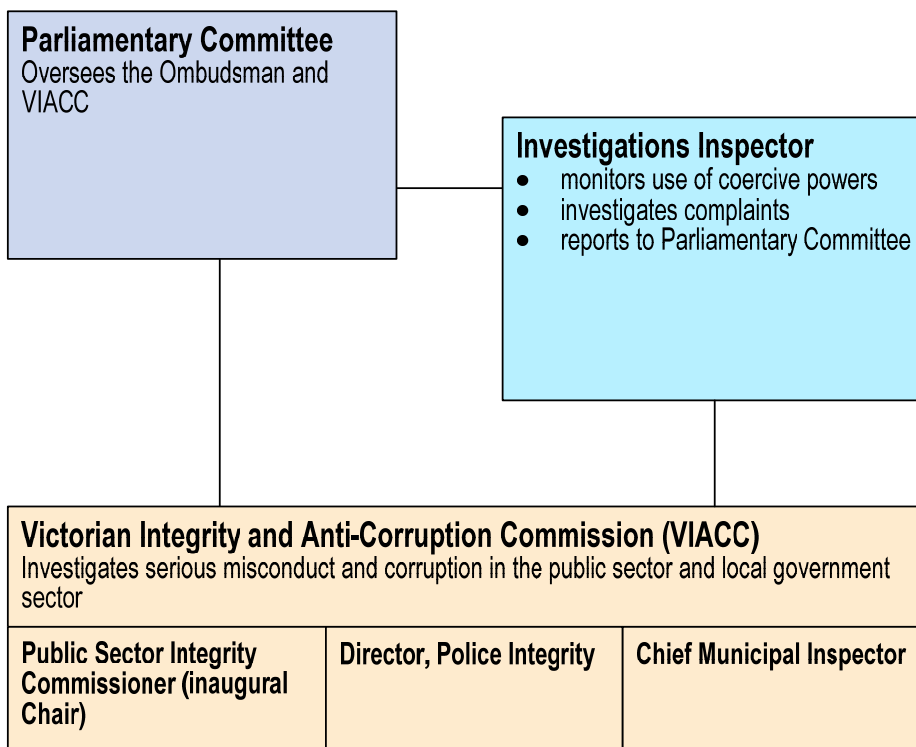
In cases not involving investigation of Victoria Police, higher thresholds should apply to access stronger powers. These thresholds include:

- a requirement that *all three* members of VIACC agree to apply for warrants to use surveillance devices, intercept telephones or conduct searches and seizures on private premises;
- a requirement that an Investigations Inspector is advised of these applications; and
- a prohibition on the Public Sector Integrity Commissioner or the Chief Municipal Inspector from leading an investigation involving controlled operations. If controlled operations are used, the Director, Police Integrity must lead the investigation or conduct the investigation jointly with one or both the other members of VIACC.

4.3.5 oversight of the VIACC

Given the extent of the powers of the proposed VIACC, the Review recommends stringent dual oversight arrangements, similar to those that apply to the Independent Commission Against Corruption in New South Wales. These oversight arrangements, shown in Figure 9, encompass a general oversight function for a parliamentary committee and a monitoring and complaints function for an Investigations Inspector.

Figure 9, VIACC oversight



The functions of the Parliamentary Committee to oversee the VIACC should include:

- monitoring and reviewing the exercise of functions and reporting to the Parliament on these matters;
- examining VIACC's annual report and other reports and reporting to the Parliament on these matters;
- examining trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct and reporting to the Parliament on any change it considers desirable to the functions, structures and procedures of the VIACC;
- inquiring into any questions referred to it by the Parliament; and
- overseeing three-yearly performance audits of the VIACC.

The oversight function of the Parliamentary Committee would be strengthened by dedicated monitoring functions by the Investigations Inspector. Functions of the current Special Investigations Monitor would transition to the Investigations Inspector. These functions would also be extended and include:

- auditing the operations of VIACC for the purpose of monitoring compliance with the law (including monitoring the exercise of coercive powers);
- dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of VIACC or its officers;
- dealing with (by reports and recommendations) conduct amounting to maladministration by VIACC or its officers; and
- assessing the effectiveness and appropriateness of the procedures of VIACC relating to the legality or propriety of its activities.

In addition, the Inspector would respond to complaints or a reference from the Parliamentary Committee. In performing these functions, the Inspector would have a range of powers including:

- power to investigate any aspect of the VIACC's operations or any conduct of officers of the VIACC;
- entitlement to full access to the records of the VIACC and to take or have copies made;
- power to require officers of the VIACC to supply information or produce documents;
- power to require officers of the VIACC to appear before the Inspector and answer questions; and
- power to recommend the VIACC take action to address any inappropriate conduct by its officers.

4.4 modernising the Ombudsman Act

Modernising the Ombudsman Act should provide an opportunity to establish a clear locus of responsibility for the Office of the Ombudsman within a broader integrity system. The Review envisages the principal responsibility is to investigate citizen complaints and concerns (including own motion enquiries) into administrative actions. Any legislative modernisation affecting the Office of the Ombudsman must respect the constitutionally entrenched status of the Office. As such, it is not anticipated that changes to the legislation would fundamentally alter the role of the Ombudsman.

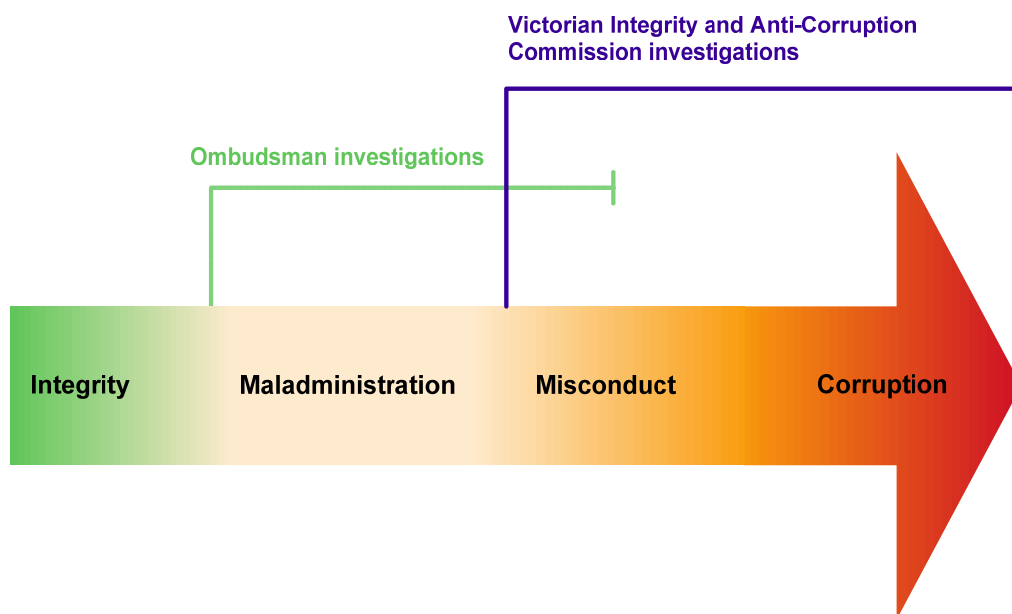
Proposed changes to the Ombudsman Act should centre on:

- clarifying the locus of responsibility for the Ombudsman within the integrity system;
- explicitly codifying principles of procedural fairness to apply during Ombudsman investigations, as discussed in section 3.4 of the Review report;
- establishing more active oversight of the Office of the Ombudsman, reflecting the Public Accounts and Estimates Committee's active oversight of the Office of the Auditor-General; and
- considering whether to codify in the Act the Ombudsman's current practice of using patterns of complaints to trigger own motion enquiries and investigations.

As outlined in section 3.4 of the Review report, the role of the Office of the Ombudsman changed by the assigning of functions under the Whistleblowers Protection Act. This change has resulted in a perception of the Office as, in effect, Victoria's anti-corruption body. The Review considers that functions under the Whistleblowers Protection Act should be placed in the VIACC. The Ombudsman should continue to focus his investigations on complaints and enquiries into administrative actions.

The relative emphasis of Ombudsman and VIACC investigations is shown in Figure 10. Ombudsman investigations should focus on maladministration, potentially extending into concerns about misconduct. VIACC investigation should focus on serious misconduct and corruption. This would facilitate tailoring investigations practice within both integrity bodies in accordance with the type of behaviour concerned. A degree of overlap would need to be addressed through coordination between the two integrity bodies. Coordination arrangements are outlined at section 4.5 of the Review report.

Figure 10, types of conduct in Ombudsman and VIACC investigations



4.4.1 oversight of the Ombudsman

Oversight instils accountability in the integrity system. Oversight strengthens the effectiveness of the integrity system by holding integrity bodies to account for their actions, including their exercise of coercive powers. This is particularly important given the power of the Ombudsman to publicly name individuals and detail adverse findings against them. This can have a significant impact on individuals' reputations and future employment prospects. In addition, oversight improves effectiveness by identifying issues of operational importance to the integrity system and raising opportunities for systemic reform or resource requirements.⁴⁴

As the Ombudsman is an independent officer of Parliament, oversight responsibility should reside with the Parliament via a parliamentary committee. The functions of this parliamentary committee should not extend to involvement in operational matters or complaints handling. Rather, consistent with oversight arrangements for ombudsmen in New South Wales and Queensland, the parliamentary committee would provide general oversight to monitor and review the Ombudsman's functions. Functions of the parliamentary committee to oversee the Ombudsman should include:

- monitoring and reviewing the exercise of the Ombudsman's functions and powers, including consultation on own motion investigations and guidelines for complaints handling;
- examining annual and other reports;
- inquiring into any questions referred to it by the Parliament;
- overseeing a performance review every three years; and
- reporting to Parliament on these matters.

It is proposed that the Parliamentary Committee to oversee the Ombudsman should be the same Parliamentary Committee that would oversee the VIACC.

4.5 integrity coordination board

The Review proposes the establishment of an Integrity Coordination Board (the Board) to strengthen cooperation and coordination across the integrity system. The Board should be established in legislation, comprising a membership of core integrity agents. This includes the Auditor-General, Ombudsman, Public Sector Integrity Commissioner (VIACC), Director, Police Integrity (VIACC), Chief Municipal Inspector (VIACC), Parliamentary Integrity Commissioner, and Public Sector Standards Commissioner. Additional membership could be extended by the Board as required. For example, the Chief Commissioner of Police and the Director of Public Prosecutions might be invited to join the Board for special purpose projects.

The Board should be empowered to share information and conduct joint investigations. Its legislation should establish an obligation for members to refer matters that come to their attention to the appropriate body for investigation. This should override provisions in integrity bodies' Acts that currently restrict information sharing. Consideration should also be given to whether individual integrity bodies' Acts require amendments to enable information sharing and joint investigations.

⁴⁴ Griffith University & Transparency International 2005, *Chaos or coherence? Strengths, opportunities and challenges for Australia's integrity systems. National Integrity Systems Assessment Final Report*, Key Centre for Ethics, Law, Justice and Governance, Griffith University & Transparency International, Australia, p. 83.

The Board should provide a forum for integrity bodies to strengthen the effective operation of the integrity system as a whole. The Board could conduct joint research, education and promotion functions; develop consistent definitions of terms and investigation processes; and develop referral and joint investigation protocols. The forum could play an important role in determining where the jurisdiction of one integrity body ends and another begins. For example, there could be a degree of overlap between the Office of the Ombudsman and the VIACC in investigating misconduct. This overlap is a strength of the system rather than a weakness. So long as effective coordination and working relationships are achieved, this arrangement protects against system gaps. The Board should play a key role in transforming Victoria's integrity infrastructure from a collection of individual integrity bodies to an integrity system.

4.6 recommendations

The Review's proposed directions for reform to Victoria's integrity and anti-corruption system are shown in Figure 8. The reform model establishes separate integrity bodies to address the three arms of government in a Westminster system:

- **judiciary** – Judicial integrity body to be determined by Attorney General in consultation with the judiciary.
- **legislature** – Privileges Committees supported by a Parliamentary Integrity Commissioner.
- **executive** – Auditor-General (financial and performance audits); Ombudsman (maladministration-misconduct investigations); and VIACC (serious misconduct-corruption investigations in the public sector and local government sector).

Each integrity body is designed to complement the central role of individuals and employers in ensuring high standards of integrity and accountability. Collectively, they form a system that oversees conduct that risks undermining integrity across a spectrum of behaviour from maladministration to misconduct and corruption. They provide dedicated expertise to investigate complaints, conduct audits, gather intelligence and enforce the law.

In order to achieve the proposed reform directions for Victoria's integrity and anti-corruption system, the Review's recommendations are listed below.

Recommendation 1 – That the Premier propose legislation to establish a Victorian Integrity and Anti-Corruption Commission responsible for identifying and investigating serious misconduct and corruption, such that:

- 1.1 The Victorian Integrity and Anti-Corruption Commission (VIACC) comprises three independent officers of Parliament:
 - a Public Sector Integrity Commissioner (who is also the inaugural Chair of the VIACC), responsible for gathering intelligence and investigating serious misconduct and corruption in the Victorian public sector (excluding Victoria Police);
 - the Director, Police Integrity, with an extended jurisdiction to include both sworn officers and unsworn employees of Victoria Police; and
 - the Chief Municipal Inspector, responsible for gathering intelligence and investigating misconduct and corruption involving local government councillors and employees.
- 1.2 Each member of VIACC is appointed for a renewable five-year term by the Governor in Council upon recommendation of the Premier, following consultation with a VIACC parliamentary oversight committee;
- 1.3 The Governor in Council may remove a member of VIACC from office on recommendation of a VIACC parliamentary oversight committee in cases of incapacity, incompetence or misbehaviour. Members of VIACC may otherwise be removed from office only by resolution of both Houses of Parliament;
- 1.4 The VIACC must appoint a chief executive officer, who reports to the Chair, and may appoint Deputy Commissioners and Assistant Commissioners;
- 1.5 The VIACC has functions under a modernised *Whistleblowers Protection Act 2001* to operate as a central point for coordinating whistleblower disclosures, including education and guidance, receiving all disclosures, referring disclosures to the appropriate body for investigation as required, undertaking investigations that best fit within VIACC's jurisdiction, and reporting to Parliament on the operation of the whistleblower protection system;
- 1.6 The VIACC may receive referrals from the Parliamentary Integrity Commissioner (see recommendation 5) and conduct investigations involving members of parliament, and publicly funded employees of members of parliament, where the Parliamentary Integrity Commissioner advises that he or she believes there is prima facie evidence of serious misconduct or corruption;
- 1.7 The VIACC has research, prevention and education functions;
- 1.8 Each member of VIACC has powers that may be independently exercised, including powers to:
 - summons witnesses
 - compel witnesses to answer questions
 - override privileges (eg self-incrimination)
 - enter premises occupied by a public authority
 - apply to a Supreme Court judge for a warrant to conduct searches and seizures.
- 1.9 The Director, Police Integrity retains existing additional powers (including covert powers), which with the exception of powers to carry defensive weapons and firearms, may be exercised in relation to investigations involving either sworn officers or unsworn employees of Victoria Police;
- 1.10 In exceptional circumstances where the Public Sector Integrity Commissioner or the Chief Municipal Inspector may require powers otherwise vested only in the Director, Police Integrity, the VIACC may:
 - refer an investigation to the Director, Police Integrity;
 - establish a joint investigation with the Director, Police Integrity; or
 - authorise the use of technical expertise from the Director, Police Integrity investigators and apply as

'the Commission' to the appropriate judicial authority for warrants to: enter private premises and conduct searches and seizures; use telephone intercepts; or use surveillance devices.

1.11 VIACC's exercise of coercive powers must be proportionate to the nature of the matter under investigation and consistent with codified principles of procedural fairness that should be abrogated only insofar as necessary and appropriate for VIACC's effective functioning; and

1.12 the VIACC is subject to active oversight from a parliamentary committee and an Investigations Inspector.

Recommendation 2 – That the Premier propose amendments to modernise legislation governing the Ombudsman, such that:

2.1 the Ombudsman is subject to active oversight by a parliamentary committee;

2.2 the Ombudsman does not investigate complaints or conduct own motion enquiries into Victoria Police;

2.3 the Ombudsman must base investigation policies and procedures on codified principles of procedural fairness and publish detailed guidelines on how investigations are conducted in accordance with these principles;

2.4 persons subject to any investigation procedures conducted by the Ombudsman have the right to seek legal advice and a right of a published reply;

2.5 functions under the *Whistleblowers Protection Act 2001* transfer from the Ombudsman to a Victorian Integrity and Anti-Corruption Commission (VIACC) (see recommendation 1); and

2.6 consideration is given to codifying the Ombudsman's current practice of using patterns of complaints to trigger own motion enquiries and investigations.

Recommendation 3 – That the Attorney-General complete a review of the *Whistleblowers Protection Act 2001* such that:

3.1 amendments proposed to the Act transition functions from the Ombudsman to the Victorian Integrity and Anti-Corruption Commission to:

- determine whether disclosures are public interest disclosures;
- investigate public interest disclosures;
- prepare and publish guidelines for the procedures to be followed by public bodies relating to disclosures and investigations; and
- review the implementation procedures of public bodies relating to disclosures and investigations.

3.2 amendments proposed to the Act establish the Victorian Integrity and Anti-Corruption Commission as the central point for coordinating and referring whistleblower disclosures;

3.3 the review considers whether broader amendments to the Act are required in areas including:

- the type of conduct covered and whether the Act should be extended to cover maladministration;
- potential simplification of processes for making complaints (eg removing 'public interest disclosure' and 'protected interest disclosure' distinctions);
- clarifying the roles of those involved in complaint handling and investigations; and
- potential expansion of the protections available to whistleblowers.

Recommendation 4 – That the Minister for Local Government review and propose legislative amendments to modernise the *Local Government Act 1989* such that:

- 4.1 clear and consistent standards of conduct for councillors and employees are established;
- 4.2 penalties for breaches of the Act are reviewed; and
- 4.3 mechanisms for investigating compliance with the Act are clearly identified.

Recommendation 5 – That the Premier propose legislation to establish a Parliamentary Integrity Commissioner, such that:

- 5.1 the Governor in Council appoints a Parliamentary Integrity Commissioner for a renewable five-year term upon recommendation by the responsible Minister, who must consult with the Privileges Committees of both Houses of Parliament before making the recommendation;
- 5.2 the Parliamentary Integrity Commissioner may receive and investigate complaints about the conduct of members of parliament and compliance with standards in the Members of Parliament (Standards) Bill 2010, once enacted;
- 5.3 the Parliamentary Integrity Commissioner may issue advice and guidance to members of parliament about standards of conduct;
- 5.4 the Parliamentary Integrity Commissioner may receive and investigate complaints about the conduct of publicly funded employees of members of parliament, including compliance with the *Ministerial Staff Code of Conduct* and the *Code of Ethics for Electorate Officers*;
- 5.5 the Parliamentary Integrity Commissioner may refer matters where there is prima facie evidence of serious misconduct or corruption to Victoria Police or to the Victorian Integrity and Anti-Corruption Commission; and
- 5.6 the Parliamentary Integrity Commissioner reports to the Privileges Committee of the Legislative Assembly and the Privileges Committee of the Legislative Council.

Recommendation 6 – That the Premier propose legislation to establish an Integrity Coordination Board, such that:

- 6.1 Integrity Coordination Board membership comprises the Ombudsman, Auditor-General, Public Sector Integrity Commissioner (VIACC), Director, Police Integrity (VIACC), Chief Municipal Inspector (VIACC), Parliamentary Integrity Commissioner, Public Sector Standards Commissioner, and other members upon invitation of the Integrity Coordination Board;
- 6.2 the objective of the Integrity Coordination Board is to strengthen coordination and effective operation of Victoria's integrity system;
- 6.3 the Integrity Coordination Board must operate a regular forum to address coordination matters;
- 6.4 the Integrity Coordination Board:
 - conducts joint research, education and promotion functions;
 - refers investigations to the appropriate body;
 - develops referral and joint investigation protocols; and
 - develops memoranda of understanding to govern inter-agency coordination.
- 6.5 nothing in integrity bodies' governing legislation prohibits the necessary and appropriate sharing of information, joint investigations or referrals between the members of the Integrity Coordination Board.

5 implementation

The Review's recommendations provide an opportunity to strengthen the effectiveness and coherence of Victoria's integrity and anti-corruption system. Implementation should require a full business case, including financial modelling, supported by a detailed transition plan.

Considerations for a business case should include costs of:

- establishing the Victorian Integrity and Anti-Corruption Commission (VIACC), including potential to transfer budgets from existing integrity bodies to accompany the transfer of functions;
- establishing the Investigations Inspector, including transfer of budget and roles from the Special Investigations Monitor;
- establishing and providing secretariat support for a new parliamentary committee to oversee the Ombudsman and VIACC;
- operating the Integrity Coordination Board, including potential for operating costs to be managed within integrity agencies' existing budgets;
- establishing a small, potentially part time, office for the Parliamentary Integrity Commissioner; and
- drafting and implementing the recommended legislative amendments to integrity bodies' Acts, and other consequential legislative amendments.

Transition planning for implementing the proposed reform model should provide for the continued operation of the LGICI, OPI and SIM until VIACC is established and operating. Transition planning should also take into account the outcomes of a number of processes underway, including:

- Parliament's consideration of the Members of Parliament (Standards) Bill;
- completing the Attorney-General and Department of Justice's review of the Whistleblowers Protection Act;
- completing the Attorney-General and judiciary's consideration of integrity oversight arrangements for the judiciary; and
- Government's response to the Public Accounts and Estimates Committee's Review of the Audit Act.



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appendix A consultations

Name	Role and organisation
Reviewed bodies	
David Wolf	Chief Municipal Inspector, Local Government Investigations and Compliance Inspectorate
Des Pearson	Victorian Auditor-General
Dr Diane Sydenham	Manager, Policy and Executive Programs, Office of Police Integrity
George Brouwer	Victorian Ombudsman
Greg Carroll	Assistant Director, Office of Police Integrity
Ian Killey PSM	General Counsel, Ombudsman Victoria
John Nolan	Assistant Director, Operations, Office of Police Integrity
John Taylor	Deputy Ombudsman, Ombudsman Victoria
Michael Strong	Director, Police Integrity
Paul Jevtovic APM	Deputy Director, Office of Police Integrity
Peter Frost	Deputy Auditor-General, Victorian Auditor-General's Office
Simon Overland APM	Chief Commissioner, Victoria Police
Sue Tait	Manager, Strategic Projects and Publications, Office of Police Integrity
Victorian public sector bodies	
Christine Nixon APM	Chair, Victorian Bushfire Recovery and Reconstruction Authority Former Chief Commissioner, Victoria Police
Claire Downey	Associate to Chief Justice, Supreme Court of Victoria
Damien Maguire	Chief Examiner
David Watts	Commissioner for Law Enforcement Data Security
Fran Thorn	Secretary, Department of Health
Grant Hehir	Secretary, Department of Treasury and Finance
Greg Tweedly	Chief Executive Officer, Worksafe Victoria
Helen Silver	Secretary, Department of Premier and Cabinet
James Lavery	Executive Director, Department of Transport
Janet Dore	Chief Executive Officer, TAC
Jennifer Patterson	Deputy General Counsel, Department of Transport
Jeremy Rapke QC	Director of Public Prosecutions
John Cain	Victorian Government Solicitor
Leslie Ross	Special Investigations Monitor, Office of the Special Investigations Monitor
Marcus Crudden	Manager, Essential Services Commission
Marisa De Cicco	Director, Justice Policy, Department of Justice

Name	Role and organisation
Michael Cunningham	Senior Regulatory Manager, Essential Services Commission
Penny Armytage	Secretary, Department of Justice
Penny Gleeson	Acting Director, Legal Branch, Department of Premier and Cabinet
Peter Froutzis	Assistant Director, Financial Position and Analysis, Department of Treasury and Finance
Philip Reed	Chief Community Officer, TAC
Philip Reed	Deputy Secretary, Department of Premier and Cabinet
Prue Digby	Deputy Secretary, Department of Planning and Community Development
Sal Perna	Racing Integrity Commissioner, Department of Justice
Scott Widmer	Acting Assistant Director, Legal Branch, Department of Premier and Cabinet
Stephen McBurnie	Examiner, Office of the Chief Examiner
Steve Mitsas	Director, Budget and Financial Management, Department of Treasury and Finance
The Hon Marilyn Warren AC	Chief Justice, Supreme Court of Victoria
The Hon Steve Bracks	Former Premier of Victoria
Yehudi Blacher	Secretary, Department of Planning and Community Development
Victorian Parliament representatives	
Bob Stensholt MP	Chair, Public Accounts and Estimates Committee
Matthew Tricarico	Deputy Clerk, Legislative Council
Ray Purdy	Clerk, Legislative Assembly
The Hon Jenny Lindell MP	Speaker of the Legislative Assembly, Parliament of Victoria
The Hon Robert Smith MLC	President of the Legislative Council, Parliament of Victoria
Valerie Cheong	Executive Officer, Public Accounts and Estimates Committee
Other jurisdictions	
Harvey Cooper AM	Inspector, Independent Commission Against Corruption, New South Wales
Irene Moss AO	Former Commissioner, Independent Commission Against Corruption, New South Wales
The Hon David Ipp AC, QC	Commissioner, Independent Commission Against Corruption, New South Wales
The Hon James Wood AO, QC	Chair, Law Reform Commission, New South Wales Former Commissioner, Royal Commission into the New South Wales Police Service
The Hon Len Roberts-Smith RFD, QC	Commissioner, Crime and Corruption Commission, Western Australia
Michael Silverstone	Executive Director, Crime and Corruption Commission, Western Australia
Nicholas Sellars	Manager, Policy and Governance, Australian Commission for Law Enforcement Integrity
Professor John McMillan AO	Commonwealth Ombudsman
Robert Needham	Former Chairman, Crime and Misconduct Commission, Queensland
Roger Watson	Director, Corruption Prevention, Crime and Corruption Commission, Western Australia

Name	Role and organisation
Teresa Hamilton	Deputy Commissioner, Independent Commission Against Corruption, New South Wales
Tony Fitzgerald AC QC	Former Commissioner, Commission of Inquiry into Official Corruption In Queensland
Dr Vivienne Thom	Deputy Commonwealth Ombudsman, Commonwealth Ombudsman's Office
Academia / think tanks	
Associate Professor Colleen Lewis	Associate Professor, Criminology, Monash University
Elizabeth O'Keeffe	Director, Transparency International Australia
Greg Thompson	Executive Director International, Transparency International Australia
Howard Whitton	Specialist Advisor, Australia New Zealand School of Government Institute for Governance
Jerrold Cripps QC	Chair, Transparency International Australia
Michael Ahrens	Chief Executive and Director, Transparency International Australia
Professor AJ Brown	John F Kearney Professor of Public Law, Griffith University
Professor Glyn Davis AC	Vice-Chancellor, Melbourne University Former Director General, Department of Premier and Cabinet, Queensland
Other stakeholders	
Adrian Nye	Former Chair, Melbourne Fire Brigade
Alison Lyon	General Counsel, Municipal Association of Victoria
Bill Scales AO	Former Municipal Inspector / Administrator, Brimbank City Council
Brigid Foster	Criminal Law Lawyer, Law Institute of Victoria
Cr Bill McArthur	President, Municipal Association Victoria
Danny Pearson	Director, Hawker Britton
David Jones	Former Special Investigations Monitor, Office of the Special Investigations Monitor
David White	Director, Hawker Britton
Eric Dyrenfurth	Chair, Administrative Review Committee, Law Institute of Victoria
Georgina Costello	Barrister, Victorian Bar
James MacKenzie	Former Chair, TAC / Victorian Workcover Authority
Jennifer Williams	Chief Executive Officer, Australian Red Cross Blood Service Former Chief Executive Officer, Bayside Health and The Alfred Hospital
Laura Helm	Policy Advisor, Administrative Law and Human Rights Section, Law Institute of Victoria
Michael Brett Young	Chief Executive Officer, Law Institute of Victoria
Michael Colbran QC	Chair, Victorian Bar Council
Michael McNamara	Chair, Criminal Law Section, Law Institute of Victoria
Norm Geschke	Former Victorian Ombudsman
Paul Holdenson	Barrister, Victorian Bar

Name	Role and organisation
Paul O'Connor	Chief Executive Officer, ComCare Former Chief Executive Officer, TAC
Peter Willis	Barrister, Victorian Bar
Phillip Priest QC	Deputy Chair, Victorian Bar Council Ethics Committee
Rob Spence	Chief Executive Officer, Municipal Association Victoria
Robert Stary	Criminal Law Section, Law Institute of Victoria
Ron Beazley	Former Victorian Government Solicitor, Victorian Government Solicitor's Office

appendix B submissions

No	Organisation/individual name
1	Accountability Round Table
2	Australian Medical Association
3	Australian Services Union
4	Australian Society of Orthopaedic Surgeons (Victorian Branch)
5	C Barnard
6	Cedric Wyndham
7	Colin Wallace
8	Associate Professor Colleen Lewis, Monash University
9	Community and Public Sector Union
10	Denis Linehan
11	Environmental Science Associates
12	Flemington & Kensington Community Legal Centre, Inc. (two submissions)
13	Dr Frank Harman
14	Gwen Woodford
15	Hugh Doherty
16	Human Rights Law Resource Centre
17	Keith Potter
18	Kevin Lindeberg
19	Lance Marke
20	Law Institute of Victoria
21	Local Government Investigations and Compliance Inspectorate
22	Malcolm A Traill
23	Marilyn Canet
24	Maurice Schinkel
25	Media, Entertainment and Arts Alliance
26	Office of Police Integrity (two submissions)
27	Ombudsman Victoria (two submissions)
28	Office of the Special Investigations Monitor
29	Paul Mullett
30	The Police Association

No	Organisation/individual name
31	Private Person - Confidential ⁴⁵
32	Private Person - Confidential
33	Private Person - Confidential
34	Private Person - Confidential
35	Private Person - Confidential
36	Private Person - Confidential
37	Private Person - Confidential
38	Private Person - Confidential
39	Private Person - Confidential
40	Private Person - Confidential
41	Private Person - Confidential
42	Private Person - Withheld ⁴⁶
43	Private Person - Withheld
44	Public Interest Law Clearing House (Vic), Inc
45	Richard Ward
46	Professor Tim Prenzler, Griffith University
47	Transparency International Australia
48	Transport Accident Commission
49	Victorian Aboriginal Legal Service Co-operative Ltd.
50	Victorian Auditor-General's Office
51	Worksafe Victoria

Submissions deemed suitable for publication will be published on the SSA website (www.ssa.vic.gov.au) following release of the Review report and the Government's response.

⁴⁵ Confidentiality requested by person making the submission to the review.

⁴⁶ Withheld from publication for legal reasons.

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Members of Parliament (Standards) Bill 2010

Ombudsman Act 1973

Police Integrity Act 2008

Police Regulation Act 1958

Public Administration Act 2004

Public Finance and Accountability Bill 2009

Victorian Charter of Human Rights and Responsibilities Act 2006

Whistleblowers Protection Act 2001

appendix D newspoll survey methodology

The Review commissioned Newspoll to conduct a survey of public perceptions of corruption at the federal, state and local level, across Australian jurisdictions.

The surveys were conducted via computer-assisted telephone interviews as part of Newspoll's national omnibus over two weekends: 12 – 14 February and 19 – 21 March, 2010. A total of 1200 adults (aged 18 years and over) participated in each survey with the sample weighted in each Australian state and territory according to the size of the jurisdiction.

Respondents were asked their opinion on how many elected politicians or public servants were involved in corruption at the local, state or federal government level. Answer categories included:

- almost none
- a few
- some
- quite a few
- almost all
- I don't know.

In addition, respondents in the second survey were asked to consider occasions where corruption has been identified in their state and to rate how effective the state government has been in fixing the problem. Answer categories included:

- very ineffective
- quite ineffective
- neither effective nor ineffective
- quite effective
- very effective
- I don't know.

appendix E legal definitions of misconduct

In Victoria, misconduct and serious misconduct by public sector employees are defined in a number of Acts, as outlined in Table 3.

Table 2, Legal definitions of misconduct and serious misconduct in Victoria

Source	Behaviour	Definition
<i>Fair Work Regulations 2009</i> (Cwth)	Serious misconduct	<p>Conduct that is serious misconduct includes:</p> <ul style="list-style-type: none"> • wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment; • conduct that causes serious and imminent risk to: <ul style="list-style-type: none"> • the health or safety of a person; • the reputation, viability or profitability of the employer's business. • the employee, in the course of the employee's employment, engaging in: <ul style="list-style-type: none"> • theft; • fraud; • assault; • the employee being intoxicated at work; • the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
<i>Whistleblowers Protection Act 2001</i>	Improper conduct	<p>Improper conduct includes:</p> <ul style="list-style-type: none"> • corrupt conduct; • a substantial mismanagement of public resources; • conduct involving substantial risk to public health or safety; • conduct involving substantial risk to the environment.

<p><i>Public Administration Act 2004</i></p>	<p>Misconduct</p>	<p>Misconduct includes:</p> <ul style="list-style-type: none"> • contravention of a provision of the PAA, the regulations or a binding code of conduct; • improper conduct in an official capacity; • a contravention, without reasonable excuse, of a lawful direction given to the employee as an employee by a person authorised to give the direction; • an employee making improper use of his or her position for personal gain; • employees making improper use of information, acquired by virtue of his or her position, to gain personally or for anyone else, financial or other benefits or to cause detriment to the public service or the public sector.
<p><i>Police Regulation Act 1958</i></p>	<p>Misconduct and serious misconduct</p>	<p>The Office of Police Integrity uses the following working definitions:⁴⁷</p> <p>Misconduct: conduct involving a negligent or reckless breach of trust, policy or the oath that a member is sworn to uphold. It includes improper or disgraceful conduct and conduct that is likely to bring Victoria Police into disrepute.</p> <p>Corruption: a deliberate act or acts of dishonesty, abuse of public trust, breach of the law, or abuse of power that undermines or is against the interests of Victoria Police and is incompatible with the impartial exercise of official duties.</p>
<p><i>Common law / Crimes Act 1958</i></p>	<p>Misconduct in public office</p>	<p>This is an offence at common law. The elements of the offence include that the prosecution must establish beyond reasonable doubt:</p> <ul style="list-style-type: none"> • the accused in the exercise of duties in his or her public office; • acted or failed to act; • the act or omission arose from improper motive; • the act or omission so injures the public interest that the punishment is warranted.

⁴⁷ Office of Police Integrity 2008, *Misconduct and corruption fact sheet*, Office of Police Integrity, Melbourne.

appendix F integrity bodies in Australia

Across Australia, governments have established various integrity and anti-corruption bodies to investigate and address maladministration, misconduct and corruption. Table 3 provides an overview of the types of integrity bodies that have been established by the Commonwealth or by state governments.⁴⁸

Table 3, Comparison of integrity institutions in place in Australian jurisdictions

	Auditor-General	Ombudsman	Police oversight body	Anti-corruption commission	Crime commission	Police
Victoria	✓	✓	✓ (Office of Police Integrity)			✓
New South Wales	✓	✓	✓ (Police Integrity Commission)	✓ (Independent Commission Against Corruption)	✓	✓
Western Australia	✓	✓	✓ (Corruption and Crime Commission)			✓
Queensland	✓	✓	✓ (Crime and Misconduct Commission)			✓
Tasmania	✓	✓	✓ (Integrity Commission)			✓
South Australia	✓	✓	✓ (Police Complaints Authority)			✓
Commonwealth	✓	✓	✓ (Australian Commission for Law Enforcement Integrity)		✓	✓

⁴⁸ Variation exists in the functions and powers assigned to each agency across the jurisdictions.

appendix G core Victorian integrity bodies

There are five core integrity bodies specified in the Review's terms of reference. These are the Ombudsman, the Auditor-General, the Office of Police Integrity (OPI), the Local Government Investigations and Compliance Inspectorate (LGICI) and Victoria Police. The functions, powers, jurisdiction and level of independence of these bodies are summarised in Table 4.

Table 4, Jurisdiction, function, powers and level of independence of Victoria's core integrity bodies

Agency and enabling legislation	Function	Jurisdiction	Powers	Level of independence
Ombudsman <i>Ombudsman Act 1973</i>	To investigate complaints about the integrity of administrative actions and decisions; initiate own motion investigations and manage whistleblower disclosures under the Whistleblowers Protection Act alleging serious misconduct or corruption.	Victorian public sector (including government departments, statutory authorities) and local government.	Coercive powers to summons witnesses and compel witnesses to answer questions. Powers to enter public premises (with or without warrants).	The Ombudsman is an independent officer of Parliament enshrined in the Constitution; reports to Parliament with limited Parliamentary oversight.
Auditor-General <i>Audit Act 1994</i>	To examine the management of resources in the public sector and independently assess whether money spent on public services has been managed economically, efficiently and effectively.	Victorian public sector (including public service, public entities and statutory bodies), universities and local government.	Coercive powers to summons witnesses and compel witnesses to answer questions. Powers to enter public premises (with or without warrants).	The Auditor-General is an independent officer of Parliament enshrined in the Constitution; reports to Parliament and overseen by Public Accounts and Estimates Committee of Parliament.
Office of Police Integrity <i>Police Integrity Act 2008</i>	To detect and investigate police corruption and serious misconduct and identify ways to prevent corruption and misconduct.	Sworn members of Victoria Police.	Coercive powers to summons witnesses, compel witnesses to answer questions and override privileges. Enter public and private premises (with or without warrants), carry weapons, seize and copy documents and override privileges in conducting searches and seizures.	The Director, Police Integrity, is an independent officer of Parliament under statute and reports to Parliament. The Special Investigations Monitor, an independent officer of Parliament, oversees the OPI's coercive powers.
Local Government Investigations and Compliance Inspectorate <i>Local Government Act 1989</i>	To detect and enforce breaches of the <i>Local Government Act 1989</i> by conducting investigations and audits, monitoring compliance by councils and prosecuting offences.	Local Government councillors, chief executive officers and senior staff.	Powers to seek (on notice) production of documents and interview persons on oath. Enforcement of notices requires Supreme Court authorisation.	The LGICI is an administrative office of Department of Planning and Community Development. The Chief Municipal Inspector reports to the Secretary.

Agency and enabling legislation	Function	Jurisdiction	Powers	Level of independence
Victoria Police (function pertaining to public sector misconduct) <i>Police Regulation Act 1958</i>	Function pertaining to public sector misconduct is to investigate any potentially criminal misconduct in the public sector.	All persons suspected to be involved in public sector misconduct (including elected officials, the judiciary, public officers or private citizens).	Powers to detain and arrest, enter public and private premises (with/without warrants), seize and copy documents (with/without warrants) and directly prosecute.	Under the Police Regulation Act, the Chief Commissioner has operational independence and reports to the Minister for Police and Emergency Services.

G.1 Ombudsman Victoria

The Ombudsman is the principal officer charged with overseeing administrative actions in the Victorian public sector. Established in 1973, the Ombudsman investigates complaints about administrative actions taken by public sector bodies and their officers.

The Ombudsman may investigate decisions made by government departments, public statutory bodies or by any member of staff of a municipal council, based on a complaint received or using 'own motion' powers. The office of the Ombudsman has broad powers to conduct investigations, including the power to enter public premises, summons witnesses and compel witnesses to give evidence.

The Ombudsman also co-ordinates and manages whistleblower disclosures under the *Whistleblowers Protection Act 2001*. This Act is designed to protect those who disclose information about serious misconduct or corruption in the public sector. In addition to investigating disclosures, the Ombudsman is also responsible for publishing guidelines for whistleblower policies and procedures in public entities.

The Ombudsman is an independent officer of the Victorian Parliament, with the provisions relating to the appointment, operational independence and tenure of the Ombudsman set out in the *Constitution Act 1975*. The Ombudsman reports to the Victorian Parliament.

G.2 Victorian Auditor-General

The Victorian Auditor-General's Office was established in 1891 to examine the management of resources in the public sector and provide an independent assessment on whether services are managed economically, efficiently and effectively. The role and function of the Auditor-General includes conducting two types of audits:

- financial statement audits, providing assurance to Parliament and the community that the information contained in the financial statements of public sector entities is presented fairly in accordance with Australian accounting standards and applicable legislation; and
- performance audits, evaluating whether a government organisation or program is achieving its objectives effectively and doing so economically and efficiently, and in compliance with relevant legislation.⁴⁹

⁴⁹ Victorian Auditor-General's Office 2010, Victorian Auditor-General's Office, Melbourne, viewed 29 March 2010, <<http://www.audit.vic.gov.au>>.

Similarly to the Ombudsman, the Auditor-General is designated as an independent officer of Parliament in the Constitution Act. The Auditor-General reports directly to Parliament and is oversighted by the Public Accounts and Estimates Committee of Parliament.

G.3 Office of Police Integrity

The Office of Police Integrity was established in 2004 to hold Victoria Police to account in maintaining the highest ethical and professional standards. The role of the OPI is to:

- detect, investigate and prevent police corruption and serious misconduct;
- examine police practices and procedures to ensure they work effectively; and
- monitor and review the way Victoria Police investigates or conciliates complaints.⁵⁰

The OPI has sophisticated overt and covert investigative powers, including the power to compel police officers to produce documents or give evidence and powers of entry, search and seizure. The Special Investigations Monitor (SIM), a separate independent officer of Parliament, has been established to monitor use of these powers by the OPI. The SIM can receive and investigate complaints from persons subject to the coercive powers and reports to Parliament about how the OPI has used these powers. The Ombudsman has jurisdiction to investigate other complaints relating to the Office of Police Integrity.

The Director, Police Integrity is an independent officer of Parliament and reports directly to Parliament. Initially part of the Office of the Ombudsman, the Director, Police Integrity became a separate entity in 2007.

G.4 Local Government Investigation and Compliance Inspectorate

The Local Government Investigation and Compliance Inspectorate monitors, investigates and prosecutes breaches of the governance arrangements and codes of conduct set out in the *Local Government Act 1989*. Its functions include:

- monitoring compliance with the governance requirements in the Local Government Act;
- investigating and prosecuting breaches of the councillor conduct requirements and electoral provisions of the Local Government Act; and
- elevating matters to the Minister for Local Government, in the case of serious failures of good governance, or to the Victorian Civil and Administrative Tribunal, in the case of gross misconduct of a councillor.

The Inspectorate was established in 2009 via a Governor in Council Order pursuant to the Public Administration Act. It is an administrative office of the Department of Planning and Community Development (DPCD). The Chief Municipal Inspector reports to the Secretary of the DPCD and can provide advice directly to the Minister for Local Government. Prior to the establishment of the LGICI, investigations into complaints of breaches of the Local Government Act were conducted by Local Government Victoria, a division of DPCD.

⁵⁰ Office of Police Integrity 2010, Office of Police Integrity, viewed 29 March 2010, <<http://www.opi.vic.gov.au>>.

G.5 Victoria Police

Victoria Police is the principal law enforcement body in Victoria. One of its functions is to investigate any potentially criminal misconduct occurring within the public sector. Victoria Police has considerable powers, both overt and covert, to enable them to investigate criminal activity and to bring offenders to justice. Where there is evidence of an indictable offence the matter is referred to the Director of Public Prosecutions.

The Chief Commissioner of Police heads Victoria Police and under the *Police Regulation Act 1958* is responsible for the 'superintendence and control' of Victoria Police.⁵¹ The Chief Commissioner of Police reports to the Minister for Police and Emergency Services. Within Victoria Police, the Ethical Standards Department is responsible for handling complaints about police and allegations of misconduct or corruption.

Victoria Police is assisted in combating organised crime in Victoria by the Chief Examiner. The statutory office of the Chief Examiner was established in 2004 under the *Major Crime (Investigative Powers) Act 2004* and enables Victoria Police to obtain evidence from witnesses by compulsory examination where the privilege against self-incrimination is abrogated. Any coercive questioning of suspected organised criminals must have Supreme Court approval and be undertaken by the Chief Examiner, who is required to ensure that the powers are lawfully used in accordance with the principles of natural justice. The use of the coercive powers is overseen by the Special Investigations Monitor.

⁵¹ Police Regulation Act 1958, Part 1, Section 5.

appendix H broader Victorian integrity infrastructure

In addition to the integrity bodies specified in the Review's terms of reference, there are a number of public bodies in Victoria that have a role in monitoring, investigating or reporting on standards of integrity, accountability and transparency in the public sector, generally focusing on a particular area. These commissioners, regulators or authorities are outlined below. In addition, Victoria's integrity and anti-corruption system includes a number of Acts and regulations, described below.

H.1 Public Sector Standards Commissioner

The position of Public Sector Standards Commissioner (PSSC) was established in 2004 under the Public Administration Act. The PSSC works collaboratively with public sector employers to promote high standards of integrity and conduct by:

- issuing codes of conduct that reinforce the public sector values;
- issuing standards on how to apply the employment principles;
- promoting the values, employment principles, codes and standards through speaking engagements, publishing information on the SSA website, and issuing policy frameworks, guidelines and training materials on particular topics;
- establishing a register of lobbyists;
- reviewing and making recommendations to public sector employers on the application of the values and employment principles in their organisation;
- reporting on application of the values and employment principles in the SSA's annual report; and
- reporting to the Premier on any review of action taken within an organisation.

H.2 Victorian Electoral Commission

The Victorian Electoral Commission (VEC) is an independent statutory authority responsible for conducting Victorian state elections, local council elections, certain statutory elections and commercial and community elections. The VEC also conducts boundary reviews, maintains the Victorian electoral enrolment register and conducts electoral research. The Electoral Commissioner is an Independent Officer of Parliament under the Constitution Act.

H.3 watchdogs and review functions

There are a number of specialised bodies that play a role in Victoria's system for oversight of public sector conduct. These include:

- the Victorian Human Rights and Equal Opportunity Commission, responsible for ensuring that Victorians understand the *Charter of Human Rights and Responsibilities Act 2009*, which requires government and public bodies to consider human rights when making laws and providing services;
- the Office of the Victorian Privacy Commission, an independent statutory body that monitors the responsible handling of personal information by the Victorian public sector;

- the Health Services Commissioner, an independent statutory authority established to receive and resolve complaints about health services, disclose of and access to health information; and
- the Director of Public Prosecutions, who is responsible for prosecuting crimes of ‘misconduct in public office’ and other related offences;
- the Racing Integrity Commissioner, appointed to strengthen the integrity assurance of the Victorian racing industry, by monitoring integrity assurances and improving intelligence sharing on integrity related issues; and
- the Commissioner for Law Enforcement Data Security, who is responsible for promoting the use of appropriate and secure law enforcement data management practices by Victoria Police.

H.4 relevant legislation

The Victorian integrity system also includes a range of laws, policies and procedures that support the delivery of high quality services and appropriate behaviour. These include:

- the *Public Administration Act 2004*, which sets out good governance arrangements for the sector in addition to detailing the values and employment principles;
- the *Whistleblowers Protection Act 2001*, providing protection for persons wanting to disclose misconduct or corruption within the public sector;
- the *Financial Management Act 1994*⁵² and the *Audit Act 1994*, emphasising good stewardship of public resources;
- the *Freedom of Information Act 1987*, promoting openness in government decision making;
- the *Victorian Charter of Human Rights and Responsibilities Act 2006*, setting out the human rights, freedoms and responsibilities protected by law;
- the *Member of Parliament (Register of Interests) Act 1978*, providing a code of conduct for members of parliament and establishing a register of interests⁵³; and
- the *Crimes Act 1958*, codifying crimes and providing sanctions for criminal activity.

⁵² The Parliament is currently considering a Public Finance and Accountability Bill 2009 which if enacted will supersede the Financial Management Act.

⁵³ Parliament is considering a Members of Parliament (Standards) Bill 2010, which if enacted will supersede the *Members of Parliament (Register of Interests) Act 1978*.

appendix | glossary

Coercive powers	<p>Strong investigatory powers conferred on government agencies to enable them to obtain information not available through traditional investigatory methods. Can include the power to:</p> <ul style="list-style-type: none">• set up telephone intercepts• install listening devices• conduct covert surveillance• override privileges• conduct searches, seizures and arrests.
Corruption	<p>Misuse of public power or position for private gain.</p>
Covert powers	<p>Power to use investigatory techniques without the knowledge of the subject of the investigation.</p>
Department	<p>Departments are the central policy advisers and program administrators for Ministers and government.</p>
Electorate officer	<p>Staff employed under section 30 of <i>the Parliamentary Administration Act</i> 2005 to assist members of Parliament in their electorate offices.</p>
Executive Council	<p>The Executive Council consists of all Ministers and provides advice to the Governor.</p>
Executive government	<p>The executive is responsible for the administration of laws passed by Parliament and the delivery of public services. The executive comprises Ministers and the administrative agencies of government such as departments and public bodies.</p>
Financial audit	<p>Review of the financial statements of a department or other public body to provide an independent opinion on whether the statements are relevant, accurate, complete and fairly presented.</p>
Governor in Council	<p>When the Governor acts on advice given by the Executive Council.</p>
Integrity	<p>The application of values, principles and standards in daily operations, such as acting with honesty and transparency and using powers responsibly.</p>
Legislative Assembly	<p>The Lower House of the Parliament of Victoria.</p>
Legislative Council	<p>The Upper House of the Parliament of Victoria.</p>
Local government	<p>Tier of government established by state and territory governments to maintain significant infrastructure, provide services and enforce various laws relating to matters of local interest. In Victoria, the principal legislation governing the establishment and operation of councils is the Local Government Act. In addition, local government is recognised in the Victorian Constitution Act.</p>
Local government councillor	<p>A person elected to hold the office of a member of a local government council.</p>
Local government employee	<p>Member of staff of a local government council.</p>

Maladministration	Performing administrative tasks improperly or inappropriately.
Member of parliament	Person democratically elected to represent voters in parliament.
Minister	A member of the government, appointed by the Premier to be responsible for a particular area of administration; he or she is also a member of Cabinet.
Ministerial officer	Staff employed by the Premier under section 98 of the Public Administration Act to provide advice and assistance to Ministers in their performance of their duties.
Misconduct	Wrongful, improper or unlawful conduct, with a degree of intent or recklessness.
Own motion	The power of an investigatory body to initiate and conduct an inquiry on its own motion without a referral or complaint to trigger the investigation.
Parliamentary adviser	Staff employed under section 99 of the Public Administration Act to provide advice and assistance to non-government members of parliament, including the Leader of the Opposition.
Parliamentary committee	A parliamentary committee consists of a group of members of Parliament who conduct investigations and make recommendations about topics of interest to Parliament.
Performance audit	Review of the efficiency and effectiveness of the procedures and processes of an organisation.
Procedural fairness	Refers to the application of fairness and transparency in administrative and legal processes; also known as the 'rules of natural justice'.
Public official	Any person holding a legislative, executive, administrative or judicial office, whether appointed or elected, or a person employed to perform a public function or provide a public service.
Public sector	Under the Public Administration Act, the public sector comprises the public service, public entities and special bodies.
Public sector director	A member of the board of a public entity.
Public sector employee	Employees of the Victorian public sector, including employees of the public service, public entities and special bodies.
Publicly funded employees of members of parliament	For the purposes of this Review, includes ministerial officers, parliamentary advisers and electorate officers.
Separation of powers	The three separate branches of government in Victoria's political system: the legislative, executive and judiciary.
Victoria Civil and Administrative Tribunal	A tribunal that hears and determines a range of disputes including disputes between people and state or local government about issues such as planning, taxation or other government decisions.
Westminster system	Victoria's system of parliamentary democracy, based on the United Kingdom's system of government and similar to that used in Commonwealth countries such as Canada and New Zealand.

appendix J about the Commissioners

Peter Allen

Peter Allen commenced as the Public Sector Standards Commissioner in August 2009. Mr Allen is also the Deputy Dean of the Australia and New Zealand School of Government.

The Governor in Council appoints the Public Sector Standards Commissioner, who can only be removed from office by resolution by both houses of parliament. The Public Sector Standards Commissioner works independently and collaboratively with public sector employers to promote high standards of integrity and conduct in the Victorian public sector.

Mr Allen's earlier responsibilities include Under Secretary in the Department of Human Services, Secretary of the Department of Education and the Department of Tourism, Sport and the Commonwealth Games; and senior positions in Community Services Victoria and Health and Community Services.

Elizabeth Proust

The Governor in Council appointed Elizabeth Proust as a Special Commissioner of the SSA in November 2009.

Ms Proust is Chairman of Nestlé Australia Ltd, and a director of Perpetual, Spotless, Sinclair Knight Merz, and Insurance Manufacturers. Ms Proust spent eight years at ANZ where she held the positions of Managing Director, Esanda; Managing Director, Metrobanking, and Group General Manager Corporate Affairs and Human Resources.

Prior to joining ANZ, Ms Proust was Secretary of the Department of Premier and Cabinet in Victoria. Other positions she has held include: Chief Executive Officer of the Melbourne City Council, Secretary of the Attorney-General's Department (Victoria), and Deputy Director-General of the Department of Industry, Technology and Resources. Ms Proust also spent seven years with BP Australia and BP International Limited. She has a BA Hons (La Trobe) and LLB (Melbourne).

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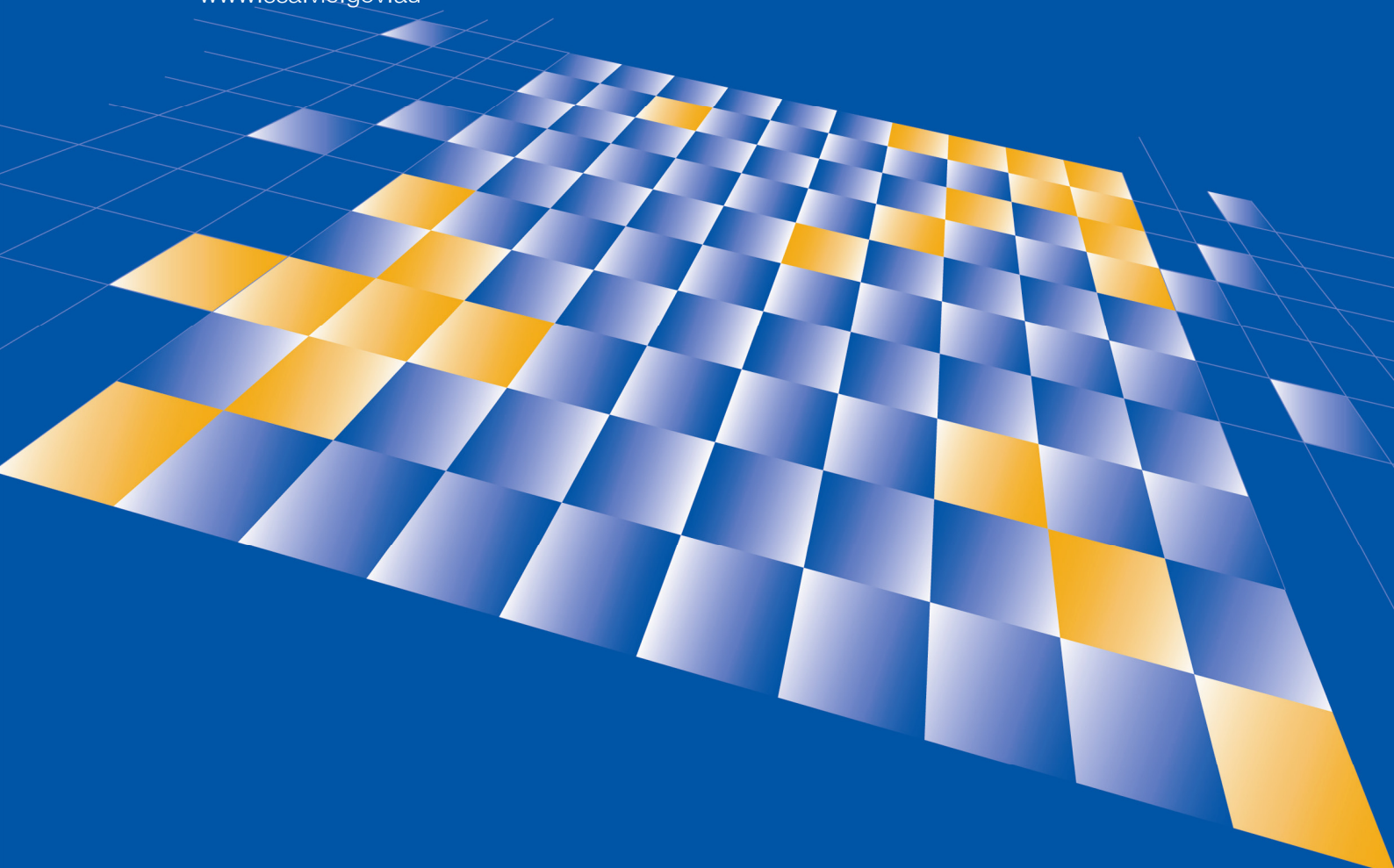
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